

1975-76 REPORT

PENNSYLVANIA CRIME COMMISSION

MAY, 1977



**OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA**

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PART I

CRIME COMMISSION REPORTS

I. Conflict of Interest and Self Dealing by Local Public Officials and Employees

In April 1973, following recurring allegations of corruption in various political subdivisions in the Commonwealth, the Pennsylvania Crime Commission initiated a study of the township form of government in Pennsylvania. The Crime Commission has since conducted formal investigations in three of these townships. One of these investigations involved a first class township¹ while the other two involved second class townships.² In the *Chartiers Township Report* the Crime Commission cited numerous abuses uncovered in Chartiers Township primarily concerning compensation and reimbursement of township supervisors. During the Pocono Township investigation, the Crime Commission discovered that the Pocono Township board of supervisors had, over a period of years, failed to adhere to requirements of existing law in awarding contracts to perform work on state-approved township road improvement projects. In addition, one township supervisor, the political "kingpin" of the township, was found to have had an interest in such contracts in contravention of Pennsylvania laws covering conflicts of interest. In Marple Township, the Crime Commission found evidence of misuse of public equipment, personnel and materials for the private benefit and gain of Marple Township officials and employees. The activities of the Marple Township officials and employees, although not technically classifiable as conflict of interest, nonetheless constituted self-dealing of the sort which should be prohibited. The *Marple Township Report* recommends legislation directed at correcting deficiencies in the First Class Township Code. The *Pocono Township Report* goes further, however, recommending one comprehensive statute that would provide for stiff criminal and civil penalties, removal from public office, and a mandatory lifetime prohibition against serving in any elected or appointed public office, for conflict of interest and self-dealing violations by both state and local elected and appointed officials in Pennsylvania. Moreover, the report recommends the institution of an independent, bipartisan Commission composed of a representative group of citizens empowered to monitor and enforce conflict of interest provisions.³

1. *Second Report on Official Corruption in Marple Township, Delaware County*, April 1973, hereafter referred to as the *Marple Township Report*. The full report follows.

2. *Case Study of the Second Class Township Code*, Pennsylvania Crime Commission, 1973-1974 Report, pp. 54-73 (June 1974), hereafter referred to as the *Chartiers Township Report; Conflicts of Interest and the Illegal Award of Contracts in Pocono Township, Monroe County*, January 1976, hereafter referred to as the *Pocono Township Report*. The full report follows.

3. *Pocono Township Report*, p. 14.

It is the opinion of the Pennsylvania Crime Commission that the present state of conflict of interest law in Pennsylvania is unsatisfactory and furthermore that the piecemeal correction of deficiencies in the Township Codes is an insufficient method for dealing with the problems depicted in the Marple and Pocono reports. One of the biggest problems with many state conflicts acts, including that of Pennsylvania, is that it is scattered throughout the statute books⁴ and is often inconsistent.⁵ Tacking on new provisions to certain sections of the code would only compound this inconsistency. On the other hand, consolidating all of Pennsylvania's conflicts laws would be highly beneficial, whether or not it results in repetition of provisions more appropriately catalogued in specialized sections of the code, since the net practical effect of creating a unified conflicts statute would be to establish a clear, comprehensive ethical reference guide.⁶

An examination of conflict of interest laws in existence throughout the nation further underscores Pennsylvania's need for a central, comprehensive act. Motivated by the premise that their citizens are entitled to have absolute confidence in the integrity of their elected representatives and public officials no less than thirty-five states have enacted substantive conflict of interest legislation. Of these thirty-five jurisdictions, twenty-seven have coverage that stretches beyond legislators to legislative employees and to other state and local public officials and employees.⁷ Of the five most populous states in the nation (California, New York, Pennsylvania, Texas, and Illinois), only Pennsylvania lacks such a statute. No matter what type of conflicts legislation is employed as a vehicle for investigating or prosecuting official corruption, the essential first step for a state government is a visible commitment to the problem. Unfortunately, the Pennsylvania legislature has not seen fit to meet this commitment despite numerous efforts by some of its members over the years to initiate action on such legislation.⁸

A broad, comprehensive conflict of interest statute will be of little value in the battle against corruption without an independent body created to monitor and enforce its provisions. This is more clearly understood in view of the fact that the isolated conflicts provisions now in existence are not enforced. The *Pocono Township Report* provides evidence that no action was taken against conduct

4. For example, conflicts provisions can be found in the following places in Purdon's Statutes: 18 C.P.S.A. §5302; 18 C.P.S.A. §7503; 43 P.S. §§1101-1801; 46 P.S. §143.1 et seq.; 53 P.S. §65564; 53 P.S. §65802; 71 P.S. §118.1; Const. Art. 3 §22.

5. An example of the inconsistency of the present statutes is depicted in the *Marple Township Report*. Were the wrongdoers officials of a Third Class City, their conduct would have been prohibited by law. See 53 P.S. §35912 and 35913. However, since they are officials of a First Class Township and the Township Code is silent on such activities, their conduct is not proscribed by any existing penal provision. Pages 22-24 of the report.

6. Consolidation, unity and consistency have been noted as being among the chief accomplishments of the recently enacted federal conflict of interest statute: 18 U.S.C. §§201-09 (1970). Perkins, *The New Federal Conflict-of-Interest Law*, 76 Harv. L. Rev. 1113, 1163.

7. These states are Arizona, Arkansas, California, Connecticut, Florida, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, Oklahoma, Oregon, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

8. For example, in 1973, State Senator John Stauffer, 19th District, proposed a conflict of interest bill (S.B. 725) that was praised by many (see the April 29, 1973, issue of the *Philadelphia Inquirer* where a column on the bill by William Eckenbarger is headlined "Conflict of Interest Bill is a Good Beginning") yet it was allowed to die in committee.

specifically prohibited by existing law, even though such conduct was overt and continuous for several years.⁹ Several explanations are plausible. First, the people who ordinarily become aware of such conduct are loath to bring it to the attention of the proper authorities. They are either associates, political allies, or friends of the wrongdoers, or subordinates reluctant to jeopardize their jobs by turning informant.¹⁰ They may feel that, since the prohibited conduct has been going on for so long without hindrance it is therefore condoned. Second, local district attorneys have little to gain by initiating investigations into misconduct of this type. In some cases the wrongdoers are their friends and political allies. Further, district attorneys are so burdened with case backlogs that they have neither the time nor resources to deal with the matter. They may choose to appropriate available resources to matters that they deem more important, such as crimes of violence and vice. In this regard, it is important to note that when the Crimes Code was reorganized in 1973, the old penal provision entitled, "Prohibited Acts by Public Officers," 18 P.S. §4682, was eliminated. It was eliminated because a majority of the committee (including judges) that participated in the reorganization felt that the new code should be streamlined and free of "insignificant" provisions.¹¹ This fact could conceivably lead local district attorneys to feel that investigations into misconduct by local public officials are just a waste of time and effort.

The extreme necessity for an independent enforcement body can be further underscored by examining the existing conflict of interest legislation presently in effect in Pennsylvania covering only state legislators.¹² As written, the Code of Ethics is commendable in that its substantive provisions, particularly the self-dealing prohibition of section 5(c), are outstanding in parts, and, through the express exceptions of 5(e), generally strike an appropriate balance between the dual objectives of conflicts legislation¹³ (ensuring governmental integrity while at the same time avoiding a situation whereby qualified individuals are deterred from entering public service). However, in view of the Act's inactivity it could hardly be said that its enactment has been an adequate solution to the conflict of interest problem. The Code of Ethics does not provide for an *enforcement* mechanism to give meaning to its sanctions and standards, but assumes the formation of House and Senate ethics committees. Neither the section 4 standards of conduct, nor the section 5 prohibitions (which include conflict of interest provisions) and disclosure requirements make mention of an authorized enforcement committee. As a result of this initial failure to provide for a viable enforcing mechanism, the Act has remained generally ineffective in promoting legislative good conduct and public confidence in state government.¹⁴ Instead, the history of the Code seems unfortunately to have

9. A Pocono Township Supervisor testified that he questioned the Pocono Township Solicitor about whether it was proper for equipment owned by another township supervisor to be working on township projects. Yet, neither the supervisor nor the solicitor took any further steps to rectify the situation or to inform the proper authorities of an apparent breach of the law (53 P.S. §65802(i) (Supp. 1974-75)). Page 7 of the report.

10. The Marple Township maintenance employees who performed private work for Marple Township supervisors testified that they realized that they were on township time and being paid for the work with township money. Nevertheless, they made no complaints to the authorities.

11. Conversation with Senator John Stauffer on August 5, 1975.

12. Legislative Code of Ethics Act, 46 P.S. §143, pp. 1-8.

13. 19 Vill. L. Rev. 82, 132 (1973).

14. 19 Vill. L. Rev. *supra*, note 13, at 128.

made a prophet of one perceptive commentator who, writing in 1959, stated:

Not the least danger of the promulgation of a code of ethics is that the act of promulgation itself may tend to be looked upon by the responsible government as a panacea for conflicts of interest problems, or may operate as a single, symbolic gesture by which that government effectively washes its hands of the affair. Codes, however, will be effective only insofar as they are elucidated, administered and *enforced*. (Emphasis added).¹⁵

Because of the general inability of state legislators to police themselves, and the history of non-enforcement of the isolated, scattered, inconsistent and inadequate conflicts provisions applicable to local officials, to make any comprehensive conflicts act work an independent agency or board with enforcement powers is clearly a must.¹⁶

15. 107 Pa. L. Rev. 985, 1025-1026 (1959).

16. Of the thirty-five states having substantive conflicts legislation, fourteen have appointed a specific agency to have affirmative monitoring and/or enforcement responsibility over their laws. Those states are Arkansas, California, Connecticut, Hawaii, Illinois, Iowa, Kansas, Louisiana, Nebraska, Oklahoma, Texas, Virginia, Washington and Wisconsin.

A. Conflicts of Interest and the Illegal Award of Contracts in Pocono Township, Monroe County

1. ORIGIN AND SCOPE OF THE INVESTIGATION

In April 1973, following recurring allegations of corruption in various second class township governmental bodies, the Pennsylvania Crime Commission initiated a study of government in Pennsylvania's second class townships. Chartiers Township, Washington County, was selected to serve as the case study in view of questions raised by an interim investigation of that township's records. In a report entitled *A Case Study of the Second Class Township Code*,¹ the Commission cited numerous abuses uncovered in Chartiers Township, primarily concerning compensation and reimbursement of township supervisors. Actions designed to relieve governmental problems caused by the abuses were recommended. Also, legislation was recommended to correct certain deficiencies in the Second Class Township Code.

In December 1973, the Commission received allegations that supervisors in another second class township, Pocono Township, Monroe County, were awarding township contracts in violation of existing law, and that at least one supervisor had a financial interest in such contracts. Such conduct, if substantiated, would

1. Pennsylvania Crime Commission, *1973-74 Report*, pp. 54-73 (June 1974) [hereinafter cited as the *Chartiers Report*]. The *Chartiers Report* had been previously issued as a separate report in August 1973.

represent a serious threat to honest government which had not been dealt with in the *Chartiers Report*. Consequently, a preliminary investigation in Pocono Township was promptly initiated. Based on the findings of the preliminary inquiry, the Commission passed a resolution on October 10, 1974, authorizing a full-scale investigation in order to determine:

... (a) whether [Pocono] township supervisors have had direct or indirect interests in contracts awarded for township road repair work in contravention of existing law pertaining to conflicts of interest, and (b) whether [Pocono] township supervisors have failed to award township road repair or other contracts in accordance with procedures set forth in existing laws.

Based on testimony received from subpoenaed witnesses at private Commission hearings held in Stroudsburg, Monroe County, in December 1974 and March 1975, as well as upon information obtained from township records, it is clear that the Pocono Township Board of Supervisors has over a period of years failed to adhere to the requirements of existing law in awarding contracts to perform work on state-approved township road improvement² projects. In addition, township supervisor Paul Frailey has apparently had an interest in such contracts in contravention of Pennsylvania law covering conflict of interests.

2. PERTINENT PROVISIONS OF THE SECOND CLASS TOWNSHIP CODE

In Pennsylvania, townships are divided into two classes. First class townships are those which have a population density of at least 300 inhabitants per square mile. Townships, such as Pocono, which are smaller, are designated second class townships.³ Pocono Township is thus governed by the Second Class Township Code ("Act").

The voters of each second class township with a population under 10,000 (Pocono Township's 1970 population was 1,870) elect the following township officials: three supervisors, one assessor, three auditors, and one tax collector.⁴ The three supervisors are elected for six year overlapping terms, one supervisor being elected every two years.⁵ They are responsible for the general supervision of the affairs of the township.⁶ On the first Monday in January of each year the supervisors are required to hold an organizational meeting at which a chairman and a vice-chairman are elected; the board appoints a non-member to serve as treasurer and secretary.⁷

Among their many duties, the supervisors are responsible for the maintenance

2. The term "road improvement" is used throughout this report to indicate construction work beyond the scope of normal maintenance of existing roads, such as construction work required to widen a road.

3. Act of May 1, 1933, P.L. 103, §201, as amended, 53 P.S. §65201 (1957) [hereinafter cited as Act].

4. Act, 53 P.S. §65402 (Supp. 1975-76).

5. Act, 53 P.S. §65410 (Supp. 1975-76).

6. Act, 53 P.S. §65510 (Supp. 1975-76).

7. Act, 53 P.S. §65511 (Supp. 1975-76).

and improvement of roads and bridges in the township.⁸ In order to carry out this responsibility, the board of supervisors is authorized to contract for road construction, reconstruction and improvement.⁹ The board may employ a road superintendent for the entire township or, if the township is divided into road districts, a roadmaster for each district.¹⁰ Township supervisors may be employed as superintendents or roadmasters.¹¹

The Act requires that all township contracts in excess of \$1,500, with certain exceptions not pertinent hereto, (a) be solicited through advertisement and awarded to the lowest responsible bidder, (b) state the entire amount which the successful bidder will receive, and (c) require the successful bidder to furnish a performance bond with surety in the amount of fifty percent of the contract amount.¹² The Act also prohibits any township official from having an interest in any contract with the township involving an amount in excess of \$300. If this prohibition is knowingly violated, the official is liable to a surcharge to the extent of damage shown to be thereby sustained, removal from office, and a fine not to exceed \$500.¹³

3. FINDINGS

a. The Awarding of State-Approved Road Improvement Contracts

The Pocono Township Board of Supervisors must submit to the Pennsylvania Department of Transportation (PennDOT) proposed road improvement projects for review.¹⁴ If the project is approved, an estimate of road reconstruction costs is then prepared by PennDOT. Copies of the estimate are forwarded to the township supervisors and county commissioners for approval. After the Monroe County Commissioners approve the estimate and authorize the utilization of funds allocated to the county from the Liquid Fuel Tax, construction contracts are awarded.¹⁵

8. Act, 53 P.S. §65516 (Supp. 1975-76).

9. Act, 53 P.S. §65710 (1957).

10. Act, 53 P.S. §65514 (1957).

11. *Ibid.*

12. Act, 53 P.S. §65802 (a), (b) and (d) (Supp. 1975-76).

13. Act, 53 P.S. §65802(f) (Supp. 1975-76). The exact language of this provision is as follows:

Except as herein provided, no township official, either elected or appointed, who knows, or who by the exercise of reasonable diligence, could know, shall be interested to any appreciable degree, either directly or indirectly, in any contract . . . for any work to be done for such township involving the expenditure by the township of more than three hundred dollars (\$300) in any year, . . . [A]ny such official . . . who shall knowingly violate this provision shall be subject to surcharge to the extent of the damage shown to be thereby sustained by the township, ouster from office, and shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars (\$500).

14. PennDOT does not review mere road maintenance. However, the Commonwealth pays a portion of the costs of road improvement projects from Liquid Fuel Tax funds allocated annually to municipalities, and thus PennDOT review is required.

15. Testimony of Pocono Township Secretary-Treasurer Elmer Munch before the Pennsylvania Crime Commission, December 5, 1974, N.T. 15-17 [hereinafter cited as Munch]; testimony of Pocono Township Supervisor Willard Anglemyer before the Pennsylvania Crime Commission, December 5, 1974, N.T. 137-139 [hereinafter cited as Anglemyer]. Mr. Anglemyer has served as a supervisor since 1970; testimony of former Pocono Township Supervisor Horace Raish before the Pennsylvania Crime Commission, December 5, 1974, N.T. 196-198 [hereinafter cited as Raish]. Mr. Raish served as a Pocono Township Supervisor from 1968 through 1973.

Since 1970, Pocono Township has initiated one state-approved road improvement project annually. These projects generally have involved the widening of roads, thus requiring the clearing of trees, stumps, and overbrush; grading (leveling the roadbed); laying and grading shale on the roadbed; and paving the surface with asphalt (blacktop). In order to perform road reconstruction work, as opposed to normal road maintenance, Pocono Township has found it necessary to rent certain heavy construction equipment not owned by the township. In the past it has done so by requesting the submission of quotations¹⁶ for equipment rental on an hourly basis. Prior to 1974, these quotations were not obtained pursuant to the advertising requirements of the Act.¹⁷ Only in 1974 did Pocono Township advertise for bids for equipment rental for its road reconstruction work, apparently due to the commencement of the Crime Commission investigation.¹⁸ Moreover, the board of supervisors has only selectively enforced the bonding requirements on businesses contracting to perform road work.¹⁹

b. The Frailey Family

Paul Frailey has served as a Pocono Township Supervisor since 1966, beginning a second six-year term in January, 1972. Through 1972 he owned a construction company which carried his name.²⁰ His primary piece of construction equipment was a half-yard hydraulic diesel shovel.²¹

Clair and Clint Frailey, Paul Frailey's son and grandson respectively, have been engaged in an excavating business since 1969 under the name "Clair and Clint Frailey Excavating"²² ("Frailey Excavating"). From the time Clair and Clint Frailey formed their partnership in 1969, they have operated two bulldozers, a front-end loader, and two dump trucks. In 1972, they purchased the half-yard hydraulic shovel from Paul Frailey.²³ Frailey Excavating has contracted to perform services for Pocono Township on a number of occasions, mostly on the state-approved road reconstruction projects.²⁴ They use their equipment on those projects to remove tree stumps and overbrush, grade the roadbed, and then lay and grade shale on the roadbed.²⁵

In 1974, Pocono Township began to advertise for bids for equipment rental on state-approved road projects. Prior to that time, Paul Frailey would verbally request his son to submit quotations for equipment rentals on such projects.²⁶ Paul

16. The term "quotation" as used herein refers to bids submitted in those instances where the Act's advertising requirements were not followed.

17. Munch, N.T. 24-25; Anglemeyer, N.T. 146, 162; Raish, N.T. 205, 218.

18. Anglemeyer, N.T. 162, 187.

19. These improprieties are discussed below.

20. Testimony of Clair Frailey before the Pennsylvania Crime Commission, March 4, 1975, N.T. 80 [hereinafter cited as Clair Frailey].

21. *Id.* at 82-83.

22. *Id.* at 59; Testimony of Clint Frailey before the Pennsylvania Crime Commission, March 4, 1975, N.T. 105 [hereinafter cited as Clint Frailey].

23. Clair Frailey, N.T. 60-61; Clint Frailey, N.T. 106. This shovel was purchased from Paul Frailey for \$7,000. The purchase price was paid in two \$3,500 payments. The first payment was made in 1972 and the second in 1973. Clair Frailey, N.T. 91; Clint Frailey, N.T. 122, 127.

24. Clair Frailey, N.T. 62; Clint Frailey, N.T. 106-107.

25. Clair Frailey, N.T. 63-64; Clint Frailey, N.T. 114. Frailey Excavating does not perform paving work. Pocono Township has always advertised for bids for paving work in those cases where the cost was in excess of \$1,500.

26. Clair Frailey, N.T. 65-66; Clint Frailey, N.T. 107.

Frailey would advise his son which equipment the township needed.²⁷ Frailey Excavating would submit its quotation in a sealed envelope. In each instance prior to 1974 the envelope was given to Paul Frailey, who in turn submitted the envelope at the bid meeting.²⁸ Paul Frailey would then personally contact his son to tell him that Frailey Excavating had been awarded the equipment rental contract.²⁹

Paul Frailey has never had any direct financial interest in Frailey Excavating.³⁰ However, he did have an appreciable indirect interest in the company in 1970 and 1971. Prior to his retirement from the construction business in 1972, Paul Frailey did perform work for his son and grandson, operating his own piece of equipment (half-yard hydraulic shovel). He would be paid an hourly rate for his services.³¹ In particular, while he still owned the half-yard shovel,³² Paul Frailey was hired to work on Pocono Township road improvement projects by Frailey Excavating.³³ The figure quoted to the township by Frailey Excavating for rental of the shovel was supplied by Paul Frailey. As Clair Frailey testified, "... whatever he [Paul Frailey] wanted for the shovel why that's what I put down for the rental."³⁴ Paul Frailey's payment for the work he performed on the state-approved projects was based on the hourly rate quoted Pocono Township for the rental of the shovel by Frailey Excavating.³⁵

According to bills submitted to Pocono Township by Frailey Excavating, the shovel owned and operated by Paul Frailey was employed on the 1970 state-approved project on 31 different days in October and November, 1970, for a total of 201 hours. Paul Frailey received \$2,814 or \$14 per hour for these services performed for the township. Likewise, the shovel was employed on the 1971 state-approved project on six different days in September and October, 1971, for a total

27. Clair Frailey, N.T. 69.

28. Clair Frailey, N.T. 65, 70, 74; Clint Frailey, N.T. 110. Apparently Paul Frailey did not even bother to turn the sealed envelope over to the secretary-treasurer (normally bids received pursuant to advertising are turned over to the secretary-treasurer for safekeeping). Clair Frailey did not know what procedure his father followed with respect to the envelope. Clair Frailey, N.T. 71. Secretary-Treasurer Munch recalled one instance where Paul Frailey personally submitted a non-advertised equipment rental quotation at a meeting of the board of supervisors on behalf of Frailey Excavating. Munch, N.T. 25-26, 67-68. Supervisor Anglemeyer also recalled an instance where Paul Frailey personally submitted a quotation at a meeting on behalf of Frailey Excavating. Anglemeyer, N.T. 147-148. In 1974, Clair Frailey submitted his sealed bid to the secretary-treasurer.

29. Clair Frailey, N.T. 73; Clint Frailey, N.T. 112. A review of the township minute books revealed that although quotations for equipment rental were read at bid meetings, a formal announcement of the award of equipment rental contracts generally did not occur.

30. Clair Frailey, N.T. 81, 84; Clint Frailey, N.T. 118.

31. Clair Frailey, N.T. 82, 84.

32. Clair Frailey, N.T. 85, 90.

33. Clair Frailey, N.T. 85, 88; Clint Frailey, N.T. 115-116. Paul Frailey has not been hired to perform construction work for Frailey Excavating since 1972. Clint Frailey, N.T. 118.

34. Clair Frailey, N.T. 98; Clint Frailey, N.T. 116-117. Apparently some time prior to 1972, Frailey Excavating entered into a lease agreement permitting it to lease Paul Frailey's half-yard shovel. In return for the right to lease the shovel, Frailey Excavating paid Paul Frailey the fixed hourly rate for his operating the machine. No other payments were ever made to Paul Frailey under the lease agreement. Clair Frailey, N.T. 86-88; Clint Frailey, N.T. 119-121. Supervisor Anglemeyer testified that he questioned the Pocono Township solicitor about whether it was proper for equipment owned by a township supervisor to be working on township projects, and was advised that the fact that the equipment was being leased to Frailey Excavating made the arrangement legal. Anglemeyer, N.T. 170-171.

35. Clair Frailey, N.T. 88-89, 97. Only Paul Frailey operated the shovel on road improvement projects prior to his selling the shovel in 1972. Clair Frailey, N.T. 88-89; Clint Frailey, N.T. 118.

of 41 hours. Paul Frailey received \$656, or \$16 per hour, for these services.

Inasmuch as the figure quoted to Pocono Township by Frailey Excavating for rental of Paul Frailey's shovel was provided by Paul Frailey, and in view of the fact that Paul Frailey was in turn reimbursed according to the number of hours he operated his shovel, there appears to have been violations of the conflict of interest provision of the Act by Paul Frailey in 1970 and 1971.³⁶

In 1972, Paul Frailey sold his shovel and ceased to operate any equipment on state-approved road improvement projects. He no longer had any apparent appreciable interest in equipment rental contracts awarded by Pocono Township to his son and grandson. However, the township board of supervisors continued to ignore the Act's requirements for advertising and bonding in the case of the Fraileys. For example, in 1972 Pocono Township initiated a state-approved road reconstruction project involving two roads. Quotations were submitted for equipment rental by Frailey Excavating and Adelmann Contracting Company. According to Supervisor Anglemeyer, inasmuch as these two bids were the only ones submitted, it was determined that each contractor would be awarded the equipment rental contract for one of the roads. Mr. Anglemeyer testified, "Somebody just brought it up, why don't we give one to one and one to the other, and that is what happened. They [the supervisors] agreed."³⁷

In 1973, the township board of supervisors set August 7, 1973, as the date on which they would receive quotations for the rental of equipment to be used on the "Summit Hill Road project," the 1973 state-approved project. On that date, at a meeting of the board of supervisors, a quotation was received from Frailey Excavating for equipment rental for the Summit Hill project. Another contractor, who had discovered the presence of construction equipment belonging to Frailey Excavating on the job site prior to August 7, appeared at the bid meeting but refused to turn in a quotation, apparently because he believed Frailey Excavating would be awarded the equipment rental contract in any event.³⁸ The contract for equipment rental was awarded to Frailey Excavating. Several witnesses testified that Paul Frailey, well in advance of the scheduled meeting, asked a second supervisor, Horace Raish, if Frailey Excavating could place its equipment on the job site. Mr. Raish consented on the condition that Paul Frailey received the approval of the third supervisor, Willard Anglemeyer.³⁹ According to Mr. Anglemeyer, such approval was not sought by Frailey.⁴⁰ Mr. Raish denied that his conditional approval of Paul Frailey's request was tantamount to authorizing Clair and Clint Frailey to place their equipment on the job prior to the bid meeting.⁴¹

36. Act, 53 P.S. §65802(f) (Supp. 1975-76). For text, see p. 6 *supra* (note 13). The pertinent information on this matter is being forwarded to the Monroe County District Attorney in order for him to determine whether criminal charges should be instituted.

37. Anglemeyer, N.T. 172. Former Supervisor Raish was unable to recall the manner in which the decision was reached to divide the two roads among the two contractors. Raish, N.T. 228. This is the only instance where a contractor other than Frailey Excavating has been awarded an equipment rental contract on a state-approved project since 1969.

38. Anglemeyer, N.T. 149-153. Former Supervisor Raish stated "I don't know the answer," when asked whether the fact that one contractor's equipment was already at the site of the Summit Hill Road project caused the second contractor to refuse to submit a quotation. Raish, N.T. 217.

39. Anglemeyer, N.T. 178-179; Raish, N.T. 213-214.

40. Anglemeyer, N.T. 178.

41. Raish, N.T. 214.

On August 21, 1973, a bill was submitted to Pocono Township by Frailey Excavating in the total amount of \$1,664, covering work performed on the Summit Hill Road project for the period August 3 through August 18. The record shows that the Frailey equipment was on the job site before the contract was to have been awarded. Thus, it appears that the contractor had been predetermined.⁴²

Clair Frailey denied knowledge of any instance where his equipment had been at a road reconstruction job site prior to the date when equipment rental quotations were due.⁴³ However, he subsequently testified:

Q: Now on the Summit Hill project, had you been advised that you should take your equipment to that project and commence working at the time that you did take your equipment there and commence working?

A: Yes.

Q: And who told you that you should go and start your work there?

A: My father.⁴⁴

c. General Failure to Adhere to Advertising Requirements

The township supervisors should have known that the equipment rental costs on state-approved road reconstruction projects would exceed \$1,500 and thus require advertising in conformance with the Act.⁴⁵ Each supervisor reviewed and approved the estimates of cost prepared by PennDOT.⁴⁶ Cost estimates for portions of the road work which the supervisors knew would be performed pursuant to equipment rental contracts were generally well in excess of \$1,500. Consequently, the supervisors were aware that such work could result in billings to the township in excess of \$1,500.⁴⁷

A variety of explanations were offered as to why the advertising requirements of the Act were not followed by the board of supervisors in awarding contracts for equipment rental on state-approved road improvement projects. One witness explained:

... Most of this was past practice which really went on. It is the people before me that went in and did it. I myself didn't feel there was any

42. All three supervisors approved the bill submitted on August 21, 1973, even though it included work performed on August 3, 4, 6 and 7.

43. Clair Frailey, N.T. 91-92.

44. *Id.* at 92-93.

45. Act, 53 P.S. §65802 (Supp. 1975-76). See p. 6 *supra*. It is worth noting the amounts paid by Pocono Township to contractors for work performed under equipment rental contracts on state-approved road improvement contracts:

1970 --Frailey Excavating	---\$5,116.00
1971 --Frailey Excavating	---\$7,033.00
1972 --Frailey Excavating	---\$8,701.00
1972--Adelmann Contracting Company	---\$9,702.50
1973--Frailey Excavating	---\$5,152.00

46. Anglemyer, N.T. 139.

47. *Id.* at 158-159.

wrongdoing as long as the rental hourly rate[sic] wasn't overboard . . .⁴⁸ The township's secretary-treasurer, an appointee of the board of supervisors, stated:

The way I figure it or see it, I think a lot of this has been done without their [the supervisors'] knowledge. I don't believe they have even known a lot of these things that have to be done. This is just my opinion. I think some of these things they go ahead and do and don't realize it has to be done a different way. In other words, I think they have rented equipment which they had no idea was going to run over \$1,500 and it did—different things like that which have not been advertised which actually should have been. I'm not trying to make excuses for them or myself, but this is something that has been going on for years and years. And then all of a sudden, they find out that things are not the way they should have been.⁴⁹

Township secretary-treasurer Elmer Munch expressed the opinion that the failure to advertise for bids for equipment rental was not due to an effort to assure that Frailey Excavating received the contract.⁵⁰ Other witnesses refused to comment on this issue on the ground of possible self-incrimination.

Elmer Gantzhorn, the Pocono Township secretary-treasurer in 1971-72, first learned about the Act's advertising requirements during the course of his attendance at meetings of the township board of supervisors. He acknowledged that he had paid bills to Frailey Excavating in excess of \$1,500 for work for which there had been no advertising for bids.⁵¹ The fact that the law's advertising requirements were not followed did not bother him: "I never gave it a thought."⁵²

d. Failure to Obtain Bonds

The Act requires that the successful bidder, when advertising is required, must furnish a bond guaranteeing performance of the contract.⁵³ However, Pocono Township has never required a bond from Frailey Excavating.⁵⁴ Even in the case of the 1974 road reconstruction project, when the township advertised for bids, the Fraileys were not required to furnish a bond.⁵⁵ Yet the owner of a paving company which in recent years has performed virtually all the asphalt road surfacing work on

48. *Id.* at 157. Supervisor Raish also felt that "tradition" was largely responsible for the failure to apply the Act's advertising requirements. Raish, N.T. 220.

49. Munch, N.T. 32-33.

50. *Id.* at 36-37.

51. For example, the Pocono Township minute book reveals payments to Frailey Excavating arising from work performed on a road reconstruction project of \$1,520 on September 21, 1971, \$2,512 on October 19, 1971, and \$1,858 on November 2, 1971. The minute book further reveals payments to Frailey Excavating arising from work performed on another road reconstruction project of \$1,528 on August 15, 1972 and \$5,457.60 on September 5, 1972.

52. Testimony of Elmer Gantzhorn before the Pennsylvania Crime Commission, December 5, 1974, N.T. 97-99 [hereinafter cited as Gantzhorn].

53. Act, 53 P.S. §65802(d) (Supp. 1975-76).

54. Munch, N.T. 45-47; Gantzhorn, N.T. 106.

55. Clair Frailey, N.T. 77; Clint Frailey, N.T. 114. Although the township advertised for bids on all phases of the 1974 road reconstruction project, the equipment rental bids continued to be based on an hourly rental figure rather than on a lump sum basis.

Pocono Township road reconstruction projects, testified that his company has always provided a bond for Pocono Township.⁵⁶ Consequently, the supervisors cannot be said to have been ignorant of the bond requirement.

e. Failure to Hire Roadmasters in Accordance with the Act

The Pocono Township Board of Supervisors has chosen to ignore that provision of the Act requiring that the supervisors "shall employ a superintendent for the entire township or a roadmaster for each district."⁵⁷ The supervisors have employed one of their own members as the superintendent for the entire township, and in addition have hired the other two members of the board as roadmasters to assist the superintendent.⁵⁸ The hiring of assistants for the superintendent does not appear permissible under the Act.

The salaries of the supervisors in their capacities as township employees are fixed by the three elected township auditors.⁵⁹ At least in the case of Pocono Township a potential conflict of interest situation arises since one auditor is the wife of Supervisor Anglemyer and a second auditor is the father of Supervisor John DeHaven.⁶⁰ Such close family ties⁶¹ make it appear questionable that the auditors could objectively review salary requests submitted by the supervisors. In addition, the Act provides that, "Any elected or appointed officer, whose act, error or omission has contributed to the financial loss of any township, shall be surcharged by the auditors with the amount of such loss, . . ."⁶² Again, such close family ties suggest that the auditors would find it difficult to decide such questions objectively.⁶³

4. RECOMMENDATIONS

The Second Class Township Code prohibits township officials from having a direct or indirect interest in township contracts.⁶⁴ However, an official is liable for

56. Testimony of Clinton F. Bruch, owner, Shiffer Bituminous Service Company, before the Pennsylvania Crime Commission, March 4, 1975, N.T. 11-12, 16. Contracts for asphalt road surfacing work have always been awarded in conformance with the Act's advertising requirements.

57. Act, 53 P.S. §65514 (1957).

58. Anglemyer, N.T. 133-134.

59. Act, 53 P.S. §65515 (Supp. 1975-76). It appears as though the Pocono Township Board of Supervisors annually requests the auditors to increase the salaries of the superintendent and roadmasters. Anglemyer, N.T. 135.

60. Mr. DeHaven has been serving as a supervisor since January 1974.

61. This situation appears to be a common one in towns with small populations. The Crime Commission recognizes that a per se prohibition as to all family relationships in township positions may not be feasible. If the Commission the Crime Commission recommends, see page 14, were established, that Commission could determine each situation on a case by case basis.

62. Act, 53 P.S. §65545 (Supp. 1975-76).

63. These are but several more reasons in support of the prior recommendation of the Commission that the Act be amended by abolishing the office of elected auditor and providing instead for the appointment by the board of supervisors of an independent auditor who is a certified public accountant. *Charters Report*, pp. 72-73.

64. Act, 53 P.S. §65802(f) (Supp. 1975-76). For text, see p. 6 *supra* (note 13). The Act contains another pertinent conflict of interest provision:

Except as otherwise provided in section 802 of this act [53 P.S. §65802], any township super-

surcharge only where it can be proven that his knowing violation caused a financial loss to the township.⁶⁵ It is extremely difficult to prove a loss of this kind. Therefore, to be effective the law should provide for a forfeit of any monies obtained by a township official knowingly violating the conflict of interest laws. Moreover, the Commission does not believe that a fine of \$500⁶⁶ serves as an adequate deterrent. Any conflict of interest law to be meaningful must insure that a public official found guilty of using his position for his own personal gain, or for the private gain of a business in which he has an interest, can be subject to imprisonment and prohibited from ever again holding a position of public trust. The Commission, therefore, recommends that Section 802(f) of the Act⁶⁷ be amended to provide for imprisonment.

The term "conflict of interest," as used herein, is intended to also include abuses similar to those which the Commission has previously uncovered and reported upon involving Chartiers Township, primarily concerning compensation and reimbursement of township supervisors, and Marple Township, Delaware County. The *Marple Township Report*,⁶⁸ details evidence of the misuse of township equipment, personnel and materials for the private benefit of elected and appointed officials of that township. Based on information accumulated by the Crime Commission, patterns of self-dealing and abuse of public position, such as those uncovered in Marple and Chartiers Townships, exist in other townships and government units throughout this Commonwealth. Clearly, those and other potential conflict of interest situations with which township officials may be confronted differ from the situation described in this report and go beyond the narrowly drawn provisions contained in the present Act.

Moreover, officials in different forms of municipal government and in state government are subject to different conflict of interest statutes and regulations.⁶⁹ The Crime Commission urges the General Assembly to replace the diverse and inconsistent state laws and regulations on the subject of conflict of interest with one comprehensive statute which should enumerate standards of conduct, set forth all prohibited acts on the part of state and local officials, both elected and appointed, and require some form of public disclosure of outside financial interests.⁷⁰ This

visor, superintendent, or roadmaster who is knowingly interested, directly or indirectly, in any purchase made or contract relating to roads . . . is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars or undergo imprisonment not exceeding six months, or both, and shall forfeit his office. (Act, 53 P.S. §65520 (1957)).

65. Act, 53 P.S. §65545 (Supp. 1975-76). See p. 6 *supra*.

66. Act, 53 P.S. §65802(f) (Supp. 1975-76).

67. *Id.*

68. The *Marple Township Report* was issued in February, 1976.

69. Pennsylvania has enacted a "Legislative Code of Ethics," Act of July 10, 1968, P.L.____, 46 P.S. §143.1 et seq., but this statute covers only members or employees of the State Senate and House of Representatives. Furthermore, the Code makes no provision for an independent body with powers to enforce the statute's guidelines. Due to a history of non-enforcement resulting from many factors, a discussion of which is beyond the scope of this report, neither the Code nor the scattered statutes dealing with abuses of position by local officials have had the desired effect of establishing public confidence in the integrity of either state or local government.

70. Public disclosure, insofar as the provision would require sufficient reporting of outside financial interests, is an important step in fostering public confidence in the integrity of government as well as making available records which could be examined in instances where conflicts are alleged to exist. Furthermore, public disclosure avoids the extreme solution of prohibiting all outside sources of income, dealings in stock, and receipt of fees for any reason.

statute should provide for stiff penalties,⁷¹ removal from public office, and a potential lifetime prohibition against serving in any elected or appointed public office, for conflict of interest violations by state and local elected and appointed officials. Such legislation should also provide for an independent, bipartisan commission composed of a representative group of citizens empowered to conduct investigations of alleged violations, as well as to monitor and enforce conflict of interest provisions.⁷² This commission should be empowered to issue advisory opinions on questions submitted by public officials. Officials acting in reliance upon such opinions could not thereafter be charged with a conflict of interest.⁷³

With governmental operations becoming more complex, even in relatively small governmental units such as Pocono Township, it is imperative that township supervisors be required, at a minimum, to annually attend sessions on the administration of township governments. Reference to the requirements of the Second Class Township Code should be incorporated into such sessions. The Commission, therefore, recommends that the Act be amended to require the mandatory formation of county associations of township supervisors and other elected officials which shall be required to hold annual training sessions of at least two days duration.⁷⁴ Furthermore, attendance of township supervisors at such sessions should be mandatory.⁷⁵ Similar legislation should be considered for other municipal officials.

71. The statute should provide for such civil remedies as voiding of contracts which violate the act, and forfeiture of any form of pecuniary gain derived from violations of the act, and a civil fine.

72. Presently pending in the State Senate are three bills which are concerned with the conflict of interest problem. However, it is the Commission's judgement that each is deficient in at least one critical respect, either because it fails to cover local as well as state officials, or because it fails to provide for an effective enforcement mechanism.

73. By Executive Order dated April 10, 1974, Governor Shapp created a Board of Ethics, composed of five members appointed by the Governor from the general public, with the power and duty, among others, "to investigate and render advisory opinions to appointed officials and state employees or their appointing authorities with respect to the scope, applicability and interpretation" of the Code of Ethics which was set forth in the same Executive Order. Among the weaknesses of the Board are that it cannot initiate its own investigations (it can only proceed if an opinion is requested), and that its function is solely investigatory and advisory (although an opinion of the Board may be utilized for appropriate administrative action).

74. The Act presently provides:

County associations of township supervisors, auditors, assessors and tax collectors may be formed. Such associations, when formed, shall hold annual or semi-annual conventions . . . for the purpose of considering and discussing questions and subjects pertaining to the best methods for the improvement of the township government, the assessment of property, the collection of taxes and the construction, improvement and maintenance of roads. (Act, 53 P.S. §65601 (Supp. 1975-76)).

75. The Act presently provides:

The supervisors of townships, auditors, assessors, tax collectors, . . . shall attend such conventions *whenever possible*. Each township supervisor, auditor, assessor, tax collector, . . . attending such convention shall receive a certificate, signed by the presiding officer and acting secretary of the convention, attesting his presence at the convention. Such certificate shall entitle him to collect from the township treasurer the sum of twenty dollars per day for each day's attendance, and mileage at the rate of ten cents per mile traveled, . . . (Act, 53 P.S. §65602 (Supp. 1975-76)) (Emphasis supplied).

B. Second Report on Official Corruption In Marple Township, Delaware County

1. INTRODUCTION

Since September, 1973, the Pennsylvania Crime Commission has been investigating allegations of corruption and official misconduct in the Public Works Department of Marple Township, Delaware County. The most significant evidence of possible violations of law uncovered during the investigation was reported on in the Commission's *1973-74 Report*, released July 10, 1974. In summary, the Report described evidence of one \$10,000 payment made by the successful bidder on a \$350,000 sanitary sewer contract to the head of the Marple Township Public Works Department, in return for favors provided by the township; an \$800 payment to the same official from the owner of an auto repair business, in return for the township providing manpower and equipment to install two storm sewer basins on the businessman's property; and the absence of records of receipt or disposition of over \$2,100 received by the same official from the sale of township scrap metal. All the evidence acquired by the Commission was given to the District Attorney of Delaware County, and, as a result, the Marple Township Superintendent of Public Works was indicted on October 17, 1974, on charges arising out of the above two alleged payments.¹ In addition, the Board of Township Commissioners has ordered that all money received from scrap metal be turned over to the township rather than be retained by the Public Works Department.

Following the release of the Report in July, 1974, Crime Commission investigators pursued numerous lesser allegations they had received concerning alleged misuse of public equipment, personnel and materials for the private benefit of Marple Township officials or other private gain.² An additional twelve witnesses testified under oath at private Commission hearings.

In the latter phase of its Marple Township investigation, the Commission found evidence of myriad small ways in which public officials in positions of authority may benefit themselves or their friends or business associates at the public expense. The Commission has uncovered a number of instances where Marple Township officials, through their use of township personnel, materials and equipment, have abused their public positions for personal or other private gain. Many of the incidents discovered, taken by themselves, could be said to be petty and not worthy of notice. However, taken together, they constitute a pattern which must be corrected. They show, furthermore, that the more serious incidents reported on earlier are not isolated acts but rather part of an overall course of misconduct by several Marple Township public officials.

One of the reasons for this pattern of apparent misconduct is the absence of

1. By agreement between the Pennsylvania Crime Commission and the Delaware County District Attorney, this report, although approved for release by the members of the Pennsylvania Crime Commission in February, 1975, has been withheld from public scrutiny until this time in order not to prejudice the right of Marple Township Superintendent William Pirocchi to a fair trial in the criminal proceedings growing out of these alleged payments. Mr. Pirocchi has now been acquitted of those charges.

2. In this investigation, the Commission staff received active cooperation from the Criminal Investigation Division of the Delaware County District Attorney's Office.

effective administrative controls and reporting procedures on the use of township equipment, men and materials. This report discusses those controls and makes suggestions for strengthening them. It also recommends the enactment of statutory controls which would prohibit the types of abuse of public position which are described herein.

It should be emphasized, however, that only a small number of Marple Township public officials or employees are responsible for the apparent acts of misconduct reported on here. There is no reason to question the integrity of the great majority of Marple officials and employees. Such personal honesty and integrity is, in the end, the best assurance of clean government.

2. ADMINISTRATIVE CONTROLS IMPOSED UPON THE MARPLE TOWNSHIP SUPERINTENDENT OF PUBLIC WORKS

a. Relationship to Board of Commissioners

The corporate power of first class townships³ is vested in the Board of Township Commissioners. In Marple there are seven Commissioners, each of whom has certain township departments nominally under his jurisdiction as a result of serving on committees, generally made up of three commissioners. These committees are established to oversee the operations of the various departments, but, according to Commissioner Robert Wenner,⁴ they play "very little" role in the day-to-day operations of these departments.⁵

The Marple Highway, Refuse and Sewer Departments are each under the supervision of the Township's Superintendent of Public Works, presently William V. Pirocchi.⁶ Matters involving these departments which require review or approval by the Board of Commissioners are discussed at the Board's work sessions, which are held twice a month and are attended by Mr. Pirocchi.⁷ However, the Board does not involve itself in many of the details of departmental activities. For example, the Board learns about materials purchased through negotiations (purchases costing less than \$1,500) only after the material is purchased and received. At that point a question may be raised as to the purpose of the materials bought, but there is seldom, if ever, any question asked about the quantity of the purchase or the quality of the materials bought or the supplier. These are left to the superintendent's discretion, evidently on the assumptions that he knows best what his departments need and that he is acting responsibly. Commissioner Wenner could not recall a single instance in three years where the Board discussed with Mr. Pirocchi the

3. Marple is one of 92 first class townships in the Commonwealth. The populations of these townships range from 558 to 95,910, while Marple has a population of 25,040, according to the 1970 census.

4. Mr. Wenner took office in January, 1972, and has served as President of the Board of Commissioners from January, 1974, to January, 1975.

5. Testimony of Robert Wenner before the Pennsylvania Crime Commission, September 13, 1974, N.T. 10 [hereinafter cited as Robert Wenner].

6. These three departments employ a total of 26 full-time employees. Mr. Pirocchi's annual salary is \$17,550.

7. Robert Wenner, N.T. 10-12, 16-18.

quality or quantity of materials.⁸ The Board of Commissioners learns about materials purchased on bids prior to purchase since they must approve the bids, but again no questions are typically raised as to the details of specifications. The commissioners do not routinely concern themselves with whether material has been properly used.⁹

b. Relationship to the Township Manager

Marple Township has a Township Manager¹⁰ who is appointed by the Board of Commissioners and is nominally responsible for coordinating all township governmental activity. Theoretically, all department heads report directly to the Township Manager on their department's activities, and the Township Manager reports to the Board. However, in Marple there is no set procedure for the Superintendent of Public Works reporting to the Township Manager on the activities of the Highway, Sewer and Refuse Departments. The Township Manager does not request or receive written project status reports but, instead, occasionally requests verbal reports and relies on observations gained from travels about the township, which he does "very often."¹¹

The Township Manager relies on the Township Engineer and Superintendent of Public Works to select the necessary materials for projects.¹² He reviews purchase orders submitted by department heads for materials and supplies, but he admitted that the department head selects the vendor and that only on "large" negotiated purchases will he question the order.¹³ This is despite the fact that purchase orders often will not contain any statement indicating the purpose for which the requested materials or supplies will be used.¹⁴ Mr. DiPrimio asserted, "I would have no reason to doubt any of my department heads' activities when it comes to purchasing."¹⁵

c. Recordkeeping

In addition to the lack of direct supervision over the Superintendent of Public Works in Marple, there are no records maintained on stockpiled materials or supplies, disposition of material and supplies, deployment of township equipment, operators of equipment, and length of assignment of men and equipment to particular projects. The manner of deployment of township men and equipment is within the sole discretion of the Superintendent of Public Works. The only records kept are daily time sheets which show the total hours, both regular and overtime, worked by each employee.¹⁶

8. Robert Wenner, N.T. 22.

9. *Id.* at 20-23, 28-29, 34-36.

10. The present Township Manager is Richard J. DiPrimio, who has served in that position since September 5, 1972.

11. Testimony of Richard DiPrimio before the Pennsylvania Crime Commission, September 20, 1974, N.T. 11-12 [hereinafter cited as Richard DiPrimio].

12. *Id.* at 15.

13. *Id.* at 16-18.

14. *Id.* at 17, 25.

15. *Id.* at 26.

16. Robert Wenner, N.T. 26, 28-29, 40-42, 44-45; Richard DiPrimio, N.T. 27-30, 37, 41-42.

3. PRIVATE USE OF MARPLE TOWNSHIP MANPOWER, EQUIPMENT AND MATERIALS

The Crime Commission has found evidence of numerous separate incidents where township officials or their associates received the benefit of the use of township men or employees. They are set forth in summary below.

a. Work Performed on Commissioner Robert Wenner's Property

The Commission found a total of at least seven occasions on which Commissioner Wenner received the benefit of work performed on his property by township employees. The first such incident was the digging of a ditch and the installation of a drain for the automatic washer in Mr. Wenner's private residence. A township employee testified that, at Mr. Pirocchi's direction, he spent approximately eight to ten hours on this work, assisted by another township employee, using township picks and shovels. He stated that he was paid by the township for this work through his regular paycheck.¹⁷ Mr. Wenner acknowledged receiving this service at his house, but could not recall who performed the work or how the workmen were reimbursed.¹⁸ Subsequently, a letter from Mr. Wenner's attorney indicated that Mr. Wenner's wife thought that she and her husband had paid one employee in cash.¹⁹

The second incident involved a township employee, at Mr. Pirocchi's direction, clearing out some blockage in the pipe leading to the cesspool at Mr. Wenner's home. This work was performed after working hours, and the employee was not paid for the work.²⁰

The third incident involved the placing of railroad ties as a retaining wall at the rear of Mr. Wenner's property to prevent soil erosion. A township employee testified that, at Mr. Pirocchi's direction, he and three co-employees did this work for Mr. Wenner on township time, using township picks and shovels, and were paid by the township.²¹ Mr. Wenner acknowledged having this work done but said that he had requested that it be done on a Saturday and that he paid the township a check in the amount of \$105 to cover the wages of the four men.²² Mr. Wenner never obtained any estimates from private contractors for this work and had no idea whether he could have had the work done by a private contractor for that amount of money.²³

The fourth incident involved the use of a township backhoe (a piece of earth-moving equipment) and truck to assist in repairing flood damage to Mr. Wenner's

17. Testimony of Employee A before the Pennsylvania Crime Commission, July 19, 1974, N.T. 6-8 [hereinafter cited as Employee A]. In order to protect employees of the Highway, Sewer and Refuse Departments from possible recriminations, all such witnesses are identified by letter, i.e., Employee A, B, C, etc.

18. Robert Wenner, N.T. 81-86.

19. Letter dated September 23, 1974, from John T. Mulligan, Esq., to the Pennsylvania Crime Commission.

20. Testimony of Employee B before the Pennsylvania Crime Commission, July 16, 1974, N.T. 47-50 [hereinafter cited as Employee B].

21. Employee A, N.T. 10-12.

22. Robert Wenner, N.T. 67-69.

23. *Id.* at 75.

driveway. This work involved two employees along with the truck and backhoe, and the work was done on a township holiday. Mr. Wenner stated that he used township men and equipment because the amount of repair work to be done was so small that he was unable to obtain the services of a private contractor.²⁴ He paid the township \$60.00 to cover the use of the backhoe and the township truck, and he paid the employees personally.²⁵

The fifth incident involved two employees spending a full day patching the driveway at Mr. Wenner's home using a township jackhammer. One of the employees testified he was paid for this work, which was performed at Mr. Pirocchi's direction, through his normal township paycheck.²⁶ The sixth incident involved two township employees who, at Mr. Pirocchi's direction, spent about an hour patching the blacktop on Mr. Wenner's driveway. A township truck transported the two men and the blacktop to Mr. Wenner's home.²⁷ No evidence of reimbursement of the township was found. Mr. Wenner could not recall either of the latter two incidents.²⁸

The seventh incident benefited Mr. Wenner only indirectly. It involved the spending of two hours of two employees' working time painting a rusty boat trailer belonging to another person and then attaching a political sign to it promoting Mr. Wenner's candidacy for the State Senate.²⁹ Mr. Wenner denied any knowledge of this.³⁰

b. Work Performed on Behalf of Former Township Commissioner Fertel

On at least three occasions while he was a township commissioner, Mr. Ronald Fertel received the services of various township employees who helped him haul building material and furniture for his personal use.³¹ In March, 1973, two employees, at Mr. Pirocchi's direction and using a township truck, picked up a load of lumber and cinder block and drove it to Mr. Fertel's summer home in Maryland. The roundtrip took from before noon until approximately 7 p.m. Both men were paid for this work by the township.³² Mr. Fertel testified that he had paid Mr. Pirocchi \$300 in cash for the building material, and that he used the township truck and two employees after the privately-owned vehicle he had arranged to use would not start.³³ Shortly before Mr. Fertel's testimony before the Crime Commission in

24. *Id.* at 52-55.

25. *Id.* at 55-56. The township's cash receipt records reflecting the \$60.00 payment break the \$60.00 down as follows: \$50.00 for backhoe rental for eight hours, and \$10.00 for a truck for 1½ hours. Mr. Wenner was in effect renting the backhoe for \$6.25 per hour. Industry rates for rental for similar equipment are about \$22.00 per hour.

26. Testimony of Employee C before the Pennsylvania Crime Commission, August 8, 1974, N.T. 15-17, 20.

27. Testimony of Employee D before the Pennsylvania Crime Commission, July 16, 1974, N.T. 23-25.

28. Robert Wenner, N.T. 88.

29. Employee B, N.T. 92-95.

30. Robert Wenner, N.T. 89-92.

31. Mr. Fertel served as a Marple Township Commissioner from 1966 through 1973.

32. Employee A, N.T. 25-31; Employee B, N.T. 52-54, 63-64.

33. Testimony of Ronald Fertel before the Pennsylvania Crime Commission, September 13, 1974, N.T. 19-24 (hereinafter cited as Ronald Fertel).

September, 1974, Mr. Fertel delivered a check to the township for \$75.00 to cover the use of the truck and the two men.³⁴

On another occasion two township employees, at Mr. Pirocchi's direction, each spent approximately seven hours hauling furniture in a privately-owned truck from the home of Mr. Fertel's father-in-law to Mr. Fertel's Maryland home.³⁵ One of the employees testified that he was paid time and a half by the township for his work and did not receive any payment from Mr. Fertel.³⁶ Mr. Fertel acknowledged employing the township men but stated that he recalled paying each of them "fifteen to twenty bucks" in cash for their time.³⁷

In a third instance, one township employee, again at Mr. Pirocchi's direction, spent approximately three hours helping deliver a refrigerator to Mr. Fertel's Maryland home. He stated he was paid time and a half for the three overtime hours that he worked.³⁸ Mr. Fertel could not recall this incident.³⁹

c. Use of Township Manpower and Equipment for the Benefit of Solid Waste Removal, Inc.

Solid Waste Removal, Inc., is a company which had a contract from Delaware County for the removal of sludge and refuse from the Darby Incinerator, Folcroft Borough. Marple Township Commissioner Robert Wenner was a 50 percent owner of this company while the aforementioned contract was in effect. The Commission found that on one or two occasions a "sewer jet" was rented by Marple Township to Solid Waste Removal for weekend use at the Darby Incinerator.⁴⁰ The sewer jet was used to clean drainage lines. Also, a township backhoe was rented for weekend use,⁴¹ as was a township front-end loader.⁴² Commissioner Wenner testified,⁴³ and township records confirmed, that Solid Waste Removal paid the township on these occasions for use of this equipment. In addition, four township employees worked on a weekend on the installation of a new drainage system and concrete pad at the Darby Incinerator.⁴⁴ Mr. Wenner recalled that these employees were working on off-duty hours and were paid either by him or by Solid Waste Removal.⁴⁵

d. Services Performed for Superintendent of Public Works Pirocchi

Township Manager DiPrimio testified that township department heads, including Mr. Pirocchi, are presently authorized to receive travel expenses of 13 cents per

34. Ronald Fertel, N.T. 26-30.

35. Employee A, N.T. 33-38; Testimony of Employee E before the Pennsylvania Crime Commission, September 20, 1974, N.T. 18-23 [hereinafter cited as Employee E].

36. Employee A, N.T. 37.

37. Ronald Fertel, N.T. 36-39.

38. Employee A, N.T. 38-40.

39. Ronald Fertel, N.T. 44-45.

40. Testimony of Employee F before the Pennsylvania Crime Commission, July 16, 1974, N.T. 118-119 [hereinafter cited as Employee F]; Robert Wenner, N.T. 51-52, 57.

41. Employee F, N.T. 119-121; Robert Wenner, N.T. 60.

42. Employee F, N.T. 116-117; Robert Wenner, N.T. 76-77.

43. Robert Wenner, N.T. 58-60, 76-77.

44. Employee F, N.T. 119-121.

45. Robert Wenner, N.T. 61.

mile to cover the use of their personal automobiles on township business. However, they are not permitted to pump township gasoline into their private vehicles and are not permitted to have work done on their automobiles by township mechanics without the express approval of the Board of Commissioners.⁴⁶ Mr. DiPrimio knows of no instance where department heads have been so authorized to have work done on their automobiles.⁴⁷

Despite the above regulations, one township employee testified that about three or four times a year he has pumped township gas into Mr. Pirocchi's personal car. This witness also stated he had observed other employees doing this and has observed Mr. Pirocchi himself on several occasions pump gas into his car.⁴⁸ In addition, this employee, as well as another township mechanic, testified that on a number of occasions they had serviced Mr. Pirocchi's personal car, replacing points and plugs, tuning it up, greasing it, changing oil, replacing oil filters and generally using replacement parts belonging to the township. All of this work was performed on township time.⁴⁹

The president of the Township Board of Commissioners, Mr. Wenner, testified that he knew of no authorization allowing Mr. Pirocchi to utilize the services of the township garage or township parts.⁵⁰ He also stated that he had no knowledge of the fact that Mr. Pirocchi was using township gasoline, car parts, or township mechanics.⁵¹

In several other instances township employees have performed work which has benefited relatives of Mr. Pirocchi. In one case, a township employee was directed by Mr. Pirocchi to make six metal "no parking" signs for a grocery store located in Sharon Hill. The township sign machine, which bakes a reflecting paper or metal sign blanks, as well as six aluminum sign blanks belonging to the township, were used. At Mr. Pirocchi's direction the employee took the six signs to the store and erected three of them, all of this work being performed on township time.⁵² The store in question is managed by relatives of Mr. Pirocchi. According to township cash receipt records, a payment of \$42.00 was made for the printing of these signs. However, a check with private companies revealed that it would have cost at least \$72.00 to have had a commercial sign company print the equivalent signs. Township Manager DiPrimio testified that use of the township sign machine on behalf of private businesses is not authorized.⁵³

In a second incident, a township employee helped Mr. Pirocchi perform some weekend plumbing work at the aforementioned grocery store. However, this employee testified that, at Mr. Pirocchi's direction, he also spent one full weekday on the plumbing job, and he received his township salary for that day as well as \$25.00 in cash from Mr. Pirocchi.⁵⁴

46. Richard DiPrimio, N.T. 43-49.

47. *Id.* at 49.

48. Employee E, N.T. 26-29.

49. *Id.* at 31-32; Employee B, N.T. 91-92.

50. Robert Wenner, N.T. 47, 49.

51. *Id.* at 50.

52. Employee B, N.T. 67-69, 75-78.

53. Richard DiPrimio, N.T. 50-51.

54. Employee B, N.T. 69-70, 73-75.

4. ADVANTAGE ACCRUED FROM PRIVATE USE OF MARPLE TOWNSHIP MEN AND EQUIPMENT

In some of the incidents described in this report, it appears that the township was reimbursed to some extent for the private use of township men, equipment and materials. In most cases, however, reimbursement appears to have been at a rate far below the usual market rate for such services, resulting in a financial benefit to the officials involved. For example, a check by the Crime Commission with private businesses located in Delaware County which rent sewer jet equipment revealed that the rental price of \$10.00 per hour⁵⁵ paid by Mr. Wenner for use of the township sewer jet at the Darby Incinerator was substantially below what he would have had to pay in the private market. One private company rents its sewer jet for \$27.50 per hour, which includes one operator, and another private outfit rents its sewer jets for \$38.50 per hour, which includes two operators. Taking into account that the township's equipment operator receives slightly more than \$6.00 per hour for freelance work,⁵⁶ Mr. Wenner still only paid approximately \$16.00 per hour for the sewer jet and one operator.

A similar check by the Commission of private industry rental charges for backhoes and front-end loaders likewise revealed considerable savings for Mr. Wenner in the case of the \$15.00 per hour rental⁵⁷ he paid to the township.

Another example shows up where building materials were delivered to Mr. Fertel's home in Maryland. A review of Marple Township's weekly time reports reveals that the two employees who delivered the material to Mr. Fertel's home each received two hours of overtime pay on that date. Their township wages, therefore, roughly totalled \$60.00 for the time spent on this job. Since Mr. Fertel paid the township \$75.00,⁵⁸ he obtained the use of a township truck, including fuel, for a minimum of seven hours at a total cost of \$15.00.

Economic savings for township officials also occurred when they employed township laborers, as the previously described payment by Mr. Wenner of \$105 to the township for four laborers working one day shows. Although reimbursement of the township may approximate the actual cost to the township, it is below the cost of using private commercial services since it does not cover the overhead and profit margins in a private business and since township wage scales are considerably below prevailing private wages.

This use of township men and equipment for the use of private individuals for personal or business purposes appears to have been an extraordinary privilege which was limited to only a few Marple public officials. Although Mr. Wenner testified that he does not believe that his influential position permitted him to rent township equipment, he was unable to cite any other instances where Marple Township equipment has been rented to other individuals.⁵⁹

55. Robert Wenner, N.T. 58.

56. Employee F, N.T. 113.

57. Robert Wenner, N.T. 60. In another instance, Mr. Wenner paid only \$6.25 per hour for the township backhoe. See footnote 24 on page 19, *supra*.

58. See p. 20, *supra*.

59. Robert Wenner, N.T. 63.

Township Manager DiPrimio testified that to his recollection the township had rented its equipment to individuals for personal use "about six times" since he became Township Manager in September 1972. He was able to recall two instances where Commissioner Wenner had rented township equipment, once on behalf of Solid Waste Removal, Inc., and once for his personal use, and one instance where former Commissioner Fertel had rented equipment (the truck used to transport building supplies). However, he could not recall any other private individuals or companies who rented township equipment.⁶⁰

A review of Marple Township records covering the receipt of payments for rental of equipment revealed only two instances where the township received rental payments for equipment. One case involved the rental of the sewer jet and other equipment by Solid Waste Removal, Inc., for use at the Darby Incinerator in Folcroft, and the other involved a rental of unspecified equipment to Pirocchi Paving Company, which is owned by a relative of William Pirocchi.

In any event the township did not make it known to the public that private citizens could receive the assistance of public employees or rent township equipment at low rates.⁶¹

On balance, it is clear that several Marple Township officials used their public position to secure special favors which were not available to the general public.

5. CONCLUSIONS AND RECOMMENDATIONS

The citizens of Marple Township have a right to expect that both elected and appointed public officials will provide leadership marked by the highest degree of integrity. To the extent that public positions are abused for private gain, the trust that citizens have a right to place in public officials is undermined, with a resultant loss of faith in and respect for our democratic institutions.

When considered together, the various instances of abuse of public position described in this report point to a compelling need to correct such abuses in Marple Township. The absence of effective administrative controls over the activities of the Superintendent of Public Works and the operations of the departments under his jurisdiction has contributed in large measure to the abuses reported herein.

New controls, whether administrative or statutory, will not serve as a panacea for these abuses. In the end, the best assurance of honest government lies in choosing public servants who have high personal integrity, who constantly bear in mind the fact that they are working for the public interest, and who avoid even the appearance of impropriety. However, in the absence of some foolproof formula for assuring integrity in public officials, Marple Township should institute stricter administrative controls to require a greater degree of accountability from the Superintendent of Public Works in the following areas:

- a. quality and quantity of materials and supplies purchased;

60. Richard DiPrimio, N.T. 55-58.

61. Township Manager DiPrimio testified that Marple Township has never formally adopted a policy concerning rental of township equipment by the public (Richard DiPrimio, N.T. 53), and that the Board of Commissioners has "never made any special announcement" on the subject (Richard DiPrimio, N.T. 60).

- b. selection of vendors;
- c. actual use of materials and supplies purchased through competitive bidding or on a negotiated basis;
- d. inventoried materials and supplies on hand;
- e. disposition of inventory;
- f. deployment of heavy equipment;
- g. mileage records of heavy equipment;
- h. hours worked by township employees on particular job assignments.

The pattern of abuse of public position uncovered in Marple Township may very well exist in other townships throughout this Commonwealth. Consequently, the Crime Commission urges the General Assembly to enact legislation that would make it a crime for any officer or employee of a township or any department thereof to use any portion of the property of a township for private gain, or to use or dispose of in any manner any such property without the consent of the Board of Commissioners. There currently is such a law applicable to Third Class Cities,⁶² and there is no reason why it should not apply to all levels of government.

The Commission also urges enactment of legislation which would make it a crime for any officer or employee of a township or any department thereof to dispose of or authorize or permit the disposal of any services, materials, supplies or labor belonging to, or paid or contracted for by, the township or any of its departments, in any work of construction of any manner of thing, whether gratuitously or for a consideration, for private rather than public benefit, unless such disposal is required by law.⁶³

62. Pennsylvania's Third Class City Code, Act of June 23, 1931, P.L. 932, 53 P.S. §35912, contains the following provision:

No portion of the property of the city shall be used for private gain by any officer of the city, councilman, agent or employe of said city, or any department thereof; nor shall the same be wilfully used or injured, or be sold or disposed of in any manner by any officer, councilman, agent or employe, without the consent of the council. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding five hundred dollars, or to undergo imprisonment not exceeding one year, or both, at the discretion of the court. Upon such conviction, the party offending shall be forthwith removed from his office or employment, and shall not thereafter be eligible to election or appointment to any place of profit or trust under said city, or any department thereof.

63. Again, such a law exists, but is limited in its applicability to Third Class Cities. Pennsylvania's Third Class City Code, Act of June 23, 1931, P.S. 932, 53 P.S. §35913, provides as follows:

No official, officer, agent or employe of any city or of any department, office, institution or agency thereof, shall dispose of, or authorize or permit the disposal of, any services, materials, supplies or labor belonging to, or paid or contracted for by, the city or any of its departments, offices, institutions or agencies, in any building, installing, laying or other work of construction of any manner of thing, whether gratuitously or for a consideration, for private rather than public benefit, within or without the city's boundaries, unless such disposal is expressly or by necessary implication authorized or required by law. This section is intended to prohibit encroachment of officials, officers, agents or employes of a city upon the markets of legitimate private enterprise engaged in all types of construction work. Any official, officer, agent or employe of a city or any department, office, institution or agency thereof, violating the provisions of this section, shall, upon summary conviction thereof, forfeit and pay to the city a fine of not less than one hundred nor more than three hundred dollars for each such offense, or in default thereof undergo imprisonment for not more than ninety days; and each day's violation shall constitute a separate and distinct offense.

II. The Administration of the Criminal Justice System

Throughout its history, the Crime Commission has been concerned with the administration of the criminal justice system. In previous years, Commission investigations have discovered and reported various breakdowns that have occurred within the system. Sometimes, as in the bail bond system in Delaware County, remedial action has been taken by individuals responsible for the administration of the system and the problems noted in Commission reports have been corrected. In other cases, defects discovered by the Commission in previous investigations have not been corrected and the same, or substantially similar, problems have been discovered in different localities by new Commission investigation.

In 1975-76, the Commission received numerous complaints concerning alleged breakdowns in the administration of the criminal justice system. In two instances, the Commission completed investigations and released reports on the problems it discovered. In both instances, the problems discovered were recurring problems. Previous Commission investigations had discovered similar problems in other cities and municipalities.

While the instant studies deal only with small municipalities in Western Pennsylvania, the problems discovered are state-wide. Based upon the premise that the problems revealed in these studies are systematic of similar problems throughout the state, the Commission's recommendations are applicable to municipalities and cities throughout the Commonwealth and not just to the two municipalities discussed in the reports.

The instant reports must be viewed and considered consistent with the whole concept of citizens respect for the law. If we do not have a system of law enforcement that the citizens can respect, then there can be no effective law enforcement.

A. A Study of the Quality of Law Enforcement in Liberty Borough

1. INTRODUCTION

The Crime Commission has received a number of complaints alleging illegal or improper activities by police officers of various municipalities in the Commonwealth. In 1974 the Commission received a complaint concerning officers of Liberty

Borough, a municipality with a population of less than 4,000 located in Allegheny County. The complaint alleged that officers were extorting payments from persons arrested, threatening that criminal charges would otherwise be brought against them. The Commission conducted an intensive investigation of Liberty Borough. The investigation established that the police were not engaged in extortion. However, a widespread pattern of illegal and improper conduct was uncovered.

Liberty Borough has a police department comprised of nine officers, six working regular shifts. Each officer was expected to meet a quota for the issuance of citations. The quota was designed to produce revenue for the Borough. The quota, combined with Liberty Borough's inadequate resources and the virtual total absence of police training, produced practices which admittedly denied citizens their rights. Non-residents and teenagers were particularly affected.

In order to fully comprehend the administration of justice in the Borough, the Commission included in its investigation a study of the Justice of the Peace for Liberty. The Commission found many improprieties and apparent inadequacies in his practices as well. This aspect of the investigation provides at least a partial analysis of the Justice of the Peace system for the Commonwealth, revamped as of 1970.

In Allegheny County alone there are 116 police units. Of that number, 75 employ fewer than ten officers regularly. These departments employ approximately 40 percent of the police officers in the County (excluding the City of Pittsburgh). There are 50 communities in Allegheny County which, like Liberty Borough, have a population under 5,000 and maintain an autonomous police department. The total number of persons in the Commonwealth residing in municipalities of this size is substantial. The number of persons having contact with small municipalities and thus affected or potentially affected by their police departments is of course significantly greater. Many of these persons are receiving police services from departments which are similar in composition to that in Liberty Borough. Thus, Liberty Borough is not merely a study of one municipality. Rather, it is an intensive case study of the type of services which hundreds of thousands of persons residing in the Commonwealth may be receiving.

In addition, in many respects it appears that Liberty Borough may exemplify the type of services provided to persons residing in even larger municipalities. Most of the problems found in Liberty Borough may be attributed to grossly inadequate training, poor and unknowledgeable leadership, and, in general, a financial inability of the municipality to staff and support a competent police department. These are problems which the Commission has found are not confined to municipalities with populations under 5,000.

As recent studies have clearly shown, crime is becoming increasingly prevalent in suburban areas. Thus, there is an urgency for both large and small police departments serving these areas to be competent and professional.

In this report the Commission focuses upon one of the most important functions of government, law enforcement. There have been a number of national studies conducted regarding the provision of police services to municipalities. Recent studies include those by such prominent groups as the President's Commission on Law Enforcement and Administration of Justice, appointed by the President, and the National Advisory Commission on Criminal Justice Standards and Goals, appointed by the Law Enforcement Assistance Administration.

These bodies have investigated some matters on a broad scale and have made recommendations designed to improve the administration of law enforcement and the provision of police services. In light of these recommendations, the Crime Commission has provided an in-depth study of Liberty. It is hoped that the Legislature, the courts, and the public carefully consider the problems raised and the Commission's proposals.

2. THE QUOTA SYSTEM OF LAW ENFORCEMENT IN LIBERTY BOROUGH

Liberty Borough is located in Allegheny County about fifteen miles from Pittsburgh.¹ It is governed by a mayor and seven councilmen, all elected at large. The mayor is elected every four years. At two-year intervals, four and three councilmen are elected respectively. The mayor's salary is \$800 per year, and a councilman's salary is \$600 per year.

Mayors of municipalities within the Commonwealth, including boroughs, "have full charge and control of the chief of police and the police force."² In Liberty Borough, as in most municipalities in the Commonwealth, the police department is the mayor's most significant responsibility.³ Thus, mayors frequently take an active, daily role in police administration. However, Liberty Borough's mayors historically have had no police experience or training prior to assuming this responsibility.

In Liberty Borough, from 1970 through 1973, the Mayor totally dominated the operation of the police department. Luke Riley was elected Mayor of Liberty Borough in November, 1969. After graduating from Duquesne University as a business major in 1950, Mr. Riley was a salesman with a large insurance company for 22 years. He had no experience in police work prior to assuming control of the Liberty Borough Police Department.⁴

Mayor Riley felt it was his own responsibility to establish police department policies. Accordingly, although the Chief was consulted regularly regarding policy implementation, Mayor Riley would not consult with the Chief, the Council, the police chairman or committee when formulating such policies.⁵

When Mayor Riley took office, the police department had only a chief and four officers. This situation made it impossible to provide police services after 1:00 or 2:00 a.m.⁶ There was only one police car, which meant that when it was being repaired, Liberty Borough had no police service.⁷ He realized that Liberty Borough could never expect to be capable of handling major criminal activities, that is,

1. Testimony of former Liberty Borough Mayor Luke Riley, before the Pennsylvania Crime Commission, N.T. 12 [hereinafter cited as Riley].

2. Borough Code, 53 P.S. §46121.

3. Borough Council is formally responsible for the hiring of new officers and for the police budget. There is a police committee of council which gives initial consideration to matters relating to the police reports to the full council. The chairman of this committee is referred to as the police chairman.

4. Riley, N.T. 24.

5. Riley, N.T. 29. The current Mayor of Liberty Borough, Mr. Robert Kessling, testified that Mr. Riley totally dominated the police department during his tenure as Mayor. Testimony of Robert Kessling, before the Pennsylvania Crime Commission, N.T. 33-34 [hereinafter cited as Kessling].

6. Riley, N.T. 32.

7. Mr. Riley related a story that in 1968, while the one police car was being repaired, the bank in Liberty Borough was robbed. Riley, N.T. 62-63.

activities other than routine traffic matters and the enforcement of minor laws and borough ordinances. Thus, he associated professionalism in his police department principally with the enforcement of traffic laws and the issuance of a sufficient number of tags.⁸

Mayor Riley admitted that his background in sales, dealing principally in concepts which involve numbers and figures, led him to associate and express his expectations concerning the performance of the officers in terms of numbers and figures. Thus, each man was ordered to produce two tags per week, and the total annual revenue expected to be generated from his officer's activities was \$5,000. The total collected in 1969 was approximately \$700, less than one-seventh of the projected amount. When he met with the men shortly after assuming office, Mayor Riley forcefully brought home the need to meet the quota. For demonstration purposes, he used a multi-colored chart with the figure \$5,000 prominently displayed:

My goal was if an officer could write two tags a week, that is roughly \$5,000 a year.

I am talking five men and that is a number. That was a goal that I met. It was my personal goal.⁹

The officers present at Mayor Riley's presentation vividly recalled the instructions as well as the multi-colored chart and monetary figures contained in it.¹⁰ All of the officers felt the system instituted by Mayor Riley constituted a quota.¹¹

The officers believed that the primary purpose of the quota was to produce revenue for Liberty Borough. Officer Wargo stated, "We were asked by [Mayor Riley] to get out and tag more to the point that they wanted to make more money."¹²

Chief Moonis testified concerning his understanding of Mayor Riley's goals:

Q: All the officers knew that the purpose of the quota system was to produce revenue, didn't they?

A: Yes. I mean, they did. They are not that stupid not to know.

Q: They certainly would have known if they came up with revenue one way, they wouldn't be disciplined?

A: Right.

Q: And if the revenue was obtained through teenage drinking¹³ citations, they knew it wouldn't matter if they issued any citations for traffic violations or not, right?

A: Right.

8. Riley, N.T. 122. The word tags is used interchangeably with citations.

9. Riley, N.T. 60.

10. Testimony of Officer Thomas Wargo, before the Pennsylvania Crime Commission, N.T. 49 [hereinafter cited as Wargo]; testimony of Officer Thomas Konias, before the Pennsylvania Crime Commission, N.T. 19 [hereinafter cited as Konias]; testimony of former Officer Mike Gergas, before the Pennsylvania Crime Commission, N.T. 19 [hereinafter cited as Gergas].

11. Konias, N.T. 58; see also Wargo, N.T. 54.

12. Wargo, N.T. 48; see also Ambroziak, N.T. 10-11; and Konias, N.T. 59.

13. It is a summary offense for a person less than 21 years of age to attempt to purchase, consume, possess or transport alcohol, liquor or malt or brewed beverages. 18 P.S. §6308. This offense is commonly referred to by officers as "teenage drinking."

Q: Whether the mayor told you this was just a traffic citation system or non-traffic or arrest or whatever, it really wouldn't make any difference as far as the officers attempting to meet the quota, right?

A: Right.¹⁴

Mayor Riley maintained direct daily contact with the police department in order to insure that his stated objectives concerning the number of tickets issued would be implemented. He testified that he monitored the activities of the police department by

... observance, by close contact with the chief of police. I would even ride in the car on occasion... the first year I was mayor... I probably rode with every policeman at least one time and from there on, it trailed off until I would say the last year when I rode in the car maybe once or twice at the most.¹⁵

Mayor Riley particularly monitored the productivity of each of the officers in connection with the issuance of citations. He admitted that he received copies of all tickets promptly after they were issued. He knew which officers were meeting his performance standards.

If there was a slow period in the issuance of citations, the Mayor would send a note to the Chief indicating that "fines were coming in slow."¹⁶ The Chief would relay this criticism to his men, often through the police log book. This book was used by the Chief and other officers to make reports on their activities, as well as to transmit instructions. The Mayor would read the log book every Saturday and initial, underline, and/or otherwise highlight those passages which he felt were important.

The log book entry dated January 2, 1972, is particularly noteworthy:

Fine's have been coming in very slow. *One of our police officer's* has turned in only *8 fine's since last June 1, 1971*. Every man has a job to do. So let's all do it together, *not some men doing it all*. I know some of our police don't like being a bad guy, but they should have been good will imbassador's not police officer's. Fine's set in this year's budget are \$3000 again.

The Mayor initialed, underlined and put notes in the margin in reference to this passage. He circled the figure \$3,000 in the last line and noted that was "only 60 percent of 1970." Thereafter revenues to the Borough for the months of January and February totalled \$1,026.¹⁷ This included only \$115 from violations of the State Motor Vehicle Code, and included \$225 from teenage drinking violations and \$549 from fines for disorderly conduct. In the month of January, there were nine persons fined for disorderly conduct, as many as in the previous six months combined.

The officers realized that Mayor Riley kept information on a regular, formal

14. Testimony of Chief Donald Moonis, before the Pennsylvania Crime Commission, N.T. 148 [hereinafter cited as Moonis].

15. Riley, N.T. 23-24.

16. Moonis, N.T. 148.

17. Revenue figures were obtained from the records of both Magistrate Kurta and former Mayor Riley.

basis on their precise rate of issuance of tickets and many adjusted their performances accordingly. Mayor Riley instructed the Chief to advise those who were not fully "participating" that they should become more active in producing tickets. He specifically directed the chief to meet with Officers Wargo and Gergas concerning their failure to produce tickets.

Officer Wargo testified that on several occasions the Mayor sent letters to the Chief regarding Wargo's performance. The Chief would then meet with Wargo and tell him that he "wasn't tagging enough."¹⁸ Similarly, Officer Gergas was informed that his performance was not meeting expectations.¹⁹ The Chief told Officer Ambroziak on one occasion that he was not producing enough tickets.²⁰

The officers frequently discussed the quota. Officer Wargo was asked:

Q: Did you ever have any discussion with any officers regarding the quota?

A: Yes, we always talked about it.²¹

Chief Moonis felt that the Mayor's practices had a substantial effect on the officers. He testified:

A couple [of the officers] got scared and I says you will have to see the Mayor, that is all.²²

According to the Chief, some officers drastically changed their performances after the quota was implemented.

During Mayor Riley's entire term, no officers were ever criticized for their job performances except in relation to their failure to meet the quota. The officers quite correctly gauged the Mayor's method of evaluating them:

Well, I think whenever you tagged a lot, you were doing a good job as far as the chief was concerned because this was the orders from the mayor. So if I wasn't doing a large amount of tagging, I wasn't doing a good job.²³

The quota system resulted in a remarkable increase in revenue for the Borough. Chief Moonis testified concerning the quota system and his pride in its effectiveness:

Q: You were aware, weren't you, of the significant increase in the amount of revenue produced by the police department after this quota was implemented?

A: Yes, you better believe I did.

Q: In fact, didn't you tell officers that you were producing as much

18. Wargo, N.T. 53.

19. Gergas, N.T. 16-17.

20. Ambroziak, N.T. 38.

21. Wargo, N.T. 61.

22. Moonis, N.T. 158.

23. Wargo, N.T. 58. "They thought the good policeman was the one that brought money into the Borough and not one that served the public." Gergas, N.T. 56.

revenue in one month as the previous chief had produced in an entire year?

A: Yes, I did. I couldn't believe it.²⁴

Mayor Riley did not have to wait until after his first year as he had expected in order to request council to hire an additional officer. The minutes of the March 17, 1970, council meeting indicate that Mayor Riley informed council that the revenue generated in the month of February alone from fines (\$330) equalled nearly 50 percent of the total revenue from fines collected in all of 1969. On April 21, 1970, Mayor Riley spoke to the council in favor of a resolution to hire an additional officer. The minutes of the meeting indicate that Mayor Riley stated:

Financially, it will not be a burden as the activity of the police would provide the funds to pay the additional costs.

At that meeting Chief Moonis was given permission to hire another officer to begin work five days later.

Mayors Kessling and Riley agreed that Liberty Borough operates on a very tight budget. For the year 1970, the first year of Mayor Riley's term, the projected revenue from fines generated by the police was \$1,000; actual revenue was \$5,334. The projected budget figure for subsequent years has been \$3,000, except for 1974, when it was increased to \$3,400. Actual collections for 1971 totalled \$3,377; for 1972, \$3,534; and for 1973, \$3,728.

Mayor Kessling testified that the reputation of Liberty Borough as a tough town for traffic violators quickly spread. Thus, traffic violations have diminished. An increasing percentage of the revenue generated by Liberty Borough officers has been through non-traffic fines, i.e., borough ordinances, particularly disorderly conduct, as well as state statutory summary offenses, particularly possession of alcohol by minors. In the years 1972 and 1973, income to Liberty Borough from fines for state motor vehicle violations totalled \$790 and \$733 respectively, while fines from borough and other state summary offenses totalled \$2,744 and \$2,995 respectively.

In the projected budgets for the years following the commencement of Mayor Riley's quota, revenue from fines has been by far the largest item other than the real estate and earned income taxes. Excluding these two items, fines accounted for \$3,000 of the additional \$7,715 projected revenue in the general fund budget for 1971; \$3,000 of \$8,405 for 1972; and \$3,000 of \$12,015 for 1973. For the year 1974, Liberty Borough projected that \$3,400 of the \$9,415 not covered by the two major taxes would be accounted for by revenue generated by the police.

Mayor Riley testified that it was important for Liberty Borough to maintain the revenue from the variable items in its budget in order to perform the services wanted. Specifically he noted a clear relationship between the increased revenue from fines and the ability to support an additional police officer.

Mayor Kessling testified that an increase in revenues of the magnitude caused by Mayor Riley's policies constitutes a significant addition to municipal income. Presently the loss of the amount of revenue from fines would necessitate a cut in expendi-

24. Moonis, N.T. 151-152.

tures "because as far as receipts, there are no other receipts coming in."²⁵ Mayor Kessling testified that recreation and parks programs would probably be cut the most.

Liberty Borough's financial dependence upon the revenue generated by fines, combined with the momentum of former Mayor Riley's programs and the new Mayor's lack of police experience, made it extremely difficult to eliminate the impact of the quota system upon police conduct. Mayor Kessling testified that at a meeting with the officers, shortly after he took office, he informed the officers to be more considerate of the people and less eager to issue citations. He noted that he did not believe that a prime function of the police was to gather revenue.²⁶

Nonetheless, the amount of revenue produced from fines during the first three months of 1974 indicated that the quota system continued to have substantial impact. In the first three months of 1974, Liberty Borough obtained revenues totalling \$1,302 from fines. Only \$44 was from violations of state traffic laws, whereas \$1,248 was from violations of the law relating to possession or consumption of alcohol by minors.²⁷

Although Mayor Kessling apparently took steps to eliminate the quota, he acknowledged that the philosophy produced by the quota had its own momentum:

Q: Would you think the police department has a kind of momentum at that point that wouldn't have changed?

A: It won't stop like snapping your finger. I mean, it takes time to change. When a person has been told for at least four years, you know, it takes time.²⁸

The quota system of law enforcement, combined with the constant pressure applied on the officers by the Mayor, helped produce improper and unconstitutional conduct by many members of Liberty Borough Police Department. This conduct included unconstitutional searches and seizures, unconstitutional arrests, harassment of teenagers, and tactics to induce individuals to pay fines and forego their rights to a hearing before a magistrate.²⁹ Chief Moonis admitted that efforts to meet the quota led to unconstitutional police procedures and the violation of citizens' rights, particularly those of teenagers. After discussing several specific instances in which persons' rights had been violated, the Chief was asked:

Q: So isn't it the case that this quota had the effect of producing violations of persons' rights?

A: Yes.³⁰

25. Kessling, N.T. 83.

26. All officers testifying indicate that there was much less pressure and a much more relaxed attitude under Mayor Kessling. Ambroziak, N.T. 47; Lofgren, N.T. 111; Wargo, N.T. 67.

27. In the first three months of 1973, fines totalled \$1,260; however, \$516 represented state motor vehicle offenses; \$394, violations of borough ordinances; and \$350, violations by minors of alcoholic beverage laws.

28. Kessling, N.T. 46-47. Officer Wargo stated: "I have noticed an increase in tags without anybody telling you to do it." Wargo, N.T. 66-68.

29. These matters will be discussed in detail, *infra*, pp. 37-45.

30. Moonis, N.T. 153. Chief Moonis also admitted that the quota had the effect of producing more teenage drinking citations. Moonis, N.T. 151.

3. LIBERTY BOROUGH POLICE DEPARTMENT

The Liberty Borough Police Department is comprised of a Chief and five officers who each work 24 hours a week. Officers in Liberty Borough may be described as "part-time regular officers."³¹ They are paid \$165 per month. There are three additional paid officers who work varying numbers of hours per week depending on the schedule of the six others. They are paid at the rate of \$1.70 per hour. The Chief receives \$200 a month. Many of the officers have regular jobs associated with the steel mills. The Chief has been employed as a mailman for many years.

There is one officer on duty at a time. On Thursday, the Chief is informed of officers' work schedules for the following week on their regular jobs. At that point, he draws up a schedule for the officers. Generally, the officers satisfy their 24 hours of police duties by working three eight-hour shifts. This frequently results in the officer working eight hours on his regular job and eight hours on his police job with at most one hour in between. This system provides Liberty Borough with 24-hour police service.

No civil service tests or tests of any nature are given applicants for positions on the police department.³² An "important factor" which the Chief considers in evaluating an applicant is whether his regular job schedule will fit in with scheduling requirements for the police department.³³

It has been a policy for at least fifteen years in Liberty Borough to hire new officers from the ranks of those who are working in the police auxiliary force. The auxiliary is comprised of volunteers approved by the Mayor, the Chief, and the vote of the auxiliary membership. Regular officers are selected by the Council, generally upon designation by the Mayor and the Chief. The enthusiasm and interest of an applicant while on the auxiliary are prime considerations in deciding whether to hire him.

Officer Wargo was in the auxiliary for many years. He testified regarding the criteria for selection to the auxiliary:

The requirements were you were 21 years of age, a citizen. . . . If you had a record, they wouldn't take you or if you were a habitual drunkard—I mean they screen you to that extent.³⁴

The auxiliary officers assist the regular officers on duty by riding along with them in the police car. An auxiliary officer is not formally scheduled to serve in the car. He merely arranges directly with the officer on duty to ride with him.³⁵

31. Moonis, N.T. 14-15.

32. The requirements that police officers be selected on merit and receive Civil Service protections do not apply to police departments with fewer than three full-time officers. 53 P.S. §46171. Boroughs, like Liberty, with part-time officers are thus exempt from Civil Service laws. See *Perhach v. Borough of Swayerville*, 41 Luz. L. Reg. 335 (1951); *Rescius v. Breen*, 15 Cambria I (1952).

33. Moonis, N.T. 31.

34. Wargo, N.T. 15.

35. The auxiliary also performs such functions as parking cars or directing traffic at weddings or school affairs. Lofgren, N.T. 8.

The Liberty procedure placing the auxiliary on active duty merely by making arrangements with the regular duty officer, is illegal. 53 P.S. §734 provides that the Mayor may call the auxiliary to active duty only during a period of "distress, disaster, or emergency." 53 P.S. §41621 provides for the appointment of

The concept underlying the policy of hiring officers from the auxiliary is that auxiliary members have received a form of on-the-job training.³⁶ However, there has never been any formal on-the-job training given to auxiliary members. The only training that auxiliary officers receive is in observing the performances of the regular officers. Thus, for example, only if an auxiliary member happened to be with an officer making an arrest or conducting a search would he learn the procedures employed in these matters. And then he would only learn the procedures employed by that officer since Liberty Borough does not have uniform operating procedures.

The only training required of regular officers is periodic Red Cross first aid training and firearms training at the time of becoming an officer.³⁷ Mayor Riley indicated that all officers had to have advanced first aid cards. However, Chief Moonis testified that not all officers had these cards since their regular work schedules prevented their attendance at a sufficient number of classes to obtain the cards.³⁸ Although some type of firearms training is also initially required, this is quite informal and is a one-time requirement.

Occasionally, other sessions or courses relating to police duties offered by the County or State are available to the officers. At most, officers are urged to attend these additional courses. Given their varying work schedules, not all officers can attend. Moreover, no discipline was or ever would be applied for failure to attend any training session.³⁹

Officer Ambroziak testified that his training regarding the laws of search and seizure consisted of an informal discussion with the former police chief and two or three other officers approximately five years ago.⁴⁰ This is typical, as Chief Moonis indicated:

Q: Have you received any training or have your officers received any training regarding search and seizure?

A: No.⁴¹

Liberty Borough officers have received virtually no training in traffic control, highway rules or police procedures for dealing with traffic violations; procedures concerning affidavits, warrants or the presentation of cases in court; the meaning of probable cause; the laws of search and seizure; constitutional warnings to be given persons placed under arrest; procedures for dealing with juveniles; the proper

special policemen during an emergency "in which the safety and welfare of the borough and the public is endangered . . ." A continuing shortage of police officers does not constitute such an emergency. "Ordinary conditions or customarily existing conditions are not emergencies." *Scaccia v. Borough of Old Forge*, 373 Pa. 161, 94 A. 2d 563, 564 (1952).

36. Riley, N.T. 31.

37. Riley, N.T. 36-37.

38. Moonis, N.T. 24.

39. Riley, N.T. 36. Some officers on their own volition have attended sessions conducted by various police officials in Allegheny County. Several attended parts of a week of sessions on the new Pennsylvania Crimes Code taught by a qualified police instructor and a three-hour seminar on filling out citations. Officer Lofgren attended a week-long course at the County Police Academy on narcotics and dangerous drugs.

40. Ambroziak, N.T. 22.

41. Moonis, N.T. 47.

manner of treating the public; principles of investigating crimes; or processing arrests.⁴²

In response to the subpoena to bring all material used in the training of Liberty Borough officers, Chief Moonis brought: (1) a 1971 copy of the *Vehicle Code*; (2) a 1957 Red Cross "First Aid Textbook"; (3) a copy of the new *Crimes Code*; and (4) a one-page mimeographed sheet entitled, "The Important Steps in Conducting an Investigation and Writing the Report."

Mayor Kessling attempted to initiate Sunday afternoon police meetings and training lectures. Prior to the Commission investigation, three short lecture sessions had been conducted by McKeesport police officers on the subjects of drugs and narcotics, courtesy and police procedures, and firearms.⁴³

All of the police officers and public officials in Liberty Borough acknowledged serious deficiencies in the training of the police officers. Both Mayors Riley and Kessling testified that they attempted to secure additional training for their men.⁴⁴ They said that they were advised by County officials, including Superintendent Kroner of the County Police, that training courses were not available to part-time police officers.⁴⁵ Nor can many officers take time off from their regular jobs to attend the formal courses when they are generally given.

At best, training of police officers in Liberty Borough is sporadic, infrequent, and not up-dated. For example, Officer Ambroziak testified concerning his firearms training, "Somebody took us back to River Road and showed us how to use them." However, the last time he had any firearms training was "at least ten years ago" and he has not even practiced on his own for "the last couple of years."⁴⁶

4. THE OFFICE OF MAGISTRATE

The magistrate plays an essential role in the conduct of the criminal justice system. A police department is dependent upon the magistrate for the issuance of search and seizure warrants, as well as arrest warrants. Likewise, the police are required to take individuals who have been arrested before the magistrate for arraignment. Following arraignment, a magistrate determines whether a prima facie case exists against a defendant. In cases involving traffic violations as well as summary offenses, the magistrate is generally the ultimate finder of fact and decides guilt or innocence. Thus, it is vital to examine the conduct of the magistrate of Liberty Borough in order to understand fully the activities of the Liberty Borough Police Department.

A magistrate is elected for a six-year term. A magistrate's duties include disposing of summary offenses, (such as disorderly conduct and violations of traffic laws and municipal ordinances), making initial determinations of whether sufficient evidence exists to send a misdemeanor or felony case to the grand jury, issuing warrants, and establishing bail. For some of the summary violations, the fine is set by law; for others, the magistrate has discretion to establish a fine of up to \$300. For some violations, he has the power to impose a jail sentence of up to 60 days. In

42. Konias, N.T. 15, 20-21; Wargo, N.T. 17, 23-24; Ambroziak, N.T. 21-24.

43. Kessling, N.T. 24-25.

44. For the first time in Liberty Borough, the 1974 budget specifically designated an amount for police training. Two hundred dollars was designated.

45. Kessling, N.T. 23-24, 72-73; Riley, N.T. 93.

46. Ambroziak, N.T. 20-21.

summary cases, the fine generally goes to the municipality of the officer prosecuting the offense and costs go to the county.⁴⁷

Andrew Kurta was elected to the office of magistrate in the jurisdiction encompassing Glassport, Port Vue, Lincoln Borough, and Liberty Borough in November, 1969.⁴⁸ Mr. Kurta receives a salary of \$14,145. During the first two years of his current term serving as a Justice of the Peace, Mr. Kurta also worked full time as a wire tester in the mills of U. S. Steel.

Mr. Kurta has voluntarily attended numerous courses in order to receive training in the application of the laws for which he is responsible. According to his testimony, he began to take some courses taught by law professors at the University of Pittsburgh as early as 1965. He also attended some courses taught by attorneys associated with the office of the District Attorney. These courses covered selected subjects and were scheduled after a sufficient number of justices, through their association, indicated an interest. In addition, Mr. Kurta has attended some one-week sessions sponsored by the State Court Administrator's office at which judges, police officers, and other knowledgeable officials lectured. He also took the one-month training session required of all magistrates who are not lawyers or had not served a full six-year term as a Justice of the Peace. This was a course "on general procedures, the rules of procedure for Justices of the Peace, the operation of the offices"⁴⁹ and various substantive areas of the law. Other required courses which he attended included a one-day session regarding the use of a new system for the issuance and processing of citations. Mr. Kurta attended nearly all courses offered him although magistrates are generally not required to attend courses and no discipline has ever been applied to magistrates in Allegheny County who did not attend.

Nevertheless, the Commission found clear deficiencies in his knowledge of the law, frequent abdication to the police of his powers to determine guilt and assess and collect fines for summary offenses, and a closeness and cooperation with the police apparently contrary to judicial ethics.⁵⁰

5. THE ADMINISTRATION OF JUSTICE IN LIBERTY BOROUGH

The Commission focused upon a two-month period in 1974 during which the police in Liberty Borough made a number of arrests for drug and alcoholic beverage violations. Included in these arrests were ten for alleged drug offenses. In all ten arrests, the police themselves and/or the Magistrate felt that illegal searches had been conducted, precluding prosecution of the drug charges. Despite the illegal searches, fines for summary offenses were imposed. The fines enriched the Borough treasury by a total of \$539; the Borough receives no monies for pressing drug charges.

An examination of this period revealed: arrests and convictions for summary offenses based on little or no evidence; evidence often admittedly obtained illegally, and, in four cases, evidence wholly fabricated; threats of drug prosecutions to

47. Testimony of Regis Welsh, Administrator for the minor judiciary in Allegheny County, before the Pennsylvania Crime Commission, N.T. 22-24 [hereinafter cited as Welsh].

48. Mr. Kurta had previously served as a justice of the peace in Glassport for four years.

49. Welsh, N.T. 10.

50. See pp. 36-45, *infra*.

obtain guilty pleas and payments for summary offenses; a policy of discrimination against non-residents, particularly teenagers; a failure by the police to promptly and properly arraign or bring charges against defendants as required by law; usurpation by the police of the exclusive authority of the Magistrate to assess and collect fines and a concomitant abdication by the Magistrate of his authority; and a closeness and cooperation between the police and Magistrate apparently contrary to judicial ethics mandated by the Pennsylvania Supreme Court.

The following case studies of this period provide a view of the administration of justice in Liberty Borough.

Case Number 1

One evening in late February, 1974, Officer Konias stopped two teenage brothers, residents of a nearby municipality, because they had long hair and the car they were driving seemed to him to be in a poor state of repair:

Q: And you stopped them for what reason?

A: Well, the car didn't look too good to me. You know what a Corvair is like when they get shabby looking, so I pulled it over.

Q: In previous testimony you mentioned that one of the reasons that you stopped these particular people was that they had long hair. Was that the case?

A: Well, that, too, yes. I mean, I don't have anything against long hair because I am going bald. That's why. They didn't look right. I mean, I never seen the car in the Borough, you know. They didn't look right, so I pulled them over.⁵¹

Officer Konias testified that after he stopped the vehicle one of the boys made "a sudden movement," and that he therefore ordered them out of their car and conducted a thorough search of it.

He found a pipe containing what appeared to be marijuana residue. A subsequent search uncovered some alcoholic beverages. As was his customary practice in such cases, Officer Konias took the boys to the police station and called Chief Moonis at his house. He told him, "I got a couple of hippies" at the station.⁵² Although Chief Moonis testified that the boys were under arrest at this time, they were not taken before a magistrate for arraignment on the drug offenses nor issued a citation for the summary offense of possession of alcohol by a minor.⁵³

The Chief testified that shortly after arriving at the station, he realized that the boys could not be prosecuted because the stop and search of the vehicle was illegal. At that point, he formed his intention not to prosecute for the drug offense.⁵⁴

51. Konias, N.T. 48-49.

52. Moonis, N.T. 55.

53. Rule 130, Pa.R.Crim.P., requires that a defendant arrested without a warrant for an alleged misdemeanor or felony is to be taken "without unnecessary delay" before the magistrate where "a complaint shall be filed against him, and he shall be given an immediate preliminary arraignment." The arraignment consists essentially of serving the complaint and advising the defendant of his rights and court procedures. If the case involves a summary offense, as well as a misdemeanor or felony, the summary offense must be dealt with along with the more serious charges. *Commonwealth v. Campana*, 452 Pa. 233, 304 A. 2d 432 (1973). See Comment to Rule 51, Pa.R.Crim.P.

54. Moonis, N.T. 46, 68-69.

Nevertheless, he obtained a report from the County Crime Lab verifying that the residue in the pipe was marijuana. He then initiated a meeting with the boys' father two days after the arrest. At that meeting, he stated that if the father paid \$122, ostensibly fines for the alcoholic beverage violations, the drug charges would be dropped.⁵⁵ The Chief threatened that if the payments were not made to him at the police station by March 15, drug charges would be filed in court.⁵⁶

Chief Moonis admitted that he assessed the fines knowing that the search which uncovered the alcoholic beverages was illegal. However, he wished to obtain the payment of fines for Liberty Borough⁵⁷ and "keep these kids . . . and keep the outsiders from coming into our community."⁵⁸

The Chief granted a delay in payment and approximately one month after the arrest the father paid the \$122 in cash to another officer at the police station. Chief Moonis was unable to make the meeting to accept payment at the station and thus left instructions for Officer Lofgren to accept the money. The officer gave the father a receipt and assured him that payment for the teenage drinking violations fully disposed of the cases against his sons.⁵⁹

During this entire period, the police did not issue or cause to be issued a citation, criminal complaint, or any notice in writing that a crime was alleged. Shortly after collection, the money was deposited with Magistrate Kurta and dealt with, according to law, as fines for teenage drinking. One hundred dollars went to the Liberty Borough treasury, \$22 to the County as costs.

Magistrate Kurta testified that he learned of the arrest for teenage drinking shortly after it occurred, although he was unaware that drugs were also found. He stated that he personally recommended the amount of the fine, an amount in excess of his usual assessment for teenage drinking.⁶⁰ He knew that no written charges had

55. Chief Moonis stated that the fines were higher than those usually assessed for teenage drinking because of the presence of marijuana. Moonis, N.T. 66.

56. Testimony of Defendant's father, before the Pennsylvania Crime Commission, N.T. 15-16 [hereinafter cited as Father].

57. Chief Moonis testified that in some cases he collected a fine for teenage drinking and gave the money directly to the Borough Treasurer. This avoided processing the case through the magistrate as required by law and saved the defendant \$11 in court costs if he were found guilty.

58. Moonis, N.T. 71-72. And see p. 45, *infra*, regarding the Chief's policy towards non-residents.

59. The police have neither the right nor the power to collect fines. They have a limited right to collect sums of money as specified by statute, constituting bail for the appearance of an accused at his hearing. 19 P.S. §§75-78. The receipt given by the police to an accused, a copy of which goes to the magistrate, clearly states that the money represents appearance bail. However, the police in Liberty Borough, with the cooperation of the Magistrate, do not collect the statutory amounts, nor do they regard the money as appearance bail. Chief Moonis believes that the police have the right to collect fines, payment of which by the accused waives his right to a hearing. Moonis, N.T. 116. Mr. Kurta presumes that payment of monies to the police constitutes payment of the fine and an admission of guilt. Kurta, N.T. 127-129. Mr. Kurta testified that he was not pleased with the practice of police collecting monies at their station. However, he regularly discussed with the police the amount which they should collect and volunteered that the practice benefits him by reducing his workload. Kurta, N.T. 126.

60. Kurta, N.T. 205-206. Chief Moonis stated that Mr. Kurta was not involved in setting the fine. However, Mr. Kurta talked with Officer Lofgren who may not have relayed the conversation to the Chief.

The police and the magistrate, sometimes jointly and sometimes independently, assessed fines for summary offenses at a higher than usual amount if they felt that a defendant had committed a more serious offense, the evidence of which was insufficient or obtained illegally. Mr. Kurta testified:

Well, even like they might be mixed in on a drug charge or something but there is no evidence on drugs. I might set it higher then. Kurta, N.T. 116.

been brought to inform the defendants of their alleged violations of law.⁶¹ He informally discussed the case with the officers, although he was the judicial official who would be responsible for making a fair and impartial decision on the case.⁶² After the collection of the fine, he drew up a corresponding criminal complaint on the alcoholic beverage charges, entering the date as one month after the occurrence. This complaint could have served no purpose other than record keeping, since the defendants were never served with the complaint nor afforded the right to a hearing.

Chief Moonis acknowledged that the manner in which the police handled this case could have given the impression to the accused and their family that they had been the victims of extortion.⁶³ The father testified that he and his family believed that they were the victims of extortion:

. . . I definitely suspected a wrongdoing. When he set the fine and said to pay it at his office, I immediately thought it was an old-time shake-down is just exactly what I told my boys. . . .⁶⁴

He paid because he did not wish to take the chance that his sons might be convicted or incur the costs of fighting a drug case.⁶⁵

Case Number 2

In February, 1974, Officer Konias stopped a Volkswagen van which did not have a valid inspection sticker. Four persons were in the van, all teenagers. The male driver had very long hair. Officer Konias claims that two pipes which could possibly be used for smoking marijuana were visible in the van. On that basis alone, he ordered the four persons out of the van and conducted a thorough, twenty-minute search of the vehicle.⁶⁶ Officer Konias testified that it was his practice to conduct a search if he saw any pipe which could be used to smoke marijuana, although he acknowledged that such pipes can be used for other purposes and that it is legal to sell, buy, and own such pipes.⁶⁷ Chief Moonis testified regarding Officer Konias

Regarding the pattern of drug charges dismissed and resolved through the payment of a higher fine for a summary offense, Mr. Kurta stated:

There was probably an illegal search and I might have assessed them a little more to make sure that they don't even [sic] come back to me any more. Kurta, N.T. 257.

The purpose of this practice was to punish and deter alleged crimes for which guilt could not be proven.

61. Within several days of issuance, Mr. Kurta receives a copy of a citation. Kurta, N.T. 157; Rule 54, Pa.R.Crim. P.

62. See footnote 80, p. 42, *infra*.

63. Moonis, N.T. 51.

64. Father, N.T. 15.

65. The father's two week take-home pay was \$259.

66. It is clear under Pennsylvania law that this search was illegal. A violation of the Motor Vehicle Code does not justify a search of an automobile. *Commonwealth v. Dussel*, 439 Pa. 392, 266 A. 2d 659 (1970). Moreover, mere sight of a pipe which *could* be used to smoke marijuana does not provide the officer with probable cause to conduct a search. In a recent case the court examined precisely this point and suggested that this would not even have been enough to support an affidavit for a search warrant. *Commonwealth v. Davis*, 57 D. & C. 2d 252 (C.P. Fulton Co., 1972).

The driver of the van testified that the pipes to which Officer Konias referred were in a brown paper bag, not visible to him. He stated that Officer Konias indicated to him that he was conducting the search because he had seen a disconnected windshield washer hose and believed that to be drug paraphernalia.

67. Konias, N.T. 57-58.

that "he don't like long-hairs," and surmised that the reason he stopped these persons was "probably long-hairs, I guess long hair."⁶⁸

In the pocket of a jacket behind the back seat, Officer Konias discovered a cigarette box containing several butts of marijuana cigarettes. Thereupon, Officer Konias placed the owner of the jacket under arrest. He found a paper bag with several pipes which could be used for smoking marijuana, containing what appeared to be marijuana residue. He placed the owner of the van under arrest.

The officer arranged to have the van towed. He took the two persons arrested to the police station. The other two occupants of the van, female companions of the persons arrested, accompanied them in a police car to the police station, although they had not been placed under arrest. At the police station, Officer Konias ordered the two young women to empty their purses. A bag containing marijuana was found in one purse. Both women were then placed under arrest.

Chief Moonis attempted unsuccessfully to reach Magistrate Kurta. None of the accused were arraigned. Shortly thereafter, Magistrate Kurta mailed a criminal complaint to each of the four alleging drug violations and establishing a date for a hearing approximately ten days after the arrest.

Less than one week later, one of the male defendants contacted Chief Moonis and arranged for a meeting to discuss the case. He, along with one of the female defendants and her mother, met Chief Moonis that evening at his office. The Chief showed them reports he had obtained from the Allegheny County Crime Lab indicating positive tests for marijuana conducted on the cigarette butts (2.12 grams), the pipe residue, and the bag obtained from the purse (12.1 grams). The Chief stated that the police were willing to drop the drug charges if the defendants would plead guilty to the charge of possession of alcoholic beverages by a minor and pay \$61 each in fines and costs. Officer Konias, as well as the four defendants, stated unequivocally that there were no alcoholic beverages in the van nor were any of the four drinking on the night of the arrest.⁶⁹ In testimony concerning this incident, one of the defendants present at the meeting stated:

He [Chief Moonis] says that the drug charges would be brought up against us and that we would go through a lot more hassle, we would have to get a lawyer and a regular hearing in court if we didn't just pay for the alcoholic charges, beverage charge.⁷⁰

Chief Moonis also stated that he would talk to Magistrate Kurta before the hearing and arrange for the cases to be disposed of in the promised manner.⁷¹

The defendants all believed that the fines represented a manner of settling the drug charges, since they knew that they had not violated the alcoholic beverage laws. Moreover, although there was absolutely no evidence against one girl of any offense, she too agreed to pay the fine in order to avoid the greater expense and problems of fighting a drug charge.

Chief Moonis informed Mr. Kurta that he had obtained evidence of possession

68. Moonis, N.T. 94-95.

69. Konias, N.T. 33; testimony of one of the defendants, before the Pennsylvania Crime Commission, N.T. 23 [hereinafter cited as Def.]; statements taken from three other defendants.

70. Def., N.T. 24.

71. Def., N.T. 23; statements from the other two participants at the meeting with Chief Moonis were in agreement with the above testimony.

of alcoholic beverages.⁷² At the hearing, the defendants each pleaded guilty to that charge and were assessed fines of \$61 as Chief Moonis had promised. They pleaded not guilty to the drug charges which were dismissed.⁷³

The defendants were never served with any written citations or complaints alleging the alcoholic beverage violations. Magistrate Kurta acknowledged that if an arrest were made for both drug and teenage alcoholic beverage offenses, the law requires service of complaints alleging both charges, notice that a hearing will be held on both charges, and a hearing at which both charges are resolved.

Two of the defendants alleged that Chief Moonis met in private with Magistrate Kurta immediately prior to the hearing and reached agreement on the dismissal of the drug charges and fines for teenage drinking charges. The Chief and the Magistrate deny this. Magistrate Kurta specifically denied having any knowledge of the facts of this case prior to the hearing. However, although no written citation or complaint alleging the alcoholic beverage charges had been prepared or served, Magistrate Kurta asked the defendants to plead to this charge at the commencement of the hearing.

Mr. Kurta's records indicate that drug charges were only brought against one of the defendants. His records failed to reveal that drug charges were ever even brought against the others. Mr. Kurta testified that to the best of his recollection the drug charges were dismissed against these persons because the evidence had been obtained as the result of an illegal search.⁷⁴ He further testified that it was possible and that it would have been consistent with his practices to have set the fines for the summary offenses higher than his usual \$36 because of the marijuana allegations.⁷⁵

Case Number 3

One night in January, 1974, Officers Lofgren and Riley noticed a car parked in a dark, isolated area off the side of a road. They saw a flame which the four occupants of the car seemed to be passing around. Officer Lofgren approached the car and spoke to the driver. He saw two beer cans on the floor in the back seat and advised the three persons under 21 that they were under arrest for the summary offense of

72. Officer Konias testified: "I told the Chief and I told Kurta, I says, 'Look, I found marijuana pipes in that car, I didn't find no alcohol.' The Chief says, 'Yes, there was a bottle of wine in there. Here's the bottle of wine.'" Konias, N.T. 34.

73. According to the defendants, when Magistrate Kurta asked them to plead to the drug and alcohol charges, they were unsure of what to say, so Chief Moonis advised them to plead not guilty to the former and guilty to the latter.

74. It is Mr. Kurta's practice to dismiss a case where he concludes that the evidence has been obtained illegally. He testified that he handles "a lot of illegal searches, lots of them." Kurta, N.T. 258. Search and seizure cases can raise complicated legal problems. Mr. Kurta is not a lawyer, has not received concentrated training in the laws regarding search and seizure, and does not have legal counsel available to advise him. Rarely does the prosecution have an attorney to represent it at the Magistrate level. Usually the only attorney involved at that level represents the defendant. Mr. Kurta admitted that he was not certain whether any responsible court official had ever advised him that he had the authority to dismiss a case due to an illegal search. Kurta, N.T. 75. Moreover when he does so he is not required to keep any reviewable record explaining the reason for his decision. Mr. Welsh, the administrator for the minor judiciary in Allegheny County, does not believe that Magistrates have the authority to dismiss a case on the basis of an illegal search. Welsh, N.T. 29. However, he stated that there is a difference of opinion on this matter and that some responsible judicial officials may have given Magistrates the impression that they do have the power. Welsh, N.T. 29-30.

75. Kurta, N.T. 220-221.

possession of alcohol by a minor.⁷⁶ He told the three to get out of the car. Officer Lofgren stated that it is his policy to conduct a body search for weapons of all persons arrested for any offense. While patting down one person, he reached in the person's pocket and found a bag containing approximately 70 pills of LSD. At that point, he also saw that under the passenger seat in the front of the car was a pipe containing hashish oil, which the persons in the car had apparently been passing around.⁷⁷ Officer Lofgren then placed all four persons under arrest for drug violations. He also decided to charge the person over 21 with disorderly conduct for being in the presence of persons under 21 who were in a car with two cans of beer and because "he was mousy with me."⁷⁸

The four were arrested within Mr. Kurta's jurisdiction but were arraigned before the Magistrate sitting in night court. A hearing was scheduled before Mr. Kurta.

Officer Lofgren telephoned Mr. Kurta the next day. They discussed all the facts of the case ⁷⁹ despite the Pennsylvania Supreme Court prohibition against such communications.⁸⁰ Prior to the scheduled hearing, Mr. Kurta met separately with attorneys representing the person over 21 and the person who had been in possession of the LSD.

The arresting officers were present for at least the former meeting. The attorney for one of the defendants told the Commission that Mr. Kurta agreed with his contention that the search had been conducted illegally. However, Mr. Kurta advised the attorney that he was going to fine his client for disorderly conduct. He stated that this fine would act as a deterrent against a drug problem that the police were facing.

Mr. Kurta stated that additional legal fees could be avoided if his client pleaded

76. Rule 51, Pa.R.Crim.P., directs that an officer should initiate proceedings for summary offenses by the issuance of a citation; in non-traffic cases he should make an arrest without a warrant only where there is a breach of the peace or where property or persons are endangered. The comment to this rule reads: "It should be noted that this procedure is designed to eliminate arrests in the middle of the night."

According to Magistrate Kurta, none of the persons were found to have been drinking the beer. Kurta, N.T. 243.

77. The defendant possessing the LSD admitted that the four had been passing around the pipe with hashish oil in it; he had been sitting in the passenger seat and had concealed the pipe when the officer approached.

78. According to Officer Lofgren, being "mousy" meant that before he had charged him with an offense, the person protested about being ordered out of the car and "felt I didn't have a right to pat him down for weapons." Lofgren, N.T. 93.

79. Kurta, N.T. 239.

80. "A justice of the peace shall . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding." Rule 4D, Pa.R.Crim.P.J.P.

Mr. Kurta regularly engages in such private conversations with police officers. These conversations include presentations by police officers of their versions of the facts of cases which Mr. Kurta will hear and judge.

It appears that Mr. Kurta does not consider the police in a neutral manner. For example, Mr. Kurta testified regarding his reasons for imposing a higher fine against one of two defendants arrested together for the same offense:

We had him in Glassport. . . . We sent his case to court for drugs. . . . we knew he was taking dope but we couldn't prove it. He was in Viet Nam. I knew he was taking dope but we couldn't prove it. I did hear he was breaking in homes, you know, it was just hearsay but we couldn't prove it. . . ."

Mr. Kurta stated that "we" referred to the police and him. Kurta, N.T. 253-254.

guilty to the charge of disorderly conduct.⁸¹ Additional legal fees would only have been incurred if Mr. Kurta found a prima facie case on the drug charge and held him for court. The attorney perceived Mr. Kurta's actions as a form of judicial plea bargaining.⁸² The attorney stated that the police officers remarked that a fine was necessary in order to protect their reputations and avoid making them appear to be fools.

The other defendants similarly had their drug charges dismissed and paid fines for a summary offense. The person apprehended with the LSD was assessed \$111 in fines and costs, as opposed to the \$61 assessed the three others.

Case Number 4

In January, 1974, Officer Lofgren "raided" what he referred to as a "beer blast."⁸³ On the basis of a telephone complaint and noise which he heard, Officer Lofgren and an officer of the Port Vue Police Department investigated a party in the woods of Liberty Borough attended by a number of teenagers. The party was in a clearing down a hill from a road. As the officers began their descent of the hill, they encountered four teenagers leaving the party. Officer Lofgren talked briefly with the four, accused them of attending a beer party, obtained their names, and placed them under arrest for teenage drinking. Three of the persons ran, thereby informing the others at the party that the police were present. Officer Lofgren ordered the girl who remained to get into his police car.

Shortly thereafter, the two officers and the girl went into the woods to get the kegs of beer which were at the party. Officer Lofgren shot holes in the keg from which persons had been drinking.⁸⁴ He testified that he did this in order to make it lighter to carry up the hill.

81. Mr. Kurta testified that the conviction for disorderly conduct was based solely on the fact that the defendant was over 21 and was with persons under 21 who had beer within their reach (although not drinking or even holding it). Kurta, N.T. 243-244.

This appears to be insufficient to support a charge of disorderly conduct. See *Coates v. City of Cincinnati*, 402 U.S. 611, 91 S.Ct. 1686 (1971); and see *Commonwealth v. Greene*, 410 Pa. 111, 189 A.2d 141 (1963).

This charge was brought under the Liberty Borough ordinance rather than the state disorderly conduct statute, 18 P.S. §5503. Rule 51 of the Pennsylvania Rules of Criminal Procedure states as follows in Section D:

When the same conduct is proscribed under an Act of Assembly and a local ordinance, the charge shall be brought under the Act of Assembly and not under the local ordinance.

In the explanatory comment to Rule 51 it is noted: "The addition of Section D eliminates the use of local ordinances, (instead of Acts of Assembly) solely to produce revenue for political subdivisions." It does not appear that Rule 51, §D, effective January 1, 1974, has altered the practice of the police in Liberty Borough of prosecuting disorderly conduct in Mr. Kurta's court under the local ordinance.

82. Another apparent case of judicial plea bargaining occurred in October, 1973. Officer Rausch had arrested two persons for possession of marijuana. These persons had been in a car parked off the side of the road during a rainstorm. A pipe containing marijuana residue had been found in the car, and marijuana seeds were found on the seat of the car. A plastic bag containing marijuana was found outside the car.

During the arraignment, Mr. Kurta offered to drop the drug charges if the accused pleaded guilty to charges of disorderly conduct. Fine and costs were set at \$111 each and they were given three days to pay. The assessment against one was later reduced to \$61.

83. Lofgren, N.T. 49.

84. Testimony of Defendant No. 2, before the Pennsylvania Crime Commission, N.T. 17 [hereinafter cited as Def. 2].

The officers waited at the top of the hill and apprehended five other persons leaving the woods and returning to their cars. The officers then drove the persons arrested to the police station for questioning.

According to the testimony of the girl first arrested, Officer Lofgren threatened that she would be sent to Juvenile Court and receive a fine of up to \$200 if she did not furnish him with the names of others attending the party. She stated that Officer Lofgren gave her the impression that he personally had the power to impose these penalties, and that as a result of her fear she gave him the names of others present at the party.⁸⁵ Officer Lofgren stated that he also received the names of persons present from another informant.

Officer Lofgren denied that he coerced or threatened harsh penalties to obtain the names from either informant. However, he did admit that he told the parents of another boy who refused to give him names that night that he would attempt to have him fined more than \$100 "if he wasn't willing to cooperate."⁸⁶

Officer Lofgren arrested additional persons that night. He filled in the spaces for fines and costs on the citations which he issued, varying the amounts from \$36 to \$111.⁸⁷

Chief Moonis incorrectly believes that the police can insert fines and costs on citations even where the amounts vary,⁸⁸ but he disapproved of the manner in which Officer Lofgren assessed fines that evening.

85. Def. 2, N.T. 27.

86. Lofgren, N.T. 51.

87. All officers in Allegheny County have received explicit written instructions from the administrator of the minor judiciary not to fill in dollar amounts when the fine for the offense can vary, as with teenage alcohol possession. Welsh, N.T. 45. The instructions read:

Fine and costs will be *LEFT BLANK* if the section calls for a *SLIDING FINE*. (emphasis in original)

At a meeting attended by Mr. Kurta and specifically dealing with the use of citations, Magistrates were instructed that the police were not to fill in the fines where the amount could vary. Welsh, N.T. 47-48.

Mr. Kurta testified that he told officers on numerous occasions not to fill in the amounts of fines. He acknowledged that an officer has no business regulating the fines, but said that he felt powerless to stop the practice. Kurta, N.T. 60-61. Nevertheless, where an officer filled in an amount greater than the Magistrate's usual assessment for an offense, generally either the officer or Mr. Kurta would contact the other to discuss the case. Kurta, N.T. 149. Sometimes Mr. Kurta would simply accept the officer's higher assessment without any discussion about it with him. Kurta, N.T. 151-152. He acknowledged that in such cases the officer would be assessing the fine and assuming the Magistrate's function. Kurta, N.T. 152. See footnote 38, *infra*.

88. Moonis, N.T. 40-41, and see footnote 86, *supra*. The following is an example of police assessment and negotiation of fines: In August, 1973, Officer Lofgren stopped a teenager driving a motor bike and charged him with a variety of offenses, including reckless driving, driving without a license, driving a vehicle without a valid inspection sticker, and disorderly conduct. The officer informed him that the total fine would be \$182. Several days later, the teenager paid Chief Moonis \$60, was told that the fine would be reduced to \$111, and that the balance could be paid in installments to either Moonis or the Magistrate. A few days later, the teenager's father first learned of the charges and spoke with the Chief. The Chief informed the father that for an additional \$11, i.e., \$71 total, he would consider the fine paid in full. Chief Moonis collected the money and turned it over to Mr. Kurta. The Magistrate recorded the money as payment for disorderly conduct and sent the violator a receipt for \$71. The Commission did not find one other instance in which a defendant was assessed \$71 in fine and costs in examining over four years of Mr. Kurta's Liberty Borough records. The treasury of Liberty Borough was enriched by \$60, and the County received \$11 representing court costs.

I didn't approve of that at all. I couldn't figure out how he would arrive at asking or charging somebody with \$100, and somebody with \$50, and I asked him. I couldn't figure out why.⁸⁹

Nevertheless, Chief Moonis did not order Officer Lofgren to proceed in a different manner, deciding to allow Mr. Kurta to rectify the disparate treatment.⁹⁰

Chief Moonis told one defendant that evening that he personally was assessing the fine and costs at \$25 above the usual amount because the youth was from Glassport. The chief testified that he did this because of an aversion to Glassport youths due to past experiences with teenagers from that municipality, although he acknowledged that he had no previous contact with or knowledge of this teenager.⁹¹

This practice was consistent with the Chief's admitted policy of assessing higher fines to non-residents of Liberty Borough.⁹² In fact, Chief Moonis followed a policy discriminating against non-residents, particularly youths:

...like I said about the problems, you know, we don't want kids from out of our borough, we don't want the outsiders coming in.⁹³

Officer Lofgren went to Mr. Kurta and swore out criminal complaints against persons at the party whose names had been given to him. In order to issue the complaints and establish guilt of possession of alcohol, Mr. Kurta only required proof that the persons had been present at the party. It was irrelevant to both the arresting officer and the Magistrate whether any of the accused had been in actual possession of the alcohol.⁹⁴ Mr. Kurta treats cases of alleged drug possession similarly.⁹⁵

Only four of the accused exercised their rights to a hearing on the charges against them. Three were convicted solely on the testimony of Officer Lofgren that he had seen them leaving the party. Officer Lofgren had no knowledge whether any of these persons had been drinking or in possession of alcohol that evening.

6. CONCLUSIONS AND RECOMMENDATIONS

Many citizens of Pennsylvania reside in or have contact with small municipalities. Their dealings with the police and magistrates are as important as those of persons in the largest cities. They are entitled to fair and competent law enforcement.

89. Moonis, N.T. 138.

90. Mr. Kurta did reduce all assessments emanating from the beer party to \$36.

91. Moonis, N.T. 140.

92. Moonis, N.T. 141.

93. Moonis, N.T. 143. The effect of this policy led to an order in the police logbook for April 11, 1972, to make illegal stops on any car in Liberty Borough containing a group of non-resident youths: "any out of Boro car's [sic] with a lot of kid's [sic] stop and check there [sic] cards. Don"

94. In *Commonwealth v. Florida*, 441 Pa. 534, 272 A. 2d 476 (1971), the Pennsylvania Supreme Court in a marijuana case held that the mere opportunity to commit or join in possession or control is insufficient evidence of possession. This decision is clearly contrary to the application of the law in Mr. Kurta's courtroom. Mr. Kurta testified that possession under the law included the mere ability to be in actual possession. Kurta, N.T. 96-106. The police in Liberty Borough similarly misunderstood and frequently misapplied the law relating to possession. Moonis, N.T. 103-104. This resulted in numerous improper arrests and convictions.

95. Kurta, N.T. 96-106.

As Liberty Borough exemplifies, many citizens are not receiving adequate law enforcement services. In order to obtain a competent police department, it is necessary to attract qualified applicants and supply those applicants with the necessary training. Liberty Borough does not have the financial means or other resources within its boundaries nor sufficient support from the county or state to meet these needs.

Nevertheless, most municipalities cling zealously to their local powers, including the power to maintain a police department. In fact, a police department serves as one of the principal areas of direct responsibility for the mayor of smaller municipalities. In Liberty Borough, the Mayor spends more of his time and has greater responsibilities in the area of law enforcement than in any other area of his concern. As has been the case with the present and previous mayors of Liberty Borough, mayors in small municipalities tend to bring no experience in police work to this important task.

It is clear that police departments presently functioning in the manner of Liberty Borough should not be allowed to operate in Pennsylvania. Past and present practices in Liberty Borough have admittedly resulted in the denial of the personal rights of citizens, particularly teenagers and those living in surrounding communities. It is fortunate that there have been no serious accidents resulting from such a police department possessing full police powers.⁹⁶

The Legislature recently addressed itself to some of the problems discussed in this report. In 1974, the Governor signed into law a bill creating the Municipal Police Officers Education and Training Commission. This body is directed to devise and initiate training for municipal police officers.⁹⁷ However, it does not appear that this measure will provide more than marginal relief for the major problems outlined by the Crime Commission in this report. First, training is required only for officers hired after the effective date of the law.⁹⁸ Present officers, who have never been required to receive any training, will be the police veterans and the leaders, persons naturally exercising daily influence over the conduct and practices of the newly hired. The positive effects of the training received by those new recruits may thus be reduced on-the-job. Second, as indicated in testimony from officers of Liberty Borough, part-time officers find it difficult, if not impossible, to attend regularly scheduled training. And it will be difficult for many small police depart-

96. The following illustrates the danger:

(1) Officer Konias testified that he fired a shot into the woods of Liberty Borough to stop the heckling of a group of kids. He stated that he fired away from the voices. He reported that the shooting accomplished its purpose. Konias, N.T. 73.

(2) Officer Lofgren fired shots into a beer keg at a teenage party. See p. 43 *supra*.

(3) The officers are not required to maintain any level of proficiency with firearms, although all carry guns. Officer Ambroziak testified that he has not even fired a gun for several years. See p. 35 *supra*.

(4) The abilities and temperament of applicants for police positions are not tested. They only must be auxiliary policemen. Virtually anyone can become a member of the auxiliary. See p. 33 *supra*. At least some auxiliary members and some police officers believe even the auxiliary has full police powers, and act accordingly.

97. The Governor named the Commission members on February 22, 1975. The Commission scheduled its first meeting shortly thereafter.

98. Mayor Kessling testified that Liberty Borough rushed to hire two officers to fill vacancies in the police department prior to passage of the law in order to avoid its effects, including feared financial costs. Kessling, N.T. 88.

ments comprised of full-time officers to spare officers for full-time training. Finally, the Training Commission must avoid the establishment of standards so high that they cannot be met by some police departments, yet not seriously diluted in order to accommodate those police departments.

There are a number of more far-reaching alternatives which Liberty Borough and the Legislature should consider. The President's Commission on Law Enforcement and Administration of Justice conducted a comprehensive national study in the 1960's of the problems surrounding the provision of police services. The Commission, as well as other authorities, concluded that effective and efficient police service cannot be provided by small fragmented political subdivisions of metropolitan areas. It found that attempts to do so generally produce many poorly financed, ill-trained, and under-equipped police departments rather than one, or several, well-trained, adequately equipped and effective police departments.

... Police activities related to manpower needs should be organized on the basis of areas large enough to support good programs. Through joint recruitment, selection, and training, police agencies increase their ability to secure the best available personnel. The State should participate in the programs through developing standards and requirements, assisting in making training facilities available to all departments, and establishment of manpower reserves upon which local departments can draw to maintain their strength when their personnel at whatever level are receiving training.

The fulfillment of police responsibilities depends upon the effective use of manpower. To this end, all police agencies need planning assistance on organizational and procedural matters, and access to area-wide crime and modus operandi analyses. Such planning tools are beyond the capacity of all but the larger departments.⁹⁹

The President's Commission further stated that a number of approaches have been used successfully in consolidating police responsibilities:

... They include: Comprehensive reorganization under metropolitan-type governments; the use of subordinate service taxing districts under a strong county government; intergovernmental agreements; and annexation by municipalities of fringe areas. One additional approach, the use of single-purpose special districts, has been utilized occasionally.¹⁰⁰

Legislation presently exists which would allow Liberty Borough to either consolidate its resources with those of surrounding communities for the provision of police services or delegate its police department functions to a larger municipality, such as the County. This would be accomplished through an intergovernmental cooperation agreement.¹⁰¹ At least three Pennsylvania political subdivisions, Allentown, Bethlehem, and Easton, have entered into such a cooperation agreement for police services in emergency situations.

99. *Task Force Report: The Police*, The President's Commission on Law Enforcement and Administration of Justice, p. 71 (1967).

100. *Task Force Report: The Police*, p. 72.

101. Act of 1972, July 12, P.L. ———, No. 180, 53 P.S. §481 et seq. (Supp.).

In some smaller communities in the Commonwealth, police protection is provided through the State Police. Given the location of State Police facilities, it is not clear that this would be practical in all cases. However, it is a measure which could be explored.¹⁰²

Even if Liberty Borough and nearby municipalities chose to consolidate their police departments, that in itself is not enough to insure adequate police services. Consolidated financial resources alone will not produce competent, capable and well-trained officers. The Legislature should carefully consider the recommendation of the National Advisory Commission on Criminal Justice Standards and Goals that all states create a State Commission to establish and administer minimum mandatory standards for the selection as well as training of police. At present, even those municipalities subject to Civil Service laws determine their own standards which are not necessarily satisfactory measurements of ability or temperament for police work. At a minimum, all newly hired police officers should be required to undergo rigorous civil service entrance exams or other valid testing procedures. The National Advisory Commission on Criminal Justice Standards and Goals strongly recommended:

Every police agency immediately should employ a formal process for the selection of qualified police applicants. This process should include a written test of mental ability or aptitude, an oral interview, a physical examination, a psychological examination, and an in-depth background investigation.

The use of part-time police officers for any but emergency purposes should be prohibited.

Liberty Borough has served as an excellent case study to highlight the problems of law enforcement in smaller municipalities. Former Mayor Riley inherited a dismal police department and attempted in good faith to professionalize its operations. The outcome for Liberty Borough, and very possibly the present condition of many other municipalities, could be worse if its public officials were not as well intentioned. Mayor Riley impressed the Commission with his dedication to public service. However, he did not have the training, knowledge, or ability to administer a police department. His manner of improving conditions proved to be contrary to the fair and impartial administration of justice.

Liberty Borough simply does not have the resources, including financial, to maintain an autonomous police department. In his attempts to financially support a police department, Mayor Riley resorted to a quota system on citations to be issued by officers. This was clearly designed to produce revenue which subsequently appeared necessary to support other programs as well. The quota itself produced numerous arrests, unlawful stops and searches, and deprived citizens of their rights. One can only conjecture on the degree to which other municipalities in the Commonwealth use traffic citations and arrests for summary offenses as means of

102. The Commission received testimony from public officials of Liberty Borough in support of locally controlled police services. The officials pointed to police familiarity with the area and residents, the efficient system of transporting persons to hospitals, and the ability of the Borough police force to perform small niceties such as starting lawn mowers for older widows. Kessler, N.T. 86. Riley, N.T. 92-97. Some of these benefits could be provided by means other than a police department with full police powers. Moreover, the benefits are far outweighed by the detriments of improper police services.

gathering revenue. The present laws encourage this by providing that fines go to the municipality of the officer. Providing such an economic incentive for the enforcement of laws is inconsistent with the fair, neutral, and impartial administration of justice. This is particularly so with non-traffic laws where the police officer necessarily applies greater subjective judgments. For example, in January, 1972, when the Mayor and Chief of Police of Liberty Borough urged the officers to meet the projected budget figure for fines, nine fines for disorderly conduct were imposed. This was as many as in the previous six months combined. In light of the quota, it is not clear that those persons would have been arrested, even assuming they violated the law, if revenue were not being sought. There are many methods of securing compliance with the law other than arrest and fine. Responsible police practices are colored and the objectivity of the officer compromised where he is responsible for producing revenue. Thus, the Crime Commission recommends that the Legislature provide that fines go elsewhere than to the municipality of the officer, perhaps into a fund for police training.

The Commission found that the irregularities in the enforcement of laws in Liberty Borough are further aggravated by Magistrate Kurta. Although his motives are not corrupt, Mr. Kurta has not always maintained a fairness and impartiality, as well as a sense of propriety, in his practices.

There may be inherent difficulties in the Pennsylvania Minor Judiciary system in which most magistrates are non-lawyers. Magistrates are responsible for making complex legal decisions without the aid of legal counsel. Frequently the only attorney in the courtroom is the representative of the defendant; the police are generally unrepresented. Moreover, there is no record keeping system which allows court officials to review the adequacy of many of the complicated decisions made by magistrates, particularly in summary cases and dismissals of alleged felonies and misdemeanors.

The Crime Commission recommends that the Legislature conduct or authorize a comprehensive study of the efficiency, effectiveness and quality of the administration of justice by the minor judiciary. Such a study should insure substantial input by all segments of society affected by magistrates, including the police, the courts, attorneys, defendants (including youthful ones), and the general public. Such a study should take into consideration the following:

Magistrates may not presently be receiving adequate training, including sufficient up-dating of training, to adequately assume their responsibilities. Moreover, the methods for fully informing magistrates of any changes in the laws, including those resulting from higher court decisions, may not be adequate.

a. Magistrates who are not lawyers do not have access to immediate legal advice concerning what can often be complex problems of law. Such advice might be made available in the form of a permanent attorney-advisor to the minor judiciary, able to attend hearings in cases where legal problems are anticipated.

b. Magistrates are not required to keep records of the reasoning for their judgments, despite the fact that they normally adjudicate summary cases and either adjudicate or make preliminary rulings in misdemeanor and felony matters. A written or tape-recorded record would better insure well-reasoned, carefully thought out decisions and would also provide a method for reviewing and upgrading the abilities of the magistrates.

c. The powers of the magistrates appear not to have been sufficiently defined. For example, Magistrate Kurta and Administrative Officer Welsh were not certain

whether magistrates have the authority to dismiss a case because of an illegal search.

d. There do not appear to be procedures for enforcing the rules of the minor judiciary, including the rules on ethics.

e. The police may need representation by legal counsel at hearings before magistrates in order to prevent the dismissal of cases which merit prosecution in the courts.

The various Courts of Common Pleas and the Supreme Court could, in their administrative capacities, consider the above matters even without legislative authorization.

Law enforcement services are among the most important provided by the government to the citizens of the Commonwealth, whether they reside in large or small municipalities. The effect of a police officer or magistrate on a citizen is similar in both contexts. The young in particular are forming their basic attitudes concerning the law through these contacts. The stake for society in fair, competent and effective law enforcement is tremendous. Thus, the Commission feels that this report deals with a topic of crucial importance which should be accorded deliberate, thorough and immediate attention. The Legislature, the courts and the public must not avoid their respective responsibilities.

B. A Study of the Quality of Law Enforcement In West Mifflin Borough

1. BACKGROUND

West Mifflin Borough is located in Allegheny County, approximately ten miles from Pittsburgh. It is one of the largest municipalities in the County, covering approximately 17 square miles with a population exceeding 30,000. Its police force of 33 officers, including the chief, a lieutenant, a safety officer, and four sergeants, is also one of the largest in the County.

Under the borough form of government in Pennsylvania, control over the police department is divided between the mayor and borough council.¹ The council members are given the authority to appoint and remove police officers and to designate one policeman as chief, while the mayor is given administrative control and the power to direct the time, place, and manner in which the chief and the police force perform their duties. The Mayor of West Mifflin considers the police department his most significant and time-consuming responsibility.²

This investigation grew out of allegations received by the Crime Commission that Gal Stinner, owner of S & S Auto Service (hereinafter S & S), West Mifflin, was paying kickbacks to West Mifflin police officers for car tow referrals. Crime Commission hearings and interviews conclusively established that nearly every officer on the West Mifflin police force has received such payments from Mr. Stinner. The investigation also disclosed that the top leadership within the West

1. Borough Code, 53 P.S. §46121, provides Mayors with "full charge and control of the Chief of Police and the police force."

2. Mayor Richard Allen estimated that police related matters occupy 75 percent of the time he spends on mayoral duties. Testimony of Richard Allen before the Pennsylvania Crime Commission, N.T. 100 [hereinafter cited as Allen].

Mifflin Police Department ignored the payments and failed to take any preventive or corrective action. In addition, the Commission found that the West Mifflin Police Department is weakened by a severe lack of internal communication and political feuds, and the capabilities of its officers are seriously limited due to inadequate training.

With the recent significant increases in the number of major crimes committed in West Mifflin, as well as in many other suburban areas, it is essential that suburban municipalities receive effective police services. The problems uncovered during the course of this investigation raise serious questions regarding the capacity of a municipality such as West Mifflin to independently maintain a competent, professional police department.

2. TOWING KICKBACKS TO POLICE OFFICERS

The procedure followed in West Mifflin when a motor vehicle is immobilized on the highway is well-established. The vehicle owner has the right to advise the police to call a specific tow truck company. If the owner is not present or has no preference, or the officer on the scene determines that the designated company cannot respond quickly enough, the officer decides which company will be called.³ According to Lieutenant Richards of the West Mifflin Police Department, where a tow truck is to be called, the officer on the scene is "the boss."⁴

Mr. Stinner testified that he has been used exclusively for fifteen years by the West Mifflin Police Department.⁵ According to 1973 police records, West Mifflin police referred 365 jobs to S & S. In the first seven months of 1974, 170 jobs were referred to S & S.⁶ Mr. Stinner stated that he receives approximately 30 to 40 towing jobs monthly from West Mifflin police referrals.⁷

The Crime Commission received statements from other tow truck owners that on a number of occasions they have been refused business even in situations where they were the most readily accessible to the scene of an accident.⁸ One tow truck owner indicated that several times he or an employee has offered to tow vehicles from the heavily traveled highway adjacent to his service station. The police always

3. The procedure in West Mifflin is for an officer on the scene to direct the station to call the tow truck company. The station will, without question, call the company specified by the officer. Generally, the officers specify S & S. Even if an officer does not specify a company, the policy is to call S & S. Chief Garsick testified that he ordered this policy over ten years ago. Testimony of Chief Stephen Garsick before the Pennsylvania Crime Commission, N.T. 60 [hereinafter cited as Garsick]. The three persons who generally call the towing companies have all been working for the police department for at least seven years. None was aware that the Chief had ordered such a policy. Rather, they called S & S because they believed that this was the standard practice which has always been followed. Interviews with Officer Victor R. Palestra and Clerks Ann Yonko and Mary Ann Sulva. All of the officers know that S & S will be called unless they specify another company. Mr. Stinner knows this also. Testimony of Gal Stinner before the Pennsylvania Crime Commission, N.T. 28-29 [hereinafter cited as Stinner].

4. Statement made during tape-recorded interview. Quotations, information, and opinions attributed to Lieutenant Richards, *below*, were taken from this interview.

5. Stinner, N.T. 117-118, 28-29.

6. Police records may have inadvertently omitted some cars towed by Mr. Stinner during both periods.

7. Stinner, N.T. 28, 47.

8. West Mifflin has an area of approximately seventeen square miles. It also has major, well-traveled highways and a number of service stations with towing facilities.

refused the offers. S & S was called, even though waiting for its arrival resulted in delays causing unnecessary traffic jams.⁹

Mr. Stinner admitted that, "On many occasions, I have given the police a [cash] gratuity."¹⁰ However, he objected to characterizing this as a kickback scheme or even as a form of payment. "I don't want to use the word 'payment' in there—no way at all."¹¹ Mr. Stinner stated that he would only give an officer money "... [i]f I feel that they warrant it for some reason."¹² Mr. Stinner characterized the money given to police officers as gifts given for some extraordinary services rendered, such as help with a difficult tow, rather than the result of a prearranged, fixed agreement.¹³ He testified that, "I have no set policy on how much to give."¹⁴ He claimed that he presented officers with such gifts approximately 25 percent of the times in which he was called by the West Mifflin police.¹⁵

Contrary to his testimony, the evidence shows that Mr. Stinner has made payments systematically and with regularity for at least the last five years.¹⁶ Mr. Stinner paid \$5 per car towed in every case where an officer appeared at his garage to claim the money due and properly identified the car and the location from which it was towed. Thus, if an accident resulted in towing two cars, Mr. Stinner would pay the officer \$10.

Sergeant Sabo described the understanding between Mr. Stinner and West Mifflin officers:

If you're in an accident and S & S tows the car in the accident, then you make it a point to go down [to Stinner's garage] the following day if it happens late at night, and he proceeds to give you the money.

Officer Spanitz learned four or five years ago that Mr. Stinner was "giving officers a gift of \$5 for each car towed in a situation where the officer was involved."¹⁷ He estimated that he has since received approximately \$300 from Mr. Stinner pursuant

9. One reason for this may have best been summarized by Sergeant Sabo who stated: "In my own mind, I felt that I was obligated to [call] S & S." Statement made during tape recorded interview. Quotations, information and opinions hereinafter attributed to Sergeant Sabo were taken from this interview.

10. Stinner, N.T. 48.

11. *Ibid.*

12. *Id.* at 52.

13. Mr. Stinner stated that he has presented officers with gifts of this nature since he began his business 28 years ago. He testified that the practice of giving "gratuities" originated as "a competitive practice in business." Stinner, N.T. 88. Over the years, he has increasingly given "gratuities", "Because of competition, and shortage of money, and inflation. Maybe the fact that I am in a better position to do it today than I was then." Stinner, N.T. 89-90. Mr. Stinner testified that it is the practice throughout the United States, including Allegheny County, for tow truck owners to present police officers with gratuities for tow referrals. Stinner, N.T. 91.

14. *Id.* at 49.

15. *Id.* at 83-84.

16. Approximately five years ago, Leo Zebelsky, owner of Leo's Service Center in Duquesne, made a serious effort to capture some of the towing business done by Mr. Stinner. He distributed cards to police officers in West Mifflin promising payment of \$5 and \$10 per car towed depending on the year of the car.

17. Unless otherwise indicated, all information, statements, opinions and quotations attributed to West Mifflin police officers were submitted to the Crime Commission in the form of written statements.

to this arrangement. Officer Spanitz stated that Mr. Stinner required the officers to identify the type of car and the location of the accident prior to payment.

It was my practice to go to Stinner Garage one or two days after the tow and receive the \$5 gift personally from Stinner. I did this so I would not forget about the tow. I told Stinner that I was involved in a situation regarding a tow, and I identified the circumstances of the tow, i.e. type of car, location The only time I received the gift was when the car was towed.¹⁸

The officers also stated that Mr. Stinner maintained and utilized written records concerning tows referred by the police for the purpose of facilitating payments.¹⁹ Sergeant Sabo said that Mr. Stinner maintained a book indicating which police officers had been involved in investigating the accident. According to Sergeant Sabo, when Mr. Stinner was involved in towing the car, he would have the name of the officer in the notebook.²⁰ If Mr. Stinner were not so involved, he would have information relating to the car towed. Sergeant Sabo explained, "You had to give him the date and type of car involved that he towed so he would keep a record."

Officer Matthews, who admitted to receiving payments approximately 30 times from Mr. Stinner, stated that Mr. Stinner would write the information given to him by the officers on a piece of paper and then make the payment. According to Officer Molzer, Mr. Stinner maintained a black book in which he kept a record of the payments to the police officers. Officer Matthews stated, "When a police officer visits Stinner's garage, Stinner checks the book to determine if he owes the officer a payment. When he pays the officer, he checks it off in his book."

The officers stated that they were responsible for distributing the money that they collected to other policemen involved in investigating the accident.²¹ Newly hired officers would learn that payments are available, as well as the procedure for collecting them from the senior officers with whom they ride in the patrol cars.²² Generally, the new officer receives his first payments from Mr. Stinner via his senior partner. Officer Molzer stated, "Payments to other officers are usually made in the locker room of the West Mifflin Police Department."

3. LEADERSHIP IN THE WEST MIFFLIN POLICE DEPARTMENT

The Crime Commission did not uncover any evidence that Chief of Police Garsick or his top assistant, Lieutenant Richards, have received payments from Mr.

18. Other officers verified that there was an identification process necessary to claim payments due. Statements submitted by Officers Darney and Andzelik.

19. Mr. Stinner showed Crime Commission agents a notebook which contains all information pertaining to tows referred by the police. He stated that he does not maintain similar records for any non-police tows. He retained the information for several weeks. He denied that he used this notebook to aid him in presenting money to officers. Stinner, N.T. 54-60.

20. Mr. Stinner, since an accident three years ago, no longer works on a tow truck. Stinner, N.T. 39.

21. Statements submitted by Officers Sabo, Matthews, Cyrus, and Molzer.

22. Statements submitted by Officers Darney, Andzelik, Matthews, Cyrus, Barncord, and Leshen.

Stinner.²³ Both men, however, have ignored the payments to officers and have failed to take any preventive or corrective action.

Chief Garsick, who has served as West Mifflin Police Chief since 1958, admitted to hearing numerous rumors over the years that his officers were accepting payments for tow referrals. Periodically, he would inform Mr. Stinner that this practice was unacceptable and would ask Mr. Stinner if he were engaged in it. Chief Garsick stated that Mr. Stinner always answered that he was not involved in any such scheme. Although the Chief admitted that payments to police officers from a tow truck operator would constitute a serious impropriety, he was satisfied to stop his inquiry with a simple question to the alleged wrongdoer. In response to the question of whether he believed that this constituted a sufficient investigation, the Chief answered:

Why should I go further than that? If I can't take the man's word, and I have known him for 40 years. He is a friend of mine. Why should I doubt his word when he says no?²⁴

Lieutenant Richards is in charge of the night shift. The great majority of payments for tow referrals are made to officers who work the night shift.²⁵ Lieutenant Richards stated that several years ago, when he first learned of the scheme, he advised then Mayor McCune to take corrective action. Lieutenant Richards claims that he repeatedly asked Mr. Stinner whether or not he had been approached by the Mayor and that Mr. Stinner always said that he had not. Lieutenant Richards felt that the Mayor was the "supreme power" and that since the Mayor had taken no action, his own hands were tied. Former Mayor McCune, however, denies that anyone had ever advised him of towing kickbacks.²⁶

Lieutenant Richards admitted that he had been in Mr. Stinner's garage on many occasions when payments were apparently made. Lieutenant Richards stated:

When a police officer came in the garage; and I was there, I walked to the far end of the garage so I didn't see a thing if it was going on. . . I didn't want to see anything.

Nonetheless, he knew why the officers were there:

If you see them coming down there after an accident, you knew. . . they get greedy, they almost want payment on the road. . . they'd go in there and stand, you know what they wanted. . .

When Leo Zebelsky began making inroads into Mr. Stinner's monopoly,²⁷

23. Both are long-time personal friends of Mr. Stinner. Like many other public officials in West Mifflin, they deal regularly with Mr. Stinner and receive discounts on gasoline, repairs, and inspections. Stinner, N.T. 61-62.

24. Garsick, N.T. 71.

25. Mr. Stinner testified, "Seventy-five percent of our towing is after hours. That would put those police that work a steady night shift in a more, in a better position to be of help to us." Stinner, N.T. 75. Due to shift changes and promotions, the individual officers receiving payments from Mr. Stinner has changed over the years.

26. Interview with former Mayor Thomas McCune.

27. See footnote 16, p. 52, *supra*.

Lieutenant Richards did take action to discourage kickbacks from him. He conducted a brief investigation and discovered that some officers were referring tows to Mr. Zebelsky and receiving payments. Lieutenant Richards testified that shortly after one accident in which Leo Zebelsky had been called, he drove to his place of business and Mr. Zebelsky mistakenly tried to pay him. He ordered Mr. Zebelsky not to make payments to officers on the West Mifflin Police Department. Lieutenant Richards believed that this was the point at which Mr. Stinner began making payments regularly. Lieutenant Richards explained, "That's another thing that led me to believe that he [Stinner] was paying, because we never had no more competition from Leo. The men didn't call there."

When Mayor Allen was elected to office in November, 1973, Lieutenant Richards went to Mr. Stinner and told him, "Rusty, we got a new Mayor. I presume you're paying these men off. Now this new Mayor is tough, he's honest. I think you should go to him, talk it over." According to Lieutenant Richards, Mr. Stinner answered, "This thing has died down, it's minimal, the men ain't coming here anymore. I prefer to just let it go like it is." The Lieutenant did not tell Mayor Allen about the kickbacks until after the Crime Commission initiated this investigation.

Lieutenant Richards acknowledged that the problems presented by a towing kickback scheme were serious. He stated that the possible consequences of payments to police officers by a tow truck operator are higher towing costs to the owners of cars towed and even the risk that cars will be unnecessarily towed. Nevertheless, he never told the officers under his supervisory authority not to take kickbacks.

The failure of Chief Garsick and Lieutenant Richards to take any action to prevent kickbacks appears to represent what one veteran officer labeled a serious lack of leadership at the command level. None of the officers questioned felt that Chief Garsick exercised competent leadership. When asked about the communication of the senior officers with Chief Garsick, Sergeant Sabo stated, "We lack communication 100 percent; there is no communication, no meetings." When questioned about dissension in the police department, he stated, "We lack leadership, basically leadership . . . [There are] no rules or regulations." Sergeant Sabo stated that he feels that there is a serious lack of communication between the Mayor and Chief, the Chief and senior officers, and the senior officers and the sergeants. He believes that the only communication in the police department is between the sergeants and the patrolmen. Officer Molzer said, "Chief Garsick knows very little concerning the activities of his officers. There is little or no communication between the Chief and the officers under him."

When asked to explain how the Chief communicates to his subordinates, Lieutenant Richards answered that the Chief does not communicate to anyone. The Lieutenant was unable to answer the question of who runs the department or what the Chief does. He stated, "I very seldom see him."

It appears that Chief Garsick has not attempted to assert a leadership role in the department. According to the sworn statements of a number of his officers, he has not concerned himself with directing operations of the department.

While the Mayor, by law, is the head of the police department, Richard Allen had absolutely no experience or training in police work or police administration prior to assuming this responsibility.²⁸

28. Allen, N.T. 100-101.

An additional problem affecting the professionalism of the West Mifflin Police Department is the serious friction between the Chief and the Mayor. Mayor Allen frequently issues his orders to Lieutenant Richards, bypassing Chief Garsick. The friction is aggravated by the major political differences that exist between the Mayor and Council and the fact that numerous councilmen are personal friends of the Chief.²⁹ At least partly as a result of the lack of leadership by the Chief and animosity between the Mayor and the Chief, the West Mifflin Police Department is divided, and the morale of the police department appears to be low.³⁰

4. POLICE TRAINING

Training is essential in order for officers to gain knowledge of current professional police practices and methods. Few officers in West Mifflin have received any form of training. There is not even an officer responsible for training. Newly hired officers do not receive any systematic on-the-job police training. Chief Garsick testified that training has consisted primarily of a new man going "out with an older man that has been on the police force."³¹ He was questioned about the training system:

Q: So the new officers would learn whatever older officers would teach them during the course of their jobs.

A: That's right, course of the tour. Nobody taught me.

Q: How did you learn?

A: Hard knocks.³²

Chief Garsick expressed no concern about this lack of training and minimized the significance of training for police officers. He was more concerned that officers who received formal training at the Allegheny County Police Academy would think that they knew too much.³³

29. The Borough Solicitor is hired by Council. The Solicitor advised Mayor Allen that he could not support him in any dispute with Council. Mayor Allen is concerned that if he were sued for matters pertaining to the internal administration of the police department, such as disciplining an officer, Council would neither authorize the Borough Solicitor to defend him nor allocate funds for his defense. Mayor Allen feels restrained in his dealings with Chief Garsick because of relationships he (Garsick) has with Council and the failure of the Solicitor to support the Mayor in any disputes which might arise. The Mayor feels that this has impeded his dealings with the police department and prevented the imposition of policy changes he might wish to make. Allen, N.T. 76-77.

30. The Crime Commission does not believe that the political problems affecting the West Mifflin Police Department are unique. For example, the following news report appeared in the *Beaver County Times* on September 30, 1975, at p. 1 and continued on p. 3, col. 5:

Albert Merulli, for the third time in four stormy years, is out -- temporarily -- as Chief of Police in Aliquippa.

Mayor James Mansueti, at a lengthy and raucous Council meeting Monday night, removed Merulli from the top post in the county's largest police department.

31. Garsick, N.T. 41. According to Chief Garsick, approximately ten years ago, six officers attended an eleven week course at the state police training academy, and three recently hired officers attended a course at the Allegheny County Police Academy. *Id.* at 34-37 and 39-41.

32. *Id.* at 41.

33. *Id.* at 34, 37-38, 41.

Sergeant Sabo was asked whether an orientation program existed for newly hired officers. He replied that there was none and, in fact, the practice was to "throw them to the wolves. He is to receive training from the officers."

When an officer is hired, he is placed on probation for six months. However, during this period, his performance is not evaluated. There are no procedures for determining whether he has acquired police skills or police knowledge. At the conclusion of the six month period, he is made a regular officer.³⁴

There is no ongoing in-service training for any officers.³⁵ Chief Garsick testified that he had nothing to bring with him in response to a subpoena directing him to produce materials used in the training of West Mifflin officers.³⁶ There is no system of periodic evaluations of the officers.

Lieutenant Richards was asked how the men would learn of changes in the law. He answered, "We have guys who are eager beavers. They seek it out for themselves. If the guy isn't eager, they don't get it."

Some West Mifflin officers sought to improve their skills on their own time, including taking college courses related to police matters. One officer stated that the efforts of some to keep themselves abreast of new police procedures often produced ridicule from the older officers.

Officers in West Mifflin are not even required to periodically practice the use of their firearms.³⁷

Sergeant Sabo was asked whether the lack of training had produced any serious incidents in West Mifflin. He answered,

It hasn't. This is what you really call being lucky, but you can see in the men themselves. They are a little confused about what to do at the scene. So, basically, they have to rely on the sergeant or an older patrolman with a little bit more experience to make the decision.

He added,

Officers don't have the proper training to know what they're looking for, a lack of knowledge. They may make the best arrest, but court is a shambles. After an arrest, he [an officer] doesn't have knowledge of what to do.

Newly hired municipal police officers in the Commonwealth are now required by statute to receive some initial training through courses approved by the Municipal Officers' Education and Training Commission. Nevertheless, after receiving this training, the officer will still be working under veteran officers who have not received training.³⁸ The veterans inevitably exercise daily influence over the conduct and practices of the newly hired. On-the-job training will come essentially from officers who are untrained themselves. Moreover, the law still does not require any ongoing training after the one initial training course.

34. Interviews with Lieutenant Richards and Sergeant Sabo.

35. Garsick, N.T. 39.

36. *Ibid.*

37. *Id.* at 76.

38. Chief Garsick, for example, has not attended training sessions for over thirty years. Garsick, N.T. 39.

Sound police training should include intensive treatment of standards of conduct for police officers. Since 1948, West Mifflin has had rules and regulations governing police standards of conduct. However, by his testimony Chief Garsick was not even aware that they existed.³⁹ There are no state rules or regulations which govern standards of conduct applicable to municipal police officers.

During the course of the investigation, most officers on the West Mifflin Police Department readily admitted receiving payments. However, most apparently felt that there was nothing wrong in doing so. According to Officer Molzer, "I never considered accepting the money from Stinner as dishonest because I never initiated the practice nor did I force Stinner to pay me." Another officer, Officer Leshen, said,

I don't consider the money paid by Stinner as any form of payment or gratuity. I consider the payment as compensation for my assistance during the removal of a car at the scene of an accident.⁴⁰

In addition to other shortcomings, there is a serious need for effective training when officers can view possible bribery in so casual a manner.

5. CONCLUSIONS AND RECOMMENDATIONS

a. Possible Criminal Violations

On the basis of the evidence compiled by the Crime Commission, particularly sworn admissions by police officers, it appears that Mr. Stinner and the officers accepting payments may have committed the crime of bribery.⁴¹ Mr. Stinner and the officers knew that an officer virtually has total discretion to determine the tow truck company which will be called. There was a standing offer from Mr. Stinner that officers on the West Mifflin Police Department would receive \$5 per car tow referred to S & S. To accept Mr. Stinner's offer, an officer merely had to go to Mr. Stinner's garage and follow the required procedure for identifying the car towed and the location of the accident. According to Lieutenant Richards, the officers would go to Mr. Stinner's garage "and stand, you know what they wanted." Certainly, Mr. Stinner also knew what they wanted. They were accepting his offer of payment in accordance with an agreement well known by all the participants.⁴²

39. *Id.* at 67.

Article 9 of the Rules and Regulations Code of the Police Department provides for "instant dismissal" of an officer who "Receives any bribe" or who "Directly or indirectly solicits or receives any gratuity or present... without the consent of the Chief of Police or Borough Council."

40. Some officers did realize that accepting payments from a tow truck operator was wrong. After accepting payments for a number of years, Officer Sabo decided to stop. He stated, "It dawned on me I was just as guilty as the people I was going out to arrest." Lieutenant Richards put the practice in its proper perspective stating that an officer accepting payments was "receiving money [improperly] by the color of his office."

41. In his testimony before the Crime Commission regarding payments to officers, it appears that Mr. Stinner also may have committed perjury.

42. A person is guilty of bribery, a felony of the third degree, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another: "(1) any pecuniary benefit as consideration for the decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter by the recipient. . . ." Act of December 6, 1972, P.L., No. 334, §1, 18 C.P.S.A. §4701 (1973).

The Crime Commission will forward its evidence to the District Attorney of Allegheny County in order to allow him to determine whether any criminal charges should be brought.

b. Corruption of Public Servants

The problem of payments to police officers from a tow truck owner has significance beyond the illegal acts themselves. Whether bribery is committed or not, the corruption of public servants is a serious danger when payments of this type are made. Each tow truck payment may be small in amount, but in principle, it is similar to larger payments designed to influence other types of police conduct. As the Commission noted in a report issued previously:

The receipt of such payments has an impact on the integrity of the individual police officer, and their wide acceptance causes everyone to be compromised to some extent. Many honest police officers find them personally degrading and resent the assumption that they can be easily bought. The Commission has found in its Philadelphia Police Department investigation that payments from businesses are a means by which officers are tested by other officers who want to see if they will go along with the system of corruption. Even an officer who will not personally take such money learns that he must look the other way when his colleagues receive bribes or risk being an outcast. In some cases where police officers have received a modest but steady payment, they can become dependent on the extra income, causing them to look for other sources of payments if transferred. Furthermore, the fact that policemen so often engage in this activity and that the police leadership fails to halt it contributes to a general sense of cynicism and hypocrisy.⁴³

It is the public which pays for kickbacks to police officers, either directly as the owners of cars towed, or indirectly through a corrupted and compromised police department.

c. Police Training and Standards

The Crime Commission noted in its report on the York Police Department that the failure to properly train and educate, particularly regarding standards of conduct, is a basic contributing cause to police acceptance of payoffs. In West Mifflin as well, training is minimal. For most officers it is actually nonexistent. Even recently hired officers who receive formal training are broken in to the West Mifflin system of kickbacks by the older officers. Proper training is essential in order to have a competent, efficient, and honest police department. Moreover, West Mifflin,

In defense of the practice, Mr. Stinner, as well as most of the officers questioned, stated that S & S provided the best available service. Moreover, Mr. Stinner testified that the practice of presenting police officers with cash gratuities originated as a result of his efforts to meet the competition of other towers. Stinner, N.T. 88. Neither ground appears to be a defense to bribery. Comments, Model Penal Code, §240.1.

43. Pennsylvania Crime Commission, *Corruption in the York Police Department, 1973-74 Report*, P. 78 (June 1974) [hereinafter cited as York Report]. The York Report concerned an investigation of kickbacks paid by tow-truck operators to members of the York police force.

like many police departments in the Commonwealth, has no enforced rules or regulations relating to standards of conduct generally or to the acceptance of money or gratuities specifically. Clearly, in West Mifflin, officers are on their own. Unfortunately, officers on many police departments throughout the Commonwealth are in a similar position.

The Commonwealth does not provide guidelines to municipal officials or police officers regarding the proper manner of discharging their respective police responsibilities. This failure is critical since many officials and officers, including the mayors who head police departments, lack basic police experience and training. Thus, they have no guidelines by which to measure satisfactory job performance or knowledge of appropriate actions in the event of deviation from acceptable practices. Moreover, there is neither a state body nor uniform statewide procedures for investigating, and if necessary, disciplining serious abuses of police powers.

The Commission strongly recommends that the Legislature provide for the adoption of statewide guidelines detailing the police responsibilities of municipal officials and officers, and, where applicable, alternative methods for discharging them. The Commission also recommends that the Legislature provide for the adoption of statewide rules or regulations governing the standards of conduct of municipal police officers and develop an apparatus to effectively enforce them. Persons with experience in law enforcement should be involved in the development and administration of such guidelines, rules, or regulations.

d. Proposal to Eliminate Towing Kickbacks

The Commission has received information that the acceptance by police officers of payments from tow truck operators is widespread throughout the Commonwealth. In the York report, the Commission recommended that York devise a system to eliminate the discretion which officers have in calling a tow company. One possible method of accomplishing this objective would be the division of a municipality into publicly announced towing districts. Towing companies could be invited to submit proposals to obtain exclusives on police tow referrals for districts. A proposal would include, at a minimum, a schedule of charges and a statement concerning the specific capabilities of the company to furnish prompt, twenty-four hour service. The official responsible for selecting the winning proposals would be required to explain his reasoning in writing. Owners of cars towed would be furnished forms to be submitted to the Chief of Police indicating that they were given the option of designating their own towing companies.

e. Proposal to Amend the Criminal Code

Presently, the Crimes Code does not adequately deal with the situation the Commission discovered in West Mifflin. Payments or offers of payments from private citizens to police officers are treated as the crime of bribery. Bribery is a third degree felony, with a maximum prison sentence of seven years. District attorneys and the public may be unwilling to invoke such stringent penalties against some forms of payoffs or kickbacks, including towing kickbacks. On the other hand, there are serious gaps in the Code's criminal sanctions relating to payments or offers to, or solicitations by, public officials. The Code does not prohibit anything less than an agreement (which approximates a contractual arrangement) between a citizen and the public official to whom payment has been made or offered. It also

only covers pecuniary payments, offers, or solicitations. The Crime Commission strongly reiterates its recommendation in the York Report that the criminal code be amended to make it a misdemeanor for any person or company to offer or pay any compensation or gratuity, money or otherwise, to any public employee in the course of public work or duties and for any employee to solicit or accept any such compensation or gratuity in the course of public work or duties.

f. Proposal to Consolidate Municipal Police Services

The problems uncovered in West Mifflin are deep-rooted and may be beyond correction. West Mifflin Borough, like many municipalities, may simply be incapable of creating and maintaining a competent, professional police department. Command officers unable to provide leadership, untrained officers, mayors inexperienced in police matters, and political disputes undermining police independence and effectiveness plague West Mifflin and are all too common in municipalities throughout the Commonwealth.

The recent substantial increases in major crimes committed against persons and property in West Mifflin, as well as in many other suburban areas, show that it is imperative that suburban municipalities receive thoroughly professional police services. In West Mifflin alone, there has been a 49 percent increase in reported major crimes against persons and property from 1971 to 1974.⁴⁴

The President's Commission on Law Enforcement and Administration of Justice conducted a comprehensive national study in the 1960's of the problems surrounding the provision of police services. The President's Commission concluded that effective and efficient police service cannot be provided by small fragmented political subdivisions of metropolitan areas. It found that the fragmentation of police services generally produces many poorly financed, ill-trained, and under-equipped police departments rather than one, or several well-trained, adequately equipped and effective police departments.

... Police activities related to manpower needs should be organized on the basis of areas large enough to support good programs. Through joint recruitment, selection, and training, police agencies increase their ability to secure the best available personnel. The State should participate in the programs through developing standards and requirements, assisting in making training facilities available to all departments, and establishment of manpower reserves upon which local departments can draw to maintain their strength when their personnel at whatever level are receiving training.

The fulfillment of police responsibilities depends upon the effective use of manpower. To this end, all police agencies need planning assistance on organizational and procedural matters, and access to areawide crime and modus operandi analyses. Such planning tools are beyond the capacity of all but the larger departments. (*Task Force Report: The Police*, the President's Commission on Law Enforcement and Administration of Justice, P. 71 (1967)).

44. The total number of reported incidents has increased from 474 to 704. The crimes comprising this figure are robbery, assault, burglary, larceny, and auto theft. Figures furnished by the Governor's Justice Commission.

The President's Commission further stated that a number of approaches have been used successfully in consolidating police responsibilities:

... They include: Comprehensive reorganization under metropolitan-type governments; the use of subordinate service taxing districts under a strong county government; intergovernmental agreements; and annexation by municipalities of fringe areas. One additional approach, the use of single-purpose special districts, has been utilized occasionally. (*Task Force Report: The Police*, p. 72).

Legislation presently exists which would allow municipalities to either consolidate their resources with those of surrounding communities for the provision of police services or delegate their police department functions to larger municipalities, such as the County. This would be accomplished through an intergovernmental cooperation agreement.⁴⁵

It is time for municipal and Commonwealth officials to reassess the notion that every municipality must maintain its own autonomous police department. Only the most professional departments can properly handle investigations of major crimes. Such investigations increasingly are becoming commonplace in suburban municipalities. Moreover, as municipal budgets are straining, it is unlikely that municipalities acting alone can afford the increased expenditures for the salaries, equipment, and on-going training necessary to finance professional departments.

Consolidation of police departments or the regionalization of police services involve critical public issues. However, public discussion of these issues is usually highly emotional. Nevertheless, the fact is that in most municipalities the retention of municipal autonomy of police departments means ever-increasing expenditures to receive increasingly inadequate police services. With the significant increases in major crimes in suburban areas, citizens fairly presented with the issues may choose not to continue to spend more to receive less. In the marketplace, where there is an alternative, they would not choose to do so.

With the increase of suburban crime and with the strain on municipal budgets, many previously routine practices are no longer affordable. For example, in many municipalities the sole criterion for the positions of police chief or police officer is friendship with council members. Also in many municipalities untrained and unknowledgeable officials actively run their police departments, frequently making them political battlegrounds. It is professional police departments, not direct and daily political involvement, which offer the only promise of crime prevention and solution.

It is commonly feared that a metropolitan police department, or even the consolidation of several municipal police departments, would mean the elimination of all local control of police services. However, there are means of organizing and directing a centralized police department which would allow for awareness and respect of local needs. The Commission hopes that its recent reports concerning municipal police departments will help begin a very necessary dialogue on how to achieve professional police services responsive to local needs and desires.

45. Act of July 12, 1972, P.L.—, No. 180, §3, 53 P.S. §481 et seq.

III. Gambling and its Effect Upon The Criminal Justice System

The Commission has spent considerable time investigating and studying the effects of illegal gambling and the ability of the criminal justice system in Pennsylvania to cope with this activity. Based upon our best information, illegal gambling still exists and flourishes in many parts of the Commonwealth. The attempts to eliminate illegal gambling through the criminal laws have failed in the past and appear to be failing at this time.

The present system of gambling laws provides us with the worst of all worlds: thriving illegal gambling operations netting organized crime millions of dollars weekly in Pennsylvania alone; tremendous loss of revenue to the Commonwealth Treasury; tremendous waste of law enforcement and judicial resources futilely attempting to enforce the laws; and widespread corruption and an undermining of the integrity of the police and public officials resulting from bribes to prevent enforcement of the laws.

At some point, society must make a judgment whether it will continue incurring substantial moral, political, and social costs or turn to alternative approaches to the problem. It must debate each particular form of illegal gambling and then decide whether it should react with tighter criminal prohibitions or shift to control through civil regulation.

The Commission does not possess the hard data necessary to reach an unqualified conclusion as to which of the alternatives would be most successful in eliminating the evils caused by the various forms of illegal gambling. A number of authorities have suggested that, of the available alternatives, it may be that the best answer is to legalize the various forms of gambling, tax the gambling enterprises as normal businesses and vigorously audit the operations. If gambling is legalized, strict laws regulating any gambling which operates outside the established rules must be enacted and there must be vigorous enforcement against violators.

The Commission recognizes that a recommendation to legalize gambling may be unacceptable to many concerned and knowledgeable persons. In fairness to their position, the Commission acknowledges that only infrequently have potentially effective methods of enforcing the gambling laws been applied. It is evident that, in many areas, district attorneys have rarely worked closely with local law enforcement officials in a conscientious and determined effort to arrest and prosecute the higher echelon members of organized gambling syndicates. Probative evidence regarding particular defendants' relationships to criminal syndicates is seldom presented to the courts. In many instances, district attorneys have failed to utilize the procedure of a special grand jury to investigate organized gambling syndicates, nor have they sought grants of immunity for and provided protection to lower echelon criminal figures to encourage their testimony. Some federal prosecutors have effectively used these methods. It is quite possible that state and municipal prosecutors could achieve similar successes.

It would also be imperative for effective gambling enforcement that the courts responsible for hearing gambling cases adopt and apply consistent sentencing practices designed to achieve rational goals. At present, the judicial process is merely an administrative burden to illegal gambling operations.

The matter of the continued existence of large-scale illegal gambling must be brought to a conclusion. Society, principally through its legislators, must debate whether it should react to the present abysmal state of the gambling laws with tighter criminal prohibitions and law enforcement procedures or shift to control through civil regulations. It is absolutely essential that one of these two positions be adopted for the various forms of illegal gambling. To take no action is to make a decision to accept the present conditions. The only beneficiaries of this reaction would be the gambling syndicates throughout the country. The damage to society continues to be too fundamental and too great to accept the status quo.

Patterns of Sentencing in Allegheny County Gambling Cases

1. INTRODUCTION

The Pennsylvania Crime Commission ("Commission"), is conducting an ongoing statewide investigation into the effectiveness of the criminal justice system in enforcing the gambling laws. In this report, the Commission discusses the sentencing of defendants convicted of gambling violations in Allegheny County.

In three previous reports, the Commission's investigations have focused primarily upon the law enforcement communities' efforts to curb illegal gambling. In the report on *Police Corruption and the Quality of Law Enforcement in Philadelphia*,¹ the Commission found that gambling thrived in many areas of Philadelphia, that law enforcement efforts were erratic and basically futile, and that substantial evidence existed of systematic pay-offs from gamblers to large numbers of Philadelphia police officers for not enforcing the gambling laws. In the report on *Gambling and Corruption in Carbondale*,² the Commission found that illegal gambling on a moderate scale operated openly and that the police department made no effort to enforce the gambling laws. In the report on *Gambling and Corruption in Phoenixville*,³ the Commission found official tolerance of widespread gambling, as well as substantial evidence that some law enforcement officials profited from this gambling through protection payments. In all three investigations, the Commission concluded that because of the costs of enforcing the gambling laws, in terms of corruption and the waste of limited law enforcement resources, the State Legislature should re-examine the gambling problem and consider whether gambling could be more effectively dealt with through means other than the criminal laws.

1. Issued March, 1974. Printed by the Pennsylvania Crime Commission as a separate volume.

2. Issued July, 1974. Printed in the 1973-74 Report.

3. Issued July, 1974. Printed in the 1973-74 Report.

At the present time, despite the fundamental difficulties which attend efforts to enforce gambling laws, society spends substantial sums of money in this endeavor and thousands of gambling arrests are made annually. It is significant to determine how these gambling cases are handled as they progress through the courts in order to have a more balanced view of the criminal justice system's overall approach to the gambling problem.

The Commission's study of gambling cases in Allegheny County courts involved both a statistical analysis of sentences over a 23-month period, and a series of interviews with the judges who had sentenced a majority of the gambling defendants during the same period. The statistical analysis examined the number of jail sentences, the number of fines, the average size of the fines, and the use of probation in gambling cases. It was designed to reveal the severity of the sentences actually imposed compared to the potential statutory penalties and to show whether the courts tended to punish repeat offenders more severely for subsequent crimes. In addition, the statistical analysis shows the sentencing patterns under the new crimes code which drastically increases potential penalties for gambling violations.⁴

The interviews were conducted to seek explanations of the statistics and to elicit from the judges the factors which influenced their independent decision-making processes in determining appropriate sentences. The Commission was interested in the type of defendant convicted of a gambling violation, particularly his background, station in life, and his role in the gambling hierarchy. In addition, the Commission wanted to determine whether the judges were influenced in their sentencing determinations by factors such as public apathy toward gambling, organized crime's relationship to gambling, the large amount of corruption resulting from gambling, and the new, higher potential penalties for gambling.

The Commission interviewed six judges of the Allegheny County Court of Common Pleas.⁵ The judges were selected for interview on the basis of their experience with gambling cases. Collectively, they handled 122 (59%) of the gambling cases finally adjudicated by the court under the new Act in the period June 6, 1973 through April 30, 1974.

The Commission is grateful for the assistance received from the members of the Allegheny County judiciary who were interviewed for this report. Each judge expressed his views frankly and indicated an open mind and a willingness to consider any changes in the system which would improve his ability to reach a more just sentencing decision. It is in this spirit that the Commission has approached the problems discussed in this report and made its recommendations.

4. In December, 1972, the State Legislature repealed the gambling laws which trace their origin to 1705, and passed new gambling statutes (effective June 6, 1973), which did not change the substance of the proscribed activities but substantially increased the maximum criminal penalties. Under the repealed statutes, the maximum penalties for gambling violations were a \$500 fine and/or one year imprisonment. See Act of June 24, 1939, P.L. 872, 18 P.S. §§4601-4607, as amended. Under the new statute, the maximum penalties were increased to a \$10,000 fine and/or five years imprisonment. See Act of December 6, 1972, P.L. —, 18 C.P.S.A. §§5512-5514 (effective June 6, 1973); 18 P.S. §1101 *et. seq.* For a discussion of the prior history of Pennsylvania's legislation against gambling see generally *Platnick v. Pennsylvania Public Utility Commission*, 18 A.2d 542, 143 Pa. Super. 550 (1941).

5. The six judges interviewed were: Hon. Samuel Strauss (Presiding Judge in the Criminal Division), Hon. James F. Clarke, Hon. Thomas A. Harper, Hon. John W. O'Brien, Hon. Silvestri Silvestri, and Hon. Henry R. Smith, Jr.

2. INTERVIEWS WITH ALLEGHENY COUNTY JUDGES

a. Judicial Discretion in Sentencing Gambling Violators

In Pennsylvania the following forms of gambling are illegal: (1) setting up or maintaining a lottery or numbers game; (2) manufacturing or selling lottery or numbers paraphernalia; (3) selling or distributing gambling devices, including punch boards, drawing cards or slot machines; (4) permitting or inviting individuals to assemble for the purpose of unlawful gambling; and, (5) poolselling or bookmaking. The statutes proscribing these activities do not set a minimum sentence nor do they vary the potential penalty according to the type or degree of involvement in illegal gambling⁶ or otherwise provide any guidance to the courts in establishing individual sentences.

As in other criminal cases, the judge presiding over an individual gambling case has broad alternatives available in sentencing. He may order probation for a fixed period of time, which can be "reporting" or "non-reporting" (the latter being essentially unsupervised). He may order a fine or jail term of any amount up to the maximum. The judge is given the discretion and the responsibility to fashion sentences and sentencing policies which promote the objective of the criminal statute in a manner consistent with other fundamental societal objectives.

b. Society's Ambiguous Moral Position on Gambling

Each of the Allegheny County Common Pleas judges interviewed by the Crime Commission stressed the fact that in his view gambling is not an activity which the community views as wrong or immoral. In the judges' opinions, the prevailing community attitude toward gambling is that it is a voluntary nonviolent activity which harms only those who engage in it to excess. To support this view, the judges pointed to the large number of persons from all sectors of the community who participate in some form of gambling. Judge Silvestri was quite explicit on this issue. He stated:

I belong to the Churchill Valley Country Club. Every time I go out there someone wants to bet \$2.00 [on a golf game].

Do you want to see some gambling? Go to some of the private clubs, or to almost any country club. They play poker and they play for big stakes. There is big money there that changes hands.

The judges postulated that at best our collective moral position on gambling is ambiguous. As Judge Strauss noted, "we face a situation today where the state actually encourages certain forms of gambling, namely the lottery." Judge Harper pointed to church bingo games, racetrack betting, and informal betting on sports events as additional evidence that our moral position toward gambling is ambiguous. Judge O'Brien asserted that "the same person who would send a first-time

6. But see Senate Bill 120, Printer's No. 1759, introduced January 23, 1973.

burglar to jail, would be perfectly willing to see a numbers writer go free." He added: "I live in a very middle class community and I bet half the people in my neighborhood play numbers." Judge Clarke's description of the community's attitude toward gambling was most concise: "extremely tolerant."

In short, a judge sentencing a gambling violator in a typical case approaches his decision without the kind of moral indignation that accompanies a decision to sentence an armed robber, rapist, or embezzler.

Nevertheless, Judge O'Brien did criticize some of his fellow judges for attributing too much weight in their sentencing decisions to the community's apathy toward gambling. Judge O'Brien said that what bothers him is that,

... some judges believe that there is nothing wrong with gambling: the State endorses it through the lottery, and therefore they use the sentencing process to obtain whatever fines they can get as revenue.

... This approach ignores the problem. The real problem is organized crime and what it buys, and the allied problem of corruption. The issue is what to do. The damn trouble is you rarely nail the guy above the writer or the messenger. The upper strata gamblers are not caught and therefore are not before the court. You don't get the Grosso's.

The attitude of the judges toward the seriousness of gambling offenses mirrors the apparent attitudes of other public officials and of the public, in general. While the Pennsylvania Legislature has ostensibly taken a strong stance in opposition to gambling by enacting broad criminal laws and greatly increasing the penalties, it has also displayed an increasing but opposite penchant for legalizing certain forms of gambling. Over the past two decades, first harness race betting, then flat race horse betting were allowed on Pennsylvania tracks under state regulations. Later, the Commonwealth established and promoted its own lottery. Thus, there is no clear legislative determination that gambling, *per se*, is an evil which should be eliminated. At best, one can infer a legislative inclination to prevent unrestricted private enterprise in gambling.

The police and prosecutors also display ambivalence toward gambling. Thus, although there are frequent arrests for illegal lotteries ("numbers"), sports betting and dice games, arrests of persons operating poker games, bingo and the ubiquitous raffles are few or non-existent. Church and social leaders also implicitly endorse moderate participation in gambling by their sponsorship of bingo and raffles, and vast numbers of citizens express their approval of gambling by frequent betting.

c. Characteristics of Gambling Defendants

The impressions the judges had of the defendants before them in gambling cases were very consistent: many of the persons arrested and convicted for gambling violations are housewives, unemployed war veterans, and senior citizens; a significant number are handicapped or disabled persons living on social security or a pension; almost all of them are dealing in small sums of money and are at the lowest level of a criminal hierarchy (if they are connected at all); the offenders include blacks and whites, men and women; and almost all are from the lower economic strata of society.

The judges noted that although many of the gambling violators have criminal records, a substantial number do not; and those that have criminal records do not usually have records of violent or heinous felonies. None of the judges interviewed recalled handling many cases involving defendants with four or more prior gambling convictions.⁷

Personal factors such as the defendants' age, financial status, and disabilities appear to be a strong influence on the judges' sentencing determinations. For example, Judge O'Brien described a recent case in which the defendant ran a numbers "office" or collecting point handling thousands of dollars in bets each day. Because the defendant was blind, however, the judge felt he could not send him to jail, so he fined him \$5,000. The defendant's lawyer then claimed that his client's pension was insufficient to pay the fine on the terms arranged with the Clerk of Courts.

Judge Clarke cited a recent case which he handled involving a 60-year old disabled man living on social security. It was the defendant's first gambling conviction. The evidence revealed that someone had dropped a bag of numbers slips out of a window which he picked up for the purpose of delivering to another party. The police arrested him while he was in possession of the slips. Judge Clarke sentenced the defendant to a term of probation. In his words, "This defendant was quite pitiful, and I could see no purpose being served by sentencing an individual such as this to jail for such a violation."

Similarly, Judge Harper cited an example of an elderly woman, whose sole source of support was social security, convicted for writing numbers:

I knew that for this woman it would probably be a severe and effective punishment if she were placed on probation, so that is what I did. I also threatened to call her minister and tell him that she was writing numbers. This seemed to upset her the most. She pleaded with me not to do this and promised that she would no longer be involved in such activities. In cases like this, there are more effective and less costly methods of deterring illegal gambling activities than jail sentences.

d. Allocation of Judicial Resources

Judge Strauss, the President Judge in the Criminal Division of Common Pleas Court, indicated that a paramount factor affecting sentencing decisions in gambling cases is the proper allocation of scarce judicial resources. Judges are concerned that a policy of imposing jail sentences on gambling violators would evoke a significant increase in demands for jury trials on the part of persons accused of gambling offenses. There are a significant number of gambling cases⁸ and a small number of judges assigned to the criminal division—fourteen presently. Thus, a tremendous backlog of cases might evolve, reducing the effectiveness of the court in handling more serious cases involving crimes of violence and other felonies.

7. The Commission isolated and studied the sentencing patterns for defendants with four or more gambling violations. See discussion, *supra*, pp. 76-87, 89-101.

8. Of the 6,675 cases tried by the court in 1972, 437 (6.5%) involved charges of gambling violations. See the 1972 *Report to the People of Allegheny County*, issued by Allegheny County Clerk of Courts, Robert N. Pierce, Jr. The Commission thanks the office of Clerk of Courts for its assistance in gathering many of the statistics contained in this report.

This stress on the court system might be further heightened by the problem of obtaining an impartial jury in gambling cases. As Judge Strauss commented, it would be very difficult to get a jury in Allegheny County which did not include at least one member who had played the numbers. Trying to select numerous such juries could involve processing many more potential jurors than now is done.

Further, the judges raised the question whether the entire effort would be counter-productive. Given the general attitude of the community that gambling is not a serious crime, juries might be reluctant to convict defendants in gambling cases if they were aware that the sentences were likely to be severe.

This same concern for scarce resources also deters judges from ordering presentence reports for most convicted gamblers. The Allegheny County Probation and Parole Office is responsible for preparing presentence reports when they are requested by the court. However, the Commission's investigation disclosed that presentence reports were requested in only two cases out of a total of 164 gambling convictions in the post-June 5, 1973 period. Judge Strauss stated that because demands placed on the Probation and Parole Office far exceed its manpower, most judges limit presentence requests to more serious offenses.

To some extent, according to the judges, the gap created by the absence of presentence reports is filled by statements of the arresting officer, the district attorney, defense counsel and the defendant himself. All of the judges interviewed stated that they obtained some information about gambling defendants in this manner.

e. Organized Crime and Gambling

All of the judges acknowledged that the most serious danger presented by illegal gambling is its potential for control and operation by organized criminal syndicates.⁹

9. Almost every Congressional hearing and independent study of the subject has concluded that illegal gambling is controlled by and provides the greatest source of revenue for organized crime. See, *President's Commission on Law Enforcement and Administration of Justice: Task Force Report on "Organized Crime,"* (1967) (hereinafter the "*President's Commission*"); *Report of the Committee for Economic Development: Reducing Crime and Assuring Justice*, Chapt. 6, "Organized Gambling and Official Corruption," (1972), (hereinafter the "*Committee for Economic Development*"), at pp. 49-50; Permanent Subcommittee on Investigations of the Sen. Comm. on Gov't Operations, *Gambling and Organized Crime*, S. Rep. No. 1310, 87th Cong., 2d Sess. (1962); and, Kefauver Comm., *2d Interim Rep.*, S. Rep. No. 141, 82d Cong., 1st Sess. 11 (1951).

The Committee for Economic Development stated at p. 50, that contrary to the view of many citizens who see "numbers" writing as a "nickel and dime" operation, estimates by responsible sources place the gross annual illegal revenue from gambling (chiefly on races, athletic contests, and "the numbers") at from 20 billion to 50 billion dollars, with the net to organized operatives at about one-third of the gross.

The *President's Commission* stated at pp. 2-3:

Law enforcement officials agree almost unanimously that gambling is the greatest source of revenue for organized crime. It ranges from lotteries, such as "numbers" or "bolita," to off-track horse betting, bets on sporting events, large dice games and illegal casinos. In large cities where organized criminal groups exist, very few of the gambling operators are independent of a large organization. . . .

* * *
... The profits that eventually accrue to organization leaders move through channels so complex that even persons who work in the betting operation do not know or cannot prove the identity of the leader.

It was the view of the President's Commission that the revenues derived from organized gambling activities are quickly re-invested in narcotics smuggling, loansharking, labor racketeering, and the infiltrating of legitimate businesses. (See pp. 1-5.)

The characteristics of gambling defendants, described above, led several of the judges to speculate that criminal syndicates deliberately recruited elderly and disabled persons to act as writers and couriers because they knew such persons were less vulnerable to jail terms. One judge stated:

Organized crime is smart. They employ people at the lowest levels who command sympathy from the court, i.e., the old, the blind, the people on old age and veteran's pensions, the crippled, and the first-time offender who is gainfully employed at some other job and is supporting a family—the man with 12 kids.

Judge Silvestri expressed a contrary view, believing that the heavy reliance on elderly persons in organized gambling is more the product of economic forces than a calculated strategy. He stated:

I have noticed in the past two years that there are more elderly people involved. Very few persons age 20-40 involved. There are more in the 50's, 60's and 70's. . . . I attribute this principally to the economy. Old people caught in the squeeze are supplementing their income.

Judge Silvestri thinks that many young persons inclined toward criminal activity have been attracted to the more lucrative field of narcotics, thus compelling gambling organizations to rely more heavily upon elderly persons.

Each judge was also acutely aware of the facts about organized crime and the corruption of public officials which were brought out in the recent federal prosecution of Anthony M. ("Tony") Grosso. In that trial, one of Grosso's operatives, Irwin Trachtenberg, testified as follows:

Q: I want to direct your attention to June of 1971. You were in the numbers business then, were you not?

A: Yes, sir.

Q: How long had you been in the numbers business?

A: As long as I can remember.

* * *

Q: Would you tell the Court and the jury what the circumstances were that gave rise to your becoming a part of the Grosso numbers business?

A: Well, I was in the business and the fellow I was giving it to happened to go to jail and I needed somebody to give the business to, and so I asked a friend of mine who I could give it to, and he told me to call a fellow by the name of Tony, so he gave me a phone number and I called the fellow and I told him what I wanted, and he said the next day somebody would call me, and that's all.

* * *

Q: What was the financial arrangement that you had with Tony Grosso?

A: Well—

Q: You weren't doing this for fun; you were making money on it?

A: Yes. I was turning stuff in at seven and getting 20 percent.

Q: Was that 20 percent you were getting on the gross of the business?

A: On the gross.

Q: So if you turned in \$100, you got \$20?

A: Yes.

Q: And if you turned in \$1,000, you got \$200?

A: Yes, sir.

Q: Now, in June of 1971, how much were you charged for protection?

A: \$550 a month.

Q: That was a monthly charge?

A: Yes, sir.

Q: Every month?

A: Every month.

Q: How was it designated to you as protection?

A: Gloria Law [his superior in the organization] would tell me. Gloria Law would tell me, "Your pro is in."

Q: Your pro?

A: Yes, that is what she would say.

Q: And that was \$550 a month?

A: Yes, sir.

Q: In June of 1971?

A: Yes, sir.

Q: Did you ever ask how that was broken down?

A: I asked Gloria, yes.

Q: What did she tell you?

A: She told me \$400 for the city, \$100 for the county and \$50 for the sheriffs.

Q: \$400 for the city, \$100 for the county—

* * *

Q: That was a total of \$550?

A: Yes, sir.¹⁰

At the well publicized trial of Samuel G. Ferraro,¹¹ former head of the Allegheny County Detective Bureau's Racket Squad, a series of racketeers testified that they had been systematically "paying off" Ferraro over a number of years for protection of their illegal gambling operations. The substance of their testimony was that in return for the pay-offs, they suffered few, if any, arrests, and if arrests were imminent, the racketeers would be frequently tipped off beforehand. The government's star witness was Anthony "Tony" Grosso, whose testimony provided a fascinating view of the illegal gambling—corruption syndrome:

Q: During the period June, 1966, to July, 1971, what business were you in?

A: I was in the numbers business.

10. Transcript of Grosso Trial, testimony of Irwin Trachtenberg, pp. 1194-1206.

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

Q: What was your position in that business?

A: I was the boss.

* * *

Q: How many days did your numbers business operate a week?

A: Six days a week.

Q: During the period between June, 1966, and July, 1971, what was the average volume of business you did?

A: About \$75,000 a day.

* * *

Q: Did you know him in June, 1966?

A: Yes, I met him through Bob Butzler. [He was head of the racket squad at the time.]

Q: After you met Mr. Ferraro, did you ever pay him any money at any time?

A: Yes, I did.

Q: How much did you pay him?

A: Every month, I would pay him \$4,950.

Q: How long did you pay him?

A: About five years.

* * *

Q: What was the purpose of the payment?

A: It was for protection.

Q: What do you mean by protection?

A: So he wouldn't bother my [numbers] writers.

Q: Did he know who your writers were?

A: Yes, he did.

Q: Did he ever arrest any of your writers?

A: Very, very seldom.

Q: What happened if your writers were arrested?

A: I would call him [Ferraro] up and he saw that they weren't bothered again.

Q: Why were they picked up?

A: By mistake.

Q: Whose mistake?

A: The county detectives that worked under him.

Q: Not his?

A: Not his.

Q: Did he ever give you advance notice of any raids or arrests?

A: Yes, he did. He would call me and tell me who was going to be arrested and to tell them to be careful.

Q: Did he ever give you any evidence—

A: Yes, sir. After the raid, the slips that were taken during the raid. He would call me and tell me "here are your hits", so I could pay the hits.

* * *

Q: Do you know where he went after leaving the county detectives?

A: He went to Hampton Township.

Q: Did he say to continue these payments after he went to Hampton Township?

A: Yes, he did.

Q: In other words, the practice continued notwithstanding the fact that he [Ferraro] changed jobs.

A: Yes, it did.¹²

Although the judges in most cases are quite aware that professional gambling is frequently controlled by organized crime and that it results in corruption of public officials, there are questions as to the kind of action they can take and the circumstances on which they can take it. The first and most immediate problem the judges raised is whether a court can properly consider the factors of organized crime and corruption in an individual gambling case.

Several judges took the view that their primary responsibility at the time of sentencing is to reach a decision based upon a consideration of the individual before them and the circumstances surrounding his offense, not on the basis of a general societal goal such as cutting off the flow of revenues to organized crime. In Judge Harper's view it would be discriminatory and hypocritical to send a low income elderly person to jail for writing numbers when so many people in society, including the State, participate in some form of gambling activity. Judge Smith expressed the view that if law enforcement officials want a defendant's sentence to reflect the evils of organized crime it is their responsibility to present probative evidence linking the defendants they arrest and prosecute to organized criminal syndicates.

Each judge stated that whenever he had evidence at the time of sentencing that the defendant was connected to an organized criminal syndicate he responded by imposing a stiff penalty, usually a fine commensurate with what appeared to be the level of that defendant's involvement in the syndicate. Judges Clarke, Harper, and O'Brien cited recent cases where they imposed fines above \$1,000 on such defendants.

However, the judges interviewed felt that they seldom received solid evidence linking a particular defendant to an organized crime syndicate. Judge Smith summed up the problem:

I get pretty miffed about people always talking about gambling's relationship to organized crime. I haven't had a case yet where there is proof of that relationship. The cases I see involve defendants with something like \$7.50 in numbers slips and absolutely no evidence of the defendant's link to organized crime. Am I supposed to accept \$7.50 worth of numbers slips as proof that a defendant is a member of organized crime?

It is the responsibility of the police and the district attorney's office to obtain evidence of organized crime activity and to present it to the courts. None of the judges interviewed could recall a concentrated effort on the part of the Allegheny County District Attorney to obtain such evidence.

If the district attorney's office were to undertake such a campaign, court sentencing could play an important role. The district attorney could seek deferral of sentencing of low-level violators in order to obtain cooperation in gathering evidence concerning higher echelon figures. This could be coupled with more

12. These are excerpts from Anthony M. ("Tony") Grosso's testimony on October 29, 1973, at the trial of Samuel G. Ferraro.

stringent sanctions, including jail, for non-cooperative convicted gamblers.

The judges generally expressed approval of such an effort and willingness to cooperate in it, but reservations were expressed over the propriety and form of judicial participation. Although willingness of a convicted defendant to cooperate in providing evidence of other crimes is clearly a legitimate factor to be considered in sentencing, one judge observed that "granting immunity" was a dangerous practice and felt that judges should not use a defendant's failure to implicate another person as grounds for jailing him. He felt that greater reliance should be placed on normal investigative techniques such as willing informants, undercover agents and surveillance.

f. Summary

According to the judges the Commission interviewed, the factors which most affect the sentencing decisions for gambling violators are: (1) the judge's belief that the community does not regard gambling as the kind of offense which warrants a jail sentence or a stiff fine, unless the offender is a significant part of a crime syndicate; (2) the fact that most of the convicted gambling violators are housewives, unemployed war veterans, senior citizens, and disabled persons from the lower economic strata of society, without prior histories of violent crimes or felonies; (3) the lack of a serious, systematic law enforcement and prosecutorial effort to reach the higher echelon of organized gambling operations; and (4) a concern for allocating scarce judicial resources to the handling of offenses which are more dangerous and harmful to the community.

In short, while a concern for organized crime and corruption of public officials is shared by the judges, most believe it would be unwise to translate this concern into a general policy of imposing jail sentences and stiff fines on gambling violators in the absence of evidence in each case that the convicted violator is significantly involved in an organized criminal syndicate.

3. STATISTICAL ANALYSIS OF JUDICIAL SENTENCING PATTERNS

a. Introduction

The intent of this analysis of judicial sentencing patterns in Allegheny County is to show the severity of the penalties actually imposed in gambling cases, compared to the potential penalties; to compare the penalties imposed on "career gamblers," or chronic offenders, with those imposed on other defendants; and, to reveal the patterns of sentences received by chronic gambling offenders. This study does not take into account such factors as an individual defendant's age, health, job, dependents, criminal record in areas other than gambling, or position in the gambling hierarchy.¹³

The raw material utilized by the Commission for this study consisted of the Allegheny County records for gambling cases in 1972 and cases tried under the new

13. This type of information is ordinarily obtained by the court through a presentence report. In gambling cases, however, the Allegheny County judiciary rarely orders a presentence report. Instead, the court relies upon information on a "rap sheet" provided by the district attorney, and upon informal questioning of the arresting officer, the defendant, and defense counsel. See *supra*, p. 69.

Crimes Code in the 11-month period from June 6, 1973 through April 30, 1974.¹⁴ These records contain the names of the defendants, the prosecuting attorneys, the defense attorneys, the judges, the verdicts, and the sentence.

The Commission's study commenced with the extraction of the County records for gambling violations during 1972. This process resulted in the Commission obtaining a list of 391 cases alleging gambling violations which were concluded in 1972.¹⁵ This list was divided into two subcategories. The first subdivision was composed of 47 cases involving defendants who had four or more prior convictions for gambling offenses.¹⁶ The other group was composed of 344 cases involving individuals who had fewer than four previous gambling convictions.

The same process of extracting and subdividing records of defendants charged with gambling violations was repeated for the period of June 6, 1973 through April 30, 1974.

The Commission divided the cases into the above two groups for analytical purposes to determine whether defendants with a series of gambling convictions were in fact given heavier sentences. The figure of four convictions was chosen by the Commission as a dividing line because it was felt that this number was sufficient to indicate a career gambling pattern.

b. Statistical Findings for 1972

1. Summary

Of the total of 391 gambling cases concluded in 1972, 318 defendants (81.3%) were found guilty, and 73 (18.7%) were found not guilty,¹⁷ including 28 (7.2%) who were given the opportunity to be found not guilty if they volunteered to pay costs.¹⁸

A substantial number of defendants had well in excess of four prior convictions, and a significant number of them were on probation for previous gambling offenses at the time of their sentencing in 1972.

The sentences meted out to convicted gambling violators included a fine in slightly more than 90% of the cases. Of the 318 total defendants found guilty, 289 were fined. While the maximum fine which could have been assessed during 1972 was \$500, the average fine assessed was \$225. The total amount of fines assessed in 1972 in gambling cases was approximately \$65,000.

Of the 318 defendants found guilty, 82 (25.8%) were placed on probation.

Only one of these 318 defendants, or less than 1%, was sentenced to jail.¹⁹

14. In 1972, 6,675 defendants were brought to trial in Allegheny County. Four hundred thirty-seven (6.5%) of these defendants were charged with gambling violations. The study focussed upon the 391 cases which were concluded within 1972 through a verdict of not guilty or a sentence. In the 11-month period following the effective date of the new Act, 6,921 defendants were brought to trial; 396 (5.7%) of whom were charged with gambling violations. Of this group, 218 defendants were charged under the new Act, and 207 were tried as of April 30, 1974.

15. This group includes those defendants who were tried in late 1971 but not sentenced until 1972. The group does not include those defendants who were tried late in 1972 and were not sentenced until 1973, except for one defendant. See Chart D-1.

16. This group of 47 cases actually consisted of 39 separate defendants, six of whom were brought to trial two or three times in 1972. For statistical accuracy, this analysis will treat this group as 47 separate defendants.

17. The court records utilized by the Commission do not indicate whether any of the not guilty verdicts were the result of an improper investigation, search, or arrest.

18. This type of verdict will be discussed *infra*, at p. 107, and Appendix C.

19. The precise figure is 0.32%.

2. Defendants with Four or More Prior Convictions

Forty-seven defendants had four or more prior gambling convictions at the time of their trials in 1972. Of this group, 44 (93.6%) were found guilty and 3 (6.4%) were found not guilty, including one defendant who was found not guilty but volunteered to pay costs. (See Chart A.)

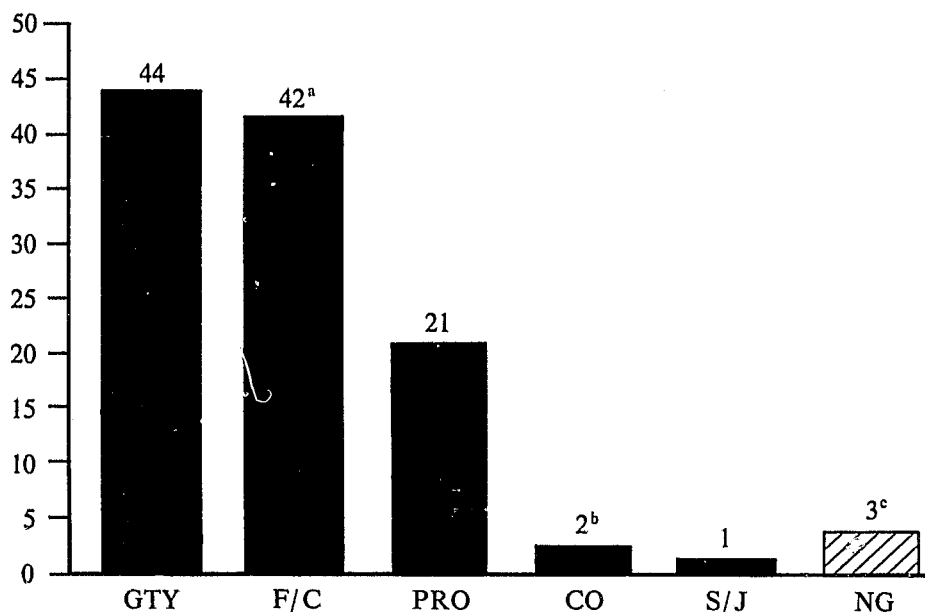
Chart A

Four (4) or More Prior Convictions

TOTAL CASES—47

TOTAL GUILTY VERDICTS—44

TOTAL FINES—42



a. Of the 42 fined, 19 also received probation.

b. Both individuals also received probation.

c. One of these defendants was found Not Guilty but Volunteered to Pay Costs.

GTY = Guilty

F/C = Fine/Cost

PRO = Probation

CO = Costs Only

S/J = Sentenced to Jail

NG = Not Guilty

i. Use of Jail Sentences

Only one of the 44 convicted defendants with four or more prior convictions was sentenced to jail in 1972 (see Chart A), notwithstanding the fact that four of these defendants were on probation for previous gambling convictions at the time of their sentencing.

ii. Use of Fines

Forty-two (95.4%) of the 44 defendants who were found guilty were fined and assessed costs. (See Chart A.) The total amount of fines assessed against these defendants was \$17,750.

Interestingly, no correlation existed between the number of convictions and the size of the fines, indicating that there was no consistent pattern of increasing fines for defendants with more convictions. In fact, only 21 (50%) of the 42 defendants who were fined received a larger fine in 1972 than they had received in their most recent conviction prior to 1972. The fines for the remaining 21 (50%) defendants either decreased or stayed the same. (See Chart B.)

Chart B

Four (4) or More Prior Convictions

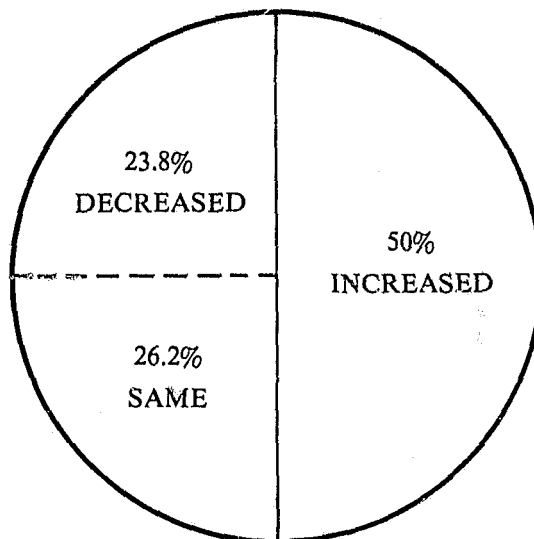
TOTAL CASES—47

TOTAL GUILTY VERDICTS—44

TOTAL FINES—42

COMPARISON OF FINES

50%—50%



**SHOWS BREAKDOWN OF MOST RECENT FINE (1972)
AS COMPARED TO PRIOR ONE**

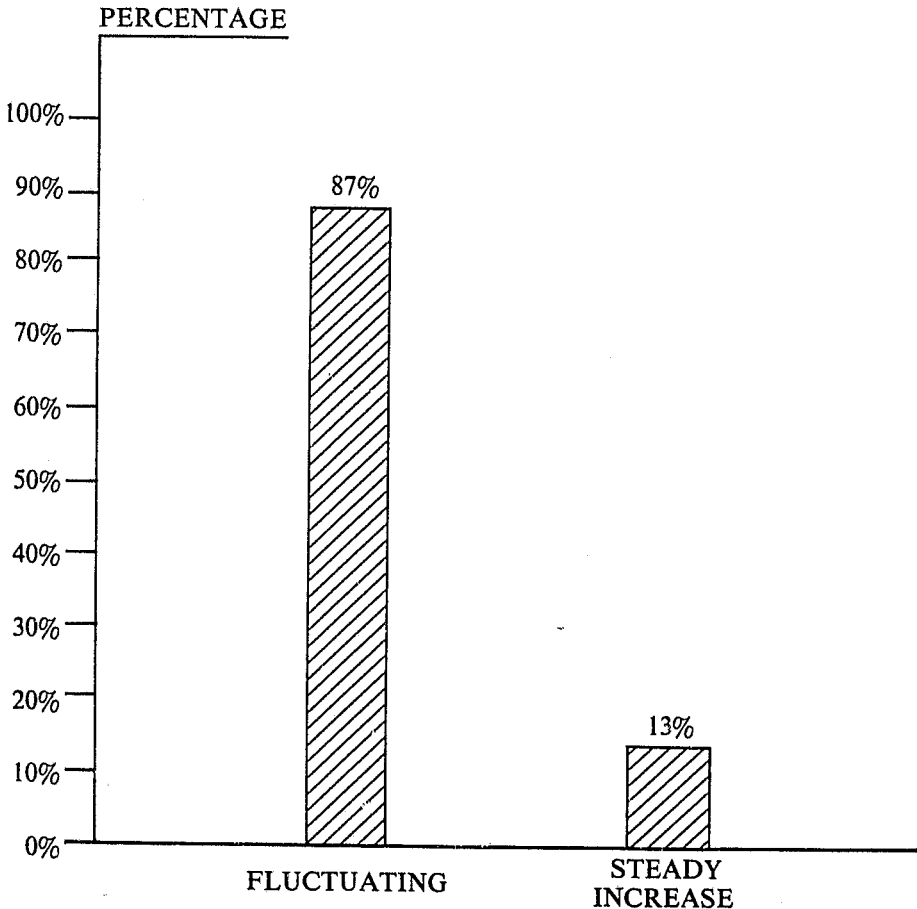
iii. Use of Probation

Probation was ordered for 21 (47.7%) of the 44 defendants found guilty. (See Chart A.) Probation was often imposed in a sporadic pattern intermingled with other sentences. Nineteen (90.5%) of those defendants placed on probation were also fined; two (9.5%) were ordered to pay court costs only. The length of probation fluctuated from a high of 18 months to a low of 6 months with an average of 12 months.

Chart C

Four (4) or More Prior Convictions

SENTENCING PROGRESSION
(With Each Additional Conviction)



iv. Continuity of Sentences

The Commission studied the sentencing histories of those defendants with four or more prior convictions at the time of their trials in 1972, in order to determine if sentences increased in severity as convictions increased. There were 39 individuals involved in these cases. Of these 39 individuals, 20 had five or more convictions at the time of their trials in 1972; one had 11 previous convictions, a second had 13 previous convictions, a third had 14 previous convictions, and a fourth had 17 previous convictions. For 34 (87%) of the defendants, the sentencing pattern fluctuated, i.e., on at least one occasion the sentence was less severe than the sentence for the preceding conviction.²⁰ For 20 of these 34 defendants, the sentencing pattern fluctuated downward on at least two occasions. For the remaining five (13%) of the defendants, the severity of the sentence constantly increased with each additional conviction. (See Chart C.)

v. Actual Sentences of Career Gamblers

The sentencing pattern of the court in gambling cases is illustrated by the series of sentences meted out to a number of "career gamblers." The Commission's study focused on 12 of these career gamblers. The following are summaries of the actual case histories of four of these defendants who have appeared frequently in the Allegheny County criminal courts. The careers of eight additional chronic violators of the gambling laws are depicted in Charts D-5 through D-12 in Appendix A. Their records follow patterns remarkably similar to those discussed below.

20. The predominant sentence in gambling cases involves only a fine and costs. This allows for an easy determination of whether a sentence is less severe than a preceding one. In cases where an individual has been sentenced to jail, any subsequent sentence not involving a jail term was considered less severe. In a few case histories, it was necessary to compare sentences involving different amounts of fines combined with varying lengths of probation. In any such case where it was even arguable that the sentencing increased in severity, the case was not labeled as fluctuating.

DEFENDANT D-1:

In 1944, D-1 received his first conviction for operating a lottery. At this time, he was sentenced to pay a fine of \$100. He next was sentenced for operating a lottery in 1962, for three distinct offenses—his second, third, and fourth convictions. For two of these violations, he was awarded a suspended sentence. For the third offense, he was fined \$250. In 1964, he received his fifth and sixth convictions for operating a lottery. On both occasions, he was only sentenced to pay costs. In 1965, this offender received his seventh conviction for operating a lottery. He was fined \$500 and given a suspended sentence. Later that same year, he was found not guilty of operating a lottery by “volunteering to pay costs.” Then, in 1967, he was convicted his eighth and ninth time for gambling violations. For each offense, he was sentenced to jail for one to twelve months. For one of these violations, he was also ordered to pay a \$500 fine; for the other a \$100 fine. In 1968, he received his tenth conviction for operating a lottery, and was fined \$200. His eleventh conviction was obtained in 1969 when he was fined \$300. In 1971, he was convicted for a gambling violation for the twelfth time. On that occasion, the judge sentenced him to pay a \$500 fine and placed him on probation. Finally, he was convicted on three occasions for operating a lottery in 1972. For the first violation, he was fined \$500—this being his thirteenth violation. For the other two violations, his fourteenth and fifteenth, he was placed on probation and fined \$500 for each violation. (See Chart D-1.)²¹

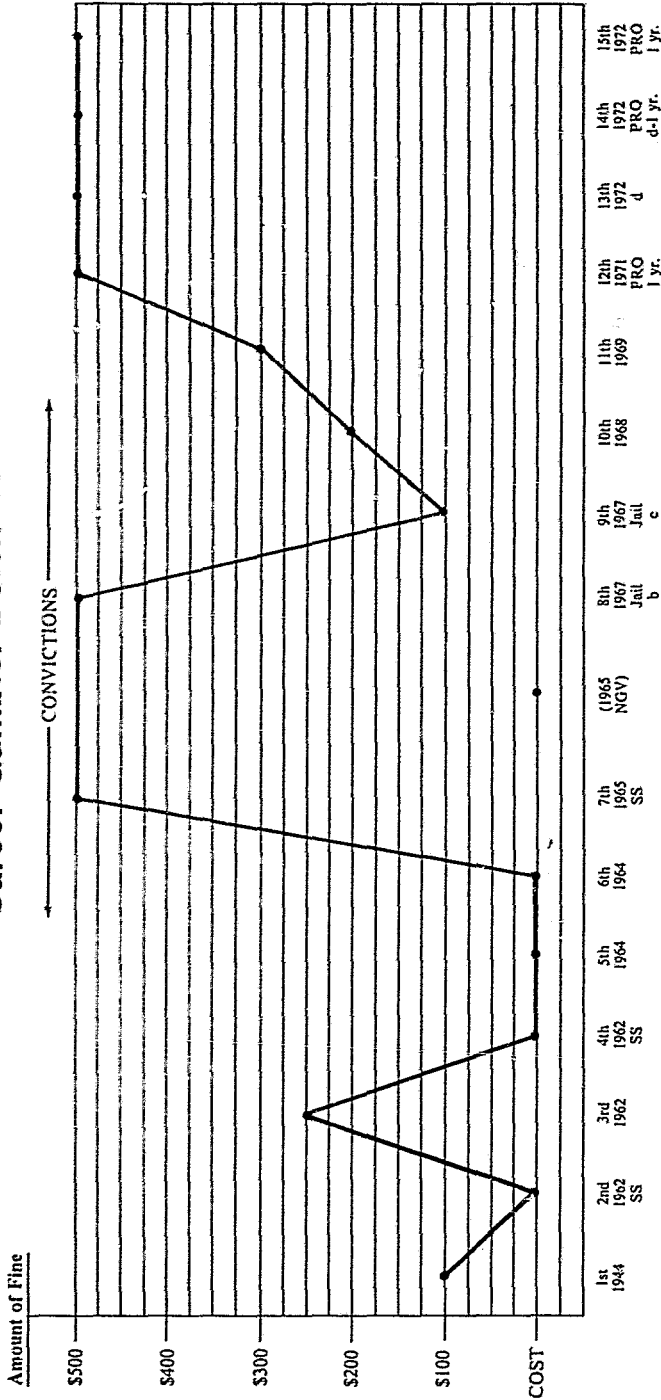
21. This Chart and all following “D” Charts (D-1 through D-12) are based on the term the defendants stood trial, and do not necessarily reflect the date of sentencing.

Chart D-1

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 1



a. Case involves four other lottery arrests in 1961, 1963, 1967 and 1970 which resulted in not guilty verdicts.

b. Includes 1/2 costs and 1-12 month sentence.

c. 1-12 month sentence.

d. Not sentenced until January 1973.

KEY: SS = Sentence Suspended

PRO = Probation

NGV = Not Guilty, Volunteered to Pay Cost

(Note: Some defendants were sentenced on the same date for more than one offense. All charts treat each offense as a separate incident.)

DEFENDANT D-2:

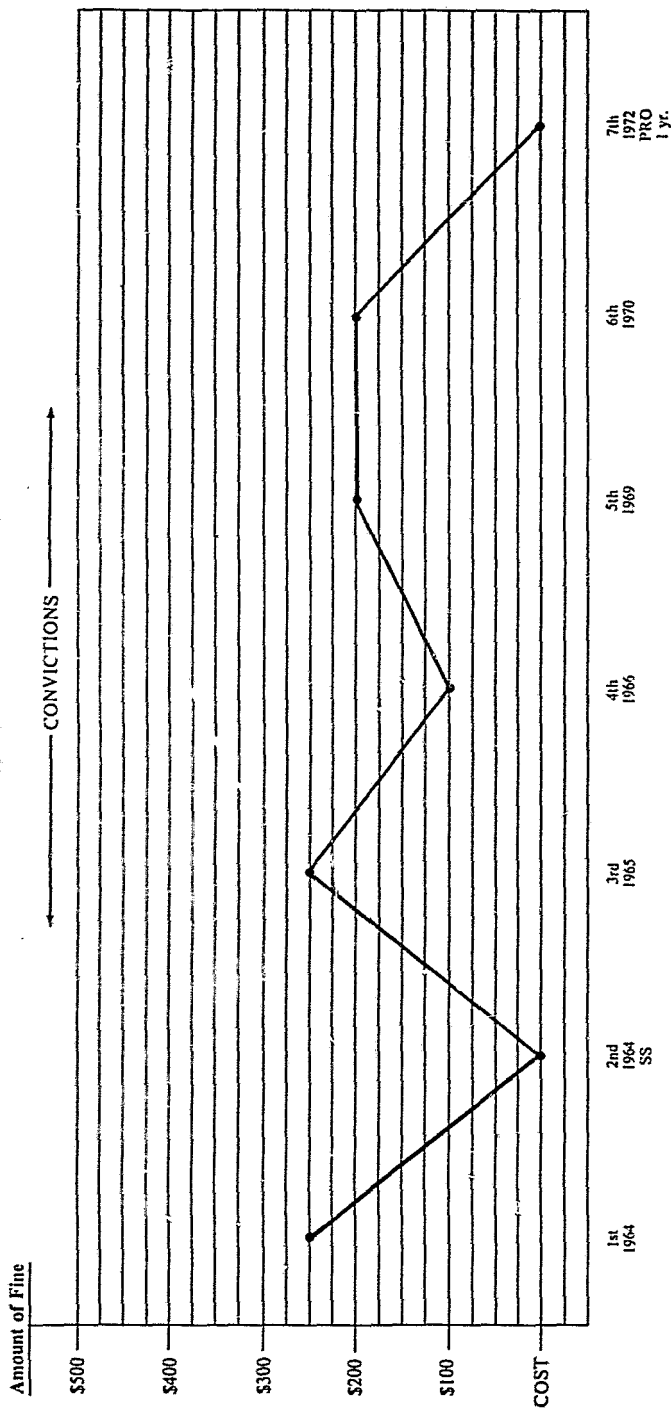
D-2 has been convicted seven times for operating a lottery between the years 1964 and 1972. As a result of his first conviction in 1964, he was fined \$250. Later that same year he was again convicted for operating a lottery and was awarded a suspended sentence. He was convicted in 1965 and was fined \$250. In 1966, he was convicted for operating a lottery and was sentenced to pay a fine of \$100. He received his fifth conviction for operating a lottery in 1969. The sentence awarded at that time was a fine of \$200. When he was convicted in 1970 for operating a lottery—his sixth conviction—he was again awarded a \$200 fine. Most recently, in 1972, upon his seventh conviction, he was placed on probation and not fined. (See Chart D-2.)

Chart D-2

Four (4) or More Prior Convictions

Sample Case Study ^a

Career Gambler Defendant 2



a. Case involves three arrests for crimes other than lottery violations.

KEY: SS = Sentence Suspended
PRO = Probation

DEFENDANT D-3:

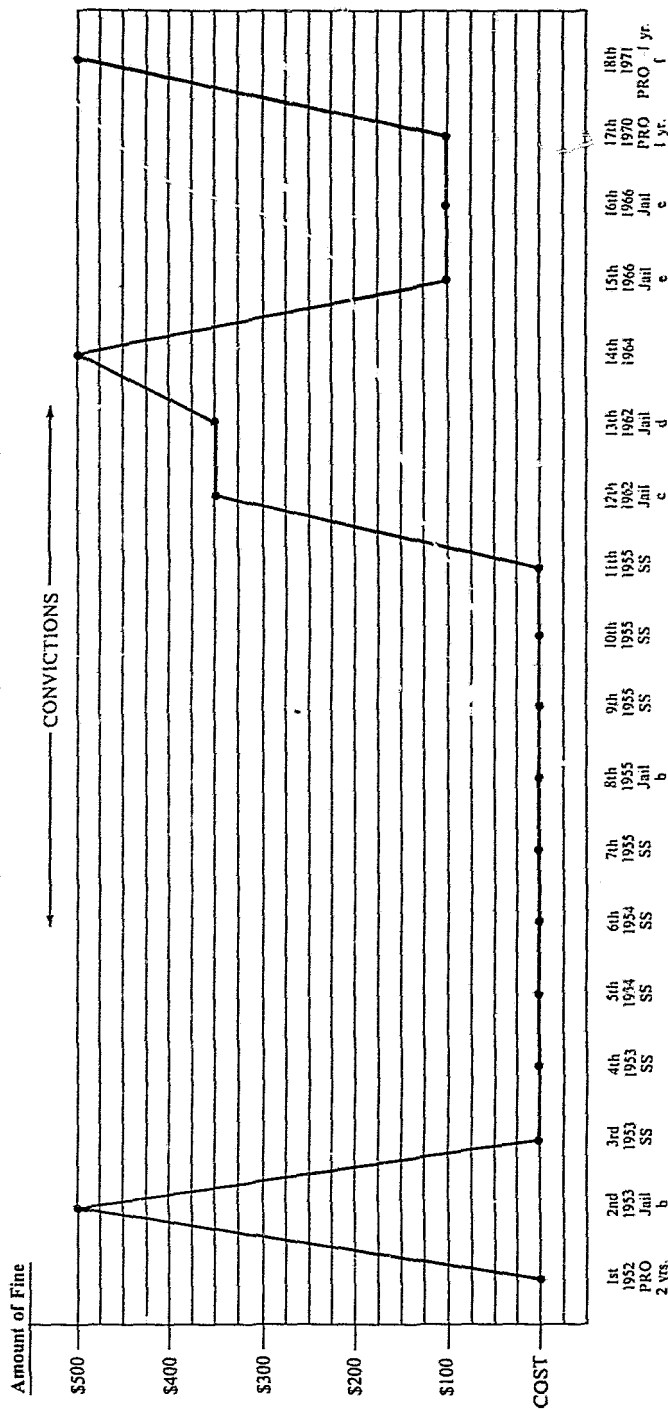
D-3 has been convicted eighteen times for lottery violations. His first conviction for operating a lottery occurred in 1952, at which time he was placed on two years probation. In 1953, he was convicted again for operating a lottery. At that time, he was sentenced to six to twelve months in jail and fined \$500. In addition, in 1953, he obtained his third and fourth convictions for operating a lottery. For both of these offenses, he was awarded suspended sentences. In 1954, he also was convicted twice for operating a lottery, his fifth and sixth offenses. For both of these violations, he was awarded a suspended sentence. In 1955, he was convicted for five separate violations of the gambling laws. For one of these violations, he was sentenced to six to twelve months in jail. For the other four violations, he was awarded suspended sentences. Not until 1962 did this offender obtain his twelfth and thirteenth convictions for operating a lottery. For one of these offenses, he was sentenced to two-to-four months in jail and fined \$350, and for the other offense, he was sentenced to one-to-three months in jail and fined \$350. In 1964, he received his fourteenth conviction. At this time, he was sentenced to pay a \$500 fine. He received his fifteenth and sixteenth convictions for gambling offenses in 1966. For each of these offenses, he was sentenced to pay a \$100 fine and to serve six months in jail. In 1970, he obtained a seventeenth conviction for operating a lottery and was ordered to pay a \$100 fine and was placed on probation for one year. Finally, he obtained his eighteenth conviction in 1971. He was awarded a \$500 fine and placed on probation for one year. (See Chart D-3.)

Chart D-3

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 3



a. Case also involved one not guilty verdict for a lottery arrest in 1951.

b. 6-12 month sentence

c. 2-4 month sentence

KEY: SS = Sentence Suspended

PRO = Probation

d. 1-3 month sentence

e. 6 month sentence

f. Sentenced in 1972.

DEFENDANT D-4:

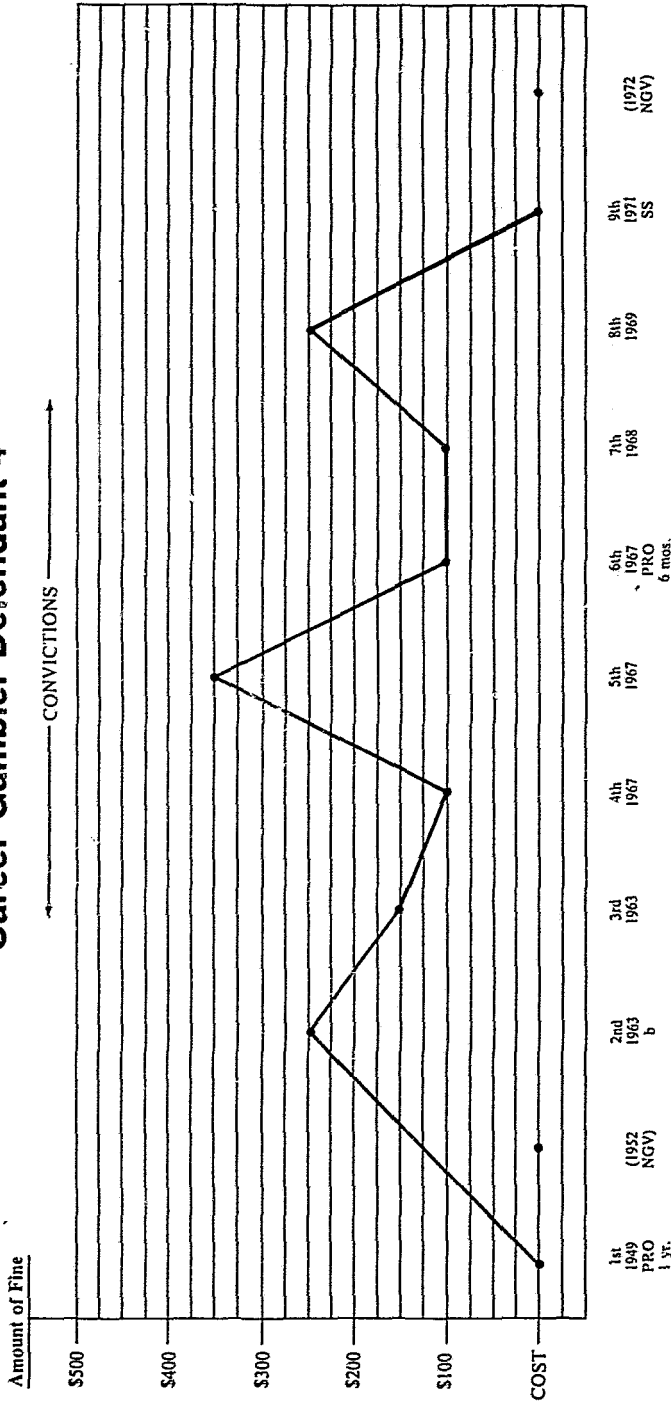
D-4 received his first conviction for operating a lottery in 1949. At that time, he was placed on probation for one year. In 1952, although he was not convicted for operating a lottery, he was found not guilty with the understanding that he would "volunteer to pay costs". He received his second and third convictions for operating a lottery in 1963. For these violations, he was fined \$250 and \$150 respectively. He received his fourth, fifth and sixth convictions for operating a lottery in 1967. For the first of these violations, he was fined \$100. For the second he was fined \$350. For the third he was fined \$100, and placed on probation for six months. Then, in 1968, he received his seventh conviction for operating a lottery and was fined \$100. His eighth violation came in 1969 and at that time he was fined \$250. In 1971, when he received his ninth conviction, he received a suspended sentence. Interestingly, in 1972, he was found not guilty of a "numbers" offense by "volunteering to pay costs". (See Chart D-4.)

Chart D-4

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 4



a. Case involves four other arrests for lottery violations in 1943, 1965, 1966 and 1970 which resulted in not guilty verdicts.

b. Paid 1/2 costs.

KEY: SS = Sentence Suspended
PRO = Probation

NGV = Not Guilty, Volunteered to Pay Cost

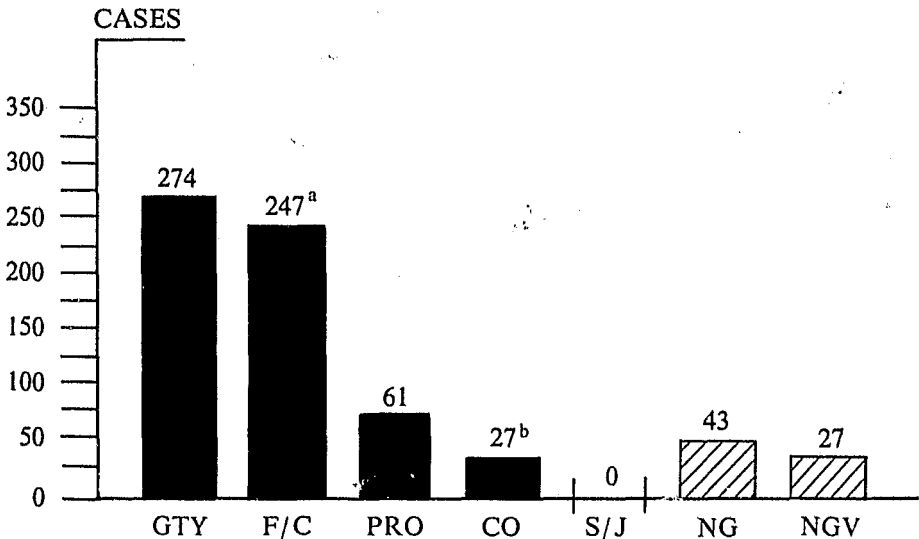
3. Defendants with Fewer than Four Prior Convictions

Three hundred forty-four defendants had fewer than four prior gambling convictions at the time their cases were disposed in 1972.²² Of this group, 274 (79.6%) were found guilty and 70 (20.4%) were found not guilty, including 27 who were found not guilty but "volunteered to pay costs". (See Chart E.)

Chart E

Fewer Than Four (4) Prior Convictions

TOTAL CASES—344
TOTAL GUILTY VERDICTS—274
TOTAL FINES—247



a. Of the 247 fined, 46 also received probation.

b. Of the 27 costs only, 15 also received probation.

GTY = Guilty

F/C = Fine/Costs

PRO = Probation

CO = Costs Only

S/J = Sentenced to Jail

NG = Not Guilty

NGV = Not Guilty/Volunteered to Pay Costs

²² Approximately 23% of these defendants had been sentenced in the past one or more times for gambling violations.

i. Use of Jail Sentences

Not one of the 274 convicted defendants was sentenced to jail.

ii. Use of Fines

Two hundred forty-seven (90%) of the 274 defendants were fined as part or all of their sentence. (See Chart E.)

iii. Use of Probation

Probation was ordered for 61 (22.3%) of the 274 defendants found guilty. Forty-six of these defendants were also fined. The remaining 15 of these defendants were required to pay court costs only. The length of the probation fluctuated between three months to three years with an average of 11.4 months.

iv. Use of the "Not Guilty Verdict But Volunteered to Pay Costs"

In the 344 cases involving defendants with fewer than four prior convictions, 27 (7.8%) utilized this procedure. (See Chart E.)

c. Statistical Findings for June 6, 1973—April 30, 1974

1. Summary

A total of 207 gambling cases involving charges controlled by the new Act were concluded prior to May 1, 1974. One hundred sixty-four defendants (79%) were found guilty²³ and 43 (21%) were found not guilty, including three who volunteered to pay costs.

Seventeen of the defendants²⁴ found guilty had four or more prior convictions.

As in 1972, the fine remained the primary sanction applied by the courts. Of the 164 defendants found guilty, 150 (91.4%) were fined. Although the maximum permissible fine was \$10,000, the average fine imposed was \$385. The fines assessed in this period totaled \$57,800.

Forty-six (28%) of the defendants found guilty were placed on probation. Only three (less than 2%) of the 164 defendants found guilty were sentenced to jail.

2. Defendants with Four or More Prior Convictions

Seventeen cases involved defendants with four or more prior gambling convictions at the time their cases were disposed of in the post-June 5, 1973 period. Of this group, 13 (76%) were found guilty. Chart F depicts a summary of the sentences in these cases.

i. Use of Jail Sentences

Two members of this group were sentenced to jail. (See Chart F.) One was sentenced to 32 days in jail to be served on weekends; the other was given 2 to 6 months. A maximum jail sentence of five years could have been imposed on these defendants for each count for which they were convicted.

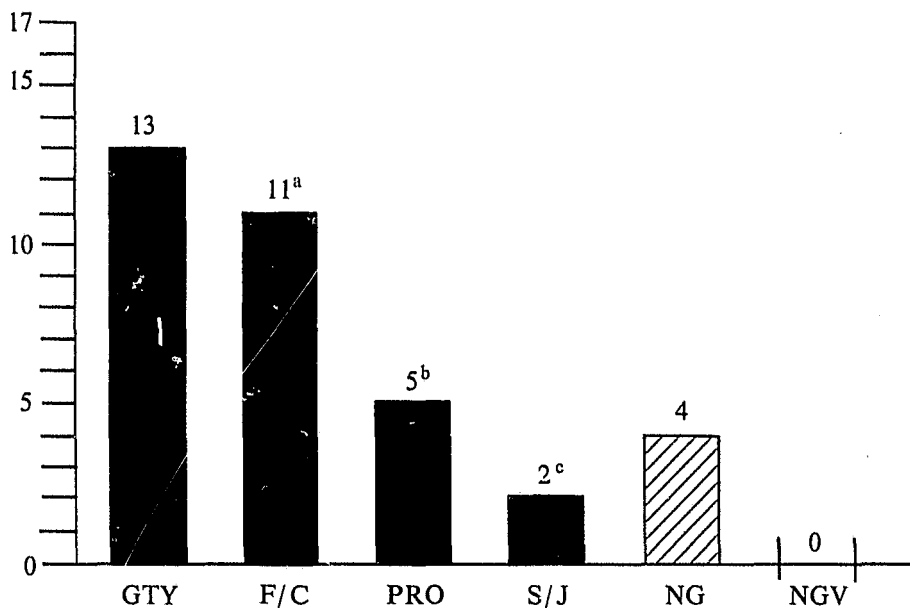
23. Four of the convicted defendants had not been sentenced as of April 30, 1974.

24. Some defendants were involved in more than one case in this period. There was a total of 13 individuals involved in these cases.

Chart F

Four (4) or More Prior Convictions

TOTAL CASES—17
 TOTAL GUILTY VERDICTS—13
 TOTAL FINES—11



- a. Of the 11 fined, 4 were also placed on probation.
- b. In one of these cases, the defendant received probation, was not fined, and was not required to pay costs.
- c. Of these 2 cases, 1 paid fine and cost and 1 paid costs only.

GTY = Guilty	S/J = Sentenced to Jail
F/C = Fine/Costs	NG = Not Guilty
PRO = Probation	NGV = Not Guilty/Volunteered to Pay Costs

ii. Use of Fines

Eleven (85%) of the 13 convicted defendants were fined (see Chart F), and 12 were ordered to pay costs. The assessed fines totalled \$9,750. The average fine was \$886.

There was no consistent pattern of additional convictions resulting in increasing fines. Six (54.55%) defendants received a larger fine for this offense than for their

most previous gambling conviction. The fines for the remaining five (45.45%) defendants either decreased or stayed the same. (See Chart G.)

iii. Use of Probation

Probation was ordered for five (38%) of the 13 defendants found guilty. (See Chart F.) Four (80%) of the defendants placed on probation were also fined. The length of probation ranged from a high of five years to a low of one year with an average of 26.4 months.

Chart G

Four (4) or More Prior Convictions

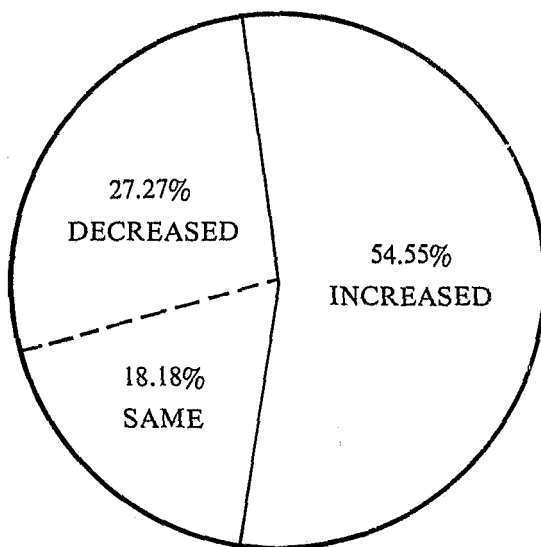
TOTAL CASES—17

TOTAL GUILTY VERDICTS—13

TOTAL FINES—11

COMPARISON OF FINES

45.45%—54.55%



SHOWS BREAKDOWN OF MOST RECENT FINE
AS COMPARED TO PRIOR ONE

(POST-JUNE 5, 1973)

iv. Continuity of Sentences

As in 1972, the sentencing histories of defendants with four or more convictions at the time of their trials in this period did not follow a consistent pattern of increasing severity. There were a total of 12 individual defendants involved. Of these

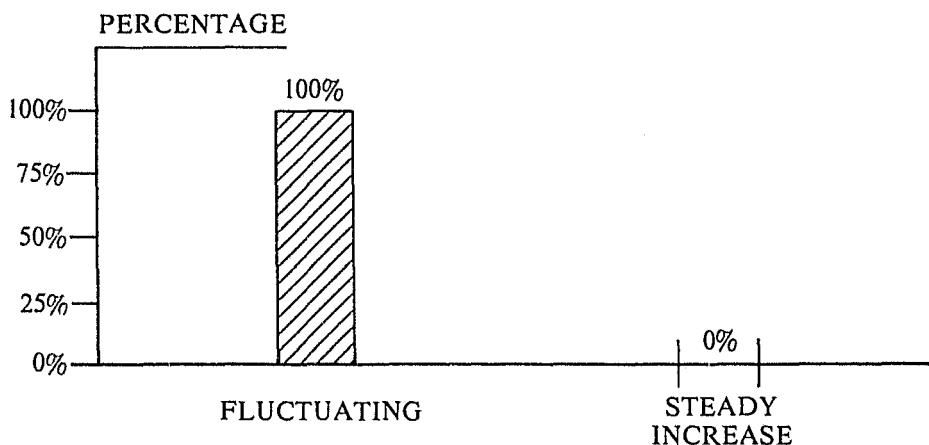
12 individuals, 10 had been convicted at least five times prior to their trials in the post-June 5, 1973 period. The sentencing pattern fluctuated for each of these defendants, i.e., on at least one occasion the sentence imposed was less severe than the sentence for the preceding conviction. (See Chart H.) With respect to nine of these 12 defendants, the sentencing pattern fluctuated on at least two occasions.

Chart H

Four (4) or More Prior Convictions

SENTENCING PROGRESSION

(With each additional conviction)



v. Actual Sentences of Career Gamblers

The Commission studied the case histories of 10 "career gamblers" to determine whether the new Act had any significant impact upon the sentences imposed upon them for convictions in this period. The case histories are depicted in Charts I-1 through I-10. A summary of the histories of four of these defendants follows. (See Charts I-5 through I-10 in Appendix B.)

DEFENDANT I-1:

In 1973 I-1 was convicted of a gambling violation for the fifteenth time. For this violation he received a sentence of 2-6 months in jail and a \$500 fine and costs—parole to be considered for payment of the sum within one week.

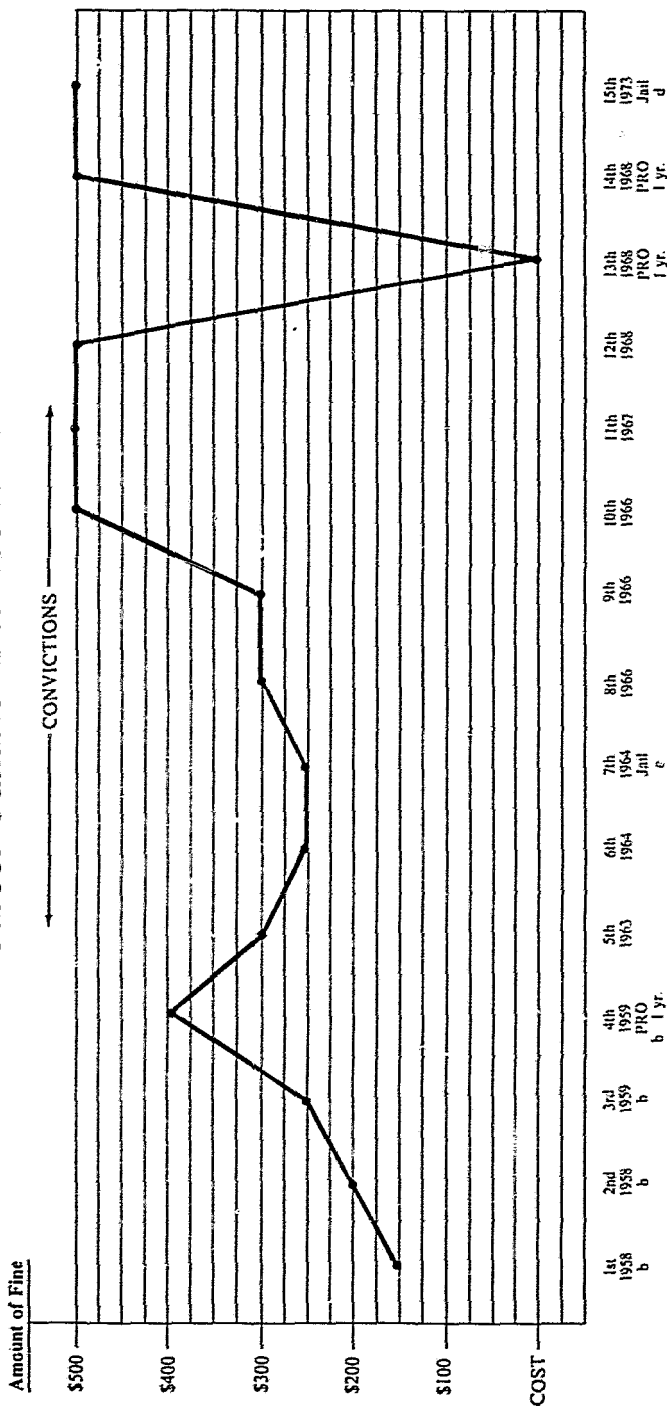
His career of gambling violations began in 1958 at which time he was fined \$150 and costs. He was committed to jail four times, twice in 1958, and twice in 1959, for failure to pay fines resulting from four separate gambling convictions. Since that time he has been arrested and tried for gambling violations almost annually. Throughout his career his fines fluctuated dramatically. He has been sentenced to jail for gambling convictions twice, in 1964 and 1973, in addition to the four occasions he went to jail for failure to pay fines. (See Chart I-1.)

Chart I-1

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant I-1



- Case involves 4 other gambling arrests in 1958, 1961, 1960 and 1966 which did not result in conviction; also includes 5 arrests for other charges.
- Defendant defaulted and was committed to jail.
- Sentenced to 60 days; release in 30 days if paid in full.
- Sentenced 2-6 months jail, parole considered for payment of sum within one week; after 30 days defendant paroled for balance of maximum term.

KEY: SS = Sentence Suspended PRO = Probation

DEFENDANT I-2:

I-2 has been convicted of gambling violations nine times over a 19-year period. In 1973, he pled guilty to operating a lottery and was sentenced to pay a \$500 fine and costs and placed on probation for three years.

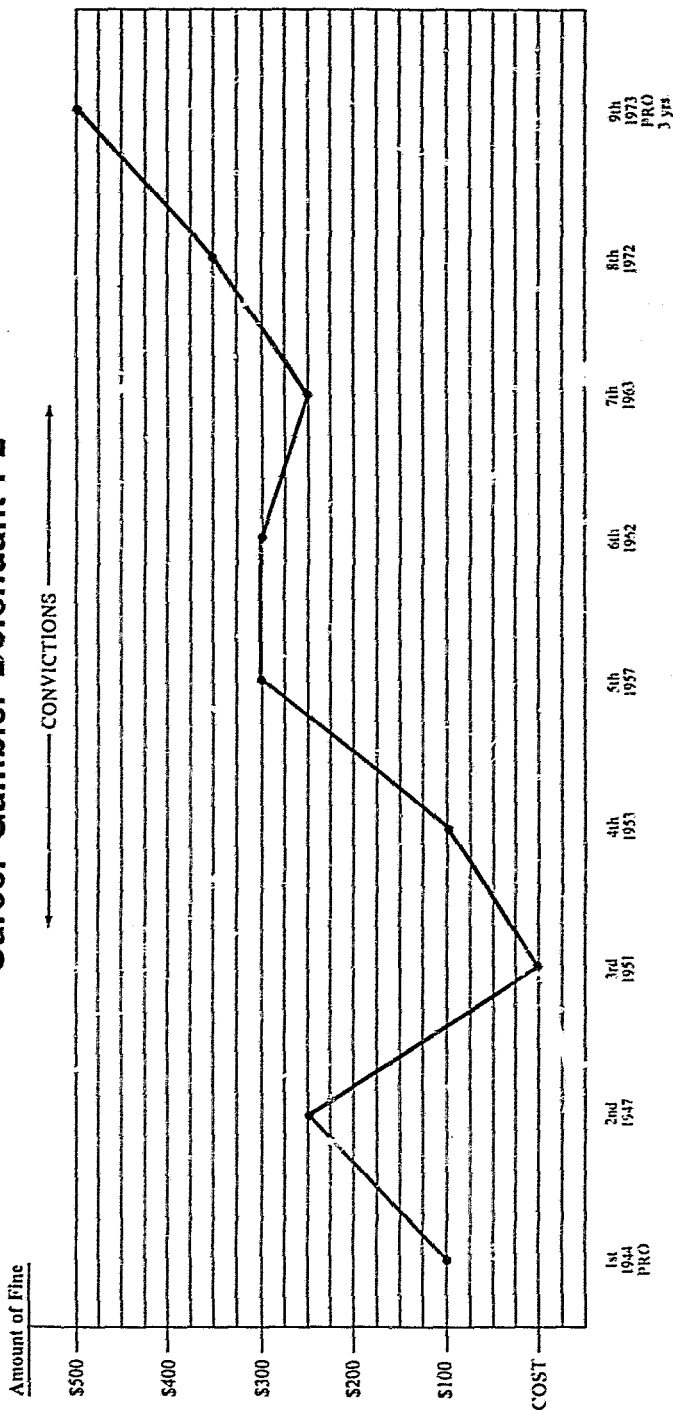
His first conviction for a lottery violation occurred in 1944. The typical sentence imposed upon him has been a fine, ranging between \$100 and \$300. According to the County records examined, he has never been sentenced to jail. (See Chart I-2.)

Chart I-2

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant I-2



a. Case included 8 other arrests for gambling violations in 1942, 1945, 1946, 1947, 1951, 1952, 1965, and 1967 which did not result in conviction; also arrested and convicted in 1956 on a charge other than gambling.

KEY: SS = Sentence Suspended
PRO = Probation

DEFENDANT I-3:

This defendant was convicted for the 8th and 9th times in 1973. The 8th conviction involved illegal conduct occurring prior to the effective date of the new Act; the 9th involved conduct coming under the purview of the new Act. He was convicted on multiple counts in both cases. He was assessed a \$1,000 fine and costs and placed on probation for one year for the offenses committed under the old Act. He was fined \$10,000 and costs, later reduced to a \$5,000 fine, and given five years of probation for his conviction under the new Act.

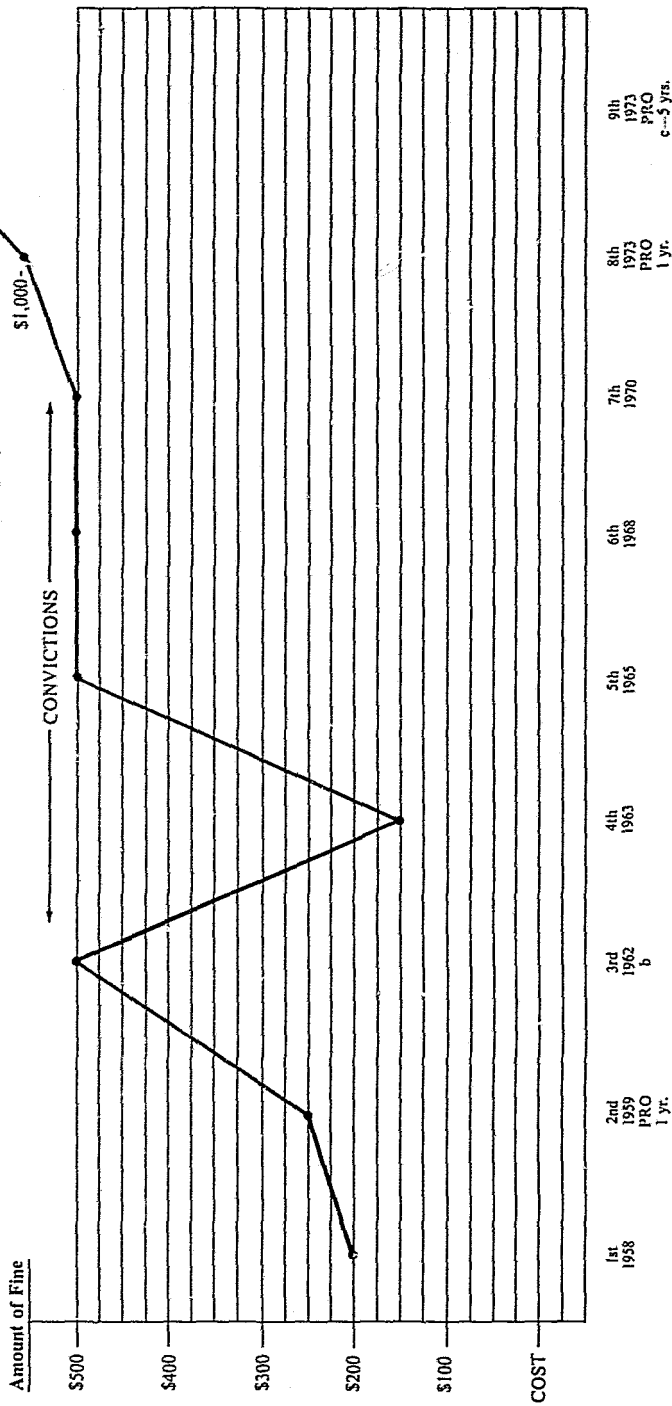
For his previous seven convictions, he was given a series of erratic sentences which include fluctuating fines and occasional probation. In addition to his convictions, he had suffered five additional arrests for gambling violations during the period 1961 through 1973.

Chart I-3

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant I-3



- a. Includes 5 other arrests for gambling violations which did not result in convictions (1961, 1962, 1965, 1969, and 1973).
- b. Assessed 1/2 costs.
- c. Sentenced to pay \$10,000 fine; one month later fine reduced to \$5,000.

KEY: SS = Sentence Suspended
PRO = Probation

DEFENDANT I-4:

This defendant is also a veteran on the illegal gambling circuit. He began his career of convictions in 1948 at which time he was sentenced to pay a fine of \$300. On his second conviction he was sentenced to jail for 30-60 days and assessed a nominal fine plus costs. On his third conviction in 1951, he was again assessed a nominal fine and costs and given a 30-60 day jail sentence. He was granted parole one week after the sentence was imposed.

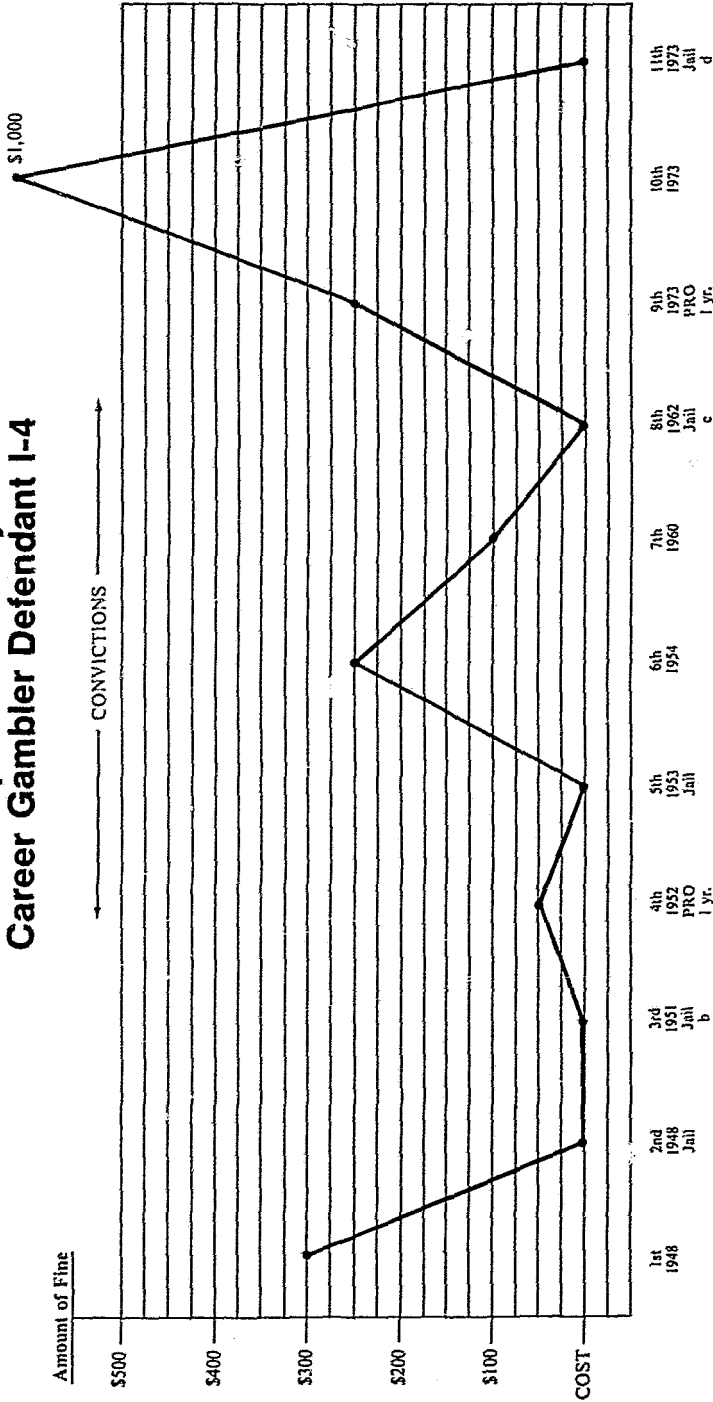
Over the course of his career, he accumulated a total of 11 convictions for gambling violations. His sentencing pattern is somewhat atypical in that he has received jail sentences on several occasions. (See Chart I-4.) In another sense, the sentencing pattern is an excellent prototype of the sentencing pattern which most of these career gamblers incur, i.e., a widely fluctuating series of fines. From 1948 through 1973 his fines fluctuated between \$50 and \$1,000.

Chart I-4

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant I-4



- a. Case involves 3 other arrests for gambling violations which did not result in convictions (1955, 1960, and 1962).
 b. On 1/16/52 sentenced to 30-60 days jail; on 1/25/52 changed to 10-60 days and paroled this date.
 c. Sentenced to 3-12 months jail on 6/3/63; on 8/31/63 paroled.
 d. Sentenced to 32 days jail to be served on weekends—7:00 PM Friday through 7:00 PM Sunday.

KEY: SS = Sentence Suspended
 PRO = Probation

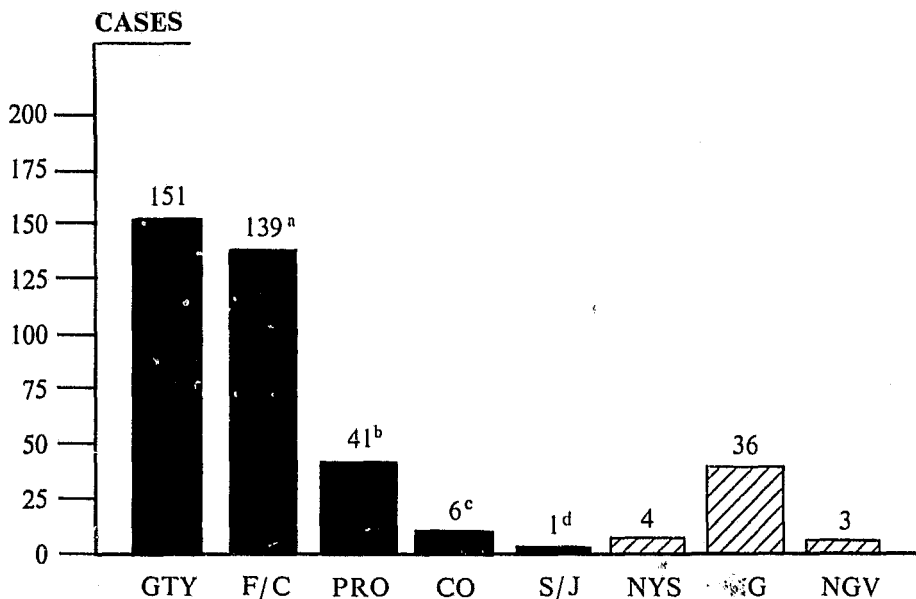
3. Defendants with Fewer than Four Prior Convictions

One hundred ninety defendants had fewer than four prior gambling convictions at the time of their trials in the period following June 6, 1973. Of this group, 151 (79.4%) were found guilty; 39 (20.6%) were found not guilty, including three who "volunteered to pay costs". (See Chart J.) Of the 151 found guilty, 147 were sentenced as of the end of this study period, April 30, 1974.

Chart J

Fewer Than Four (4) Prior Convictions

TOTAL CASES—190
TOTAL GUILTY VERDICTS—151
TOTAL FINES—139



a. Of the 139 fined, 37 also received probation.

b. In one of these cases the defendant received probation, was not fined, and was not required to pay costs.

c. Of the 6 costs only, 3 also received probation.

d. The one sentenced to jail was not assessed fine and costs.

GTY = Guilty
F/C = Fine/Costs
PRO = Probation
CO = Costs Only
S/J = Sentenced to Jail

NYS = Not Yet Sentenced as of
April 30, 1974
NG = Not Guilty
NGV = Not Guilty/Volunteered to
Pay Costs

i. Use of Jail Sentence

One (less than 1%) of the 151 defendants found guilty was sent to jail in this period. He was given a 9 to 23 month prison term.

ii. Use of Fines

One hundred thirty-nine (92%) of the 151 defendants were fined. (See Chart J.)

iii. Use of Probation

Probation was ordered for 41 (27%) of the 151 defendants found guilty. Thirty-seven (24.5%) of these defendants were fined; three were required to pay court costs only; and in one case the County paid the costs. The length of probation ranged from a low of one month to a high of five years, with an average 15.4 months.

iv. Use of the "Not Guilty Verdict But Volunteer to Pay Costs"

This technique was applied to three defendants in this period.

4. CONCLUSIONS AND GENERAL REFLECTIONS ON THE COURT'S SENTENCING PATTERN IN GAMBLING CASES

The Commission's statistical analysis reveals some interesting patterns and comparisons. (See Table 1.) Regardless of either the type of defendant or the time period, the court has rarely been willing to use jail as one of its sentencing alternatives. Out of a total of '82 convicted gambling defendants in this study, only four were sentenced to jail.²⁵ In both time periods a fine was the most frequently imposed sentence. Overall, fines were imposed in 91% of the cases. "Career" gamblers, on the average, received fines several hundred dollars higher than persons with fewer than four prior convictions. The average amount of fine under the new Code increased for both the "career" gamblers and others. In both time periods probation was imposed more frequently on "career" gamblers, while under the new Code the average length of probation has increased for both types of defendant. The few judgments of probation to "career" gamblers under the new Code were noticeably longer than those given to the other defendants.

25. The Commission also examined the number of jail sentences given defendants who were tried under the old Act during 1973. Curiously, the statistics reveal that 18 defendants were sentenced to jail during this period. Of those 18 defendants, eight had four or more prior convictions at the time of their sentence.

It is difficult to explain the remarkable increase in jail sentences during this isolated period. A close examination of the individual cases involving jail sentences does not suggest any ready answers. One would have expected that the stiffer jail terms contained in the new Act might well have resulted in more jail sentences for convicted gamblers. It appears that exactly the opposite has occurred. Indeed, there has been a remarkable decrease in jail sentences involving cases decided under the new Act when the figures are compared to the group of defendants tried under the old Act in 1973.

Table 1
Comparison of Sentences in the Two Time Periods

June 6, 1973—April 30, 1974
Cases under new Code

1972

	Career Gamblers	Defendants with fewer than four prior convictions	Total	Career Gamblers	Defendants with fewer than four prior convictions	Total
Total tried	47	344	391	17	190	207
Total convicted	44	274	318	13	151	164
Total found not guilty by agreeing to pay costs	1	27	28	—	3	3
Total receiving fines	42	247	289	11	139	150
Average fine	\$423	\$191	\$225	\$886*	\$345	\$385
Total receiving probation	21	61	82	5	41	46
Average length of probation	12 mos.	11.4 mos.	11.6 mos.	26.4** mos.	15.4 mos.	16.6 mos.
Total receiving jail sentence	1	0	1	2	1	3

*A \$5,000 fine was imposed upon one defendant. Excluding that case, the average fine was \$475.

**A five-year period of probation was imposed upon one defendant. Excluding that case, the average length of probation was 18 months.

In addition, there is a substantial amount of fluctuation in the sentences given to repeat offenders. Of those repeat offenders fined in 1972, 23.8% received lower fines than that given for their most recent conviction; in the 1973-1974 period, 27.27% received lower fines. This fluctuating pattern is further born out by the examination of the sentencing experiences of the chronic offenders detailed above.

A judge faces a complex problem in determining the sentences which he should impose upon a convicted gambling law violator. Some factors militate toward the imposition of severe criminal penalties. Organized crime derives substantial income from illegal gambling, which in turn finances activities such as narcotics distribution, loansharking, infiltration of legitimate businesses,²⁶ and corruption of public officials. It was perhaps in recognition of these factors that the Pennsylvania Legislature recently increased the maximum sentences for gambling offenders and passed the Corrupt Organizations Act.²⁷

Other factors militate against harsh sentencing of the average convicted gambler. The public as a whole is extremely tolerant toward gambling; the state and a variety of social and religious groups practice certain forms of gambling, thus implicitly sanctioning gambling. This makes society's moral position toward gambling ambiguous. Typically, the only persons who have been arrested in Allegheny County are those who operate at the lowest level of illegal gambling operations and, according to the judges interviewed, such persons are often poor, aged and disabled.

Each judge inevitably brings to a sentencing decision his own individual background, experiences, attitudes, and personality, all of which have some effect on the way in which he resolves the competing factors in an individual case. However, it is incumbent upon the courts, in the exercise of their discretion, to devise and apply sentencing policies which deal with competing interests in a logical and consistent manner. The collective results of sentencing decisions reported on above, as well as the comments by the judges who were interviewed, raise some questions as to whether the court in Allegheny County is adequately carrying out its sentencing function in gambling cases. Sentences are normally relatively light. There is a considerable amount of fluctuation in severity of sentence. Probation has been ordered frequently for recidivist defendants despite the legislative indication that it is not appropriate in such cases.²⁸ Further, violations of probation (through the occurrence of a new gambling conviction while on probation) have not usually produced jail sentences.

The basic goals of sentencing have been succinctly summarized by one commentator as follows:

The sentencing decision ordinarily seeks to accomplish one or more of the multiple objectives of criminal sanctions: *rehabilitation* of the convicted

26. See fn. 9, *supra*.

27. See Appendix D.

28. 19 P.S. §1501 provides that probation is appropriate when:

... it does not appear (to the Court) that the defendant has ever before been imprisoned for crime... and where the said Court believes that the character of the defendant and the circumstances of the case (are such) that he or she is not likely again to engage in an offensive course of conduct....

See also *Comment* to Rule 1405, Rules of Criminal Procedure, *Pennsylvania Rules of Court*.

offender into a noncriminal member of society; *isolation* of the offender from society to prevent criminal conduct during the period of confinement; *deterrence* of other members of the community who might have tendencies toward criminal conduct similar to those of the offender (secondary deterrence), and deterrence of the offender himself after release; *community condemnation* or the reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves; and *retribution* or the satisfaction of the community's emotional desire to punish the offender. To make a reasoned sentencing decision a sentencing authority must determine the priority and relationship of these objectives in each particular case.²⁹

An analysis of the sentences imposed on gambling offenders in the two periods which the Commission studied leads to the conclusion that few of these objectives are presently being met. The predictable sanction of a fine of less than \$400 is not likely to *deter* the convicted offender or other members of society from gambling illegally. This is particularly certain if the participants are associated with an organization like Tony Grosso's which allegedly grossed \$75,000 per day, six days per week. The judges interviewed conceded that their sentencing pattern probably achieved very little in the way of general deterrence. Indeed, Judge O'Brien stated: "People write numbers knowing they will not go to jail." He feels that the established sentencing pattern makes it even more difficult to sentence a first-time offender to jail because the judge knows that many people start writing numbers with the feeling that it is not harmful or morally wrong and the genuine belief that it is not a serious criminal offense.

Theoretically, stiff punishment, especially in the form of fines, could serve as a deterrent. As Judge Smith asserted when interviewed by the Commission: "I don't see that jail is necessarily the answer in the numbers situation. If you get the right kind of evidence [linking a defendant to organized crime] I think a fine is better; hit them in the pocket where it will really hurt the organization." This theory has not been tested since few substantial fines were found to have been actually imposed.

Similarly, other goals of criminal sentencing are not being met in gambling cases. Since no one goes to jail, the objective of preventing criminal conduct by *isolating* a defendant is not fulfilled. And, since so many people see nothing morally wrong with gambling and the typical sanction is lenient, *rehabilitation* does not occur and indeed may be an unrealistic objective in the gambling area.

The weak sentences in gambling cases possibly do fulfill, to some extent, the remaining two objectives. Since society generally has a tolerant or ambivalent attitude toward gambling, a fine of less than \$400 may well satisfy any community desire for *retribution*, if it exists. Similarly, the meting out of penalties for illegal gambling may represent *community condemnation* of illegal gambling and help to satisfy the need to maintain respect for criminal laws, generally. Judge Strauss cited the need for maintaining respect for law as an objective in his sentencing and as the principal reason for not releasing gambling defendants on nominal bail. It is

29. Appellate Review of Primary Sentencing Decision: A Connecticut Case Study, 69 Yale L. J. 1453, 1455 (1960). See also, H.L.A. Hart, *Punishment and Responsibility*; H.L. Packer, *The Limits of Criminal Sanction* (1960); and Hart, *The Arms of the Criminal Law*, 23 Law and Contemp. Prob. 401 (1958).

doubtful, however, that the arrest and imposition of small fines on numbers writers makes anyone respect the gambling laws or other laws. Haphazard enforcement of gambling laws and lenient, inconsistent sentencing more likely breeds disrespect for the law.

Some judges suggested other practical considerations which further influence and complicate sentencing. Chief among them is the scarcity of resources available for the handling of criminal defendants. Gambling offenses constitute a significant percentage of the offenses processed through the criminal courts. The general demand for the resources of the court, the office of probation and parole, and the jails, far exceeds the supply. Since the judges regard many offenses as far more serious and injurious to the public than gambling, they have chosen to minimize the allocation of resources to gambling cases. Thus, it is felt that lenient sentences, such as small fines, produce a lower demand for jury trials on the part of gambling offenders. Indeed, it is felt that jail sentences and stiff fines might produce such a demand for jury trials that the courts would become backlogged. Presentence reports on the nature and background of the defendant are not often ordered because of concern for the limited resources of the probation office. Similarly, it is widely felt that since jails are already overcrowded and have a questionable deterrent effect on criminal conduct, they ought to be reserved for offenders who pose more serious threats to the public than gamblers.

The sentencing patterns disclosed in this study suggest that most of the judges agree that under existing circumstances jail sentences are inappropriate for the typical gambling violator. In the two time periods specifically studied by the Commission, it is apparent that jail sentences have been infrequently meted out: one sentence in 1972 and three sentences for all of the defendants tried under the new Act, through April 30, 1974.

The court's disposition of some gambling cases through a verdict of "not guilty but volunteered to pay costs" in 7.2% of the cases in 1972 and 1.4% in the 1973-74 period raises further questions about the carrying out of the sentencing function. It is almost a universal practice in criminal cases that a defendant adjudged innocent is not assessed costs. However, a peculiar technique employed in Allegheny County is a form of "quasi-plea bargaining" in which the defendant volunteers to pay the court costs and in exchange is adjudged not guilty. It appears that the procedure of imposing costs on an acquitted defendant is illegal.³⁰ The practice should be closely scrutinized, rather than winked at, as is presently the case.

The Commission believes that an important defect in sentencing procedures is the lack of sufficient information before the courts. As noted earlier in this report, presentence reports are rarely ordered for gambling violators.³¹ The Commission's investigation disclosed that despite a total of 164 gambling convictions in the post-

30. For further discussion on this topic, see Appendix C.

31. "It is vital, also, to realize that whatever its defects, the presentence investigation is indispensable in any sentencing scheme that does not treat the infinite varieties of people as entirely fungible. This means, in my workaday terms, that we could not pretend at all to any measure of sense in sentencing without the basic presentence investigation. Moreover, if my remarks about conventionality sound smug, let it be said there is no ground whatever for that. The judges are surely not less conventional than the probation officers. On the contrary, it seems probable that sentences would be wilder and stiffer than they are without the steady influence of probation officers."

Marvin E. Frankel, *Criminal Sentences* (New York: Hilland Wang, 1972), p. 35.

June 5, 1973 period, presentence requests were ordered in only two cases. In the period January 1, 1973 through April 30, 1974, out of a total of 889 presentence reports requested by the courts, only 8 (0.9%) related to convicted gambling violators. Judges Clarke, Harper, and Strauss stated that they rely upon information in the district attorney's files and evidence elicited from the defendant and the defense counsel to evaluate the defendant. However, this process apparently fails to bring to the court's attention adequate information about the defendant's criminal record, which is necessary for a fair and logical decision.

Finally, the court does not have a formal method of consultation among judges to bring collective judgments to bear on discreet problem areas, such as gambling, or to articulate and implement common goals in sentencing. Judge Strauss and Judge O'Brien told the Commission that several years ago an effort was made among the judges to institute a consistent approach for sentencing gambling defendants. The effort apparently failed because of a general lack of interest. The criminal division of the Allegheny County Common Pleas Court consists of fourteen judges with different backgrounds and philosophies, all of whom independently try criminal cases and impose sentences. The strategy of drawing upon fellow judges' experience and insight is left to individual initiative. If a consistent, rational sentencing policy evolves from this process, in any area, it is purely a matter of chance.

5. ALTERNATIVE APPROACHES TO REACHING SENTENCING DECISIONS

a. Introduction

The judges the Commission interviewed acknowledged that many of the criticisms set forth above focus upon important problems and raise serious questions concerning the role and approach of the judiciary in the area of illegal gambling. The Commission was encouraged by the judges to suggest alternative approaches to the problems and include them in this report. Accordingly, this section outlines some alternative approaches which the Commission believes merit careful consideration by the judiciary and the legislature.

b. Existing Alternatives

1. SENTENCING COUNCILS

Sentencing councils have been used by judges of the U.S. District Court for the Eastern District of Michigan for over ten years.³² Under this system, prior to rendering sentence, the trial judge meets with two other judges to discuss what he or she proposes to do. Each judge sitting on the panel has received and reviewed the pertinent information about the convicted defendant prior to the conference. At the conference, the sentencing judge indicates his or her proposed sentence and reasons therefore; if there is disagreement, discussion and debate follow, with the trial judge rendering the ultimate decision.

32. The practice has since been adopted in two other Federal Districts, the Eastern District of New York (Brooklyn, Long Island), and the Northern District of Illinois (Chicago). M. Frankel, *op. cit.*, p. 76.

In 1966, Chief Judge Theodore Levin reviewed the workings of the council, with many favorable comments.³³ He observed:

In approximately one out of every three cases each year the sentencing judge, during or after the meeting, reached a different conclusion from the one he had proposed at the beginning of the discussion. These instances of change include all eight members of this court, indicating that each judge has been receptive to the opinions of his colleagues.³⁴

Judge Levin also saw a positive impact on judicial attitudes:

The Council has tended to induce in the sentencing judge more objective and principled attitudes. His awareness that he must expose his thinking to the critical gaze of his colleagues persuades him to examine his own prejudices and motivations underlying his conclusions.³⁵

His conclusion about the procedure is particularly noteworthy:

As a direct result of our Sentencing Council, the sentence any defendant receives in the federal courthouse in Detroit depends must (sic) less than it did on the courtroom in which he happens by chance to find himself. *Regardless of the courtroom he enters, the defendant is more likely to receive a sentence which conforms to the goals of the correctional theory, for the sentencing council does not merely reduce disparity or inequitable treatment, it also tends to raise the quality of all sentencing.*³⁶

The American Bar Association, on the basis of a thorough study and report by its Advisory Committee on Sentencing and Review, recommended that the sentencing council procedure be employed "in as many cases as is practical."³⁷

2. SENTENCING PANELS

A sentencing panel is similar to a sentencing council, except that the panel, rather than the individual judge, is empowered to render a sentence. It would have the same attributes of reasoned discussion and analysis but would take the responsibility for the decision away from the individual judge.

3. ONE JUDGE SENTENCING ALL GAMBLING VIOLATORS

An approach taken by the New Jersey Supreme Court in 1967 toward minimizing disparity in the sentencing of gambling offenders was the issuance of an order to the state's trial courts that a single judge in each county should sentence gambling

33. Levin, *Toward a More Enlightened Sentencing Procedure*, 45 Neb. L. Rev. 499 (1966).

34. *Id.* at 506.

35. *Id.* at 505.

36. *Id.* at 509 (emphasis added).

37. ABA Standards, *Sentencing Alternatives and Procedures* 294, (Approved Draft, 1968).

offenders, regardless of the judge who heard the case.³⁸ This alternative could help eliminate disparities and inconsistencies in sentencing, particularly if the assigned judge remained the same for substantial periods of time and if he consciously strove to develop and apply rational policies. However, this procedure, taken alone, does not satisfy the need for a collective judgment on sentencing policies for gamblers.

4. PERMANENT OR ROTATING COURT OF SENTENCE APPEALS

A number of states have legislatively adopted appellate review of sentences as a method of increasing fairness and rationality in the sentencing process.³⁹ Some states have appointed tribunals specifically responsible for considering the severity of sentences; others have vested their appellate courts as a whole with the specific authority to alter sentences.⁴⁰ None of the statutes allow the state to initially appeal the sentence, but only provide this right to the defendant.⁴¹ However, a minority of five states do permit the state to seek and court to impose an increased sentence if the defendant does choose to appeal.⁴² The constitutionality of any procedure providing for an increased sentence is suspect as a violation of the defendant's rights against double jeopardy, particularly if the state could initiate the appeal.⁴³

38. *State v. DeStasio*, 49 N.J. 247, 254-55, 229 A.2d 636, 640 (1967). Acting pursuant to its administrative powers the New Jersey Supreme Court issued the following memorandum to the state's trial courts:

"The Supreme Court is of the view that it is essential for the fair and effective administration of criminal justice that judges in imposing sentences adhere to the same general policy in cases which may involve syndicated crime. Unfortunately, in gambling cases efforts to achieve such uniformity, even within the same county, have not been successful when sentences have been imposed by whatever judge happens to be sitting at the time. Accordingly, the Supreme Court considers it necessary to require that the Assignment Judge in each county either personally handle all sentencing in gambling cases or designate a particular judge to impose sentence in all such cases, even though the case may have been tried or the plea taken before another judge."

39. Alaska, Alas. Stat. Ann., §12.55.120 (1969); Arizona, Ariz. Rev. Stat. Ann., §13-1717 (1956); Connecticut, Conn. Gen. Stat. Ann., §§5194-196 (Supp. 1965); Florida, Fla. Stat. Ann., §932.52 (Supp. 1966); Hawaii, Hawaii Rev. Laws, §§212-14 (Supp. 1965); Illinois, Ill. Ann. Stat., C. 38, §121-9 (Smith-Hurd 1964); Iowa, Iowa Code Ann., §793.18 (1950); Maine, Me. Rev. Stat. Ann., tit. 15, §§2141-2144 (Supp. 1966); Maryland, Md. Ann. Code, Art. 26, §§132-138 (1966); Massachusetts, Mass. Gen. Laws Ann., C. 278, §§28A-28D (1959); Nebraska, Neb. Rev. Stat., §§29-2308 (1964); New York, N.Y. Code Crim. Proc., §§543, 746; Oregon, Ore. Rev. Stat., §§138.050, 168.090 (1963 Repl. Part).

40. Compare for example, Massachusetts with Nebraska.

41. In Alaska, the state may appeal to the Supreme Court on the ground that a sentence is too lenient; however, if the defendant has not also appealed, the court cannot increase the sentence but may only express its formal approval or disapproval.

42. Alaska, Connecticut, Maine, Maryland, Massachusetts.

43. In *Commonwealth v. Silverman*, 442 Pa. 211, 275 A.2d 308 (1971), the Pennsylvania Supreme Court addressed itself to the issue of whether "modification of a sentence imposed on a criminal defendant which increases punishment constitutes further or double jeopardy?" In that case, the trial judge reconsidered a sentence and increased it on the following day. In broad language the court held that "a modification of a sentence imposed on a criminal defendant which increases the punishment is double jeopardy, and we now so rule" (at 442 Pa. 217). In *Walsh v. Picard*, 446 F.2d 1209 (1st Cir. 1971), upholding the Massachusetts procedure providing for an increase in sentence if the defendant first appeals, the court stated, "the Massachusetts procedure does not permit the state to reopen the question of sentence on its own initiative. Were it to do so, it would of course violate the proscription against double jeopardy." All other courts considering the issue directly have also ruled that statutes providing for an increased sentence after appeal by the defendant do not violate rights protecting against double

The committees of the American Bar Association studying this proposal have been sharply split on the issue of whether an increased sentence should be permissible, although the ABA House of Delegates approved the procedure allowing for an increased sentence if the defendant appeals. The ABA did strongly recommend the adoption of an appellate review procedure for sentencing. See ABA Standards, *Appellate Review of Sentences* (Approved Draft, 1968).

5. ADMINISTRATIVE SENTENCING TRIBUNAL

The alternative of establishing administrative sentencing tribunals also claims numerous supporters and is used to a degree in California.⁴⁴ Under the California system the judge makes a decision as to probation, fine or commitment. If the decision is to commit the offender, a statutorily designated maximum term is set; the amount of the term actually served is then in the hands of the administrative authority.

Such an approach seems more like a transfer of sentencing problems than a solution to them. It may, however, merit serious exploration as a means of vesting the sentencing power in a tribunal which includes but is not limited to lawyers.⁴⁵

6. SPECIAL SENTENCING POLICY FOR GAMBLING OFFENDERS

In addition to changes in the procedure used in arriving at sentencing decisions, the courts can consider adopting uniform sentencing policies to be applied by individual judges. For example, the courts could uniformly call for presentence reports or could decide to uniformly increase the severity of imposed sentences for repeat offenders. These policies could be announced and subjected to public scrutiny.

Such an adoption of policy was approved a few years ago by the New Jersey Supreme Court in the case of *State v. Ivan*, 33 N.J. 197, 162 A.2d 851 (1960). That case involved an appeal from a sentence of one to two years and a \$5,000 fine for bookmaking. The defendant argued that the sentence should be overturned because the trial judge had a preconceived policy that gambling offenses merit this severe sentence without regard to the circumstances of the individual offender.

In affirming the sentence, the New Jersey Supreme Court placed great weight on the fact that the presentence report indicated that the defendant would not reveal the identity of his superiors in the operation. After noting the multitude of aims of the criminal law the court said:

...[I]f the crime is a calculated one and part of a widespread criminal skein, the needs of a society may dictate that the punishment more nearly

jeopardy. *Robinson v. Warden, Maryland House of Correction*, 455 F.2d 1172 (4th Cir. 1972); *Kohlfuss v. Warden of Connecticut State Prison*, 149 Conn. 692, 183 A.2d 626 (1962); *Hicks v. Commonwealth of Massachusetts*, 345 Mass. 89, 185 N. E.2d 739 (1962). Dealing with an analogous issue, the United States Supreme Court held that where a defendant has secured a reversal of a conviction, a sentence may be imposed upon retrial which is more severe than that imposed after the original conviction. *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). *Chaffin v. Stynchcombe*, 412 U.S. 17, 93 S.Ct. 1967, 36 L. Ed. 2d 714 (1973).

44. Cal. Pen. Code, §3000, 5078 (1964).

45. Cf. the proposal of Judge Marvin E. Frankel (U.S. Dist. Judge in the Southern District of New York) of a Sentencing Commission. M. Frankel, *Criminal Sentences*, op. cit.

fit the offense than the offender. There the sentencing judge may conclude he should give priority to punishment as a deterrence to others and as an aid to law enforcement.⁴⁶

The Court continued:

Here we are dealing with organized crime. The offense is in no sense an isolated excursion beyond the pale of the law induced by engulfing circumstances. It may be such as to the particular individual at the bar, and if he alone were implicated in the criminal operation, a judge might well deal with the other first offenders. But when the offense serves the interests of a widespread conspiracy, it would be a mistake to think of the defendant as an isolated figure. He is part and parcel of an enterprise.

* * *

Such is the scene a judge should see in dealing with an offense of this kind. He would be myopic if he saw no more than the defendant before him. As the trial court aptly observed, a fine would be a license fee for the operators—a minor experience in a lucrative venture. A racket cannot be curtailed if fronts and tools are easily available, and they will be unless the price is too high.⁴⁷

Finally, the court's approach to reconciling general sentencing policies with the need for careful consideration of the individual offender's circumstances merits quotation in full:

We find no illegality in the position of the trial court. More than that, we affirmatively agree with his exercise of his discretion. N.J.S. 2A:112-3, N.J.S.A. provides for a *minimum* fine of \$1,000 or a *minimum* jail sentence of one year or both. In requiring minimum punishment, the Legislature expressed a stern view of the criminal act itself. It wisely allowed some room for appraisal of individual cases. If the sentencing judge believes the gambling offense is isolated and involves but the defendant himself, he may deal with the offender at the lower end of the scale of punishment. But if the statutory prescription means anything, it must mean that if the crime is part of a larger operation, it merits stern treatment. The trial judge wisely coordinated that policy with the social gain in the redemption of the individual. He offered defendant a chance to make a clean breast of his associations. The offer had a dual purpose. It tested the capacity of defendant for rehabilitation by lesser punishment. It also sought to obtain for law enforcement officials the aid they need if they are to succeed in their exhausting efforts to stamp out syndicated crime or at least to hedge it in.⁴⁸

46. 162 A.2d at 853.

47. *Id.* at 854.

48. *Id.* at 854.

c. Attitude of the Interviewed Judges Toward Alternative Sentencing Practices

All of the Allegheny County judges interviewed for this report were highly receptive to the concept of revising and rationalizing existing sentencing procedures. In particular, a number of the judges viewed the sentencing council alternative as feasible and worthy of serious consideration. Several judges expressed doubts about sentencing panels, however, since they would invade the autonomy of individual judges. Further, if decisions by a sentencing panel were a formal requirement they could become too time consuming in the judges' views. Two of the judges, Clarke and Smith, reacted favorably to the suggestion of having a single judge sentence all gambling cases for a specific period of time, while others argued for a more collective approach.

The need for reform in sentencing has previously been recognized by several of the judges, and some discussions of it have taken place, although they were inconclusive. For example, Judge O'Brien and Judge Strauss recalled that they had once attempted unsuccessfully to get the judges to reach some agreement on consistent sentencing in gambling cases. Judge O'Brien indicated that in his view the following sentence schedule might work: (1) first offense—maximum fine; (2) second offense—probation; (3) third offense—jail.

Although there appears to be agreement on the need for some sort of reform, there is not unanimity among the judges as to the solution. For example, Judge Strauss stated that if the courts cannot arrive at a consistent and rational sentencing policy for gamblers he might look favorably upon a legislatively mandated system of graduated fines for gambling violators. Judge Harper strenuously disagreed with this suggestion. In his opinion it is absolutely essential for a judge to have considerable discretion in imposing a sentence if society is at all concerned about justice in each case.

d. The Power to Institute Reform

The Commission has analyzed the above described alternatives for sentencing in order to determine which of them might be implemented by the Court of Common Pleas and which would require action by either the Pennsylvania Supreme Court or the State Legislature.

The Pennsylvania Supreme Court is empowered by the Constitution "to prescribe general rules governing practice, procedure, and the conduct of all courts."⁴⁹ Pursuant to this authority the Supreme Court has adopted a comprehensive set of procedural rules pertaining to the conduct of criminal cases. Rule 1401 provides that:

... the judge who presided at the trial or who received the plea of guilty or nolo contendere shall impose sentence unless there are extraordinary circumstances which preclude his presence.

This rule is a codification of its own earlier decisions, particularly *Commonwealth v. Thompson*,⁵⁰ in which the court stated that:

The parties to the litigation, which includes the Commonwealth, ordinar-

49. Pa. Const. Art. 5, §10(c).

50. 328 Pa. 31, 195 A. 115, 114 A.L.R. 432 (1937).

ily possess an undoubted right to have the judge who heard the evidence and witnessed all that took place in the courtroom, help to...impose sentence. The sentencing or suspension thereof of a person convicted of crime is a judicial act of serious import in the administration of justice, and can only be performed by the judge who tries the case, except in cases of imperative necessity. . . . In no event should substitution or replacement after verdict ever be permitted except under unavoidable circumstances, such as sickness, impossibility to act, or other substantial cause which would make the continuance of the trial judge's presence impossible.⁵¹

The court felt that a trial judge possesses intimate knowledge of the case and the defendant which would be lost by his removal.

The *sentencing council* is not inconsistent with Rule 1401 and decisions of the Supreme Court regarding sentencing, for the trial judge retains the full, unfettered right to impose sentence. The courts of common pleas in the Commonwealth are empowered to adopt "local rules for the conduct of their business which are not inconsistent or in conflict with general rules prescribed by the Pennsylvania Supreme Court." 17 P.S. §62; Pa. Rules Crim. Proc. 1(b). Pursuant to this power, the Allegheny County Court of Common Pleas could adopt the *sentencing council* procedure.

However, it would appear that the procedures of *sentencing panels* and the *designation of one judge to sentence all gambling violators* would require a directive of the Supreme Court. In the *Thompson* case, *supra*, the court made clear that there was no constitutional, statutory or decisional impediment to the Supreme Court allowing judges other than the trial judge to impose sentences.⁵² There would be no conflict with Rule 1401 if the local court adopted a policy in which one judge tried and sentenced all defendants charged with gambling offenses.

The judges of the Common Pleas Court could collectively enunciate the policies which they planned to individually apply in the sentencing of gambling violators. However, in light of the Supreme Court pronouncements on sentencing by the trial judge, it is doubtful that these policies could be internally enforceable by the President Judge of the Common Pleas Court without the approval of the Supreme Court.

It appears that establishment of an appellate review procedure for sentencing is a legislative matter, beyond the authority of the Supreme Court to implement. The Court's powers are restricted by the Constitution which prohibits it from modifying "the substantive rights of any litigant" or affecting "the right of the General Assembly to determine the jurisdiction of any court." Pa. Const. Art. 5, §10(c). The establishment of administrative sentencing tribunals would also require legislative action.

51. See also, *Commonwealth v. Zeger*, 200 Pa. Super. 92, 186 A.2d 922 (1962).

52. "...statutory and decisional authority permits substitution to take place in a criminal case subsequent to the receipt of the verdict for the purpose of hearing motions and passing sentence, in the absence of any likelihood of prejudice to the defendant. . . ." (at 328 Pa. 30-31). See also *Freeman v. United States*, 227 F. 732 (2d Cir. 1915), which analyzes in great historical depth the rights of a defendant to have the same judge preside at all trial and post-verdict stages; *People v. Bork*, 96 N.Y. 188 (1884); Anno. "Substitution of Judge in Criminal Case," 114 A. L. 435 (1938).

6. RECOMMENDATIONS

a. The Allegheny County Judiciary

In this study the Commission has attempted to highlight the complex problems confronting the judiciary in arriving at a fair sentence in individual gambling cases and to illustrate the results of individual sentencing decisions under the existing system. In each case, judges are confronted with the problems of balancing the basic public apathy towards gambling, the state's implicit sanctioning of gambling through the lottery, and the nature of the average convicted gambling defendant against the need to deter illegal gambling because of its serious impact on organized crime and corruption. The difficulty of these individual decisions and the erratic patterns which have emerged indicate that there is considerable room for improvement in the sentencing process and a need to institute certain changes to improve the court's overall effectiveness.

The court's information gathering process concerning defendants is haphazard and inadequate. At a minimum, the use of presentence reports should be increased and the court should give consideration to other, more formalized methods of gathering material facts about the defendant. Such factors as the number of prior gambling convictions, whether the defendant is on probation at the time of his sentence, and the defendant's position in the gambling hierarchy, should be given great weight in arriving at the sentence. There appears to be no justification for the consistent pattern of fluctuating sentences uncovered in this report. Sentences should increase in severity for those individuals who have made a career of flaunting the law.

It is evident from many of the comments of the judges that there is a need for the court to collectively adopt and apply goals in the sentencing of convicted gambling defendants. The Commission has discussed a variety of approaches which have been used with success by federal and other state courts to achieve this. The common premise of each of these approaches is that rationality and consistency in sentencing is promoted if the sentencing judge is required to articulate the reasoning underlying his decision, and subject that decision to the scrutiny and criticism of his fellow judges. Adoption of any of them would be a significant step forward.

The Commission believes that the judges in the Allegheny County court ought to consider the approach which seems to them to be most feasible in light of the purposes of the gambling statute and the available resources. It should either adopt, if possible, or advocate to the Supreme Court or legislature, if necessary, the best approach. Whatever approach is adopted in the gambling area may be considered to be an experiment which would provide useful information on whether the approach selected could be useful in all criminal cases.

b. The District Attorney

This study has revealed that a major problem the judiciary faces in gambling cases is the lack of probative evidence linking defendants to organized crime above the lowest levels. Many of the judges rightfully asserted that there is something wrong and unjust with a system that arrests and prosecutes the lowest ranking members of a gambling operation and leaves the real managers and beneficiaries of the illegal operation untouched.

The Commission strongly recommends that the office of the District Attorney

of Allegheny County work closely with local law enforcement officials towards arresting and prosecuting the higher echelon members of organized gambling syndicates. In addition, the District Attorney could begin to collect and present to the court probative evidence regarding particular defendants' relationships to criminal syndicates, convene a special grand jury to investigate organized gambling syndicates in the County, and seek grants of immunity for and provide protection to lower echelon criminal figures who supply law enforcement officials with material information concerning illegal gambling operations. This type of concerted approach has been used effectively by federal prosecutors in Allegheny County. Since the district attorney has substantially the same powers as the federal prosecutor and since the state gambling laws are often easier to enforce than the federal laws, there is no reason why the district attorney cannot achieve similar successes.

c. The Pennsylvania State Legislature

This report, as well as three previous Commission reports, reveals the overwhelming problems which have permeated the criminal justice system in its attempts to deal with illegal gambling. The sentences given by the judiciary to gambling defendants and the difficulty of developing and applying rational sentencing policies further serve to highlight the need for the State Legislature to consider new approaches and alternatives to the gambling problem. Trying to cope with illegal gambling through the criminal laws has, to date, been an abysmal failure, and a boon to organized crime and corruption.

The existence of such overwhelming problems in enforcing prohibitions against certain types of conduct, including gambling, makes it debatable whether the criminal law could control them even if both law enforcement and the judiciary solve their respective problems and work harmoniously toward common goals. Moreover, the gambling laws have been on the books for many years, and the losses in attempting to enforce them seem to have consistently been far greater than the gains. At some point, society must make a judgment whether it will continue incurring substantial moral, political, and social costs or turn to alternative approaches to the problem. It must philosophically debate whether it should react with tighter criminal prohibitions or shift to control through civil regulation.

In its report on *Police Corruption and the Quality of Law Enforcement in Philadelphia*, the Crime Commission has recommended that gambling and other vice laws be reevaluated and revised with serious consideration given to decriminalization. Specifically, it said:

"Legislative"

Vice Laws: Many studies, e.g., Morris and Hawkins, *The Honest Politician's Guide to Crime Control* (1970), and James F. Ahern, *Police in Trouble* (1972), have concluded that the criminal law cannot enforce a moral code to which society is not willing to subscribe. The Commission believes that it is now time for the Pennsylvania Legislature to reconsider the vice areas. In the reevaluation, the costs to society in terms of integrity problems and law enforcement corruption should be weighed. There may be other competing values which outweigh or cause some compromise in the legislative approach to dealing with integrity problems in government.

However, the Commission feels it is important to understand the costs of these competing interests in terms of integrity in government. For example, present efforts to combat victimless crimes are totally ineffectual and supply the underpinning for systematic police corruption. Consequently, the Commission recommends that it is inappropriate to utilize our police to enforce most vice laws, with narcotics being an exception to this view. This is not a mere assertion that simple legalization is the answer. On the contrary, the Commission recommends the use of different methods of regulation supported in some areas by criminal sanctions. However, the police should not be charged with this regulatory or criminal enforcement responsibility. The immediate response may be that the Commission has only changed the identities of who is corrupt. To some extent that may be so; but by removing the source of most corruption from police departments, police departments could concentrate their efforts to protect society from physical violence and other agencies of government, such as the recommended Office of Special Prosecutor, could be charged with the anti-corruption responsibility. The Commission believes that such a change would materially improve the quality of government in the urban community.

Gambling: If progress in reducing police corruption is considered a primary goal by the General Assembly, the present policy of regulating gambling through the criminal laws and the police should be re-evaluated and revised. Gambling should be regulated by the state. Fraudulent gambling practices should be criminal, and disobeying the appropriate state regulations should also be punishable. The state regulation should consist, however, primarily of taxing gambling proceeds, so that organized crime's greatest source of revenue will be significantly reduced, if not eliminated. Gambling profits should be utilized for the benefit of society as a whole. Police should not be involved in the enforcement of the state civil regulation of gambling.⁵³

Implementation of these recommendations appears to be even more imperative in light of the facts uncovered in this report. The costs of corruption combined with the waste of law enforcement and judicial resources are overwhelming.

53. Pennsylvania Crime Commission, *Police Corruption and the Quality of Law Enforcement in Philadelphia* (1974), pp. 826-827.

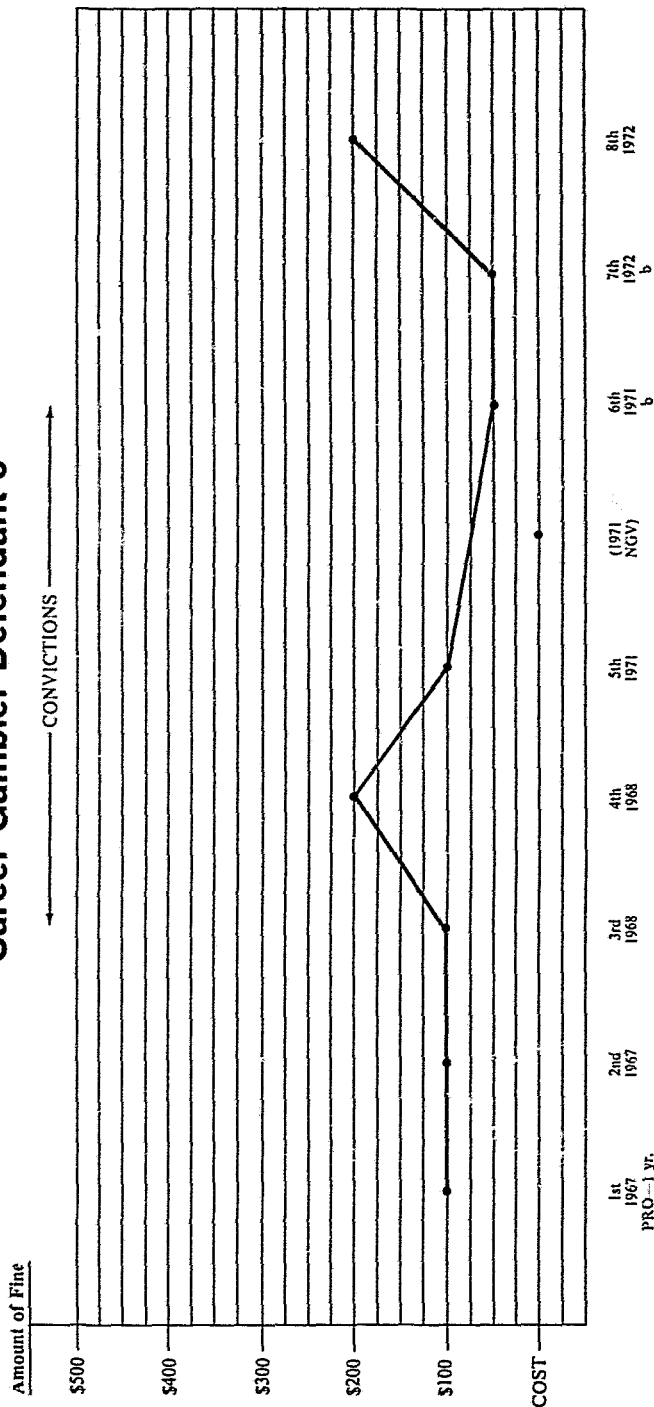
APPENDIX A

Chart D-5

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 5



a. Case involves one other lottery arrest in 1972 which resulted in a not guilty verdict.
b. or ninety (90) days.

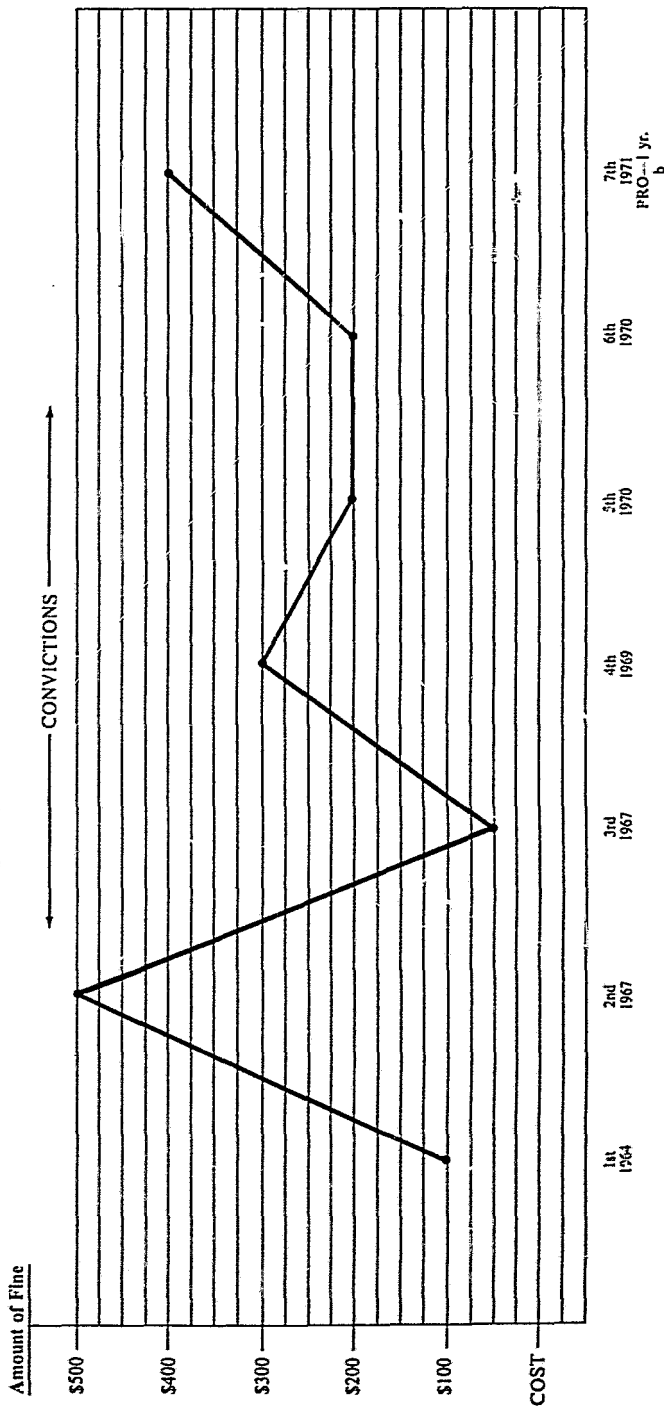
KEY: SS = Sentence Suspended
PRO = Probation
NGV = Not Guilty, Volunteered to Pay Cost

Chart D-6

Four (4) or More Prior Convictions

Sample Case Study ^a

Career Gambler Defendant 6



a. Case involves two other lottery arrests, one in 1968, which resulted in not guilty verdicts.
b. Sentenced in 1972.

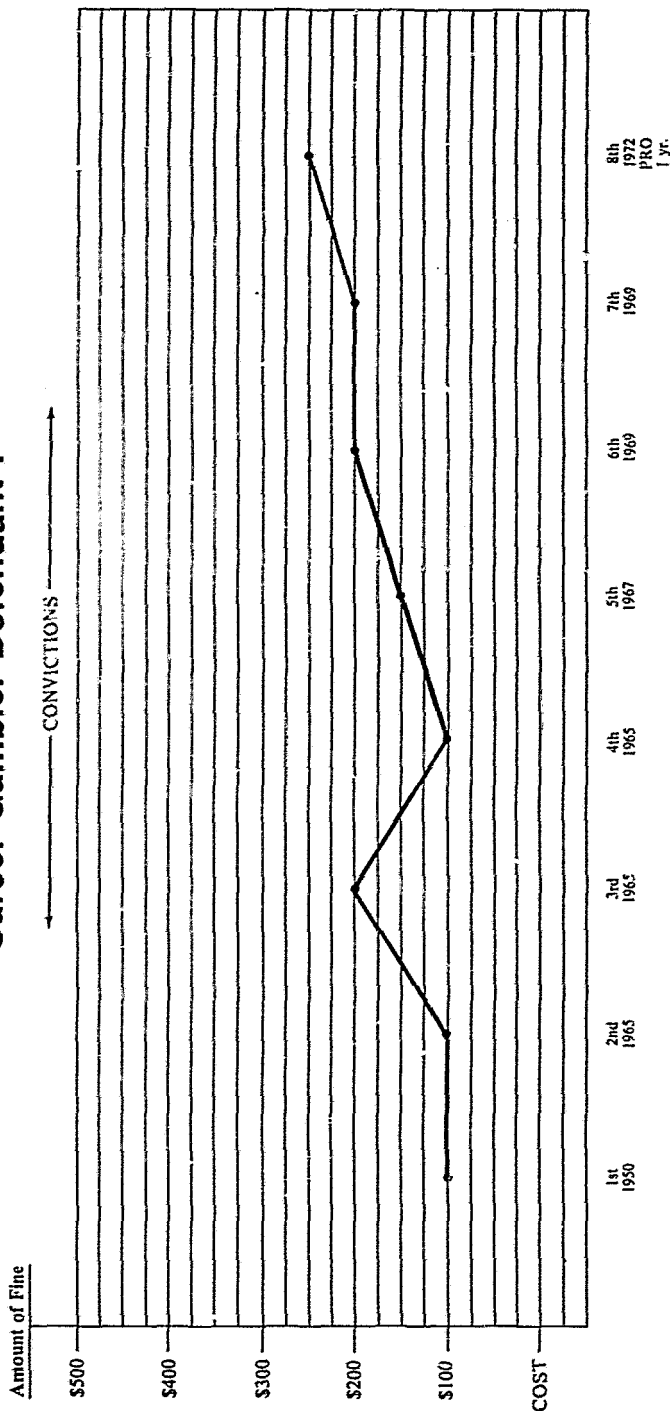
KEY: SS = Sentence Suspended
PRO = Probation

Chart D-7

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 7



a. Case involves one other lottery arrest in 1955 which resulted in a not guilty verdict.

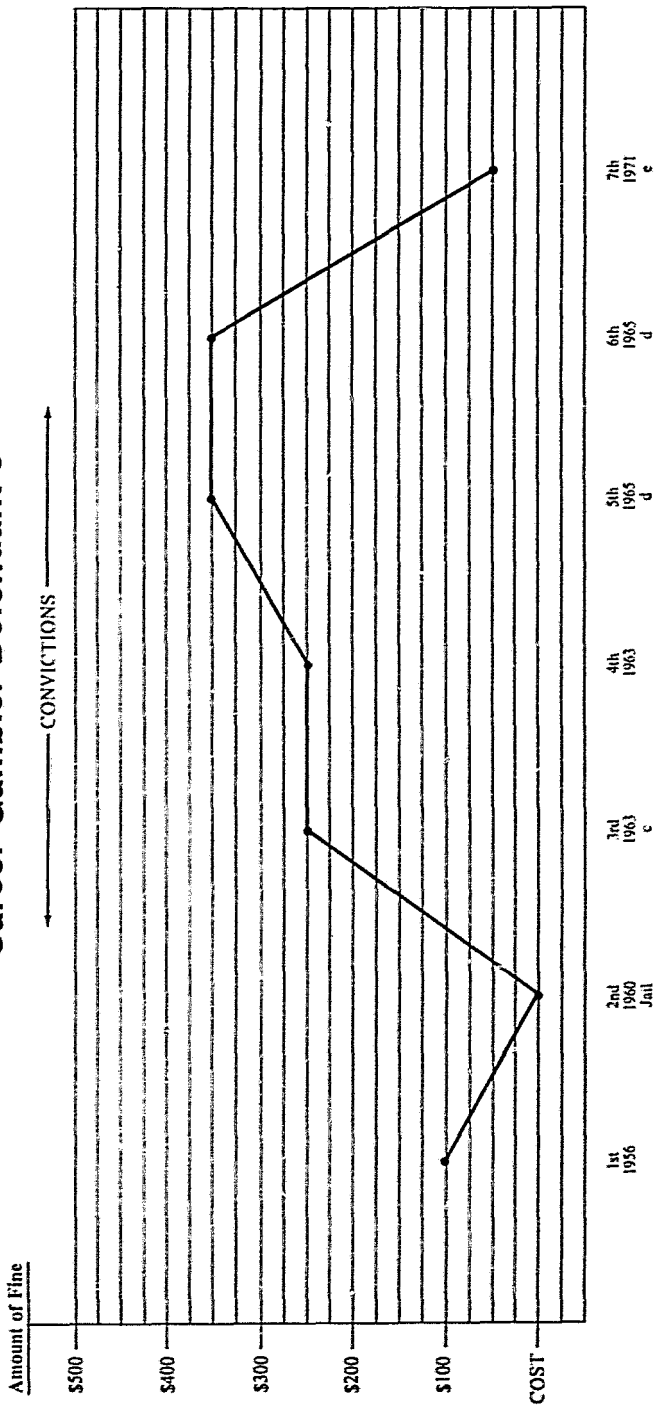
KEY: SS = Sentence Suspended
PRO = Probation

Chart D-8

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 8



- a. Case involves one other lottery arrest in 1963 which resulted in a not guilty verdict.
- b. 3-6 month sentence.
- c. Paid 1/4 costs.
- d. or 6 months.
- e. Sentenced in November, 1972.

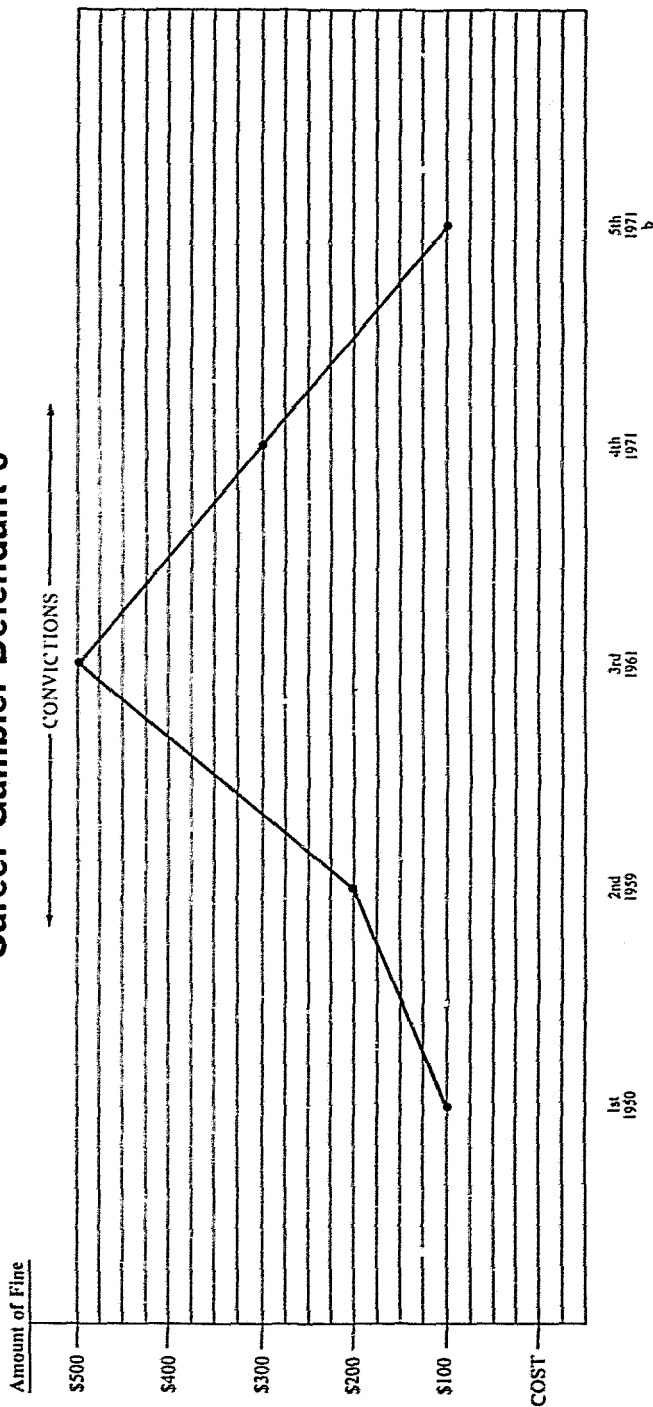
KEY: SS = Sentence Suspended
R = on

Chart D-9

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 9



a. Case involves two arrests for crimes other than lottery violations.

b. Sentenced in January, 1972.

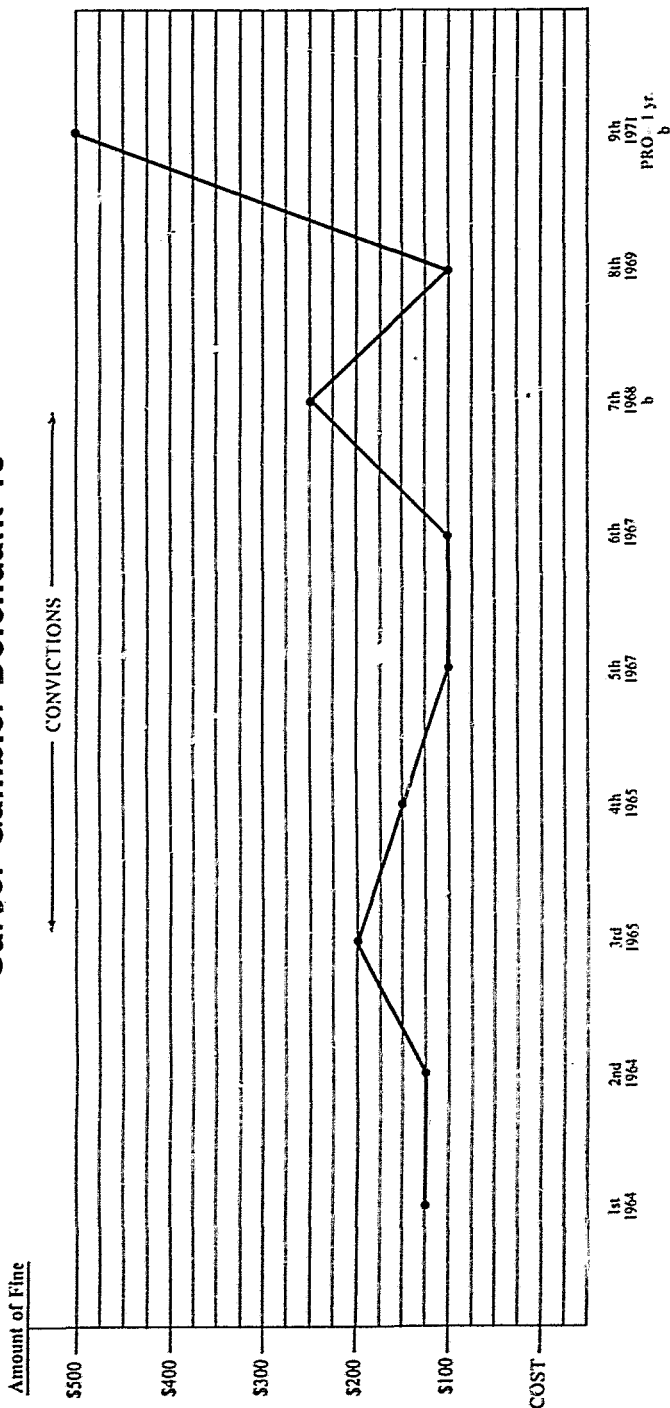
KEY: SS = Sentence Suspended
PRO = Probation

Chart D-10

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 10



a. or 30 days.
b. Sentenced in March, 1972.

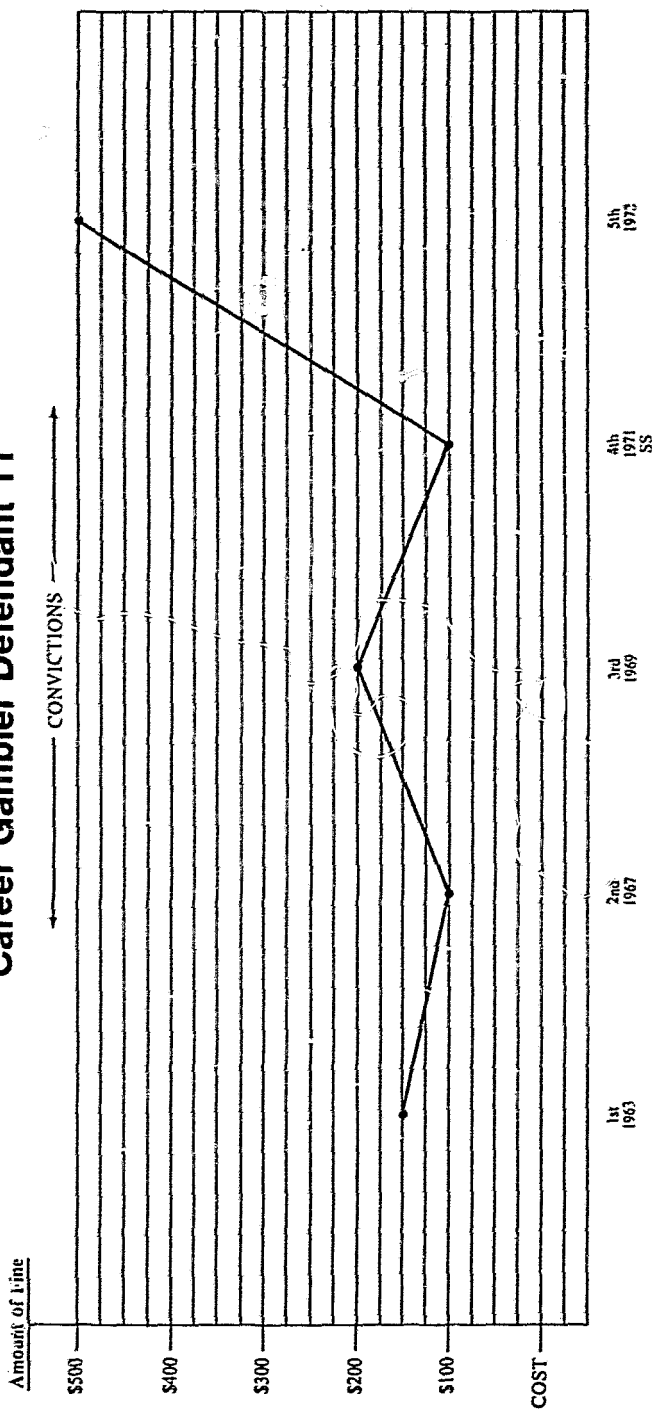
KEY: SS = Sentence Suspended
PRO = Probation

Chart D-11

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 11



a. Case involves two other lottery arrests in 1948 and 1960 which resulted in not guilty verdicts.

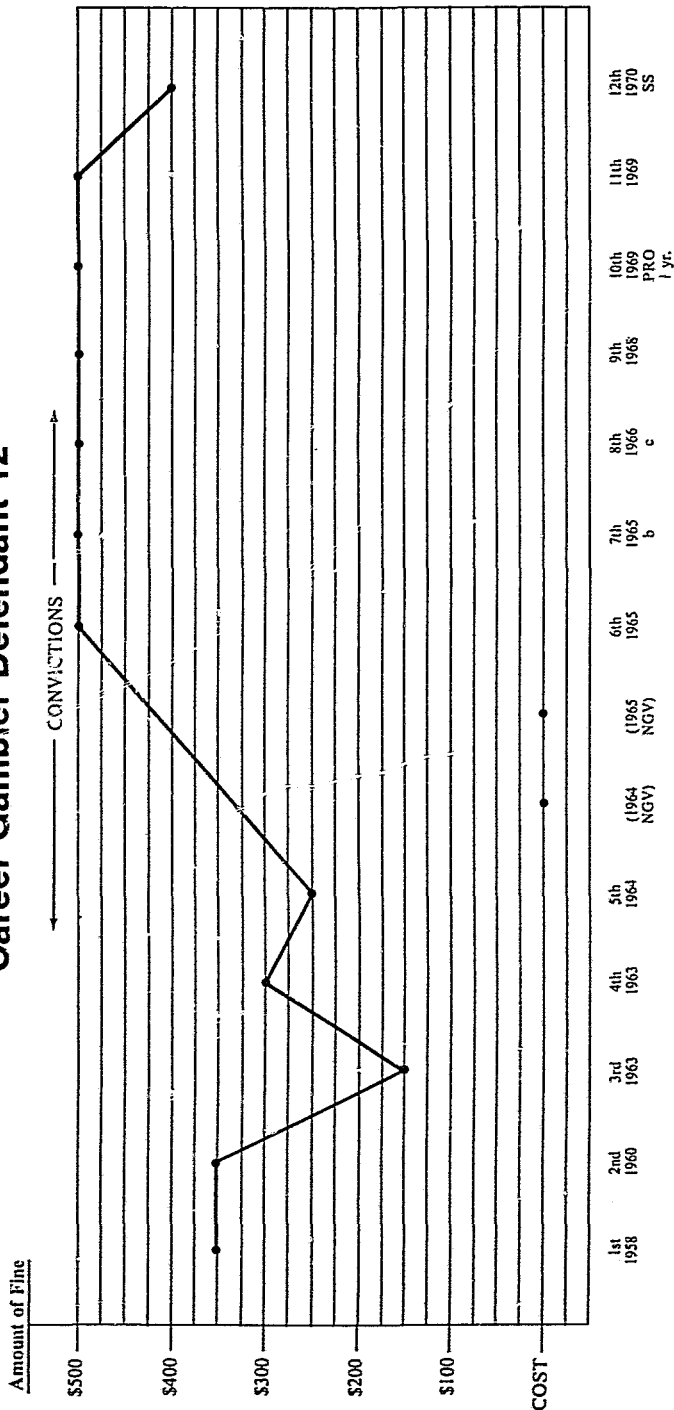
KEY: SS = Sentence Suspended
PRO = Probation

Chart D-12

Four (4) or More Prior Convictions

Sample Case Study^a

Career Gambler Defendant 12



a. Case involves three other lottery arrests in 1955, 1965, and 1970 which did not result in convictions.
 b. or 30 days.
 c. or 3-6 months.

KEY: SS = Sentence Suspended
 PRO = Probation
 NGV = Not Guilty, Volunteered To Pay Cost

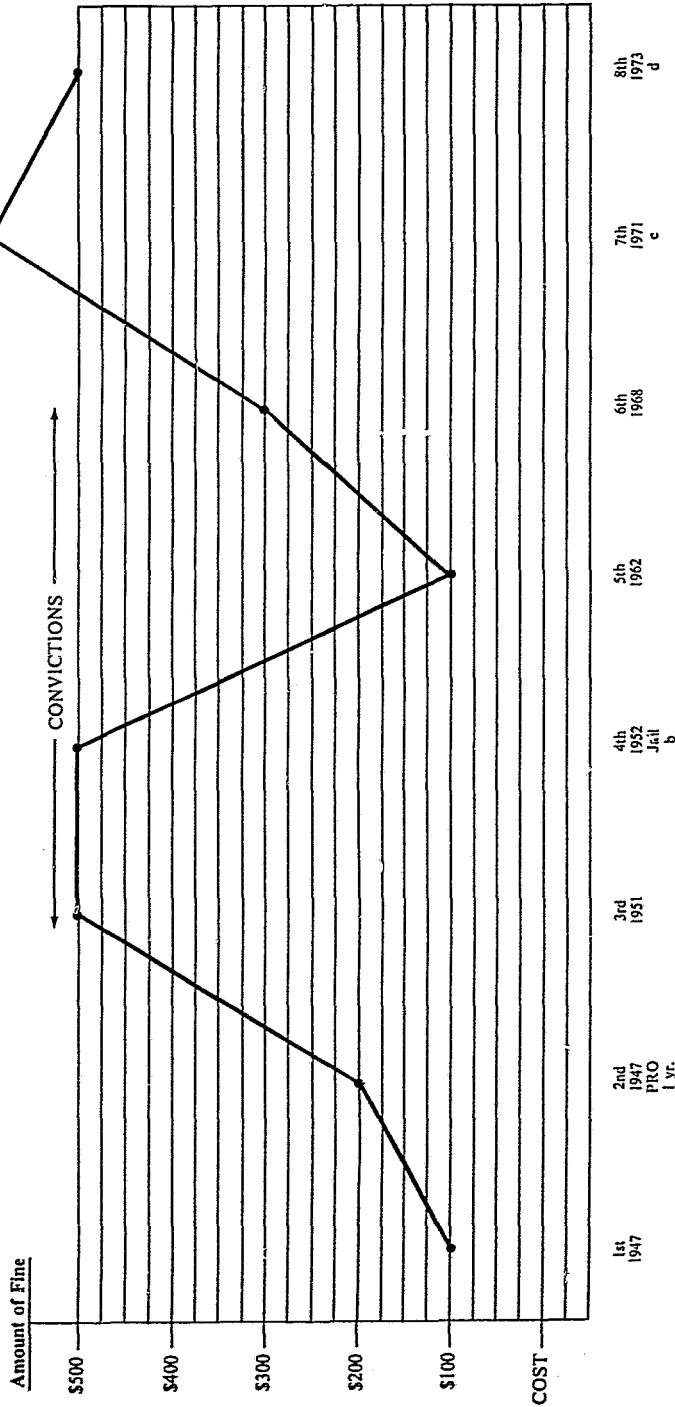
APPENDIX B

Chart I-5

Four (4) or More Prior Convictions

Sample Case Study

Career Gambler Defendant I-5^a



- Case involves 5 other gambling arrests in 1947, 1955, 1958, and 2 in 1974, which did not result in convictions; also, one conviction in 1968 on an unrelated charge.
- Sentenced on 6/23/52 to 90-180 days jail; on 7/17/52, changed to 6 months probation.
- Involved more than one count.
- Assessed 1/2 costs.

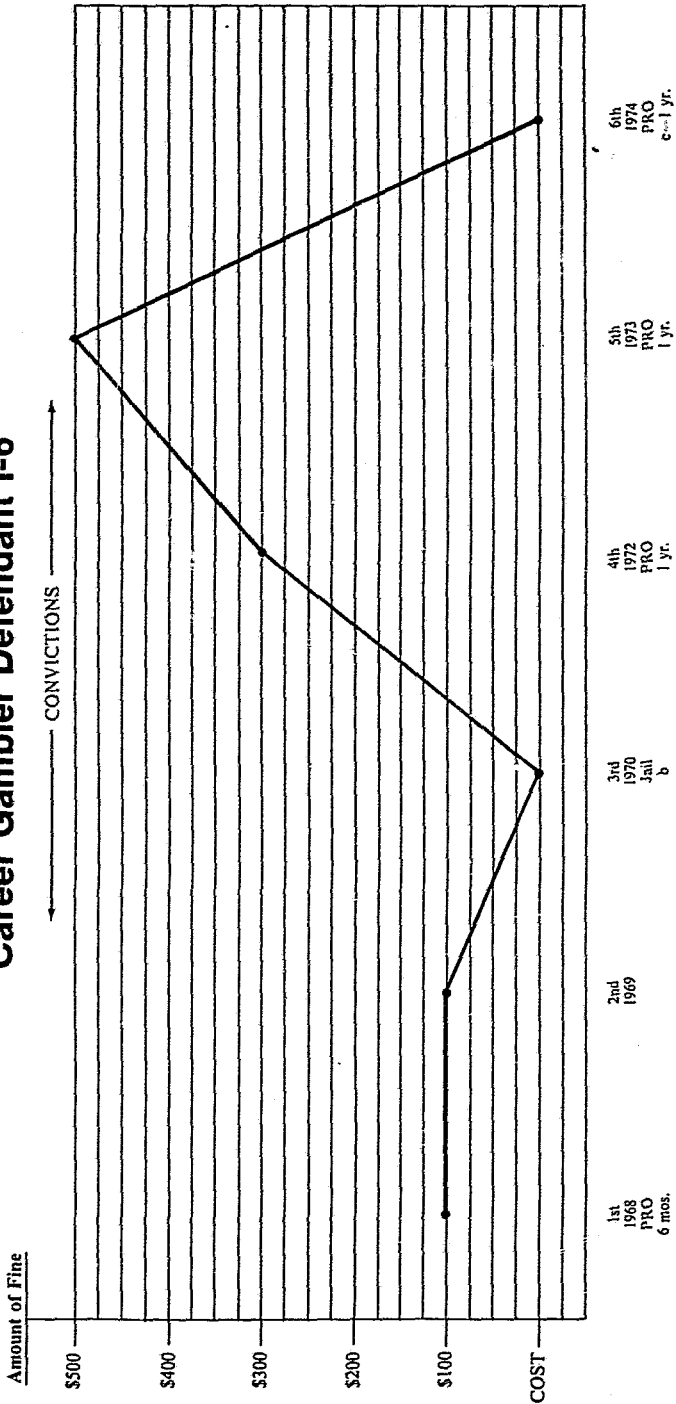
KEY: SS = Sentence Suspended
PRO = Probation

Chart I-6

Four (4) or More Prior Convictions

Sample Case Study

Career Gambler Defendant I-6^a



- a. Case involves 2 other arrests for gambling in 1951 and 1969 which did not result in convictions; also, 6 arrests for other unrelated charges, only 2 of which resulted in convictions.
- b. Costs and 10 days jail.
- c. Sentenced to 1 yr. probation, no fine, and County to pay costs.

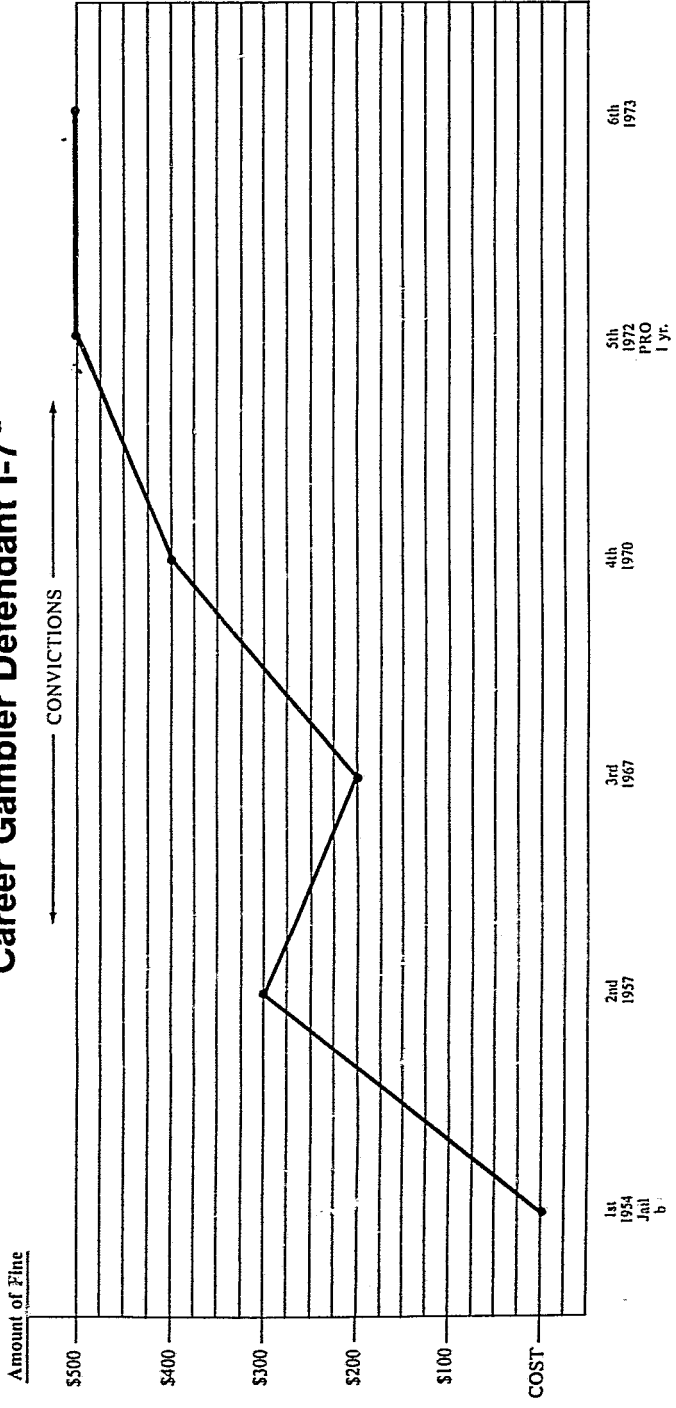
KEY: SS = Sentence Suspended
PRO = Probation

Chart I-7

Four (4) or More Prior Convictions

Sample Case Study

Career Gambler Defendant I-7^a



a. Case involves one other conviction in 1971 for unrelated charge.
 b. On 1/16/56 sentenced to 2-12 months jail; paroled on 3/26/56.

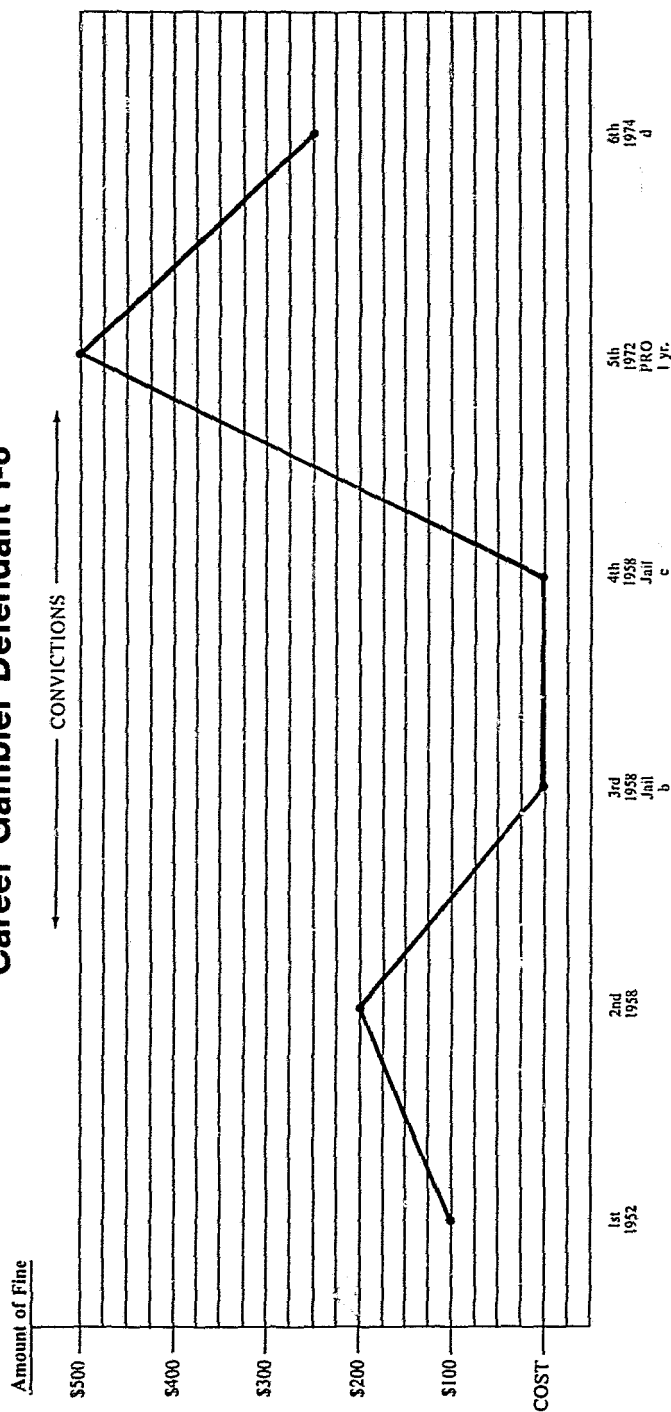
KEY: SS = Sentence Suspended
 PRO = Probation

Chart I-8

Four (4) or More Prior Convictions

Sample Case Study

Career Gambler Defendant I-8^a



- Case involves one other gambling arrest in 1958 which did not result in conviction.
- Costs and 3 months jail on 4/12/60; on 5/20/60, paroled.
- Costs and 3 months jail—concurrent to 3rd conviction sentence.
- Two gambling charges still pending as of April 30, 1974.

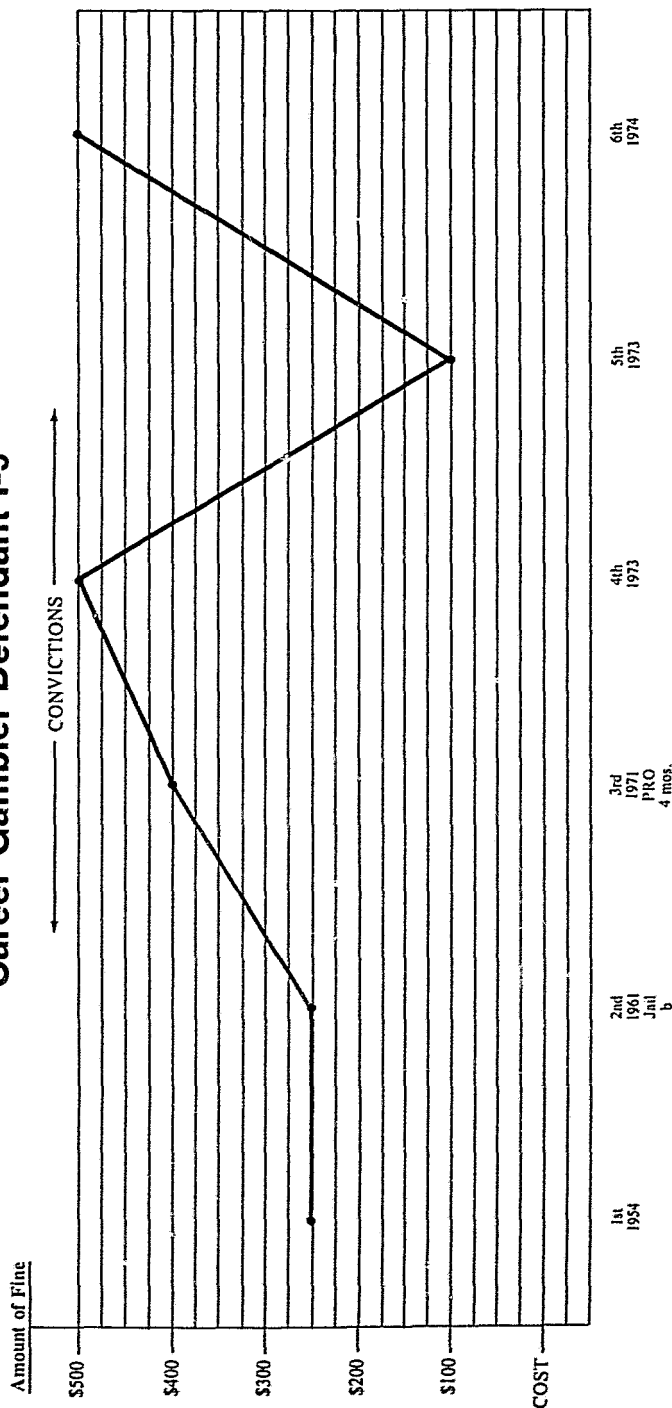
KEY: SS = Sentence Suspended
PRO = Probation

Chart I-9

Four (4) or More Prior Convictions

Sample Case Study

Career Gambler Defendant I-9^a



a. Case includes one other arrest for gambling in 1956 which did not result in conviction.
 b. Sentenced to 4 months jail.

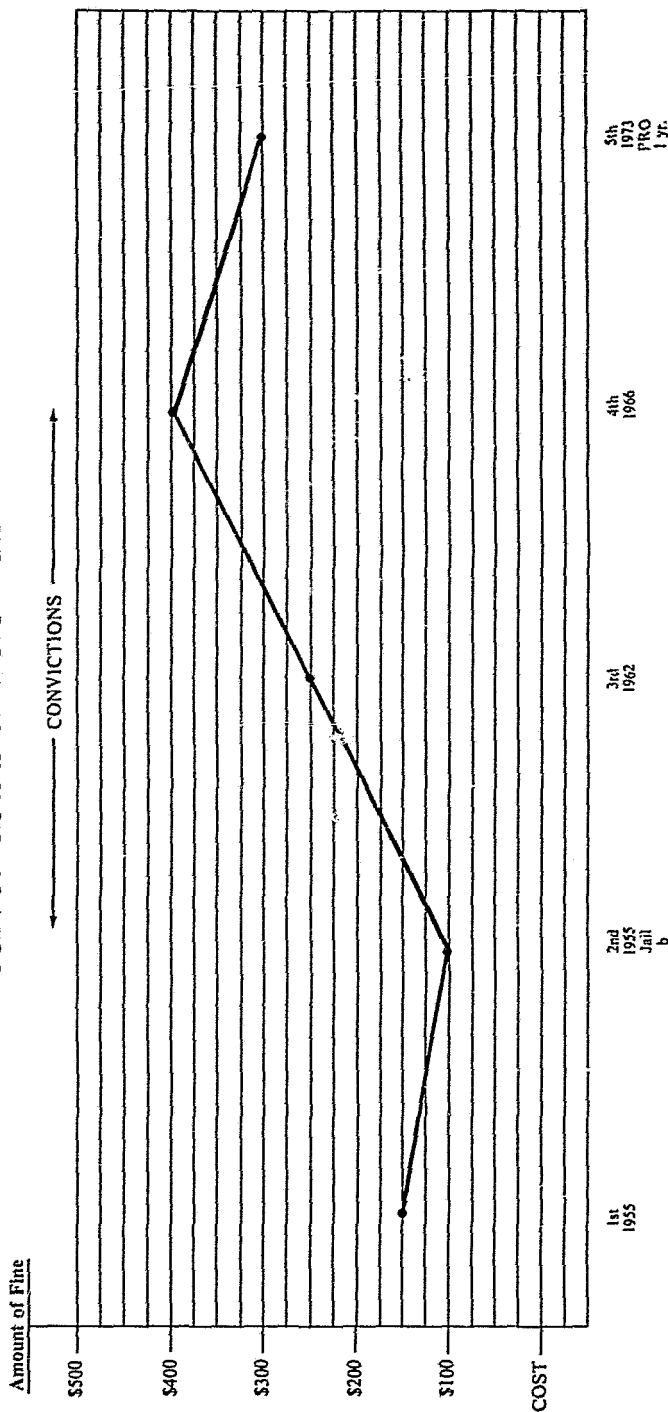
KEY: SS = Sentence Suspended
 PRO = Probation

Chart I-10

Four (4) or More Prior Convictions

Sample Case Study

Career Gambler Defendant I-10^a



a. Involves 2 other arrests for unrelated charges which did not result in convictions.

b. Sentenced on 1/25/57 to 1-2 months jail; on 2/23/57, released.

KEY: SS = Sentence Suspended
PRO = Probation

APPENDIX C

Giaccio v. State of Pennsylvania, 382 U.S. 399 (1966), casts considerable doubt on the legality of the procedure of imposing costs on an acquitted defendant. In that case, a jury acquitted a defendant of wantonly discharging a firearm at another person but imposed costs on the defendant pursuant to the authority of 19 P.S. §1222 [Act of March 31, 1860, Pub. L. 427, §62]. In invalidating this procedure as violative of due process, the United States Supreme Court stated:

... The Act, without imposing a single condition, limitation or contingency on a jury which has acquitted a defendant simply says the jurors "shall determine, by their verdict, whether *** the defendant shall pay the costs" whereupon the trial judge is told he "shall forthwith pass sentence to that effect, and order him [defendant] to be committed to the jail of the county" there to remain until he either pays or gives security for the costs. Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce. This state Act as written does not even begin to meet this constitutional requirement. 382 U.S. at 403.

The Supreme Court also rejected the argument that Pennsylvania case law provided sufficient legal standards for the jury to impose costs on an acquitted defendant.

Pennsylvania case law makes it clear that the court retains supervisory power over the conduct of the jury. This power has been specifically defined to include the correction of the improper imposition of costs on a defendant by a jury (*Commonwealth v. Shaffer*, 52 Pa. Super., 230 (1966); *Commonwealth v. Sezawich*, 26 Wash. Co. 54 (1946)). It would appear that this supervisory power is limited to correcting jury abuses and cannot be used under the rationale of *Giaccio*, *supra*, to impose costs on an acquitted defendant where there are no legal standards:

... [A] law fails to meet the requirements of due process if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves *judges* or jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case. (emphasis added) 382 U.S. 399, 402-403 (1966)

Liability for costs in criminal cases is entirely dependent on statutory regulation (*Commonwealth v. Mobley*, 40 D.&C. 311, 50 Dauph. 113 (1941)). The Pennsylvania Legislature has not amended the statute to provide the required standards. There thus seems to be no statute which specifically authorizes a court in a non-jury trial of a misdemeanor case to impose costs on an acquitted defendant. 19 P.S. §22, entitled *Discharge; assessment of costs*, authorizes an alderman, justice of the peace or magistrate to assess costs against a defendant charged with assault when the charges have been dismissed. But this statute has been held unconstitutional on other grounds (*Commonwealth v. Davis*, 54 Luz. L. Reg. 285 (1965); *Commonwealth v. Bossler*, 29D.R. 171 (1920)).

APPENDIX D

The Corrupt Organizations Act of 1970, Act of December 8, 1970, P. L. —, 18 P.S. §911, as amended, contains the following findings of fact.

"The General Assembly finds that:

- (1) Organized Crime is a highly sophisticated, diversified, and widespread phenomenon which annually drains billions of dollars from the national economy by various patterns of unlawful conduct, including the illegal use of force, fraud, and corruption;
- (2) Organized Crime exists on a large scale within the Commonwealth of Pennsylvania engaging in the same patterns of unlawful conduct which characterize its activities nationally;
- (3) The vast amounts of money and power accumulated by organized crime are increasingly used to infiltrate and corrupt legitimate businesses operating within the Commonwealth, together with all of the techniques of violence, intimidation and other forms of unlawful conduct through which such money and power are derived;
- (4) In furtherance of such infiltration and corruption, organized crime utilizes and applies to its unlawful purposes laws of the Commonwealth of Pennsylvania conferring and relating to the privilege of engaging in various types of business and designed to insure that such businesses are conducted in furtherance of the public interest and the general economic welfare of the Commonwealth;
- (5) Such infiltration and corruption provide an outlet for illegally obtained capital, harm innocent investors, entrepreneurs, merchants and consumers, interfere with free competition and thereby constitute a substantial danger to the economic and general welfare of the Commonwealth of Pennsylvania; and
- (6) In order to successfully resist and eliminate this situation, it is necessary to provide new remedies and procedures."

The "Corrupt Organizations Act" makes it unlawful for any individual who has received income from a "pattern of racketeering activity" to invest that income in the acquisition or the operation of any legitimate enterprise. The legislature defined "racketeering activity" to include, *inter alia*, illegal gambling activities.

IV. Absentee Voting Irregularities in Delaware County

1. ORIGIN OF THE INVESTIGATION

Following the May 1974 primary elections, the Pennsylvania Crime Commission received a number of citizen complaints alleging voting fraud in the City of Chester, Delaware County. An extensive preliminary inquiry was conducted to determine whether a full-scale Commission investigation was warranted. The inquiry consisted of an examination of the voting machines, voters' certificates and numerous voter interviews. While several possible violations of the election laws were indicated, it did not appear to the Commission at that time that these violations were sufficiently systematic or widespread to justify a full Commission investigation.¹

The problem of voting irregularities in Delaware County again came to the Commission's attention in the May 1975 primary elections. A resident of Ridley Township, Delaware County, complained that a township committeewoman had violated several provisions of the Election Code relating to absentee ballots. The Commission investigated the complaint and decided to discuss its findings with the Delaware County District Attorney. That office reviewed the information supplied by the Commission and concluded that prosecution of the committeewoman was not warranted. The Commission continued its investigation and found evidence to indicate that many irregular activities were occurring in the casting of absentee ballots in the county and that political workers were involved in these activities.

As a result of the Crime Commission's Ridley Township investigation, the Attorney General of the Commonwealth sent a letter to the Delaware County Board of Elections. In this letter, the Attorney General noted that the violations uncovered by the Crime Commission reflected a serious disregard by the committeewoman in question and other political workers of the proscribed procedures to be followed in the absentee ballot system. He urged the Board of Elections to institute strict controls over the distribution of both the absentee ballot applications and the absentee ballots themselves, stating that only through tighter administration of the absentee voting laws may voters be protected against efforts to improperly influence the electoral process.

This notice from the Attorney General to the Delaware County Board of Elections clearly detailed the need for strict compliance with the laws. Thus, it was with much concern that the Crime Commission received further citizen complaints regarding absentee ballot procedures during the November 1975 general elections.

1. See Pennsylvania Crime Commission 1973-74 Report, pp. 87-90.

2. SCOPE OF THE INVESTIGATION

The Crime Commission, pursuant to Resolution dated November 20, 1975, launched an investigation to determine the extent of any persistent absentee ballot procedure violations in Delaware County, the role and responsibilities of the Board of Elections in regard to these violations, and any other apparent irregularities in voting procedures generally. Since the greater number of complaints emanated from citizens of the City of Chester, the Commission focused on that general geographic area to provide a microcosmic analysis of the voting problems in the County as a whole.

3. ABSENTEE VOTING—A PERSPECTIVE

Citizen participation in elections on as wide a scale as possible is so well recognized an element of representative government that all states, though varying in degree, have made a form of absentee voting possible for those unable to be at their regular voting places on election day.²

Although many of the problems involved in keeping the secrecy of the ballot intact were alleviated with the advent of the voting machine, the absentee ballot continues to represent an extraordinary procedure where secrecy is difficult to ensure. The safeguards of normal voting procedures are diminished, leaving the absentee ballot open to potential violations.

In an attempt to balance the goals of universality of suffrage and protection against fraud, the Pennsylvania legislature enacted a detailed absentee voting statute.³ The statute is quite liberal in terms of encouraging the use of the franchise, but requires strict adherence to its provisions in order to maintain the secrecy of the ballot.

a. Statutory Framework

The Election Code sets forth in detail the requirements for absentee voting. There are six basic categories of those persons eligible to vote by absentee ballot: (1) those in military service, (2) federal service employees, (3) veterans who are bedridden or hospitalized outside the county of their residence, (4) civilians absent from their county of residence on the day of the primary or general election on account of duties, (5) physically sick or disabled persons, and (6) patients in public institutions. [The Crime Commission's inquiry revealed that the vast majority of absentee ballots issued in Delaware County related to persons in the fourth and fifth categories above. Accordingly, all further reference to voting procedure will relate to requirements for those two categories.]

An elector seeking to vote by absentee ballot must request an application form by appearing in person at the office of the County Board of Elections to sign for the application, or by mailing a personally signed request for an application.⁴ In the event the application form is not executed at the office of the Board of Elections by

2. *Civilian Absentee Voting Laws*, Illinois Legislative Council, Bulletin 3-226 (Springfield, 1958).

3. Act of August 13, 1963, P.L. 707; as amended, 25 C.P.S.A. §§3146.1 et seq. (Supp. 1974).

4. In the event the elector is permanently disabled and his or her name appears on a "permanently disabled electors list," the elector may dispense with this application procedure.

the voter in person, the Board, upon receipt of the signed, mailed request, will forward an application form to the voter. The voter then completes the application form⁵ and returns it to the Board of Elections. When the Board of Elections receives the application, it compares the information received with the information found on the applicant's permanent registration card. If the Board is satisfied that the applicant is qualified to receive an official absentee ballot,⁶ the application is marked "Approved." When so approved, a temporary registration card is inserted in the district register with the voter's permanent registration card. This temporary card is in a contrasting color to the permanent card and conspicuously contains the words "Absentee Voter." This is to preclude the absentee voter from voting again at the polls.

Upon receipt and approval of an application, the Board of Elections delivers or mails the absentee ballots to the approved electors. In secret, the voter marks the ballot and places it in the envelope on which is printed "Official Absentee Ballot." This envelope is then sealed and placed in a second envelope on which is printed the form of declaration of the elector, the address of the elector's county Board of Elections, and the local district of the elector. The elector completes the declaration, signs it, and seals the envelope. The envelope then must either be mailed or delivered in person by the elector to the county Board of Elections. The Board, upon receipt of such envelopes, keeps them in locked containers until they distribute them unopened to the absentee voters' respective election districts for canvassing.

If the voter requires assistance in voting the absentee ballot, he or she must submit with the application a statement setting forth the precise nature of the disability.⁷ The voter selects an adult to assist in the voting. The adult person rendering the assistance executes a declaration to that effect.⁸ Such declaration form is returned to the County Board of Elections in the mailing envelope within which the "official absentee ballot" is returned.

Any person violating any of the provisions of the laws relating to absentee voting is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for a term not exceeding one year, or both.

b. Judicial Interpretation

The Courts have recognized the fact that the normal voting safeguards are not present in the context of absentee voting and accordingly have strictly construed the Absentee Voting Law. Stating that the provisions of the statute are mandatory in nature, the Courts have sustained numerous absentee ballot challenges where

5. The application must be signed by the voter. However, if the voter is unable to sign, he is excused from signing upon making a statement witnessed by one adult person.

6. The shut-in, sick or disabled voter must have an attending physician sign his or her application attesting to the voter's illness or physical disability. If the voter does not have an attending physician, he or she may submit the application with the declaration and signature of a registered elector of his or her election district who is not related to the voter by blood or marriage.

7. This statement must be acknowledged before an officer qualified to take acknowledgments of deeds.

8. If the disability is permanent and the voter will thereafter at ensuing primaries or elections require assistance, that fact must be recorded on the voter's permanent registration card.

Boards of Election have construed the laws as discretionary.⁹ In taking a hard line on compliance with the statute, the Courts have noted the need to preserve the purity of the ballot:

The methods and procedures, as prescribed in the Act, are adequate if followed accurately, but it is at once obvious and inescapable that an elector who chooses to exercise the privilege of voting by absentee ballot must follow the regulations and conditions set forth in the statute. Otherwise, the intent of the legislation would be defeated and the safeguards to be erected absent.¹⁰

It is in this context that the Crime Commission undertook to examine the alleged voting irregularities in Delaware County.

4. FINDINGS

The Crime Commission polled a sample of 166 persons in Delaware County who had voted in the 1975 General Election by absentee ballot. One hundred and fourteen persons agreed to be interviewed. Approximately 53% of those contacted were residents of the City of Chester.¹¹ Of those persons who agreed to be interviewed, 44% indicated various violations of the Absentee Voting Laws.¹² Of those persons agreeing to be interviewed in Chester, 67% indicated voting law violations. These violations may be explained as follows:¹³

a. Requests and Applications

As previously explained, the Board of Elections is charged with the duty of determining the eligibility of those wishing to vote by absentee ballot. The Legislature has established a detailed process so that this determination may be made based upon a full knowledge of the facts in each case. Each voter must either *appear in person* at the Board of Elections or *mail in a written signed request* for an absentee ballot application. The Crime Commission has discovered that in many instances, contrary to statute, requests for applications for absentee ballots were non-existent. In the general poll, 39% of those interviewed stated that they had never requested an application. In the City of Chester, 45% of those interviewed did not make a request. In many cases, where requests were made, the requests were

9. *Canvass of Absentee Ballots of November 2, 1965 General Election*, 39 D&C 2d 429 (1966); *In Re: Challenges to Absentee Votes With Respect to the General Election Held November 3, 1964*, 61 Sch. L.R. (1966).

10. *Ibid.* at p. 250.

11. The others selected for interviews were residents of Clifton Heights Borough, Yeadon Borough, Upper Darby Township and Ridley Township.

12. Of the total number of residences contacted, 48 persons were either not available or refused to be interviewed by Crime Commission agents.

Approximately 53% of those who indicated statutory violations did so by executing sworn statements attesting to the illegal voting procedures in their respective voting experiences. Of those persons indicating absentee voting violations in the City of Chester, approximately 58% did so in signed sworn statements.

13. See Appendices I and II for a summary of findings.

hand delivered to the Board of Elections by persons other than the voter making the request, contrary to statute.¹⁴

Despite the fact that the only way the Board can determine absentee voting eligibility is by examining the application form, several voters stated that a third party would arrive at the voter's house with both an application for a ballot and the actual ballot at the same time.

Thus, contrary to statutory mandates, requests were either non-existent or delivered to the Board by third parties, and applications were secured by the voters without prior requests (and were often secured on behalf of the voter by third parties). In a majority of instances, the third parties participating in these activities have been identified by the Crime Commission as persons active in partisan politics.

In one instance, a voter admitted that her committeeperson came to her home and had the voter sign an application form, but the voter never received her absentee ballot. The voter questioned the committeewoman about this and the committeewoman replied, "Your vote is taken care of."

Illustrating the extent to which the Board of Elections fails to maintain election code integrity and the extent to which political workers are involved in absentee voting, one voter has related that she telephoned the Board for information on how to vote by absentee ballot. This voter was told by a worker in the Board office to contact her local committeeperson for the necessary information.

b. Ballots—Delivery

The statutory scheme requires the Board of Elections to determine voter eligibility and then deliver the ballot to the voter by either messenger or mail. The Crime Commission has found that the Board of Elections does not have a list of authorized messengers to deliver ballots. Rather, the Board turns the ballot over to various third parties for delivery to the voter. In the majority of such cases, the third party is identified as a political worker. While the statute does not require a list of authorized messengers, the Board of Elections appears to have handed out ballots for delivery quite indiscriminately.

c. Marking of Ballots—Unauthorized Assistance

When a third party gains entrance to the voter's home when delivering the ballot, it has frequently been found that the third party remains in the voter's home or returns to the home at a later date to provide assistance when the voter marks the ballot. The statute clearly makes detailed provision for voter assistance and requires the person giving assistance to file a declaration attesting to such fact. In the general poll, approximately 47% of those interviewed indicated that they had received assistance from a third party. Overwhelmingly, the third party was a political worker. In the City of Chester, this figure is 48%. The Crime Commission has found that no declarations of assistance whatsoever were filed in any of these cases of voter assistance.

In many cases, voters have stated that the political worker told the voter to just

14. Out of 3,415 absentee ballot applications submitted, approximately 11% of the requests for applications were hand-delivered to the Board of Elections by persons other than the individual making the request.

sign the ballot; the worker would then remove the signed unvoted ballot from the voter's home. In the general poll, 33% of those providing statements said that their ballot was actually voted by a political worker. In the City of Chester, this figure is 35%.

d. Ballots—Return

The Absentee Voting Laws require that after the ballot is marked in secret, the voter is to either *mail it in or deliver it in person* to the Board of Elections. The Crime Commission has examined the records and found that absentee ballots not returned by mail are generally not returned in person by the voter. In almost every case of non-mail return, the ballot is delivered to the Board of Elections by a third party. In the majority of cases, the third party is a political worker.

In the general poll, 98% of those interviewed stated that their ballots were handed over to their committee workers rather than to the Board of Elections, as provided by statute. In the City of Chester, this figure is also 98%.

5. CONCLUSIONS

a. The Board of Elections

The statute clearly defines that requests for applications must be made either in person or by written signed request mailed by the voter. The statistics show that the Board of Elections has failed to require compliance with this section. Third party participation at this stage is documented. Likewise, applications must be either *delivered in person or mailed by the voter* to the Board. Again, the Board has not seen to it that electors comply with this provision, and again third party participation is present. Ballots were often distributed by the Board to the third parties who then took the ballot into the voter's home. And while the statute requires the *voter* to either return the marked ballot by mail or *in person* to the Board of Elections, the statistics show that a great number of ballots were hand-delivered to the Board by third parties.

Thus, as this study shows, not only has the Delaware County Board of Elections been remiss in its duties, but its failure to enforce the statute has actively encouraged third parties to intervene in the casting of absentee votes.¹⁵

b. The District Attorney

The Crime Commission was pleased to receive positive support regarding this

15. While it may be argued that absentee ballots could not alter the outcome of elections to county-wide office, they may have a decisive effect on elections to local office. There were several close local contests in Delaware County in the 1975 general elections:

	Number of Votes Deciding the Election	Number of Absentee Votes Cast
Aston	2	2
Upper Chichester	10	5
Clifton Heights	18	13
Nether Providence	15	19

investigation from the District Attorney of Delaware County, Frank Hazel. When Mr. Hazel was informed of the voting irregularities in the county, he personally reviewed the Commission's findings and took preventive measures by writing a letter to the Chairman of the Board of Elections. This letter summarized the kinds of problems detailed by the Crime Commission and warned that in the future, the District Attorney's Office would prosecute appropriate cases of violations of the Election Code. Copies of this letter were sent to members of the County Council and to the County Chairmen of both political parties.

6. STATEWIDE SIGNIFICANCE

It should be noted at this point that the problems uncovered in Delaware County are not "Delaware County" problems. Rather these problems occur throughout the Commonwealth and seem to be inherent to a system of rather burdensome requirements and virtual disregard of the statute. Two other case studies will serve to show the kind of attitude toward absentee ballots which prevails in the Commonwealth and which undermines the system's integrity.

a. Carbondale, Lackawanna County

In May of 1973, the Crime Commission found that in the City of Carbondale, pressures were placed on police officers to actively participate in the political campaign of the incumbent Mayor. Information was received that the Mayor told each police officer to get five absentee ballots and advised them as to which citizens to contact.¹⁶ The Mayor, a physician by profession, allegedly knew which voters would be amenable to apply for absentee ballots. Several witnesses testified that they saw absentee balloting material at either the Mayor's office or his residence. One of these witnesses testified to actually filling in absentee ballots that had been signed but not marked by voters and that this activity took place in Mayor Kaufman's home at his direction. The Chief of Police also appears to have encouraged police officers to solicit absentee ballots. Witnesses stated that they had seen stacks of applications and absentee ballot envelopes in both the office and the home of the Chief of Police.¹⁷ Several police officers complained that getting absentee ballots was part of their job and they feared dismissal if they failed to solicit absentee ballots from citizens. Therefore, the policemen delivered applications and ballots to individuals for their signatures and then returned these materials to the Mayor. The policemen then assisted the Mayor in completing the blank signed ballots.

In summary, interviews with electors indicated the following: (a) some electors stated they voted both by machine and by absentee ballot, (b) some individuals who were officially listed as having cast absentee ballots never in fact applied for or voted by absentee ballot, (c) several voters were given absentee ballots by political workers despite the fact that they never submitted an application, (d) some persons did not live at the address from which the absentee ballot was cast, (e) some electors submitted applications for ballots but never received the ballot.

16. See Pennsylvania Crime Commission 1973-74 Report, pp. 130-134.

17. Testimony of Officer Thomas Murphy before the Pennsylvania Crime Commission, July 10, 1973, N.T. 50. Testimony of Sergeant Albert Mazza before the Pennsylvania Crime Commission, July 11, 1973, N.T. 73.

These violations closely parallel the absentee balloting irregularities uncovered in Delaware County. But, it is perhaps the attitude of Carbondale's Mayor that best indicates the crux of the problem:

...[I] didn't have to worry about absentee ballots. If I wanted absentee ballots, I could get all I wanted myself... [I] have a lot of patients and I know who is sick and who is not sick. And all I have to do is turn their names over to the committee people and the committee people contact these people and that would be enough. A lot of those people are very much obligated to me. In fact, they come to me requesting me to get them absentee ballots and I would send the committee people out to approach them. I never took any myself, but I could get all I wanted, no trouble.¹⁸

This statement clearly demonstrates that absentee ballots appear to be easy targets in a political campaign and that political workers may play an intricate role in the wholesale solicitation of these ballots.

Following the publication of the Crime Commission's report on absentee voting irregularities in Carbondale, the Director of the Lackawanna County Voter Registration Office took measures to tighten controls over the distribution of absentee ballots.¹⁹ Although there was no investigation or prosecution of individual voting fraud cases, efforts were made to number the ballot requests, conduct seminars for the Judges of Election and educate the electors in general.

b. Norristown, Montgomery County

The 1975 primary election in Norristown, Montgomery County, offers an example of a well-ordered plan to win an election by manipulating absentee ballots. The Montgomery County District Attorney's staff has documented the case of a former Norristown councilman who tampered with absentee ballots in an effort to win the nomination for borough council.

The primary scheme perpetrated by the councilman involved the forging of absentee ballot applications in the names of various electors. When the Board of Elections would send out absentee ballots to the supposed applicants, the councilman would somehow know the approximate arrival date of the mailed ballot and conveniently appear at the voters' homes to aid in marking the ballots. In most of these cases, the voters have sworn that they never requested nor applied for ballots; that the signatures appearing on the applications are not their signatures; that they were not legitimately qualified to receive absentee ballots; that the birthdates appearing on the applications were not correct; that the councilman was present at the time they marked their ballots; and that they handed the marked ballots over to the councilman for return to the Board of Elections.

In several cases, votes were cast for voters who had moved out of the councilman's voting district. The councilman managed this by again falsifying applications

18. Testimony of Mayor Abraham J. Kaufman before the Pennsylvania Crime Commission, November 15, 1973, N.T. 17.

19. In 1971 there were approximately 7,100 absentee ballots cast in the County. By November 1975, this number was reduced to approximately 2,700.

and requesting on the application forms that the ballots be mailed by the Board of Elections to neighboring addresses. The councilman would forewarn these neighbors that mail would be arriving in the names of other persons. He asked the neighbors to notify him of the arrival of the ballots so he could pick them up and deliver them to the proper addresses. In fact, the councilman picked up this mail, voted the ballots, forged the voters' signatures and cast the ballots without the knowledge or consent of the appropriate electors. In one case, a woman confessed that a ballot had been delivered to her home address in the name of a former neighbor, and that at the request of the councilman, she forged the name of the former neighbor on the ballot after the councilman marked it.

In other cases, voters would tell the councilman that they would agree to vote for him but that they didn't want to be bothered with obtaining the necessary papers. The councilman, by forging applications, got ballots for these persons, was present at the time the ballots were marked, and took the ballots from the homes of the electors. In one instance, a voter stated that the councilman merely went out to his car to get an application for the voter to sign.

In no cases investigated were requests for applications made by the electors as required by statute. In most cases of forged applications, the occupations and birthdates of the applicants were incorrectly stated. When determining eligibility for absentee ballots, the Board of Elections could have easily checked this information and the applicants' signatures against the voter registration cards.

Following its investigation, the District Attorney's office brought vote fraud and perjury charges against the councilman.²⁰ On April 7, 1976, the councilman pleaded guilty to 23 charges of tampering with absentee ballots.²¹ As of this date, the councilman is awaiting sentencing pending further background investigation.²²

7. LEGISLATIVE RECOMMENDATIONS

Despite the laudable efforts on the part of the District Attorneys of Delaware and Montgomery Counties to warn political workers and actually prosecute violations of the Election Code, absentee voting irregularities are of such nature that strict enforcement is difficult at best and insufficient to deal with the systemic problems of the Election Code itself. A hard look at the Code's response to that delicate balance between encouragement of the franchise and pollution of the ballot is required.

It may be argued that one of the reasons voters turn to their committee workers to obtain absentee ballots or choose not to vote at all is because the Election Code's application requirements are overly burdensome. Perhaps the most burdensome requirement is that a voter must in effect make an *application* (request) for an *application* for a ballot.

The Pennsylvania Legislature has recognized the difficulties of this procedure and has taken steps to remedy the situation. The House of Representatives has passed reform legislation aimed at eliminating the initial request for application procedure.²³ A voter would, by any available means, secure an application for an

20. *Commonwealth v. Bruno Petrillo*, No. 3486, October Term 1975.

21. The perjury counts were dismissed after the councilman entered his plea.

22. The maximum sentence would be 27 years imprisonment and a fine of \$23,000.

23. H. R. 761, Cong., Session of 1975.

absentee ballot and submit the executed application to the Board of Elections. This Bill has been sitting in the Senate State Government Committee since July 24, 1975. The Crime Commission urges the Senate to pass this legislation as soon as possible so that electors may take full advantage of their franchise.

While passage of this proposed legislation will make it easier for electors to secure their own absentee ballots, it may also make it easier for political workers to lawfully possess large numbers of absentee ballot applications. We may assume that political workers will continue to intrude into the absentee voting process with even less thought to statutory violation.

To deal with this concern, the Crime Commission urges further reform of the Election Code. Every effort should be made to exclude third parties from the opportunity to influence, mark, or alter absentee ballots. In this regard, the following revisions of the Election Code are recommended.

a. Applications

House Bill 701, *supra*, eliminating the request-for-application requirement, should be adopted. But the Legislature should go one step further by prescribing how these applications should be submitted to the Board of Elections. Provision should be made that applications may be made by the elector in only one of three ways and in no other manner: (1) in person at the Board of Elections, (2) by mail, or (3) by delivery to the Board of Elections only by the elector, or by the husband, wife, son, daughter, sister, brother, father or mother of the applicant.

b. Elector's Receipt of the Ballot

The Election Code should be amended to require that except in cases where the deadline for balloting prohibits, all absentee ballots shall be *mailed* to the applicant by the Board of Elections. This would eliminate the present provision in the Code that permits ballots to be delivered to the applicant by any third party, thus abetting third party presence in the voter's home with an unmarked ballot.

In addition, an effort should be made to eliminate the problem found in Montgomery County where the Board of Elections mailed ballots to addresses other than the applicant's home address. This will require a provision prohibiting the mailing of a ballot to an address within the voter's election district other than the voter's own legal address.

c. Elector's Return of the Marked Ballot

The Election Code's instruction that the ballot be returned to the Board of Elections by the elector in person or by mail is virtually disregarded by all parties. Accordingly, the following section should be incorporated into the statute:

Absentee ballots shall be returned by the elector either in person or by mail. No third party shall return an absentee ballot for an elector at the office of the Board of Elections. In the case of an elector who casts an absentee ballot because of illness or physical disability, such ballot shall only be mailed by such elector or by a person designated by such elector who consents thereto. Such elector may designate for such purpose only one of the following persons:

A licensed physician, registered or practical nurse or any other person who is caring for such elector because of such elector's illness or physical disability, a member of such elector's family, or if no such person consents or is available, then a registrar of voters or deputy registrar of voters in the municipality in which such elector resides.

No person shall have in his or her possession any official absentee ballot or ballot envelope for use at any election or primary except the elector to whom it was issued, the Secretary of the Commonwealth or his or her authorized agents, any official printer of absentee ballot forms and his or her designated carriers, the United States Postal Service, any other carrier designated by the Secretary of the Commonwealth for the purpose of delivering official blank absentee ballot forms to municipal clerks, any person authorized by municipal clerks to receive official blank absentee ballot forms on behalf of such municipal clerk, any authorized election official, or any other person authorized by statute to possess such ballot or ballot envelope.²⁴

This legislation would provide a facile method by which the voter may apply for and return the marked ballot to the Board of Elections. At the same time, third parties would be on unequivocal notice as to unauthorized possession of balloting materials. By reducing or eliminating the political workers' contact with the voter in terms of obtaining and returning the ballot, the unauthorized participation in marking the ballots would correspondingly be reduced or eliminated.

However comprehensive any piece of legislation may be, its ultimate success depends on an educational factor. If the electorate understood the reasons underlying the legislation and the import of the proper functioning of the system, voting fraud would be greatly diminished. In this regard, the Crime Commission suggests that an Absentee Voters Guide, in concise pamphlet form, be attached to every absentee ballot. This pamphlet should explain the seriousness of the situations the voters may encounter and should encourage the voters to report any violations to appropriate law enforcement officials.

To complement this educational campaign, more emphasis must be placed on the responsibility of the Boards of Election. In the case of forged applications, it is only through careful scrutiny by these Boards that voting fraud can be checked. Their legislative mandate is to administer the absentee voting laws, and they must carry out the mandate with integrity and attention to detail. This, coupled with the interest of local prosecutors to strictly enforce the laws, is a prerequisite to the proper functioning of democratic elections.

24. This proposed statute is similar to recent absentee voting legislation passed in Connecticut in 1975, 9 C.G.S.A. Ch. 145, 9-134 et seq. (1975 amend).

CHARACTER OF POLL

	Persons Polled	Not Home or Refused Statement	Irregular Address	Statements	Sworn	Oral
Chester	84	21	3	60	23	37
Clifton Heights	30	17	1	12	1	11
Yeadon	26	10	—	16	1	15
Woodlyn	4	—	—	4	—	4
Upper Darby	22	—	—	22	1	21
TOTALS	166	48	4	114	26	88

RESULTS OF POLL

	Number of Statements	No Violations	# of People Alleging Violations	TYPES OF VIOLATIONS				
				No. Req.	Ballot Return	Illeg. Assist.	Ballot Voted by Worker	Misc.
Chester	60	20	40	18	39	19	14	8
Clifton Heights	12	10	2	—	2	1	1	3
Yeadon	16	15	1	1	1	—	—	—
Woodlyn	4	1	3	—	3	2	—	—
Upper Darby	22	19	3	—	3	1	1	—
	114	65	49	19	48	23	16	11

APPENDIX I

TOTAL POLL

49 Persons Alleged Violations
26 Executed Sworn Statements

	<u>Allegations</u>	<u>In Sworn Statements</u>
NO REQUEST	19 = 39%	13 = 50%
BALLOT RETURN	48 = 98%	26 = 100%
ILLEGAL ASSISTANCE	23 = 47%	15 = 58%
BALLOT VOTED BY WORKER	16 = 33%	12 = 46%
MISC.	11 = 22%	4 = 15%

CHESTER POLL

40 Persons Alleged Violations
23 Executed Sworn Statements

	<u>Allegations</u>	<u>In Sworn Statements</u>
NO REQUEST	18 = 45%	12 = 52%
BALLOT RETURN	39 = 98%	23 = 100%
ILLEGAL ASSISTANCE	19 = 48%	14 = 61%
BALLOT VOTED BY WORKER	14 = 35%	11 = 48%
MISC.	8 = 20%	2 = 9%

APPENDIX II

V. Fraudulent "Cents-Off" Coupon Redemption Schemes

1. INTRODUCTION

a. A Primer on "Cents-Off" Coupons

In these times of skyrocketing costs for food and other common household needs, "cents-off" coupons offer consumers an opportunity to obtain substantial savings on their purchases. In particular, food coupons have become an increasingly popular method of cutting down the impact of spiraling food costs among consumers from all economic levels.

"Cents-off" coupons may be obtained by direct mail, in or on the product package, or from magazine and newspaper advertisements. Such coupons not only offer inflation-plagued consumers the opportunity to save money on the purchase of products, but are considered by manufacturers as a valuable tool in promoting product loyalty, as well as in inducing consumers to purchase new products, slow-moving products or products faced with a new competitor.

A "cents-off" coupon generally contains a statement that the manufacturer will reimburse the retailer for the face value, plus a three to five cent handling fee, for each coupon accepted with a product purchase. Many stores which accept these coupons send them to clearing houses, rather than directly to the manufacturers. Clearing houses perform the sorting, accounting, mailing and billing associated with the reimbursement of retailers for accepting these coupons from consumers.¹ The clearing house determines the total face value of the coupons received and reimburses the retailer for that amount.² Coupons are then submitted to the various manufacturers, who pay the clearing house the face value of the coupons and the handling fee. The clearing house, depending on the volume of coupons received, will either share a portion of the handling fee with the retailer or retain the total handling fee as payment for its services.

According to the best estimates available, ten years ago manufacturers distributed about 10 billion coupons directly to the public. In 1973, approximately 28 billion were distributed, and that number jumped to approximately 50 billion in

1. References in this report to "clearing houses" are to those companies which are operated on a profit basis, as opposed to grocer associations which offer their members the same services, i.e., sorting, accounting, mailing, and billing, as are rendered by clearing houses, but on a non-profit basis.

2. One of the claims generally made by clearing houses is that they can offer more prompt reimbursement for coupon submissions than would be available to the retailer if he submitted coupons directly to the manufacturer.

1974. About 10 per cent of the coupons distributed are eventually redeemed by retailers. Coupon redemptions thus involve many millions of dollars annually.

b. Fraudulent Coupon Schemes

It is fraudulent to redeem coupons where there has not been a corresponding product purchased. The increased distribution of "cents-off" coupons by manufacturers has brought with it an increasing number of fraudulent coupon redemption schemes.

The potential for massive fraud most clearly arises when unscrupulous persons establish clearing houses; and this report focuses on such a scheme.

The clearing house fraud involves the accumulation of large quantities of unused coupons. This may be done in several ways. Persons associated with the clearing house may simply clip coupons from newspapers and magazines. The clearing house may also purchase coupons at discount prices (i.e., at a percentage of face value) from, among others, (1) junk dealers who obtain discarded magazines and newspapers, (2) persons who obtain newspapers and magazines which have not been circulated due to printing defects and then cut large quantities of coupons by means of mechanical devices, and (3) charitable organizations whose members clip coupons.

The unused coupons are then submitted to the manufacturers along with coupons which the clearing house has received from retailers. The clearing house may submit these coupons for redemption under the names of retailers with which it is already doing business, retailers with which it does not do business, or fictitious retailers. The difference between the value of the legitimate submissions and the value of the total submissions represents the illegal profit to the clearing house.

Clearing houses are subject to audit by the manufacturers. Therefore, for purposes of maintaining false records purporting to establish the receipt of coupons from retailers and corresponding payments to retailers, a clearing house may engage in additional fraudulent devices. Retailers may be involved in some of these schemes, as where a clearing house sells coupons to a retailer at a discount. The retailer then submits the coupons to the clearing house which pays him the full face value. Thus, for \$200 in cash, a clearing house may sell a retailer unused coupons with a face value of \$400. The retailer will then submit these fraudulently obtained coupons to the clearing house and receive a check for \$400. This allows the clearing house to create records establishing the purchase of coupons from retailers.

There are other devices designed to create false records of payments to retailers. A clearing house may issue checks payable to a retailer which the retailer will cash at a discount, even though the retailer never submitted any coupons to the clearing house. For example, a clearing house may issue a check payable to XYZ Grocery Store for \$400. The owner of XYZ will cash the check but give the clearing house only \$300. Thus the owner profits by \$100 when he deposits the \$400 check to his account, and the clearing house records will indicate the purchase of coupons worth \$400 from the retailer.

In other instances, the clearing house may issue checks payable to retailers but simply forge signatures and retain the proceeds of the check themselves. Although there is no actual transfer of funds, the clearing house will be able to produce

cancelled checks apparently establishing payments to retailers.³

The general public has all but ignored the problem of fraudulent coupon redemptions, no doubt because much of the coupon fraud is of a petty nature which most persons tend to ignore. However, although no one member of the public may suffer a serious loss as a result of coupon fraud, the cumulative returns to the coupon cheats may be enormous. Furthermore, illegal coupon redemption schemes bilk manufacturers out of millions of dollars annually. Although no exact figures are available, estimates of the annual cost to manufacturers range from \$70 million to \$200 million. Many industry officials believe the \$200 million figure may be low. Of course, these losses are passed along to consumers in the form of higher prices. These higher prices, at least in part, offset the savings which coupons offer the consumer, thereby negating the major benefit to the consumer of coupon distributions.

2. BACKGROUND AND SCOPE OF THE INVESTIGATION

In July, 1974, the Pennsylvania Crime Commission received allegations that a large-scale scheme to defraud manufacturers through the redemption of fraudulent "cents-off" coupons was centered at Jimmy's Coupon and Redemption Center, Inc. (hereinafter "J.C.R.C."), Catasauqua, Pennsylvania. J.C.R.C. was owned and operated by William James "Jimmy" Shanaberger.⁴ J.C.R.C. began operations as a coupon clearing house in October, 1972, receiving coupons from retail outlets and paying merchants the face value of the coupons.⁵ The company received authorization from major food manufacturers to submit coupons received from retailers. J.C.R.C. would be reimbursed the face value and paid a handling fee per coupon. J.C.R.C. profits were to be derived solely from the handling charges paid by the manufacturers.⁶

As a result of the initial allegations, the Crime Commission initiated a preliminary investigation. During this investigation, alleged illegal activities were observed, records were checked and personal interviews were conducted. Crime Commission investigators received the active cooperation and assistance of Chief

3. Clearing houses are not always involved in fraudulent coupon redemption schemes. The following are among other of the more common schemes of defrauding manufacturers through coupon redemption:

- a. Retailers submitting directly to manufacturers coupons which do not represent corresponding purchases;
- b. Groups of persons cutting or counterfeiting large quantities of coupons and then themselves redeeming the coupons through fictitious retail outlets;
- c. Check-out personnel mixing coupons with those cashed in by shoppers and removing from the cash register an amount equivalent to the face value of the "salted" coupons;
- d. Shoppers simply turning in coupons for products not purchased to check-out personnel who fail to confirm a corresponding purchase.

4. From 1966 to 1972, William J. Shanaberger had operated Jimmy's Market at the same location.

5. It is estimated that J.C.R.C. obtained agreements from approximately 3,500 retail grocery stores to submit coupons to J.C.R.C., although only approximately 50 percent were active accounts.

6. In 1973 Shanaberger opened a branch office in Sonora, Mexico, employing approximately 20 persons, and began sending coupons there to be sorted, counted and processed in order to take advantage of lower labor costs. By approximately the summer of 1974 he had revamped his operation so that the Catasauqua office merely packaged coupons and mailed them to Mexico where all sorting, counting and processing was performed.

John Garger and the Catasauqua Police Department, as well as the assistance of the Staff Assistant for Security for General Foods Corporation.

When it became apparent that the J. C. R. C. operation was interstate in nature and that federal laws were probably being violated, the United States Postal Inspection Service was called upon to participate in the investigative activity. The Crime Commission thereafter jointly conducted additional interviews with the Postal Inspection Service and continued to conduct surveillances and develop informants. This continuing investigative activity was instrumental in documenting the activities of the principals involved in the coupon scheme. The Postal Inspection Service maintained regular contact with the office of the U.S. Attorney for the Eastern District of Pennsylvania during the course of the investigation.

On January 22, 1975, an indictment was returned by a federal grand jury against William James "Jimmy" Shanaberger, President of J.C.R.C.; John B. "Jack" Jensen,⁷ J.C.R.C. General Manager; Peter Burgio, Pittston, Pennsylvania; Allesandro Imperiale, Brentwood, New York; Samuel Ristagno, Pittston, Pennsylvania; and George Shina, a food market operator from Detroit, Michigan, charging the six men with conspiracy, mail fraud, and aiding and abetting in a scheme to defraud. The indictment charged that they purchased large quantities of unredeemed coupons from various sources at prices far below their face value; that they submitted them to J.C.R.C.; that J.C.R.C. combined these coupons with legitimately redeemed coupons moving through the clearing house; and that J.C.R.C. submitted the coupons to national food manufacturers claiming that they had been legitimately redeemed by consumers at retail stores. It is believed, based upon a review of seized J.C.R.C. records and contact with selected retail stores, that the indicted co-conspirators (all those indicted other than Shanaberger) grossed approximately \$150,000 from fraudulent coupon submissions through J.C.R.C. during the 12 month period commencing October, 1973. Shanaberger during that period, apparently grossed over \$400,000 from illegal coupon submissions.⁸

On April 28, 1975, Shanaberger, Jensen, Burgio, Imperiale, and Ristagno pled guilty in U.S. District Court to six counts of mail fraud and conspiracy in connection with the J.C.R.C. operation (57 additional counts were dismissed as part of the plea bargain). Shina entered his guilty plea on May 22, 1975. Shanaberger was placed on five years probation and fined \$6,000, \$1,000 on each count. All the other defendants were given suspended sentences and placed on one year probation, except for Shina, who was fined \$300. Each defendant faced a maximum penalty of five years imprisonment on each count of mail fraud and conspiracy to which they pled guilty.

7. Jensen was identified as Vice-President on the most recent filing of a list of J.C.R.C. corporate officers. Fay M. Chew was identified as the corporate Secretary. Peter Belletiere, an incorporator of J.C.R.C., served as J.C.R.C. general manager through approximately April, 1973, when he was fired by Shanaberger for allegedly converting company funds to his own use. Belletieri was arrested for bookmaking in September, 1972, and was subsequently convicted of the charges.

8. Shanaberger also realized a profit from legitimate coupon submissions to manufacturers. At the time of his arrest, he owed approximately \$175,000 to retailers for these legitimate submissions.

3. NATURE OF FRAUDULENT COUPON REDEMPTION ACTIVITY

a. J.C.R.C.

1. FRAUDULENT COUPON SUBMISSIONS

During the course of the investigation, numerous instances of fraudulent coupon submissions were uncovered. J.C.R.C. submitted coupons to manufacturers under the names of retailers with which it had never dealt, as well as those with which it no longer dealt. In addition, J.C.R.C. fraudulently added coupons to legitimate submissions from retailers.

The owner of a grocery store was shown two 1974 J.C.R.C. invoices indicating that in excess of 300 and 600 coupons respectively had been received from his market and submitted to General Mills, Inc. The owner denied ever hearing of J.C.R.C. or any other clearing house, claiming that he sent all of his coupons directly to manufacturers.⁹ Two other grocery store owners were shown J.C.R.C. invoices indicating that they had submitted coupons to J.C.R.C. in 1974. These owners both stated that they had discontinued dealing with J.C.R.C. prior to the dates of the invoices.¹⁰

A grocer, who dealt with J.C.R.C., was shown two 1974 J.C.R.C. invoices, dated within seven days of one another, indicating the submission by J.C.R.C. to General Foods Corp. of over 400 and 700 coupons respectively received from his market. He asserted that he could not have submitted those coupons to J.C.R.C. because it would have taken him "years" to accumulate such amounts of General Foods coupons.¹¹

Another food market owner, who had submitted coupons to J.C.R.C. during 1973, made only one submission to J.C.R.C. in 1974 when he submitted a mixture of coupons from numerous food manufacturers having a face value of \$76.02. He was shown a June, 1974, J.C.R.C. invoice indicating a submission to General Foods Corp. alone of close to 600 coupons valued at over \$100 received from his store. The store owner asserted that it was impossible that he had given J.C.R.C. that many General Foods coupons in 1974.¹²

On two occasions in the last several years the owner of a pharmacy submitted coupons for drug and cosmetic items to J.C.R.C. On each occasion he submitted approximately \$20-\$25 worth of coupons. He was shown a 1974 J.C.R.C. invoice indicating a submission to General Foods Corp. of over 800 coupons valued in excess of \$100 received from his pharmacy. The owner stated that his pharmacy could not possibly have accumulated that many coupons. He also noted that he could not have submitted General Foods coupons to J.C.R.C. because his pharmacy does not sell any food products whatsoever.¹³

9. Sworn statement obtained from Store Owner A, October 16, 1974. Two grocery store owners refused to cooperate with investigators. Those store owners and J.C.R.C. employees referred to in this report are not identified by name in order to protect them from possible retaliation.

10. Sworn statements obtained from Store Owner B, October 16, 1974, and Store Owner C, October 16, 1974.

11. Sworn statement obtained from Store Owner D, October 16, 1974.

12. Sworn statement obtained from Store Owner E, October 11, 1974.

13. Sworn statement obtained from Store Owner F, October 16, 1974.

Countless other instances of apparent fraudulent coupon submissions to food manufac-

2. SALE OF UNUSED COUPONS AT DISCOUNT

J.C.R.C. sold coupons (which J.C.R.C. personnel had initially accumulated through their own devices) to cooperative retailers at discounted prices. The retailers resold the coupons back to J.C.R.C. at face value. This allowed J.C.R.C. to establish records of coupon purchases to guard against audits by manufacturers. For example, the owner of one grocery business was contacted by J.C.R.C. General Manager "Jack" Jensen. He agreed to purchase coupons from Jensen for cash at 50 percent of face value. Subsequently he purchased the coupons "three or four times" and then in each instance submitted the coupons to the clearing house and received a J.C.R.C. check for approximately twice the amount he had paid. The owner identified three cancelled J.C.R.C. checks payable to his market as those which he had received in these transactions.¹⁴

Another food market owner admitted that on three occasions in the Spring of 1974 he purchased approximately \$200 worth of coupons from J.C.R.C. for \$100 in cash. On each occasion, after purchasing the coupons in this manner, representatives of J.C.R.C. delivered the coupons to his place of business. The store owner then submitted the coupons to J.C.R.C. and received checks in an amount equal to the approximate face value of the coupons.¹⁵

Two store owners stated that Jensen offered them similar deals. On several occasions Jensen sold them coupons with a total face value of \$200.¹⁶ Subsequently the owners submitted to J.C.R.C. the coupons which they had purchased along with coupons redeemed by their customers. They received J.C.R.C. checks for the face value of all the coupons submitted.

3. KICKBACKS FOR CASHING CHECKS

J.C.R.C. personnel promoted a scheme whereby retailers would cash J.C.R.C. checks payable to the stores in return for a kickback. This system also allowed J.C.R.C. to falsify its accounting records to reflect payments to retailers for coupons. Thus, J.C.R.C. could submit coupons to manufacturers under the names of the stores which had cashed the checks, even though the coupons may not have been obtained from retailers at all. For example, one grocery store owner, who is owed "about \$5,000 or \$6,000" by J.C.R.C. for coupons submitted, related how he was approached by Jack Jensen in his store:

Well, he came in here, he says, I got a check here for about \$2,000, he said. He said I'll give you a chance to make some money on this—I know

turers by J.C.R.C. were uncovered during reviews of seized J.C.R.C. corporate records. These were not substantiated through personal interview because the pattern of fraudulent submissions by J.C.R.C. had already been well-established.

14. Sworn statement obtained from Store Owner G, October 3, 1974. For example, a store owner would purchase \$400 worth of unused coupons from a person representing J.C.R.C. for \$200 in cash. He would then submit those coupons to J.C.R.C., which would pay him \$400. The grocer thus profited by \$200 on his \$200 investment. Although J.C.R.C. paid the grocer the \$400 it received from the manufacturers, it profited illegally in the amount of the \$200 cash received from the grocer for the unused coupons plus the per coupon handling fee received from the manufacturers.

15. Sworn statement obtained from Store Owner H, October 7, 1974.

16. Sworn statements obtained from Store Owner I, October 3, 1974, and Store Owner J, October 3, 1974.

we [J.C.R.C.] owe you a lot of money, so if you cash [the check] I'll give you a \$250.00 profit for yourself, and he said \$250.00 would be towards the money we [J.C.R.C.] owe you for your coupons, he says you give me \$1,500 and I'll give you a check for \$2,000 and that's what I did.¹⁷

The grocer identified two cancelled J.C.R.C. checks payable to his store, both in the amount of approximately \$2,000, which he had endorsed and cashed. He had given Jensen \$1,500 for each check and thus had received \$500 to retain (\$250.00 for his services and \$250.00 on account for redeemed coupons).¹⁸

The owner of another grocery business cashed a J.C.R.C. check in the amount of approximately \$1,000 payable to his market. After he cashed the check, Jensen returned \$225 to him. The grocer admitted that he knew the transaction was "wrong," but he "had to take the chance at the time" because he was in debt and needed the money.¹⁹

Other grocery owners were also solicited by Jensen to cash checks payable to their markets. They were promised 25 percent of the proceeds of each check. One store operator identified a cancelled J.C.R.C. check for \$1,000 payable to his market as a check which he had cashed for Jensen at his bank. He gave Jensen \$750 and kept the remaining \$250.²⁰ The owner of another food market was shown two cancelled J.C.R.C. checks for approximately \$1,000 and \$1,100 respectively payable to his market. He admitted cashing the checks and receiving \$250 from Shanaberger on one occasion and from Jensen on the other.²¹

4. CHECK FORGERIES

J.C.R.C. in some cases issued checks payable to retailers, ostensibly for coupon submissions, but forged the signatures of the named payees and cashed the checks. Thus, although no funds were actually transferred, J.C.R.C. would have the cancelled checks to establish payments to retailers.²²

b. Lu-Lac Grocers Association

Many of the coupons delivered to J.C.R.C. were received from Lu-Lac (Luzerne and Lackawanna Counties) Grocers Association (hereinafter "Lu-Lac"), a food coupon clearing house²³ located in DuPont, Pennsylvania. Lu-Lac was owned

17. Sworn statement obtained from Store Owner K, October 4, 1974.

18. *Id.*

19. Sworn statement obtained from Store Owner G, October 3, 1974.

20. Sworn statement obtained from Store Owner L, October 2, 1974. This store operator was also contacted by Jensen and offered a deal whereby Jensen would sell him coupons at a discount rate, but the store manager turned Jensen down because he didn't have the available cash to purchase the coupons.

21. Sworn statement obtained from Store Owner M, October 3, 1974. On another occasion, pursuant to an arrangement he had worked out with Jensen, this store owner gave a J.C.R.C. employee \$200 in cash in payment for \$400 in coupons, which the store owner then submitted to J.C.R.C. However, J.C.R.C. never paid him for these coupons.

22. This scheme is discussed in greater detail at pp. 160-164 *infra*.

23. Lu-Lac Grocers Association was not a non-profit grocers association, nor did it obtain authorization from food manufacturers to redeem coupons. Rather, it acted as a sub-clearing house for J.C.R.C.; all coupons received by Lu-Lac were delivered to J.C.R.C. for processing.

and operated by Samuel Ristagno and Peter Burgio. J.C.R.C. records reveal that Lu-Lac submitted coupons through J.C.R.C. on behalf of approximately 45 stores.

Burgio explained that Lu-Lac had been formed at Shanaberger's behest because J.C.R.C. had acquired a reputation in Luzerne and Lackawanna Counties for failing to pay grocers for coupons submitted. According to Burgio, in early 1974 Ristagno approached him to provide financial backing for Lu-Lac. Burgio agreed. He also signed up approximately 10 to 15 customers for Lu-Lac.²⁴

The agreement between Lu-Lac and J.C.R.C. called for Lu-Lac to receive a 1½ cent per coupon handling fee plus ten percent of the face value of all coupons submitted. Burgio claims he left Ristagno in the summer of 1974 because J.C.R.C. was not paying him his commission and was not reimbursing Lu-Lac for the amounts paid to stores which submitted coupons to Lu-Lac.²⁵

1. KICKBACKS FOR CASHING CHECKS

In a scheme similar to that of J.C.R.C., Lu-Lac personnel found store owners to cash checks in return for kickbacks. Ristagno arranged with store owners, none of whom actually accepted coupons from customers, to allow him to submit his own coupons under the names of their stores. The store owners were paid 25 percent of the amount received from the manufacturers. Pursuant to this scheme, one owner cashed two checks payable to his store and received 25 percent of their value from Ristagno.²⁶

Two other store owners admitted cashing Lu-Lac checks signed by Burgio and Ristagno payable to their stores for amounts just under \$400. Ristagno paid them 25 percent of the proceeds.²⁷

Another grocer cashed a Lu-Lac check signed by Burgio and Ristagno for over \$800 payable to his market and received 25 percent of the proceeds from Ristagno. This grocer admitted that he cashed "maybe one, maybe two" other checks presented by Ristagno for which he also received 25 percent kickbacks.²⁸

2. APPARENT CHECK FORGERIES

In a number of instances, J.C.R.C. and Lu-Lac checks payable to retailers were cashed, although the named payees claimed that they had neither received, nor placed their endorsements on, the checks. For example, the owner of a store which sold no grocery items and did not carry the phrase "grocery store" as part of its

24. The Lu-Lac contract with its customers called for Lu-Lac to make reimbursement for the face value of all redeemed coupons, and for Lu-Lac to retain the per coupon handling fee in consideration for services rendered.

25. Interview with Peter Burgio, October 22, 1974. Ristagno has five convictions for gambling offenses, the most recent occurring in January 1975, involving an illegal gambling operation raided by the F.B.I. in Wilkes-Barre in 1972. Burgio denied knowing about Ristagno's reputation as a gambler and bookmaker.

26. Sworn statement obtained from Store Owner N, October 17, 1974. The store owner could not recall if the checks were drawn on the J.C.R.C. or Lu-Lac account.

27. Interview with Store Owner O, October 17, 1974, and Store Owner P, October 17, 1974.

28. Sworn Statement obtained from Store Owner Q, October 17, 1974.

None of the grocers involved in the 25 percent kickback scheme with Lu-Lac ever received any invoices from Ristagno showing the amount of coupons he submitted to manufacturers through J.C.R.C.

name, was shown three cancelled checks. Two J.C.R.C. checks were signed by Shanaberger and were payable to that store, which was noted as "[Y] Groc. Store" on the face of the checks.²⁹ One Lu-Lac check was signed by Burgio and Ristagno and was payable to "[Y] Grocery Store." All three checks were endorsed with the name of the owner misspelled. The check signed by Burgio and Ristagno was cashed by Ristagno. The owner's purported endorsement was on the check when Ristagno cashed it.³⁰ According to the owner, the store never accepted grocery coupons, and the owner never heard of J.C.R.C. or Lu-Lac and never received any of the three checks in question.³¹

Another grocer, who signed a contract with Lu-Lac through Burgio, made one submission to Lu-Lac of coupons worth approximately \$70, for which he eventually received payment of about \$45. He was shown a cancelled Lu-Lac check signed by Burgio and Ristagno for more than \$500 payable to his market. He denied ever receiving the check or placing his endorsement on it, or ever authorizing anyone else to receive, endorse or cash any checks payable to his market.³²

Ristagno and Burgio signed a Lu-Lac check for over \$300 payable to a market which had been closed for almost three years. The former owner had never received the check and denied placing her endorsement on it; she had never even heard of Lu-Lac, Ristagno, or Burgio.³³ A second endorsement on this check was that of an employee of a store owned by Ristagno. A third endorsement on this check was that of Peter Burgio's brother.

Pertinent information on alleged check forgeries will be turned over to appropriate local prosecutors in order that a determination can be made on whether criminal charges should be instituted.

c. Independent Food Grocers Association

J.C.R.C. also received coupons from Independent Food Grocers Association of America (hereinafter "Independent"), a food coupon clearing house ³⁴ located in Bellmore, Long Island, New York. Independent, owned and operated by Allesandro "Al" Imperiale, represented approximately 100 stores in New York.³⁵ Imperiale entered into an agreement with J.C.R.C. in early 1974, calling for a set commission per coupon submitted. According to Imperiale, he personally delivered the coupons, identified by store, to J.C.R.C. He denied ever receiving kickbacks from store

29. A submission of coupons by J.C.R.C. to Ralston Purina and Quaker Oats Companies in early September, 1974, contained packages of coupons broken down by stores, one of which was "[Y] Grocery." Upon investigation, such a store was found not to exist. U.S. Postal Inspector Report of Investigation, September 13, 1974. Other cases of submissions of coupons by J.C.R.C. from fictitious stores were also uncovered during the investigation.

30. Sworn statement obtained from Informant I, October 22, 1974.

31. Sworn statement obtained from Store Owner Y, October 17, 1974.

32. Sworn statement obtained from Store Owner R, October 22, 1974.

33. Sworn statement obtained from Store Owner S, October 22, 1974.

34. Like Lu-Lac, Imperiale's company was not a non-profit grocers association, nor did it obtain authorization from food manufacturers to redeem coupons. Rather, it acted as a sub-clearing house for J.C.R.C.; all coupons received were delivered to J.C.R.C. for processing.

35. J.C.R.C. records disclosed that Imperiale's company submitted coupons to J.C.R.C. under the names of approximately 40 New York stores.

owners or converting J.C.R.C. checks payable to New York stores to his own use.³⁶

Notwithstanding Imperiale's denials, the evidence suggests that he was involved in a kickback scheme and with check forgeries.³⁷ The owner of one delicatessen related an offer by Imperiale:

He asked me if I would give him permission to hand in about a thousand dollars worth of coupons in my store's name, using his coupons, and the check would be cashed by him and he would give me half the amount of the money. I refused his offer, and told him I would only hand in the coupons I received from the customers in the store.³⁸

This owner denied ever submitting any coupons to J.C.R.C. He also denied authorizing Imperiale or J.C.R.C. to submit to manufacturers, under his store's name, any coupons which his store had not collected. Yet J.C.R.C. accounting records indicate that coupon submissions totaling over \$800 were received from this store in February, March and July, 1974. In addition, J.C.R.C. records indicate that two checks were issued to this store in March and April, 1974, each exceeding \$100. The store owner denied receiving either check. The April check was endorsed with the name of his store and contained a second endorsement, "Imperiale," written below the store's name.³⁹

Numerous other instances were uncovered where J.C.R.C. submitted coupons to manufacturers, under the names of New York stores, greatly in excess of the number of coupons submitted by the stores to Independent. Checks payable to those stores were issued by J.C.R.C. but were cashed without the knowledge or approval of the store owners. For example, the owner of one market redeemed coupons through Independent from January through April, 1974. The value of all coupons submitted during the four month period was approximately \$400. J.C.R.C. records indicate that over \$1,400 worth of coupons were received from this store in June, 1974. The grocer was shown two J.C.R.C. checks payable to his store in May and June, 1974, each in an amount in excess of \$300. He denied ever receiving or endorsing these checks.⁴⁰

The owner of another food store submitted a total of approximately \$35 worth of coupons to Imperiale, yet J.C.R.C. records indicate receipt of \$1,200 worth of

36. Interview with Allesandro Imperiale, October 9, 1974. On September 21, 1974, Imperiale filed suit in United States District Court for the Eastern District of New York against J.C.R.C., Inc., claiming he was owed approximately \$44,000 for coupons delivered plus a two cent per coupon handling charge.

37. Investigation also disclosed the submission of coupons to J.C.R.C. by Imperiale in the names of non-existent stores.

38. Sworn written statement of Store Owner T, October 9, 1974.

39. In a number of other cases it was determined that grocery store operators who submitted coupons to Imperiale were shown on J.C.R.C. records as having furnished coupons far in excess of the number actually submitted, although no evidence of possible forgery was uncovered in those cases. For example, the owner of a supermarket once gave Imperiale "200 and some odd dollars worth" of coupons, and on a second occasion roughly \$56 worth of coupons. Yet J.C.R.C. records show that his supermarket submitted in excess of \$1,000 worth of coupons in June, 1974. Interview with Store Owner U, October 10, 1974. The owner of another food market last gave Imperiale coupons in July, 1974. J.C.R.C. records indicate that over \$350 worth of coupons were received from this store in August, 1974. Sworn statement obtained from Store Owner V, October 9, 1974.

40. Interview with Store Owner W, October 9, 1974.

coupons from him in April, 1974, and the issuance of a check payable to his market for over \$1,000. An examination of the cancelled check revealed an endorsement in longhand misstating the name of the market. It also contained a second endorsement, "Bellmore Prov. & Cheese Co.", a company owned by Imperiale's brother. The grocer asserted that he never received this check and that the endorsement appearing on the check was not in his writing. He also stated that he endorses checks with a rubber stamp, and that he has never authorized any other person to endorse or cash any checks payable to his market.⁴¹

One grocery store owner who occasionally dealt with Independent was shown two cancelled J.C.R.C. checks payable to his store. Both were endorsed in longhand with the name of his store; one contained the second endorsement "Al Novello."⁴² The grocer stated that he had never seen either check. He pointed out that he could not have endorsed them since he always either rubber stamps his store's endorsement on checks or writes out his name in full. He also denied giving anyone permission to receive, endorse or cash any checks payable to his store.⁴³

The owner of a supermarket who submitted coupons to Imperiale received his last check in payment from him in May, 1974. Yet J.C.R.C. records contain a cancelled check payable to his store dated July, 1974, and endorsed in the store's name.⁴⁴ The check contains the second endorsement "Al Novello." The owner stated that he never received this check.⁴⁵

Another grocery store owner under contract with Independent was twice asked by Imperiale to cash J.C.R.C. checks payable to his store. Imperiale gave him approximately 25 percent of the face value of the checks. The owner stated that he believed that the 25 percent represented payment for the coupons he had legitimately submitted. The store owner felt "it was obvious" that Imperiale was submitting additional coupons under the owner's name.⁴⁶ He guessed that he accumulated "maybe \$20" worth of coupons each month, yet J.C.R.C. accounting records indicate that his store submitted over \$4,000 worth of coupons between February and August, 1974, and that at least six checks were issued payable to the store during that period. Several of these checks contained endorsements of the name of the market which were apparently forged. Two of those checks contained the second endorsement "Farmers Mkt.", owned by Al Imperiale.

The owner of another food market, who has never accepted food coupons, admitted that in the spring of 1974, he entered into an arrangement with Al Imperiale to cash checks payable to his market for a 25 percent kickback. He cashed one check pursuant to this arrangement, which he identified from among cancelled checks he was shown, but never received any other checks from Imperiale. The store owner was shown five additional cancelled J.C.R.C. checks payable to his store. He

41. Sworn statement obtained from Store Owner X, October 10, 1974.

42. Al Novello, a fruit wholesaler, told investigators that Imperiale paid him for purchases with checks payable to other stores.

43. Sworn statement obtained from Store Owner Z, October 9, 1974.

44. A copy of the subject cancelled check was not available on the date of interview, so that no inspection of the store endorsement was possible.

45. Interview with Store Owner AA, October 10, 1974. J.C.R.C. accounting records show coupon redemptions from this store between April and July, 1974, in the total amount of approximately \$4,000, an amount far in excess of that which the store owner believes he submitted.

46. Sworn statement obtained from Store Owner BB, October 9, 1974.

denied ever seeing, endorsing or cashing any of them. He also denied ever authorizing anyone to submit food coupons under the name of his store or to endorse and cash checks payable to his store.⁴⁷ One of the checks contained the second endorsement "Al Novello."

d. George Shina

George Shina submitted coupons to J.C.R.C. on behalf of approximately 40 stores located in the Detroit, Michigan area. J.C.R.C. was to pay him 1½ cents per coupon submitted. Shina previously had been involved with a coupon clearing house in Detroit which submitted coupons through another clearing house in Atlanta, Georgia. However, following investigations of these companies by food manufacturers and by the U. S. Postal Inspection Service, Shina began submitting coupons through J.C.R.C. early in 1974. Surveillance disclosed that Shina personally visited the J.C.R.C. office in Catasauqua, Pennsylvania, at least twice monthly once he began dealing with J.C.R.C. He would often bring with him large quantities of coupons which had not been redeemed by customers at retail stores.⁴⁸ Many of the coupons brought to the J.C.R.C. premises by Shina were taken to Lu-Lac Grocers Association rather than processed at that time by J.C.R.C.⁴⁹ These coupons were eventually submitted to J.C.R.C. by Lu-Lac for processing.

Investigation further determined that many of the stores in the Detroit area on whose behalf Shina was purportedly bringing coupons to J.C.R.C. had never dealt with him. At least four of the stores under whose names coupons were submitted to J.C.R.C. did not even exist. One store under whose name Shina was submitting coupons to J.C.R.C. as late as August, 1974, had been destroyed by fire in February, 1974. Many J.C.R.C. checks, payable to Detroit area stores, were deposited in Shina's personal bank account or in the account of a food market which he owned and operated.

4. SOURCES AND HANDLING OF FRAUDULENT COUPONS

a. Handling of Fraudulent Coupons

It is clear that J.C.R.C. employees, at the direction of their superiors, fraudulently added coupons to legitimate store submissions. On various occasions when employees entered the J.C.R.C. offices in the morning, they would come upon large boxes of coupons which had not been delivered during working hours on the previous day. Shanaberger would order employees to mix, or "salt-in", these coupons with coupons received from some of the larger retailers.⁵⁰

A J.C.R.C. employee stated that "once a week, sometimes twice a week" Shanaberger would tell her to salt-in coupons with those submitted to J.C.R.C. by

47. Sworn statement obtained from Store Owner CC, October 9, 1974.

48. See pp. 166-167 *infra* for a discussion of the nature of coupons brought to J.C.R.C. by Shina.

49. Interview with Informant 2, August 14, 1974; interview with Informant 3, August 29, 1974; interview with Informant 4, September 25, 1974.

50. Interview with Informant 5, August 2, 1974.

stores; Jack Jensen on occasion also gave her similar directions. She did not know the source of these salted-in coupons.⁵¹

Another J.C.R.C. employee was given boxes of coupons by Shanaberger. She was told to take coupons from the boxes and assign them to various stores which submitted coupons to J.C.R.C. On numerous occasions she was paid for doing this work in her home.⁵²

Another employee was instructed on numerous occasions by Shanaberger to mix loose coupons in with coupons received from stores. On several occasions this individual also observed bulk quantities of coupons, unidentified by store, being given to J.C.R.C. employees to take home and add into boxes containing legitimate coupons, identified by store. This person also observed coupons being salted-in by employees on the J.C.R.C. premises. Although the employee felt that such practices were quite irregular, no effort was made to question them because of fear of "repercussions" from Shanaberger.⁵³

A J.C.R.C. employee stated that on numerous occasions Shanaberger told her to add coupons to legitimate store submissions. Shanaberger directed her to add a small number of coupons to those submitted by the "little stores" and a greater quantity to those submitted by the "larger stores." The employee did not know the quantity of coupons added on any particular occasion since she was not responsible for counting the salted-in coupons. Rather, Shanaberger directed employees to put in a "handful." Shanaberger personally gave the employees the coupons which were to be added.⁵⁴

Another J.C.R.C. employee stated that on numerous occasions she was ordered by Shanaberger, and less often by Jensen, to salt-in coupons with the coupons submitted to J.C.R.C. legitimately. Shanaberger provided the extra coupons which were generally already cut and stacked. This woman often saw Shanaberger and Jensen bring in large quantities of coupons which were not identified by store name. She was unaware of the source of those coupons. According to this employee, "it was part of [the] daily routine" for J.C.R.C. employees to add extra coupons to the legitimate coupons submitted by stores.⁵⁵

b. Sources of Fraudulent Coupons

One employee estimated that anywhere from ten to fifty percent of the coupons passing through J.C.R.C. were fraudulent.⁵⁶ Pertinent accounting records uncovered during the course of the investigation, together with information contained in an audit of J.C.R.C. operations prepared by a major food manufacturer, suggest that the 50 percent estimate may be accurate for the twelve month period commencing in February, 1973.

51. Sworn statement obtained from Informant 6, November 14, 1974.

52. Interview with Informant 3, August 5, 1974. On August 9, 1974, 136 pounds of coupons were confiscated from this employee's home. A smaller amount of coupons was confiscated on the same date from the home of another J.C.R.C. employee.

53. Sworn statement obtained from Informant 7, October 2, 1974.

54. Interview with Informant 8, October 2, 1974.

55. Sworn statement obtained from Informant 9, October 23, 1974.

56. Interview with Informant 2, July 30, 1974. Another employee stated that Shanaberger had told her on August 29, 1974, that he and Jack Jensen had "salted" approximately \$12,000 worth of coupons into the business during that week. Interview with Informant 3, August 29, 1974.

Investigation has determined that the coupons which were salted-in with the legitimate coupons came from a variety of sources. For example, a grocery store operator stated that about two years ago he began submitting legitimate coupons to J.C.R.C. Shortly thereafter Shanaberger approached him and an arrangement was worked out whereby he would submit bulk quantities of scrap coupons. He supplied Shanaberger with scrap coupons, generally with a total face value of \$1,000, on approximately ten occasions. Shanaberger paid him 30 percent of the face value. The store operator obtained most of the scrap coupons from junk men, but also received large quantities from employees of a scrap dealer and of a newspaper and magazine distributing agency. He paid anywhere from 15 to 25 percent of face value to the junk men and 25 percent to the others.⁵⁷

One individual stated that on several occasions he had sold to Shanaberger, at a discount on face value, \$30-\$40 worth of coupons which he and his wife had clipped from newspapers and magazines. He also stated that he had placed approximately \$2,500 worth of carpeting in the home of a scrap dealer, who paid the bill by giving him coupons with a face value of \$10,000. The coupons were then sold to Shanaberger for \$2,500.⁵⁸

A housewife sold coupons for cash to Shanaberger at 30 percent of face value in order to support "junior church projects." The coupons sold to Shanaberger were clipped by women associated with her church.⁵⁹ Another housewife who also sold coupons to Shanaberger at 30 percent of face value for charitable purposes once asked him why he paid for the coupons in cash rather than by check. Shanaberger replied that he "had his reasons."⁶⁰

A J.C.R.C. employee stated that on several occasions other J.C.R.C. employees, including Shanaberger's wife, clipped coupons from large quantities of magazines. This individual did not know the source of the magazines.⁶¹ Sam Ristagno, assisted by his wife and children, was often observed clipping large quantities of coupons from newspapers and magazines.⁶²

A woman who had been a customer of Shanaberger when he operated Jimmy's Market stated that in approximately August, 1974, he asked her to clip clean a box of ragged coupons and to burn several boxes of old magazines that contained expired coupons. She clipped and returned to Shanaberger the loose coupons, and disposed of the magazines with her regular trash. She never received any compensation for clipping the coupons. According to this individual, Shanaberger told her that George Shina had provided the coupons and magazines.⁶³

Numerous J.C.R.C. employees often observed Peter Burgio, Samuel Ristagno, Al Imperiale, and George Shina delivering bulk quantities of coupons to J.C.R.C., but most of these individuals were uncertain whether the coupons were identified by store. However, one employee did observe Shina on at least two occasions bring

57. Sworn statement obtained from Store Owner DD, October 4, 1974. This store operator also recalled two instances where Shanaberger gave him large checks made payable to his store and Shanaberger gave him 30 percent of the proceeds merely for cashing the checks.

58. Interview with Informant 10, November 14, 1974.

59. Sworn statement obtained from Informant 11, October 24, 1974.

60. Sworn statement obtained from Informant 12, October 23, 1974.

61. Sworn statement obtained from Informant 7, October 2, 1974.

62. Sworn statement obtained from Informant 1, October 22, 1974.

63. Sworn statement obtained from Informant 13, October 2, 1974.

coupons to J.C.R.C. which were not identified by specific stores. She also observed coupons from Shina and Lu-Lac which were blurred and discolored.⁶⁴ Other employees stated that Shina's and Lu-Lac's coupons were frequently blurred and discolored.⁶⁵ Coupons in this condition usually are the product of so-called "first runs" which printers generally destroy.

According to one employee, many of the coupons brought to J.C.R.C. by Shina appeared to have been scrap coupons because they contained uniform cuts or uniform discoloration.⁶⁶ Shanaberger would on occasion tell her to transfer coupons from store submissions brought in by Shina to other store submissions because of the large amounts of identical coupons contained in Shina's store submissions.⁶⁷

Some store owners mixed fraudulently obtained coupons with their legitimate submissions to J.C.R.C. For example, a supermarket owner admitted that he mixed his legitimate coupons with those which he accepted from five charitable organizations. He had redeemed the coupons from the charitable groups for 50 percent of face value. According to this individual, both Shanaberger and Jensen were aware that unused coupons purchased from charitable organizations were being mixed with coupons accepted from consumers. The arrangement worked out between Shanaberger and the supermarket owner called for the supermarket to kickback to J.C.R.C. ten percent of the face value of coupons submitted to J.C.R.C.⁶⁸

A U.S. Postal Service mail carrier admitted that he entered into an arrangement with Shanaberger to sell to J.C.R.C. at a discounted price any coupons that he could obtain. Pursuant to this arrangement the mail carrier sold coupons to Shanaberger obtained from mail assigned to him for delivery.⁶⁹

In order for J.C.R.C. to "hide" the illicit coupons in the company records, Shanaberger or Jensen would regularly request a J.C.R.C. employee to write up invoices reflecting receipt of coupons from "favored accounts." These invoices were drafted to show receipts of coupons in amounts generally approximating \$300, \$1,000, or \$2,000. The invoices generally were for amounts slightly over or under the round figure such as \$998.30 or \$1,001.20 in order that the figures would not stand out. Checks were then made payable in these amounts to the "favored accounts." No legitimate coupons were ever received by J.C.R.C. to back up the invoices prepared for the favored accounts. Samuel Ristagno, Peter Burgio, George Shina,

64. Sworn statement obtained from Informant 8, October 2, 1974.

65. Interview with Informant 2, August 25, 1974; interview with Informant 4, September 25, 1974.

66. At least two J.C.R.C. employees were approached by Shina during August, 1974 and asked if they were interested in working in his room at a nearby motel cutting and counting coupons he had stored there. Interview with Informant 2, September 2, 1974.

67. Sworn statement obtained from Informant 6, November 14, 1974.

68. Sworn statement obtained from Store Owner EE, October 7, 1974. This individual also stated that on separate occasions he was approached by both Shanaberger and Jensen and asked if he would accept cash from them in amounts varying from \$250 to \$1,000 per month if they could forward their own coupons to manufacturers in his store's name. The store owner refused to discuss such an arrangement because at the time J.C.R.C. owed him a substantial amount of money for coupons which had been submitted to the clearing house.

69. This carrier was prosecuted for this offense in December, 1974, in U.S. District Court for the Eastern District of Pennsylvania, and pled guilty to a charge of obstructing the delivery of mail. He also lost his position with the U.S. Postal Service.

and Al Imperiale all regularly received J.C.R.C. checks payable to various stores based upon phony invoices.⁷⁰

Many of the situations previously described in this report clearly relate to the checks issued to the so-called favored accounts.⁷¹ In most of those cases, as previously described, the store owners never received the checks or any of the proceeds, or if they did it was in order to cash the checks for a kickback.

5. CONCLUSIONS

Manufacturers are distributing an increasing number of "cents-off" coupons to the American public. There has been a significant corresponding increase in the fraudulent redemption of such coupons. The general public, of course, bears the real costs of these frauds. As shown in this report, fraudulent coupon redemption schemes can be of considerable magnitude. J.C.R.C. was fraudulently redeeming coupons which it was receiving from the New York City and Detroit areas and may have had plans to expand further.⁷² Shanaberger alone grossed over \$400,000 as a result of fraudulent coupon submissions in the 12 month period prior to his arrest. The other indicted co-conspirators grossed approximately \$150,000 as a result of fraudulent coupon submissions through J.C.R.C. during the same 12 month period. Thus, this one organization fraudulently obtained over one-half million dollars in one year.

However, even in light of the rising incidence of coupon redemption fraud⁷³ and the enormous sums that the coupon cheats may secure, it does not appear that the ultimate responsibility for protecting the purchasing public and the manufacturers lies with government through the imposition of legislative or administrative regulatory devices. It is doubtful that state or federal regulatory devices intended to cope specifically with fraudulent coupon redemption, such as public registration of clearing houses and periodic detailed financial reporting, could successfully cope with the problem.⁷⁴ It is even more unlikely that the benefit which might result from such regulatory devices would make up for their enormous costs.

The elimination of individual fraudulent coupon schemes can perhaps best be accomplished, as in the instant situation, through effective enforcement of the criminal laws.⁷⁵ Specific statutory prohibitions against the methods and practices

70. Interview with Informant 5, August 2, 1974.

71. Reviews of seized J.C.R.C. corporate records disclosed numerous other instances of stores believed to have been favored accounts receiving J.C.R.C. checks on a recurring basis in amounts approximating \$1,000. However, no attempt was made to interview additional store owners once the pattern of the illicit schemes had been established.

72. William Shanaberger told an employee of a major food manufacturer that he intended to form new companies in Michigan and Los Angeles. Phone conversation between Shanaberger and employee of Ralston Purina Company on September 3, 1974, as reported to U.S. Postal Inspector.

73. As of April 30, 1975, the U.S. Postal Inspection Service was investigating thirty major coupon redemption fraud cases throughout the United States. The Philadelphia Division is currently working two such cases.

74. It is arguable that fraudulent practices might be discouraged if clearing house operators know that their books can be reviewed by outsiders through the requirement of public accounting. However, Shanaberger and his associates were not dissuaded from such practices even though they were aware that J.C.R.C. could be subject to audit by manufacturers without prior notice.

75. In a recent case in the United States District Court for the Eastern District of Pennsylvania, five individuals were indicted on mail fraud charges and charged with planning and executing a scheme

employed in coupon frauds would be particularly valuable in the fight against coupon cheats and schemers. The Crime Commission urges the Pennsylvania General Assembly to amend the Pennsylvania Crimes Code to make it a felony of the third degree for any person or company to solicit or accept from any person or company any "cents-off" coupon with knowledge that the coupon did not represent a corresponding purchase,⁷⁶ or for any person or company to offer or submit to any other person or company any "cents-off" coupon with knowledge that the coupon did not represent a corresponding purchase.

Another potential safeguard against coupon fraud lies in a public that is educated and alert to the issue. The public must be made aware of the harm of selling unused coupons at discounted prices to dishonest grocers or clearing houses, and of the reasons why this practice is illegal.

Public education can also serve to apply pressure on manufacturers to thoroughly qualify retailers and clearing houses who are permitted to handle coupons, and to regularly audit records and merchandise inventories. Though manufacturers may suffer initially when they redeem coupons for which no actual purchases were made, this cost is passed along to consumers in the form of increased retail prices. Informed citizens might demand that manufacturers provide more effective policing of coupon distribution and redemption than is presently the case.

Of course, if coupon fraud continues to proliferate, the end result may be that coupon distributions will be limited to the product package, or that coupon distributions will be halted altogether. In such an event, both the public and the manufacturers would be the losers. It is, therefore, in the best interests of all to make every effort to eliminate this serious fraud.

which obtained in excess of \$250,000 from various manufacturers. The indictment charged that the defendants obtained wholesale quantities of "cents-off" coupons from numerous charitable, church, and other non-profit groups, and then submitted these coupons for redemption to over 100 manufacturers. According to the indictment, the defendants had created non-existent retailer names and also utilized existing company names in order to fraudulently represent to the manufacturers that the coupons being submitted had been obtained by the retailers from their customers. The defendants were charged with renting post office boxes in the names of the phony companies or those which they controlled, and then receiving checks at those post office boxes from manufacturers. The defendants then deposited the checks through various checking accounts opened in the names of the retail companies and divided and distributed the net proceeds to the various co-conspirators by checks paid from these checking accounts. All the defendants in the case eventually entered guilty pleas. *United States v. Raiton*, Crim. No. 72-661 (E.D. Pa. 1973).

76. Of course, acceptance by the public of coupons obtained by direct mail, in or on the product package, or from magazine or newspaper advertisements, should not be covered within the meaning of the prohibition against acceptance of such coupons.

VI. Migration of Organized Crime Figures From New Jersey Into Pennsylvania: A Case Study of Syndicated Gambling in Bucks County

1. INTRODUCTION

In late 1972, the Southeast Regional Office of the Pennsylvania Crime Commission received complaints from citizens of Bristol Borough, Bucks County, concerning local gambling operations. They alleged that bookmaking was operating openly and that card and dice games, frequented by local and out of state gamblers, were occurring regularly. Routine surveillance established the names and places of operation of the local gamblers. Bookmaking was observed taking place in and around the Keystone Hotel, Bath Street, Bristol, and the St. Ann's Athletic Association, Wood Street, Bristol.¹ Efforts were then initiated to identify the persons controlling these observable operations.

On May 7, 1973, a Pennsylvania Crime Commission resolution was approved authorizing an investigation to focus upon organized criminal activity in the Township of Bristol and the Borough of Bristol, Bucks County. The investigation was to include an inquiry into related official corruption. The Commission had also received allegations that in recent years substantial numbers of individuals and business enterprises engaged in organized criminal activity had moved from New Jersey into Bucks County, and that persons engaged in organized gambling activity in Bucks County had connections with persons so engaged in Philadelphia. Thus, the initial resolution was amended to inquire into these matters.

Throughout this report, the Commission has maintained the anonymity of sources of information in order to protect them from recriminations and prevent ongoing investigative efforts from being jeopardized. The Commission has based its conclusions in large part on information supplied by these sources, as well as through additional interviews, surveillances, private Commission hearings at which a total of 33 witnesses testified under oath pursuant to subpoena, and close cooperation with other law enforcement officials.² The Commission has in all cases

1. The Pennsylvania State Police was also aware of these street level operations, and in October, 1973, several of the individuals involved in the operations were arrested for gambling offenses.

2. Throughout this investigation the Crime Commission received assistance and cooperation from the Bristol Township Police Department, the Pennsylvania and New Jersey State Police, the Office of the Bucks County District Attorney, the New Jersey State Commission of Investigation, and the Organized Crime Squad of the Mercer County, New Jersey, Prosecutor's Office.

attempted to corroborate the testimony and statements of witnesses. Evidence was not used in this report unless it was consistent with other credible information received or the inconsistencies could be fairly resolved.

2. ORGANIZED CRIME AND GAMBLING IN BUCKS COUNTY

a. History Prior to 1970

The organized crime ties between Bucks County, Philadelphia, and Trenton, New Jersey are deeply rooted in the history of the Cosa Nostra family presently headed by Angelo Bruno of Philadelphia.³

This organization had been ruled by Joseph Bruno (no relation to Angelo) from 1927 until 1944. At the time he took command of the family he resided in Bristol Borough, in lower Bucks County. However, on New Years Eve, 1928, one of his racket associates was murdered,⁴ and shortly thereafter he moved his residence and headquarters to Trenton, New Jersey. From there, Joseph Bruno ruled a gambling cartel that at one time extended from Delaware County into South Philadelphia and Camden, New Jersey, north to Bristol and Trenton, and also along the South Jersey shore.

Following Joseph Bruno's decision to retire from control of the family in 1944, general control passed to Joseph Ida, who maintained his position until 1957.⁵ Syndicate control of the numbers racket in Bristol, however, became fragmented after Joseph Bruno's retirement, as local operators seized the opportunity to become independent.⁶ But Bristol Borough was an industrialized area that had become very prosperous during World War II, as local factories took on defense-related production; it was not for long that organized crime left this area to small-time independents.

3. For a complete discussion of the core group Cosa Nostra families whose members work and reside in Pennsylvania, see *Pennsylvania Crime Commission Report on Organized Crime* 17-21 (1970).

As pieced together by various law enforcement authorities, La Cosa Nostra is a confederation of "families". Each family is run by a "capo" ("boss") whose chief duty is to maintain discipline within the family and maximize profits. Beneath each boss is a "sottocapo" ("underboss") who collects information for and relays messages to the boss and passes his instructions on to underlings. On the same level with the underboss is the "consigliere" ("counselor"), often an elder member of the family whose judgment is highly valued. Below the underboss and counselor are the "caporegima" ("lieutenants") who serve as the buffers between the family heads and lower echelon persons, thereby helping to insulate the top figures from the grasp of law enforcement authorities.

The leaders maintain their insulation by avoiding direct communication with the persons involved in street operations. The family members who, at the direction of the lieutenants, supervise the street workers are called "soldati" ("soldiers"). Soldiers often manage unlawful street operations on a commission basis. The persons who are employed by the soldiers to work in illicit enterprises on the street level are generally not family members, and thus come from many ethnic groups. These employees (categorized by law enforcement officials as "associates" of organized crime) are afforded no insulation from traditional police operations and consequently are the persons most frequently arrested.

4. Interview with Mr. A., January 9, 1975, and various public sources.

5. Ida attended the much-publicized meeting of La Cosa Nostra leaders in Apalachin, New York, in November, 1957. After this meeting he fled the United States rather than face deportation charges. *Pennsylvania Crime Commission Report on Organized Crime* 20 (1970).

6. Testimony of Mr. B., before the Pennsylvania Crime Commission, July 17, 1974, N.T. 14, 18, 20 [hereinafter cited as Mr. B].

The man who initiated steps to gain control over the action in Bristol after Joseph Bruno's retirement was Samuel Rizzo DeCavalcante, boss of a much smaller La Cosa Nostra family. DeCavalcante consolidated control over his numbers operation in this area during the 1950's and caused the virtual elimination of the independents.⁷

DeCavalcante achieved his objective by gaining the allegiance of Bristol residents Charles Chillela and Augustus Montevino. Chillela had been the largest of the local numbers bankers and Montevino had been a local numbers writer who was a long time friend of DeCavalcante.⁸ In addition, DeCavalcante financed the "edge-off" operation⁹ of James Goia of Trenton, New Jersey, a member of the Angelo Bruno family.¹⁰

DeCavalcante first became known to Bristol residents around 1948 due to his attendance at local dice games. However, as is the case with all La Cosa Nostra leaders, his position of control over the numbers racket in Bristol was concealed by the activity of the more visible street operatives.¹¹ To the average citizen of Bristol it appeared as though the numbers racket was run by Chillela through such street workers as Augustus Montevino, Augustus Nocito, and Vito La Rosa, as well as through various other writers who turned their daily play over to Chillela.¹²

By the late 1960's DeCavalcante's dominance over the Bristol numbers racket had significantly diminished.¹³ Local numbers writers continued their operations and "edged-off" their bets to both Philadelphia and Trenton, New Jersey, depending upon where their contacts were located. Some small operatives had even held their own bets and only took what they could safely handle.¹⁴

During the period of DeCavalcante's influence in Bristol, the Angelo Bruno family remained active in Bucks County. According to information accumulated by

7. In addition to his involvement in numbers activity, DeCavalcante occasionally bank-rolled dice games in Bristol Borough during the late 1940's and early 1950's. Mr. B, N.T. 24.

8. Mr. B, N.T. 15, 28-29.

9. Numbers bankers and bookmakers are able to insure against being wiped out by heavy losses on a given day by "edging-off" or "laying-off" bets through a complicated reinsurance system which protects their capital base.

10. Mr. B, N.T. 22-23; Logs of Electronically Surveilled Conversations of Samuel Rizzo DeCavalcante, et al., 1961-1965, by the Federal Bureau of Investigation [hereinafter cited as DeCavalcante transcripts], vol. 13, pp. 5, 7. Introduced during proceedings of *U.S. v. DeCavalcante, et al.*, U.S. District Court, District of New Jersey (Camden), Criminal No. 111-68.

11. The fact that DeCavalcante was the actual money backer of crap games run by Chillela was also a well kept secret. Mr. B, N.T. 24.

12. *Id.* at 27-28. La Rosa ran his operation out of a pool hall on Mill Street and primarily took bets from the southern portion of Bristol Borough. Interview with Mr. C, July 1, 1974. Nocito operated in and around the Fleet Wing Aircraft plant. *Id.*; Mr. B, N.T. 66.

13. In September, 1966, DeCavalcante became involved in a scheme to extort \$12,000 from five persons who operated (bankrolled) an independent dice game in Trevoze, Bucks County. On October 1, 1966, a \$3,000 payment was made directly to DeCavalcante by the operators of the game, with weekly payments of \$200 to follow until the debt was paid. Shortly thereafter the five men were subpoenaed to appear before a federal grand jury, but they refused to testify on self-incrimination grounds. An alleged DeCavalcante soldier forgave the remaining "debt" because of their refusal to testify. However, the government was able to secure other testimony which resulted in DeCavalcante's conviction in June 1970, on extortion and conspiracy charges. *U.S. v. DeCavalcante, et al.*, U.S. District Court, District of New Jersey (Camden), Criminal No. 111-68 (notes of testimony of Kenneth Martin).

14. Mr. B, N.T. 26.

federal and New Jersey law enforcement agencies, John Simone (also known as Johnny Keys, a caporegime from Trenton) controlled a large numbers operation in Trenton which extended to the U.S. Steel plant in Falls Township, Bucks County. Direct control over Simone's "edge-off bank" was initially exercised by Charles Costello. A major associate of Costello in running the "edge-off" for Simone was Carl ("Pappy") Ippolito, who became a more dominant figure in Simone's numbers operation after Costello was indicted (and subsequently acquitted) in Trenton for operating a \$500,000 a year numbers bank. John Simone,¹⁵ Charles Costello,¹⁶ and Carl Ippolito are all cousins of Angelo Bruno.¹⁷

b. Developments Since 1970

Since approximately 1970 the areas of operation and influence of La Cosa Nostra families have become clouded. Trenton had for many years served as a base of operations for La Cosa Nostra members who were tied into families located in Philadelphia, New Jersey, and New York City; however, operations of the various families were usually kept separate. Organizational changes that have occurred have apparently been caused by a realignment of power in La Cosa Nostra's national "commission."¹⁸ As a result of death, self-imposed exile, incarceration, and flight from federal authorities on the part of many of its previous members, the commission has apparently come to be dominated by Carlo Gambino of New York City.¹⁹ The capos of other families represented on the commission are reportedly Gambino's puppets.

Reputed members of the Gambino organization operated in the early 1960's exclusively in New York City; New Haven, Connecticut; Miami, Florida; and Newark and Trenton, New Jersey. By 1971 Gambino members were reportedly also operating in Baltimore, Maryland; Chicago, Illinois; and Philadelphia and the northeastern counties of Pennsylvania. Of particular interest to law enforcement has been the increase in activity by reputed Gambino soldati in the Trenton area, where two of the principal Gambino operatives reportedly have been Nicholas Russo²⁰ and Anthony Tassone.²¹ This report discloses the apparent spill-over of

15. *Pennsylvania Crime Commission Report on Organized Crime* 24 (1970).

16. *Id.* at 27.

17. Testimony of Carl Ippolito before the Pennsylvania Crime Commission, November 21, 1974, N.T. 45 [hereinafter cited as Ippolito].

18. The commission, composed of the bosses of the most powerful families (generally located in large cities), makes major policy decisions for the Cosa Nostra organization and serves as the ultimate authority on family disputes involving organization and jurisdiction.

A description of the structure of the La Cosa Nostra "Commission" is contained in *Measures Relating to Organized Crime*, U.S. Senate, Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary Hearings 124-125 (1969).

19. Gambino's strength is believed to have been further consolidated due to the shooting of Joseph Colombo in New York City on June 28, 1971, and the death of Buffalo, New York, capo Stefano Magaddino in July, 1974. [This report was initially released in July, 1976. Since the publication of the report, Mr. Gambino died on October 15, 1976, in New York].

20. Russo was incarcerated in New Jersey from 1971-1973 for contempt for refusing to answer questions before the New Jersey Commission of Investigation. New Jersey authorities believe that when John Simone of Trenton sold his home and business interests and moved to Fort Lauderdale, Florida, several years ago, he turned over his numbers operation, i.e. edge-off bank, to Russo.

21. Tassone was convicted in 1973 in Rhode Island for fixing a horse race, was convicted in June 1975 in Mercer County, New Jersey, for armed robbery, kidnapping, assault and conspiracy, and has several gambling convictions in New Jersey.

Gambino family activity and operations into lower Bucks County.

In 1970, Angelo Bruno was incarcerated for contempt of court after refusing to answer questions before the New Jersey Commission of Investigation. Subsequently, a number of reputed organized crime figures fled New Jersey to avoid being subpoenaed by that agency.²² Among them was Carl Ippolito, who in December, 1972, registered in a Bucks County apartment complex under his mother's maiden name, Vizzini.²³ Ippolito eventually became one of the major subjects of that phase of the Bucks County investigation concerned with the movement to Pennsylvania of individuals once prominent in New Jersey gambling activities. This report discloses that many of these persons have direct or indirect connections with organized crime core groups.

c. Significance of Organized Crime Presence

The President's Commission on Law Enforcement and Administration of Justice commented on the dangers to society posed by organized crime:

...In a very real sense [organized crime] is dedicated to subverting not only American institutions, but the very decency and integrity that are the most cherished attributes of a free society. As the leaders of Cosa Nostra and their racketeering allies pursue their conspiracy unmolested, in open and continuous defiance of the law, they preach a sermon that all too many Americans heed: the government is for sale; lawlessness is the road to wealth; honesty is a pitfall and morality a trap for suckers.²⁴

Organized crime's greatest source of revenue since the prohibition era has been illegal gambling,²⁵ which includes lotteries (the most common form of which is "numbers"), bookmaking on sports events, and large card and dice games. Estimates of the amount grossed annually by organized crime from gambling range from \$5 to \$30 billion.²⁶ Profits amassed through illegal gambling are used by organized crime to infiltrate legitimate businesses,²⁷ and also serve as the financial

22. *State of New Jersey Commission of Investigation 1973 Annual Report*, 34-35.

23. Ippolito, N.T. 18-19.

24. *The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Organized Crime 3* (1967).

25. Congress, in passing the anti-gambling provision of the Organized Crime Control Act of 1970, has determined that the huge revenues from gambling operations provide the fiscal muscle for organized crime. Legislative History of Pub. L. No. 92-458, 2 *U.S. Code Cong. & Admin. News* 1970, p. 4028.

26. Because of the complexities of the numbers and sports betting systems, the average bettor has no way of knowing that the "small-time" numbers writer or bookmaker with whom he is placing his wager is part of a complicated network which likely involves organized crime. Organized crime members either control the gambling operation or provide the lay-off money which protects the small operator from being wiped out, or both. Most lay-off or edge-off men are members of organized crime groups or are controlled by such persons.

27. Pennsylvania's Corrupt Organizations Act of 1970 makes it unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity (defined to include gambling offenses) in which such person participated as a principal, to use or invest any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise. Act of December 6, 1972, P.L.____, No. 334, effective June 6, 1973, 18 C.P.S.A. §911.

underpinning for organized crime involvement in such criminal activity as loan-sharking and drug trafficking.²⁸

3. ORGANIZED CRIME RELATED GAMBLING ACTIVITY UNCOVERED IN BUCKS COUNTY

a. Golden Rod Ranch Restaurant

On March 28, 1973, the Bristol Township Police Department reported information they had received to the Pennsylvania Crime Commission. Allegedly, the Golden Rod Ranch Restuarant, Levittown, Bucks County, was being renovated to provide gambling facilities. So far as the local police could determine, gambling activity had commenced during the week of March 18, 1973, when locally known gamblers began frequenting the basement of the restaurant by means of an entrance on the north side of the building. During April, 1973, the Commission was able to identify nine individuals who visited the basement of the Golden Rod almost daily. Most of these ~~one~~ had prior criminal convictions, particularly for gambling offenses.

The Golden Rod Restaurant was operated by George Cerula of Levittown, who leased the building and grounds from a Philadelphia corporation. George Cerula had no criminal record. His brother, Edward Cerula, visited the basement of the Golden Rod almost daily. Edward Cerula has had frequent contact with suspected bookmakers and racket figures in New York and New Jersey, and has several convictions in Bucks County for gambling violations. The Commission learned that Edward Cerula raked the games for the house, i.e., took the house share from each hand.²⁹

In July, several sources reported that a "big man from Trenton" had recently moved into the Bristol area. In August, the Crime Commission received information that Albert Campo had been observed at the Golden Rod and that Campo was a longtime associate of Carl Ippolito. The Commission was advised that Ippolito was now living in Morrisville, Pennsylvania.³⁰ Another source reported that Ippolito was attending poker games in the basement of the Golden Rod.³¹ Shortly thereafter, the Commission received a report that Ippolito had been directed to consolidate under his control the independent gambling activity in Bucks County.³²

On August 29, 1973, after obtaining a search warrant, the Bristol Township Police Department raided the basement of the Golden Rod Ranch Restaurant. Despite the fact that the basement was a virtual fortress,³³ they eventually gained

28. Illegal gambling operations promote additional types of crimes, such as extortion in order to collect gambling debts, and bribery in order to prevent disruption of gambling operations by law enforcement officials. For a more general discussion of gambling's relationship with other crimes, see *Pennsylvania Crime Commission Report on Organized Crime* 38-39 (1970).

29. In his absence, Levittown resident Charles Mazzella raked the games. Interview with Mr. I, October 15, 1973.

30. Interview with Mr. F, August 22, 1973.

31. Interview with Mr. G, August 23, 1973.

32. Interview with Mr. H, September 23, 1973.

33. The entrance into the basement consisted of a series of three doors. The first door, which was entered from the parking lot on the north side of the building, opened into a passageway leading to the second door. Behind the second door was a reinforced steel door which had taken five men to install. Interview with Mr. D, April 4, 1973. Shag carpeting had been placed on the basement walls as well as the

entrance. Sixteen people were in the basement of the Golden Rod and questioned by the police. Two were residents of New Jersey, and four, including Edward Cerula, had previous convictions for gambling offenses. Carl Ippolito and Charles Warrington were among the sixteen.

New Jersey authorities reported that Warrington had been a close associate of reputed Gambino family member Anthony Tassone³⁴ in the illegal gambling operations that took place at the Columbus Lounge in Trenton, New Jersey. It was also learned that Warrington had been arrested on March 8, 1968, in a gambling raid at the New Armstrong Club, Walklett Alley, Trenton,³⁵ along with Tassone and another reputed Gambino associate, Nicholas Russo.³⁶ Warrington resided in Trenton for several years prior to 1972 and then moved to Pennsylvania.

On October 1, 1973, George Cerula, Carl Ippolito, Charles Warrington, and thirteen other men, most of whom were also at the Golden Rod at the time of the raid, were served with Pennsylvania Crime Commission subpoenas requiring them to appear and testify regarding the Golden Rod and other gambling activity in Bucks County.

Of the sixteen witnesses who appeared at private Commission hearings on October 17 and 18, 1973, seven refused to testify on the basis of their Fifth Amendment privilege against self-incrimination.³⁷ Most of those who did answer questions at the Commission hearings testified that anyone could gain entrance to the basement of the Golden Rod simply by asking to be let in if the outside door was closed, that only gin rummy and pinochle were played in the basement, and that no money was involved in the card games. A number of the witnesses stated that they were playing pinochle on the night of August 29, 1973; however, the Bristol Township police found some sixty decks of regular playing cards but no pinochle decks.³⁸

Following the October hearings, the Commission resumed its investigation of Carl Ippolito's activities. On November 11, 1973, Ippolito met Anthony Tassone at the Golden Rod. According to a Commission source, they discussed dice or crap games located in Bucks County. Ippolito denied ever talking with Tassone about any gambling operation in Bucks County.³⁹ Ippolito admitted knowing Tassone for over forty years, but declared that he had no idea what Tassone did for a living.⁴⁰

Ippolito also met with Dominick Iavarone at the Golden Rod restaurant.⁴¹

floor in order to provide additional soundproofing. Interview with Mr. E, April 2, 1973. An elaborate electronic buzzer system, running from the first door to the basement room, served to warn the basement occupants of any persons passing through the outer door. The Commission confirmed through an audit of subpoenaed Golden Rod Ranch records that several thousand dollars were spent to construct the basement room.

34. See p. 176 *supra*.

35. A total of \$22,000 was confiscated during this raid.

36. See p. 176 *supra*.

37. It took the Commission over one year from the time Ippolito was first served with a subpoena to obtain his testimony. Intensive litigation occurred during this period (see Appendix).

38. George Cerula, who as a result of the raid was charged with operating a gambling establishment, was eventually placed on probation as part of an accelerated rehabilitative disposition program.

39. Ippolito, N.T. 41.

40. *Id.* at 38.

41. Ippolito also met Alvin Feldman at the Golden Rod. Feldman was reported by New Jersey authorities to be a past associate of Nicodemo "Nick" Scarfo, a reputed member of the Angelo Bruno family.

Iavarone, then residing in Trenton, New Jersey, was reportedly involved in a large sports-bet ring.⁴² In addition, New Jersey authorities reported that Iavarone was a close associate of Anthony Tassone and Nicholas Russo. Iavarone has a record of several arrests for bookmaking, and was apprehended in the 1968 raid on the New Armstrong Club in Trenton.⁴³ In January 1974, Iavarone moved his residence to Falls Township in Bucks County.

b. Sunny's Cleaners

Although gambling activity in the Golden Rod basement appeared to diminish toward the end of 1973, other gambling activity in Bucks County, involving those who frequented the Golden Rod and their associates, continued to flourish. In September, 1973, the Pennsylvania Crime Commission received information from sources in Philadelphia regarding a large dice game operating in lower Bucks County. In December, additional information was received which indicated that the principal location for this dice game was Sunny's Dry Cleaning in the Colonial Plaza Shopping Center, Bensalem Township, Bucks County. Frank Barbetta was the operator of this dry cleaning establishment.⁴⁴

Information was received that the gambling took place in a back room of Sunny's.⁴⁵ Blackjack was allegedly played in the afternoons between 3:00 P. M. and 6:00 P. M., and the dice games were played in the evenings, usually commencing after 9:00 P. M.⁴⁶ It was reported that the normal volume of play in the dice game exceeded \$15,000 per night.⁴⁷ Further investigation established that the games were frequented by gamblers and racket figures from Philadelphia such as John Craigh, Theodore Perry, Harry Laquintano, and James Maletteri.⁴⁸ John Sorber of Parksburg, Chester County, Pennsylvania, was also identified by the Commission as a frequent visitor at the night sessions.⁴⁹ On two occasions, Sorber was observed leaving Sunny's with two other individuals after midnight. Subsequently, the Commission received information that Lancaster, Pennsylvania, gamblers Richard Manduchi and Larry Napolitan⁵⁰ had accompanied John Sorber to a "high-stakes

42. Interview with Mr. C, November 30, 1973.

43. See p. 178 *supra*.

44. Pennsylvania State Police records show Barbetta with five arrests and four convictions. On November 8, 1971, Barbetta had been arrested by the Pennsylvania State Police and charged with establishing and maintaining a gambling house at this location. The charges were subsequently dismissed at a preliminary hearing.

45. This information was later substantiated by the Pennsylvania State Police.

46. Interview with Mr. C, January 23, 1974.

47. *Id.*

48. Philadelphia Police Department records show Craigh (a/k/a Craig and Creag) with 18 arrests, 5 convictions; Perry with 45 arrests, 10 convictions; Laquintano with 25 arrests, 11 convictions; and Maletteri (deceased 1974) with 50 arrests, 11 convictions.

49. Sorber was arrested by the Pennsylvania State Police and convicted in 1971 for sports bookmaking.

50. Pennsylvania State Police records show Richard Manduchi with 15 arrests and 6 convictions. Most recently, Richard Manduchi was arrested on June 29, 1974, following a five month State Police undercover investigation, for operating a sports bookmaking ring, and was charged with sixty-two counts of bookmaking. On October 23, 1974, Manduchi was convicted on 61 counts for bookmaking. The case is now on appeal. In August 1974, Manduchi and Lawrence Napolitan were arrested in Lancaster by Pennsylvania State Police on gambling charges (these charges were subsequently dropped

crap game outside of Philadelphia near Liberty Bell Race Track."⁵¹ This source reported that the bankers, or operators, of the game were known as Frank and Teddy.⁵² This information confirmed previously received data indicating that Frank Barbetta and Theodore Perry were the money men behind the dice game at Sunny's Cleaners.⁵³ Several sources had reported to the Crime Commission that Frank Barbetta was involved in a sports-bet operation, as were some of his acquaintances, including John Craig and Ted Perry, and that Barbetta ran the dice game in order to recoup losses incurred from his sports-bet operation.⁵⁴

A number of Bucks County residents who had previously been observed entering the basement of the Golden Rod also frequented Sunny's. For example, on February 20, 1974, twenty-six individuals were observed leaving the building at 1:10 A.M. (The cleaning business had been closed since 6:00 P.M. that evening). Among them were four men, each with at least two gambling convictions, previously observed entering the Golden Rod basement. Golden Rod owner George Cerula and John Craig were also observed departing during the early morning hours.

On February 22, 1974, the Pennsylvania State Police obtained a search warrant and raided Sunny's Cleaners. However, no gambling was taking place at the time of the raid, and it was subsequently learned that the dice game had been moved to a private residence in Cornwells Heights, Bucks County, on the evening of the raid.⁵⁵ The interior of Sunny's Cleaners had a buzzer at the main entrance like that at the Golden Rod serving to warn the occupants of the back room if anyone entered the premises. The entrance to the back room was guarded by a reinforced steel door. The cleaning establishment was clearly serving as a "front" for other activity on the premises. Approximately fifteen articles of clothing were found in the dry cleaning shop. Only two had been serviced in January 1974; the remaining garments had slips attached indicating that they had been there since 1971 or 1972. Several weeks after the raid it was reported that the dice game had been moved from Sunny's to a private club in the Mayfair section of Philadelphia.⁵⁶ This private club listed Theodore Perry as a member.

During March 1974, several dice games reportedly operated in competition with the game that had moved from Sunny's. A smaller game allegedly operated in the Democratic Club in Bristol Borough, and a higher stakes game was alleged to have been operated for a short time by Dominick Iavarone and James Christy in an establishment located on Bristol Pike, Andalusia, Bucks County.⁵⁷

In late July 1974, the activity at Sunny's Cleaners began to increase again.

in December 1974 due to insufficient evidence). The Commission learned that Frank Barbetta had been placing numerous telephone calls to John Sorber's home in Parkersburg, Larry Napolitan's residence in Lancaster, and a home in Lancaster at which Manduchi resided.

51. Interview with Mr. K, March 28, 1974. Sunny's Cleaners is located within the vicinity of Liberty Bell Race Track.

52. *Id.*

53. Interview with Mr. C, January 23, 1974.

54. Interview with Mr. L, January 9, 1975; interview with Mr. C, February 24, 1974.

55. Interview with Mr. C, February 24, 1974.

56. Interview with Mr. K, March 28, 1974.

57. Interview with Mr. C, April 3, 1974. Christy has an extensive criminal record, including numerous convictions for bookmaking and other gambling activity in both Pennsylvania and New Jersey.

Included among the new influx of visitors were Charles Warrington and Carl Ippolito. On August 7, 1974, Warrington and Ippolito were observed entering Sunny's Cleaners where they remained for over two and one-half hours. Warrington subsequently testified that he didn't know if Barbetta was engaged in any illegal gambling.⁵⁸ Ippolito denied ever being present in the back room at Sunny's while a crap game was taking place.⁵⁹

c. Democratic Club

After Labor Day 1974, the activity at Sunny's Cleaners was sporadic. According to various Commission sources, the dice game was floating back and forth between Sunny's and Northeast Philadelphia. In mid-September, information was received concerning increased activity at the Democratic Club (Demi Club), Radcliffe Street, Bristol Borough.⁶⁰ Commission investigative efforts established that Albert Campo,⁶¹ Dominick Iavarone, and James Christy frequented the Demi Club in the late afternoons. Edward Cerula and two other persons who were present in the Golden Rod basement when it was raided were also observed at the Demi Club.

In late September and October, the Commission received considerable information regarding a dice game at the Demi Club. Allegedly, a sizable dice game was being operated by James Christy and Dominick Iavarone, and a club official or member was receiving money for the use of the hall for this purpose. The Commission was advised that the game was held six days a week in the afternoons between 3:00 P.M. and 6:00 P.M. Although Carl Ippolito never came near the game, his money allegedly backed it.⁶²

Carl Ippolito denied that he had any knowledge of gambling activities undertaken by Christy or Iavarone. Although he admitted that they had given him a phone number of a "club" where they could be reached, Ippolito claimed that he did not know the name of the club.⁶³ When asked if he had ever talked to Iavarone about what goes on at the club, Ippolito replied:

I don't talk about nothing to nobody. Do you know why? I don't want to get involved, I don't talk to nobody about nothing. I mind my own business. I learned that a long time ago.⁶⁴

58. Testimony of Charles F. Warrington before the Pennsylvania Crime Commission, August 12, 1974, N.T. 45.

59. Ippolito, N.T. 85.

60. Interview with Mr. C, September 17, 1974.

61. See p. 180 *supra*. Campo has several gambling convictions in New Jersey. Campo is another of the individuals who has moved from New Jersey to Bucks County, having taken up residence in Morrisville in 1973.

62. Interview with Mr. C, November 6, 1974.

63. Ippolito, N.T. 98-100.

64. *Id.* at 100. On November 7, 1974, Crime Commission agents observed Carl Ippolito and Dominick Iavarone in Frank's Cabana, a steak shop at 1200 South Tenth Street, Philadelphia, engaged in conversation with the owner, Frank Sindone. At the time the 1970 *Pennsylvania Crime Commission Report on Organized Crime* was written, Sindone, a/k/a Sindoni, was thought to have been proposed for membership in the Angelo Bruno organized crime family. He is now reportedly a member. Sindone was arrested by the Federal Bureau of Investigation on June 21, 1974, on loansharking charges stemming from a \$25,000 loan to a New Jersey automobile dealer, but was acquitted of the charges by a U.S. District Court jury on March 28, 1975. Sindone is presently under indictment in New Jersey on loansharking charges growing out of an alleged \$18,000 loan to a Wildwood, New Jersey, nightclub owner.

On February 21, 1974, the following individuals, among others, were observed entering and/or leaving the Demi Club: Charles Warrington, Albert Campo, James Christy, Theodore Perry, Harry Laquintano, and two other men with criminal records for gambling who were present in the Golden Rod basement when it was raided.⁶⁵

In March, 1974, the Commission learned that the gambling activity at the Demi Club had been moved back to Sunny's Cleaners. This move, which was confirmed by local law enforcement officials, eliminated the possibility of police action against the club.

4. CONCLUSIONS

The Commission has been able to document that organized gambling operations in Bucks County have become infiltrated over the past several years by persons once prominent in similar activities in New Jersey. Many are believed to be directly or indirectly connected with organized crime "core-groups." This influx of organized crime figures from New Jersey is a continuing process. According to information received by the Commission, additional individuals are planning to move to Pennsylvania.⁶⁶ It is not surprising, given such recent movement, that numerous numbers and sports-bet banks have relocated from Trenton to Bucks County. One such numbers bank operation, uncovered in 1973 in Falls Township, Bucks County, produced an estimated annual gross revenue in excess of \$1 million. Both of the individuals apprehended for operating the bank were from Trenton; one has long been associated with Trenton figure Charles Costello.⁶⁷

The influx from New Jersey certainly cannot be attributed to weak anti-

65. This information, along with other information pertaining to the Demi Club, was related to Bucks County detectives who were aware of the alleged gambling activity at the club.

66. New Yorkers are also participating in the influx. For example, another person who has taken up residence in Pennsylvania is John Salute, formerly of Brooklyn, New York, presently residing in Falls Township, Bucks County, who is a reported associate of Anthony Tassone. Surveillances of Salute led Commission agents to Trenton, New Jersey, where he was observed making what appeared to be manual pick-ups of "daily play." On every occasion that Salute was followed to New Jersey, he concluded his travels at the North Trenton Civic Club, 613 Princeton Avenue, Trenton. The observations made by Pennsylvania Crime Commission agents were related to New Jersey authorities, and on February 7, 1975, Salute was arrested at the North Trenton Civic Club and charged with failure to return a rented vehicle and possession of lottery slips. The arresting officers found numbers slips on the premises reflecting bets totaling in excess of \$110, as well as cash in excess of \$1,800. The property located at 613 Princeton Avenue is owned by Anthony Tassone.

During the Pennsylvania Crime Commission surveillance of Salute, he was observed on several occasions meeting with former New Yorker Paul Campanile. On February 17, 1974, Campanile and a John Santore, a/k/a John Santini, were arrested by Falls Township Police at the Villa Sorrento restaurant in Bucks County after apparently attempting to shoot a third party. Illegal possession of firearms charges were lodged against the two, who subsequently left Pennsylvania. Santore was apprehended by federal authorities on December 21, 1974, in Coral Springs, Florida, on the basis of a warrant issued by authorities in Nassau County, New York, charging bank robbery, as well as on the Bucks County charges. On March 13, 1975, Paul Campanile was murdered in a service area on the Garden State Parkway, Monmouth County, New Jersey, in what appears to have been a typical gangland execution. Salute, Santore, and Campanile are all former New Yorkers reputed to have been associated with Anthony Tassone in various illicit activities. This relationship appears to be another indication of the spread of the Gambino family influence beyond New York City and into New Jersey and Pennsylvania.

67. See pp. 174 *supra*.

gambling laws in Pennsylvania. In fact, the maximum penalties for gambling violations were recently increased to a \$10,000 fine and/or five years in prison.⁶⁸ However, obtaining evidence of the existence of organized gambling syndicates is an extremely difficult task. For instance, despite the Crime Commission's exhaustive investigation in Bucks County,⁶⁹ there has been only limited success in verifying the sources of the financial backing for the games. The Commission has been unable to document the recipients of the profits.

The migration of organized crime associates from New Jersey to Pennsylvania may be explained by the relative difficulty of obtaining this evidence in Pennsylvania compared with New Jersey. The following factors highlight this contrast:

1. Pennsylvania law prohibits both telephone wiretaps and electronic surveillance ("bugging"), while New Jersey law permits wiretapping pursuant to a court order and discretionary use of "body bugs."

2. Law enforcement agencies in Trenton and its environs, as well as law enforcement units throughout New Jersey, have a reputation for actively stalking gambling operations (aided by court-approved wiretapping). Local Bucks County police are often hindered by inadequate manpower and Pennsylvania's statutory prohibition against the use of wiretapping. They also do not have available for assistance any local unit similar to the Organized Crime Squad of the Mercer County (Trenton), New Jersey, Prosecutor's Office. Thus Bucks County police have generally been able to keep track of gambling operatives on only a fragmented and street-level basis.⁷⁰

68. Pennsylvania Crimes Code, Act of December 6, 1972, P.L. —, No. 334, effective June 6, 1973, 18 C.P.S.A. §§5512-5514. Under the Pennsylvania gambling statute in effect prior to June 6, 1973, maximum penalties for gambling violations were a \$500 fine and/or one year imprisonment. Act of June 14, 1939, P.L. 872, 18 P.S. §§4601-4607, as amended. All forms of gambling are illegal in Pennsylvania except for the state-operated lottery and bets on horseracing at authorized race tracks. Although the law does not prohibit mere participation in unlawful gambling as a player or frequenter, penalties are attached to such acts as the possession or sale of gambling paraphernalia and devices, allowing persons to assemble for unlawful gambling, and soliciting persons to visit an unlawful gambling establishment for gambling purposes. 18 C.P.S.A. §§5512-5514.

69. Much of the information concerning the names of suspected and reported street operatives involved in numbers and bookmaking operations, particularly in Bristol Borough and Bristol Township, have been omitted for the sake of brevity.

The Crime Commission's Bucks County probe was not limited to gambling. It also included an investigation of allegations that members of the Bristol Borough Police Department had participated in burglaries and other unlawful activity. The Commission uncovered information indicating that two former members of that police force had participated in burglaries in the Bristol area. As a result of information furnished by the Commission to the Bucks County District Attorney, former officers Joseph Genco and Joseph Mangiarcina were arrested on burglary charges. Genco pled guilty to the charges in Bucks County Common Pleas Court in January 1975. Mangiarcina's subsequent trial ended when his motion to dismiss the charges was granted on the ground that the evidence produced by the prosecution was insufficient in point of law to support a conviction.

70. The Bucks County District Attorney has acknowledged that, prior to the public release of the DeCavalcante transcripts in 1968, his office had only a "shadowy" awareness of the presence of organized crime elements in the county. The information which had been accumulated on the subject resulted primarily from rumor. Since that time, the efforts of his office in this area have been limited in varying degree by the legal difficulties inherent in impaneling investigative grand juries in Pennsylvania; the legal prohibition in Pennsylvania against wiretapping; certain legal obstacles in obtaining witness immunity in matters related to organized crime or racketeering; and with respect to gambling offenses specifically, by the fact that many local police departments have generally placed a low priority on the need to ferret out illegal gambling in light of continually increasing violent crime. According to the

3. Many persons considered members of organized crime operations in New Jersey are fearful of being subpoenaed by the New Jersey State Commission of Investigation. That agency has been successful recently in securing incarceration on contempt charges for witnesses refusing to testify after being granted immunity. The statutory procedures available to the Pennsylvania Crime Commission are time-consuming and unwieldy, as evidenced by the efforts to secure the testimony of Carl Ippolito. (See Appendix).

Given these tools and the greater quantity of solid evidence of the connection between large gambling operations and organized crime that they produce, it is not surprising that judges in Mercer County, as well as in the rest of New Jersey, have acquired a reputation for imposing harsher sentences for gambling than their counterparts in Bucks County and other areas of Pennsylvania.

For one reason or another, the Judiciary in Pennsylvania has not taken a serious and strong stand against gambling. A study conducted by the Crime Commission of 1972 arrest data showed that arrests for gambling in Philadelphia normally result in discharges, regardless of the gambler's position within a criminal organization. Over 91 percent of all those arrested were acquitted or had their cases dismissed, most of these at a pretrial hearing; 2.9 percent were given probation; 4.0 percent were given light fines (never more than \$500); 1.1 percent were given suspended sentences; and only 0.4 percent of all those arrested were sentenced to jail.⁷¹

A Crime Commission study of gambling cases in Allegheny County Criminal Court also revealed that jail sentences are rarely imposed. A fine of less than \$400 was the most commonly imposed sanction.⁷² The Commission determined that the persons most frequently arrested in Allegheny County are those at the lowest level of illegal gambling operations. According to the judges, such persons are often poor, aged or disabled.⁷³ The Allegheny County judges who were interviewed all indicated a concern for the problems posed by organized crime and the resultant corruption of public officials. However, most believe that it would be unwise to translate this concern into a general policy of imposing jail sentences and stiff fines on gambling violators without evidence in each case that the convicted violator was significantly involved in an organized criminal syndicate.⁷⁴

Thus, while the courts do recognize the problem of organized crime control of gambling as a serious one, they are understandably reluctant to impose a severe

District Attorney, any effort to adopt a strike force program to attack organized criminal activity would not be worth the expenditure of time and resources given the legal obstacles described above. Interview with Bucks County District Attorney Kenneth Biehn, July 23, 1975.

71. Pennsylvania Crime Commission, *Report on Police Corruption and the Quality of Law Enforcement in Philadelphia 192-193* (March 1974) (Hereinafter *Philadelphia Report*).

72. Pennsylvania Crime Commission, *Report on Patterns of Sentencing in Allegheny County Gambling Cases 24 passim* (November 1974) (Hereinafter *Allegheny County Report*).

73. *Id.* at 56.

74. *Id.* at 23. The Crime Commission, in making recommendations for improving the sentencing process in gambling cases, recognized that:

In each case, judges are confronted with the problems of balancing the basic public apathy towards gambling, the state's implicit sanctioning of gambling through the lottery, and the nature of the average convicted gambling defendant against the need to deter illegal gambling because of its serious impact on organized crime and corruption. *Allegheny County Report* at 76.

sentence without adequate proof of a connection between the gambler and organized crime.

The findings of the Pennsylvania Crime Commission's investigative work in the area of gambling lead to the conclusion that law enforcement is failing badly in its efforts to eliminate or even reduce syndicated gambling through the criminal process. The Commission has issued a number of reports focusing primarily on illegal gambling and the related efforts of law enforcement. In all of those reports, the evidence was that the efforts to control gambling had been essentially unsuccessful. As this report on Bucks County indicates, even when the effort is made on a local level to enforce the gambling laws, success may often be limited due to the difficulty of obtaining solid evidence of criminal wrongdoing upon which successful prosecutions can be based.

Based upon information presently available to the Commission, illegal gambling still exists and continues to flourish in many parts of the Commonwealth besides Bucks County. The attempts to regulate illegal gambling through the criminal laws have failed in this state in the past and appear to be failing in Bucks County and throughout the Commonwealth at this time. There is reason to believe that counties other than Bucks are also facing the prospect of increased gambling activity generated by the benefitting persons thought to be associated with organized crime. Given the evils attendant with the presence of organized crime and the likelihood that events in Bucks County and elsewhere will have a spillover effect, the necessity for the State Legislature to consider new approaches to the gambling problem in this Commonwealth appears more compelling than ever.⁷⁵

Under the approach to organized crime controlled gambling presently followed in Pennsylvania, our citizenry is subjected to the worst of all worlds: thriving illegal gambling operations which provide funds used to support other organized criminal activity, a tremendous waste of the law enforcement and judicial resources that are presently engaged in a futile effort to enforce the gambling laws, and widespread corruption among law enforcement and other public officials resulting from bribes received to prevent enforcement of the gambling laws. Furthermore, the Commission does not perceive any significant movement in Pennsylvania in favor of improved tactical weapons and tighter law enforcement procedures and a tougher judicial attitude towards gambling. Nor, in the Commission's judgment, can such a momentum reasonably be expected to evolve in the foreseeable future; movement in the opposite direction appears to be dominant in Pennsylvania.⁷⁶ In the meanwhile, the Commonwealth is confronted with the knowledge that its law enforcement agencies continue to ineffectively flail away at illegal gambling activity. The damage to society resulting from present conditions continues to be too fundamental and too serious for us to continue to accept the status quo.

75. The Crime Commission has previously recommended that the State Legislature should consider new approaches and alternatives to the gambling problem. *Allegheny County Report* at 79; *Philadelphia Report* at 827.

76. Pennsylvania has had a statutory ban on all wiretapping since 1957, including wiretapping by law enforcement agencies pursuant to court order. In February 1975, the State Legislature enacted a law which prohibits monitoring or recording the voice of another person, without that person's approval, by use of any electronic or other device. See 18 C.P.S.A. §§5701-5707. Thus, the use of "body bugs" by law enforcement agencies is now outlawed in Pennsylvania as an investigatory tool, although the United States Supreme court has upheld the constitutionality of the use of such devices.

5. RECOMMENDATIONS

Pennsylvania has attained an image as a State with organized crime and official corruption problems. Its law enforcement agencies have not been provided with the tools, and, as a result, its attack on organized crime is completely ineffective. You ask, "How are they attacking these problems," and I am saying, basically, they are not.

Captain Justin Dentino⁷⁷

Regardless of what decision is made concerning gambling in Pennsylvania, legislative action must be taken if local and state law enforcement agencies are to have any effect on organized crime. As Captain Dentino stated, Pennsylvania law enforcement authorities are not able to have any effective impact on organized crime groups at this time.

In 1970, the Pennsylvania Crime Commission published its *Report on Organized Crime*. The report documented the existence of widespread organized criminal gambling and other activities in the Commonwealth and concluded that new tactics and legislation would be needed to be able to fight and control this activity.

Four new substantive laws were recommended in the *1970 Report*. Three of these have since been enacted, and the fourth has been passed by the Senate, but not the House, consistently since it was proposed.⁷⁸

The problem has been that the procedural means devised and recommended in the *1970 Report* to enforce the substantive laws have not been enacted. In order to make it realistic to expect effective enforcement of the proposed *substantive* laws, the Commission also recommended that four important *procedural* measures be enacted. While none of these four has yet been enacted into law, two of them have been considered at every session of the General Assembly since they were recommended and were passed by one or both Houses in some form.

77. New Jersey State Police, Commander, Intelligence Bureau. Hearings on Senate No. 1417 (wiretapping and Electronic Surveillance Control Act) before the New Jersey Senate Judiciary Committee, at 90A (1975).

78. The three substantive laws which were passed were the following:

The Corrupt Organizations Act which was drafted by the Crime Commission in cooperation with the House Law and Order Committee. This Act became law on December 8, 1970, and has been incorporated into the new Crimes Code as Section 911.

An amendment to the 1939 Crimes Code was enacted on December 29, 1972, providing for harsh penalties for making extortionate extensions of credit, engaging in criminal usury, financing extortionate uses of credit, financing criminal usury, collection of extensions of credit by extortionate means, receiving the proceeds of extortionate extensions of credit, receiving proceeds of criminal usury, and possession of records of criminal usury. While this Act is not codified in the new Crimes Code, it survives repeal of the 1939 Crimes Code because of Section 72 of the Statutory Construction Act, 1 Pa. C.P.S.A. §1952.

A recommendation that the perjury statute be enlarged to allow a conviction upon proof that inconsistent statements were made under oath, without the necessity for proving which one was false is reflected in §4902 (e) of the new Crimes Code.

The fourth recommendation, which was not passed, concerned syndicated gambling. Senate Bill 131 passed the Senate on April 28, 1975, by a vote of 46-0. This bill, which reflected the original recommendations made by the Crime Commission in 1970, was referred to the House Judiciary Committee, but was never reported out.

The first of these dealt with immunity from prosecution for witnesses compelled to testify over a claim of privilege against self-incrimination. Pennsylvania has had what is called "transactional" immunity since 1968. 19 P.S. §640.1 *et seq.* The immunity granted under this statute applies to "any transaction, matter, or thing" concerning which the witness is compelled to testify. It also purports to bar any "penalty", "forfeiture", "liability", "or thing" concerning which the witness is compelled to testify. It also purports to bar any "penalty", "forfeiture", "liability", or "cause of action" arising from the transactions about which he testifies. The Commission drafted a "use" immunity bill for the General Assembly, which would bar the use of a witness's compelled testimony against him, but would allow a prosecution or other action based upon evidence acquired independent of his compelled testimony.

A use immunity bill was introduced in the Senate during the 1971-72 session but never came to a vote. In the 1973-74 legislative session, both the House and Senate passed versions of the bill but could not agree on its final form. A draft of a use immunity bill was prepared for the last session of the General Assembly, but it was not introduced.

The second was a recommendation that a measure be enacted that would facilitate greater and more efficient use of the investigative grand jury. The 1970 *Report* called for "A statute to convene regularly and automatically an investigative grand jury in each of the more populous counties, and to allow such grand juries (1) considerable independence in their operation and (2) the power to indict and to issue public reports on general crime conditions in their jurisdiction." There was such a bill passed in the Senate and pending in the House at the time of that recommendation. It was never enacted into law. A bill introduced in the Senate in the 1971-72 session never came to a vote. In the 1973-74 session an investigative grand jury bill was passed by both the Senate and the House but was then tabled in the Senate.

The past session of the General Assembly had before it Senate Bill 693. This bill would have empowered the court of common pleas of any county to summon an investigative grand jury upon the petition of either the District Attorney or the Attorney General. In addition, it provided a procedure whereby special investigating grand juries could be summoned for statewide investigation. This bill was referred to the Senate Appropriations Committee on July 8, 1975, but no further action was taken.

The most controversial recommendation made in the 1970 *Report* concerned what most law enforcement officers consider to be the single most important and effective tool in the fight against organized crime: the responsible use of wiretapping and electronic surveillance. At the time of that report, wiretapping was illegal in Pennsylvania.

The Crime Commission recommended that the legislature enact, "A statute, modeled after the federal statute, to prohibit all electronic surveillance—wiretapping and electronic eavesdropping—except that conducted by law enforcement agencies under strict court supervision to collect evidence of serious criminality." Such a bill was then pending but never enacted. In fact, Sections 5701 through 5704 of the Crimes Code as originally enacted made all interception of telephone or telegraph communications, or the installation or use of any device for this purpose, a crime and also provided for a civil cause of action. In 1974 these sections were

amended to apply to all forms of electronic or mechanical interceptions of any voice communication, whether or not the communication involved a telephone.

The effect of this statutory two-party consent rule is to eliminate completely wiretaps or "body-bugs" as law enforcement tools, except under a narrow exception providing for the use of transmission devices, but not recording devices, to intercept conversation in "those situations in which the personal safety of . . . law enforcement officers is in jeopardy. . . ."

Last session's Senate Bill 1232 would have amended Section 5702 of the Crimes Code to allow certain wiretaps by law enforcement agencies when authorized by the subscriber of a telephone or victim of a crime involving a telephone, such as in extortion, bribery, and other crimes. This would be a step in the direction originally proposed by the Crime Commission, albeit limited in scope. The problem of electronic surveillance is presently being restudied by the staff of the Crime Commission, and it is our hope that an even more complete and acceptable piece of legislation will be suggested.

The procedural recommendation made in the *1970 Report* that seemed to have received the least attention as such is the one dealing with sentencing. The Commission recommended that legislation be enacted that would allow the sentencing court to impose extended terms of imprisonment for criminals who could be determined by the court to be connected with organized crime and calling for mandatory minimum sentences for certain crimes. The Sentencing Act, which is incorporated into the Crimes Code (Sections 1301 to 1382), and Chapter 1400 of the Pennsylvania Rules of Criminal Procedure, call for pre-sentence reports generally, but neither makes any reference to organized crime as such or to more severe penalties for identifiable organized crime figures. And neither the Sentencing Act, the Rules, nor the Crimes Code calls for mandatory minimum sentences.

In conclusion, there were eight specific proposals for legislative action made in the Crime Commission's *1970 Report on Organized Crime*. Three of the four substantive proposals have been enacted into law, and the fourth was still being actively considered in the last session of the legislature. That legislature also actively considered three of the four proposals for procedural reforms.

The Crime Commission recommends that the legislature give law enforcement agencies and courts the tools necessary to make the enforcement of the substantive laws a realistic possibility. As the matter now stands, the laws relating to organized crime are little more than official codifications of moral indignation—it is virtually impossible for state law enforcement agencies to obtain the evidence necessary for an arrest, much less for a conviction.

In contrast, in the Spring of 1976, federal authorities, armed with superior investigative weapons, especially court-approved electronic surveillance, made significant raids on organized crime activities in Philadelphia. One of these raids, made on April 22, 1976, uncovered a huge high-stakes crap game in South Philadelphia. Charles Warrington and Carl Ippolito, both cited in this report as having significant organized crime connections in New Jersey as well as Pennsylvania, were involved in this operation.⁷⁹ Another, on April 29, 1976, at Frank's

79. "It was one of the largest operations on the East Coast, with organized crime connections," an [FBI] spokesman said." Philadelphia Evening Bulletin, April 22, 1976, at 60. See also Philadelphia Daily News, April 23, 1976, at 5.

Cabana Steak Shop, uncovered evidence of alleged gambling activities and loansharking. The owner, Frank Sindone, has long been identified by law enforcement personnel as a leader in Angelo Bruno's family. The raid on Frank's Cabana was made possible by the use of electronic surveillance.⁸⁰

The federal criminal laws in this area do not differ substantially from Pennsylvania's. What differs is the means available to enforce them. The Crime Commission therefore specifically reiterates its recommendations that the legislature enact the following pieces of legislation:

1. A penal statute specifically directed at syndicated gambling.
2. An amendment to §§5701-5707 of the Crimes Code to allow for electronic surveillance by law enforcement personnel with strict judicial supervision and harsh penalties for abuse.
3. A use immunity statute.
4. An investigating grand jury statute.
5. An amendment to the Sentencing Code to allow for imposition of harsher sentences for convicted persons who are demonstrated to have connections with organized criminal activity.

As this section points out, such pieces of legislation have been in draft form for some time. The legal staff of the Crime Commission stands ready to lend its assistance to the legislature to prepare new legislation if that course is more likely to result in a product that will be enacted.

80. See generally Philadelphia Inquirer, April 30, 1976, at 1B; Philadelphia Evening Bulletin, April 30, 1976, at 1 ("FBI Listens 100 Hrs.; Raids S. Phila. Hangout").

APPENDIX: Commission Efforts to Obtain Testimony from Carl Ippolito

Carl Ippolito and Charles Warrington appeared at private Commission hearings on October 18, 1973, but refused to answer questions on the basis of their Fifth Amendment privilege against self-incrimination.

On December 7, 1973, the Commission filed petitions with Commonwealth Court requesting that both Ippolito and Warrington be granted immunity and ordered to testify before the Commission concerning their participation in illegal gambling activities and their dealings with organized crime figures.⁸¹ Following service that day upon Ippolito of the Commission's petition, his whereabouts became unknown. Although reports of his presence in Florida, Las Vegas, New York City, and of periodic sightings in Bucks County came to the attention of the Commission over the next four months, none could be verified. In an effort to serve him personally with the Commonwealth Court order of January 21, 1974, granting him immunity from prosecution and directing him to appear and testify before the Commission,⁸² Commission agents unsuccessfully attempted to locate Ippolito by means of surveillance of his known associates. On May 23, 1974, the Commission learned that Ippolito might be in attendance at a private party being held that night in the Branding Iron restaurant in the Treadway Roosevelt Inn on Roosevelt Boulevard, Philadelphia.⁸³ The purpose of that gathering was to celebrate the birthday of Alfred Manuszak,⁸⁴ a well-known gambling figure and one of the largest independent sports-bet operators in Philadelphia. A surveillance of the restaurant was established early in the evening. At 10:00 P.M., Commission agents attempted to confirm the presence of Ippolito by conversing with Dominick Iavarone, who had momentarily left the party. Iavarone denied that Ippolito was present. As

81. Normally, when an individual who appears before the Commission in response to a subpoena stands on his Fifth Amendment right against self-incrimination, the Commission must, through the Attorney General, go to court and petition for immunization of the witness in order to obtain that individual's testimony. (Grants of immunity are sought under the authority of the Act of November 22, 1968, P.L. 1080, §§1-6, 19 P.S. §§640.1-640.6 (Supp. 1975-76)). If the petition for immunity is granted, the Commission then sets another hearing date. If the individual appears and again refuses to testify, the Commission must return to court a second time and file a petition to have the witness held in contempt of court. If the contempt petition is ultimately granted, the contempt ruling can be appealed all the way to the Pennsylvania Supreme Court.

82. This order was issued following a Commonwealth Court hearing on the petition for immunity.

83. Interview with Mr. J, May 23, 1974.

84. Philadelphia Police Department records show 22 arrests and 5 convictions for Manuszak.

Iavarone returned to the party, Commission agents assembled at the top of a flight of stairs which was the only exit from the private room. Shortly thereafter a group of about ten individuals, seemingly led by Philadelphia figure Frank Matteo,⁸⁵ alias Frankie Mendel, ascended the stairs together. In the middle of the group was Carl Ippolito. The Commission agents descended the flight of stairs and met the group surrounding Ippolito in the middle of the stairs, whereupon Ippolito was served a copy of the court order. In addition to Manuszak, Matteo, and Iavarone, Armand Julian, Francis McFadden, John Paul,⁸⁶ Charles Mazella,⁸⁷ Albert Campo,⁸⁸ and John Craigh⁸⁹ were also present at the party.

Following service of the order, Ippolito appeared at the Commission offices on June 12, 1974, in response to a second subpoena. However, he again refused to answer any questions put to him. The Commission consequently petitioned Commonwealth Court on August 1, 1974, to adjudge Ippolito in civil contempt of Commonwealth Court and to order that he be incarcerated in a state prison until he complied with the court order.

Commonwealth Court, after a hearing on the matter, had previously issued an order on February 26, 1974, granting Warrington immunity from prosecution and directing him to testify before the Commission. On April 15, 1974, Warrington appeared before the Commission in response to a second subpoena, but he again refused to answer any questions also. The Commission then petitioned Commonwealth Court to have Warrington adjudged in civil contempt.

A hearing on the Commission's petition to have Warrington cited for contempt was held on June 21, 1974, and on July 24, 1974, Commonwealth Court ruled him in civil contempt and directed him to appear before the court on August 12, 1974. At the hearing held on that date Warrington agreed to testify before the Commission after the Commonwealth Court refused his petition to stay its order holding him in contempt pending outcome of an appeal to the Supreme Court of Pennsylvania. He appeared and testified before the Commission on August 12, 1974. (Warrington's appeal to the Pennsylvania Supreme Court was eventually discontinued). Warrington also testified a second time before the Commission on November 21, 1974.

Following a hearing held on August 12, 1974, to consider the Commission's petition to adjudge Ippolito in contempt of court, Ippolito agreed to testify at a Crime Commission hearing in accordance with the court order granting him immunity. Ippolito appeared and testified before the Commission on November 21, 1974, over one year after he had first been served with a Commission subpoena.

85. Philadelphia Police Department records show 37 arrests and 3 convictions for Matteo.

86. Philadelphia Police Department records show Julian with 12 arrests, 2 convictions; McFadden with 28 arrests, 6 convictions; Paul with 23 arrests, 4 convictions.

87. See note 38, p. 177 *supra*. Mazella has an extensive criminal record, including several gambling convictions and a conviction for armed robbery.

88. See p. 189 *supra*.

89. See p. 189 *supra*.

VII. Abuses and Criminality in the Bail Bond Business in Pennsylvania

1. INTRODUCTION

During the past few years, the Pennsylvania Crime Commission received numerous citizen allegations of illegal overcharges and other improprieties in the bail bond system. These allegations were verified in a preliminary inquiry, which, coupled with an earlier investigation in Delaware County,¹ demonstrated the need for a thorough state-wide examination of this multi-million dollar industry. Consequently, the Commission began an investigation into the nature and extent of abuses in the Pennsylvania bail bond system, including an examination of the effectiveness and enforcement of applicable laws, rules and regulations. All aspects of the system were scrutinized: from the defendant, bondsman, and magistrate, through the judicial and law enforcement authorities, to the insurance companies and Insurance Department.

Shortly after arrest, a criminal defendant in Pennsylvania is arraigned before a district justice,² who either releases the defendant on his own recognizance (ROR), or on a nominal bond, or sets bail.³ New guidelines for the setting of bail were adopted by the Pennsylvania Supreme Court in 1973, and permit the judge to accept a fixed percentage of the bail amount as a returnable collateral deposit.⁴ In some counties, e.g., Allegheny, Berks, Montgomery and Philadelphia, local court rules establish the percentage deposit system for general use. If this alternative is not offered, the defendant must post the full cash amount, or its equivalent in real property, or pay a bondsman to post the bond for him. In any event, the failure of the defendant to appear for court as scheduled will render him a fugitive and cause his bail to be forfeited.⁵

A bondsman may be licensed to post bail in Pennsylvania either as a professional bondsman or as a surety agent. A professional bondsman is a person who posts more than two bail bonds in any month, and must pay an annual license fee of fifty dollars (\$50.00).⁶ Court rules require the professional bondsman to post

1. See, "Report on an Investigation in Delaware County, Pennsylvania, With Particular Reference to Abuses in Bail Bonding: 1970-71 *Report of the Pennsylvania Crime Commission*, p. 65.

2. The term "district justice" refers to members of the Pennsylvania minor judiciary who began in 1968 to replace magistrates and justices of the peace. However, the terms are still used interchangeably.

3. See 19 P.S. §§51, 52 (Supp. 1975-76); *Pa. R. Crim. P.* 4001.

4. See *Pa. R. Crim. P.* 4001-4006.

5. See *Pa. R. Crim. P.* 4013, 4016.

6. See Professional Bondsman's Act, 19 P.S. §90.1 et. seq. (1971).

sufficient unencumbered collateral with each bond to cover the bail amount.⁷ A surety agent is, after passing an insurance examination, licensed to represent an insurance company in posting bail. Since each surety company must deposit substantial funds with the state, and submit to examinations and audits, the surety agent need only post his company's power of attorney as collateral.⁸ However, most surety companies require each individual agent to maintain a "buildup fund" to protect corporate assets against the agent's liability. The buildup fund is a fund maintained by the company in trust for the agent, into which the agent must deposit a set portion of each bail fee received.

A major problem in regulation of the bail system is the general lack of uniformity across the state. In each county, the district attorney, the county solicitor, and the Court of Common Pleas may each have responsibility for some phase of the system. The Pennsylvania Insurance Department is, in addition, statutorily authorized to license and regulate all professional bondsmen, surety agents, and surety companies.⁹ The Department is limited in its power to enforce criminal penalties, and must refer its recommendations for criminal prosecution to the appropriate district attorneys. The Commission was unable to document any such referrals since 1972.

Effective policing of the bail system from within does not exist. The insurance companies, with the greatest access to their agents' records, have generally ignored criminal violations of state statutes by their agents unless some corporate loss resulted. Usually, many of these violations are only revealed after civil action for nonpayment of forfeitures. Within Pennsylvania alone, millions of dollars are currently owed to the various county courts by professional bondsmen and surety agents for forfeitures. Some individuals are currently ignoring forfeiture debts totalling more than \$100,000. Many of these debts have been outstanding for more than five years, and most are eventually settled by payment of a token amount. Without this financial pressure on bondsmen to guarantee their clients' appearance, fugitives are usually not returned until they are rearrested for another offense. The bondsmen thus are able to collect fees with minimal effort and minimal loss.

Although problems exist throughout the county and state governments in relation to the bail system, perhaps the major victims are those defendants who can least afford it. In general, only those individuals of insufficient wealth to post their own cash or property and ineligible for ROR or nominal bail, need the services of a bondsman. Most of the bondsmen investigated were found to have violated at least one of the criminal statutes pertaining to the conduct of their business. For this reason, this report focuses on the professional bondsmen, the surety agents, and the Pennsylvania Association of Bailbond Underwriters. All four regional offices of the Crime Commission participated in the bail bond investigation, which extended into almost half of the counties in Pennsylvania, and included some inquiry into the bail activities of over sixty (60) bondsmen; including professional bondsmen, surety agents and unlicensed persons.

Many individuals were found to be misrepresenting their authority, either by

7. See *Pa. R. Crim. P.* 4006(c). Some counties, e.g., Allegheny, Lackawanna, and Luzerne, have also demanded a collateral deposit account from the individual bondsmen.

8. Some counties require an additional collateral deposit from the agent or company, e.g., Allegheny and Philadelphia Counties require \$100,000; Montgomery County requires \$25,000.

9. See 40 P.S. §1 *et. seq.* (1971).

improper use of their licenses, by posting bail without a proper license, or by misusing a surety company's power of attorney. The nonpayment of forfeitures, a common problem throughout the state, often resulted from individuals posting bail without proper collateral. Lax licensing requirements permit many bondsmen to post bail although ignorant of bail laws, rules, and regulations. In addition, certain bondsmen were found to have an improper alliance with judicial and law enforcement officials. The most prevalent offense, however, is the one most damaging to the individual defendant: the misrepresentation of lawful fees, resulting in illegal overcharges. Consequently, many bondsmen fail to report their total income from bail either to their supervisors or to state and federal revenue authorities.

This investigation must progress beyond this level into an examination of the state and local governmental authorities overseeing the bail system, the corporate structures supporting the surety agents, the hidden participants in the bail system, and the various attempts at reform. A thorough exploration of these areas must be undertaken before any major revision of the existing legal structure can be proposed.

2. SURETY AGENTS

A surety agent must pass an insurance examination and be endorsed by a properly registered insurance company before licensing by the Insurance Commissioner for the regular posting of bail bonds.¹⁰ The licensed agent must then register his company's financial statement and general power of attorney, authorizing him to represent that company, in each county in which he intends to do business.

The ultimate responsibility of each insurance company for the bonds posted by its agents is guaranteed by the requirements of the Insurance Department Act.¹¹ Further, each surety company must post collateral in the amount of \$100,000 with the Insurance Commissioner, and similar amounts in particular counties, such as Allegheny, Montgomery and Philadelphia. Several companies, however, attempt to limit their liability by requiring each agent to pay their own forfeitures from their own savings, relying on the agent's buildup fund as the next resource before depleting corporate assets. At least one company, Midland Insurance, permits agents with securely established buildup funds to contract with subagents. The subagent remits an extra portion of his fees to the primary agent, who then assumes liability for the bonds posted.

The authority of the surety agent is embodied in the special power of attorney which must be posted with each bond. This power is usually preprinted with specific limits as to time and amount, and authorizes him to post a certain sum of his company's assets as collateral on a single bond during a specified time period. For example, a power of attorney of Z Insurance Company may authorize John Jones, agent, to post a bond not exceeding \$5,000 between April 2, 1976 and June 2, 1976. Such a power could not be used for a \$7,000 bail bond, or posted on any date not falling within the stated time limits. Since only one power of attorney may be used with each bond, two \$5,000 powers could not be stacked on to the \$7,000 bond. (See

10. See 40 P.S. §§232, 237 (Supp. 1975-76).

11. See 40 P.S. §832 (1971).

Exhibit 1 for an example of stacked powers.) Moreover, the company may not be liable for bonds secured by void or stacked powers. The printing of specific limitations on these powers of attorney, unfortunately, has not prevented abuses.

EXHIBIT I

\$5,000 bail bond posted in Monroe County by Stuyvesant agent Melvin Levine, attaching two \$2,500 powers of attorney.



COMMONWEALTH OF PENNSYLVANIA

Versus

FRANK E. REID

Rule 4066--BAIL BOND
Published and Sold by The Plankenhorn Co., Williamsport, Pa. 17741

No. Term, 19....
Charges: Theft by unlawful taking or
disposition

We, the undersigned, Frank E. Reid Principal,
and Stuyvesant Insurance Company surety, our
successors, heirs, and assigns, are jointly and severally bound to pay to the Commonwealth of Pennsylvania
the sum of FIVE THOUSAND AND 00/100 dollars, or \$5,000.

The condition of this bond is that the defendant Frank E. Reid

is to appear before the issuing authority and in the Criminal Courts of Monroe
County at all times as his presence may be required, ordered, or directed, until full and final disposition of
the case, to plead, to answer, and defend as ordered, the official charge or charges, and shall abide and not
depart from the court without leave, then this obligation is to be void; otherwise it is to remain in full force
and effect. If the defendant pleads, answers and defends as ordered, then this bond is to be void; but if
the defendant fails to perform this condition, payment of the amount of the bond shall be due forthwith.

And further, we do hereby empower any attorney of any court of record within the Commonwealth of
Pennsylvania or elsewhere to appear for us at any time, with or without designation filed, and whether
or not the said obligation be in default, to confer judgment against us, and in favor of the Commonwealth
of Pennsylvania for use of the County of Monroe

and its assigns, as of any term
or session of a court of record of the County of Monroe
for the above sum and
costs, with release of all errors, without stay of execution, and inquisition on and extension upon any levy
or real estate is hereby waived, and consideration agreed to, and the exemption of personal property from
levy and sale on any execution hereon is also hereby expressly waived, and no benefit of exemption is
claimed under and by virtue of any exemption law now in force or which may be passed hereafter.

And for so doing this shall be sufficient warrant. A copy of this bond and warrant being filed in said
action, it shall not be necessary to file the original as a warrant of attorney, any law or rule of the Court
to the contrary notwithstanding.

This bond is signed on October 2, 19 73 at Stroudsburg, Pa.

Frank E. Reid (SEAL)
(Signature of Defendant)

446 White Birch St., East Strouds-
(Address) burg, Pa.

STUYVESANT INSURANCE COMPANY (SEAL)
(Signature of Surety)

445 Linden St., Allentown, Pa.
(Address)

by: Melvin Levine (SEAL)
(Signature of Surety) Attorney in Fact

445 Linden St., Allentown, Pa.
(Address)

Signed and acknowledged before me on October 2, 19 73

Thomas J. Shriver

EXHIBIT I (Cont.)

POWER OF ATTORNEY THE STUYVESANT INSURANCE COMPANY

New York, New York
Bonding Department, 19C Microlab Road, Livingston, New Jersey 07039

AUTHORITY FOR	ITEM 1	ITEM 2 BOND IN EXCESS OF	ITEM 3 NOT VALID IF USED AFTER	ITEM 4 EXPIRED AND REPLACED	POWER NUMBER
TO ACT AS ATTORNEY-IN-FACT	STATE <i>PA</i>	<i>50,000.00</i> AND NO CENTS	<i>12</i> MO. <i>10</i> DAY <i>73</i> YR.	<i>9</i> MO. <i>10</i> DAY <i>73</i> YR.	<i>441428</i>

KNOW ALL MEN BY THESE PRESENTS

SECTION 1 That The Stuyvesant Insurance Company, a New York corporation does hereby make, constitute and appoint the party(ies) as set forth in Item One (1) above as its true and lawful attorney in fact with full power and authority hereby conferred to execute on behalf of the said Company, as sole surety only subject to the limitations at herein set forth, a Criminal Bail Bond on behalf of

ITEM FIVE (5)

to be given to

Frank E. Ruck
Name of Person to be Insured

Insert Bond Amount
Valid if Not Completed

2500

SECTION 2 That the authority of such attorney in fact to bind the Company shall not in any event exceed the amount set forth in Item Two (2) above on a one bond and the said status in fact is hereby authorized to insert in Item Five (5) the name of the person on whose behalf this bond is given.

SECTION 3 That this power is not valid unless used on or before the date set forth in Item Three (3) and can only be used once.

SECTION 4 The authority of such attorney in fact is limited to surety bonds and cannot be construed to guarantee for failure to provide payments, bail, or any other payments of any kind.

SECTION 5 This Power of Attorney is made and executed pursuant to and by authority of the following By Law duly adopted by the Board of Directors of the Company on February 19, 1958:

ARTICLE VI - RESOLUTIONS

Section 6. President Officers and Attorneys in Fact. The President, the Executive Vice President, or any Vice President shall have power and authority to appoint, resign, remove, reappoint, rehire, and discharge any and all Attorneys in Fact; and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and attach the seal of the Company, provided such seal shall not be necessary when any bond or other obligation shall be executed under a power of attorney to which the seal of the Company is attached and such power of attorney attached to such bond or other obligation.

SECTION 6 This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolution duly adopted by the Board of Directors of the Company on November 15, 1958:

Resolved, that the signature of the President, or any Executive Vice President or any Vice President and the seal of the Company, shall constitute a facsimile on any power of attorney, and the signature of the Secretary or an Assistant Secretary and the seal of the Company shall constitute a facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power to execute and sealed and certified by certificate so executed and sealed shall, with respect to the undersigning to which it is attached, continue to be valid and binding on the Company.

SECTION 7 IN WITNESS WHEREOF, THE STUYVESANT INSURANCE COMPANY has caused these presents to be signed by its Vice-President and corporate seal to be hereunto affixed on the date set forth in Item Four (4) above.

SECTION 8 DO NOT ACCEPT A POWER OF ATTORNEY WHICH BEARS ANY ALTERATIONS, ERASURE OR INTERLINEATION:

THE STUYVESANT INSURANCE COMPANY

BY

Edwin P. Ruckenstein
Vice President

STATE OF NEW JERSEY
COUNTY OF ESSEX

On the month day and year as set forth in Item Four (4) above before me personally came Edwin P. Ruckenstein to me known, who, being by me duly sworn and deposed and say that he resides in the City of Newark, State of New Jersey, that he is the Vice President of The Stuyvesant Insurance Company, the corporate seal described in and which executed the above instrument, that he knows the seal of the corporation and that the seal affixed to said instrument is such corporate seal and that the corporate seal was affixed to the said instrument pursuant to authority given by the Board of Directors, that the corporation is duly and legally authorized to transact business in the District of Columbia and all states and is duly and legally authorized to issue recognizances and bail bonds in the District of Columbia and all states and has complied with and is now complying with the provisions of the Act of Congress of August 12, 1894, and the insurance laws of the said states allowing certain corporations to be accepted as Surety on Bonds.

SWORN TO BEFORE ME ON THE DATE SET FORTH
IN ITEM (4) FOUR ABOVE

NOTE

- (1) A SEPARATE POWER OF ATTORNEY MUST BE ATTACHED TO EACH BOND EXECUTED.
- (2) POWERS OF ATTORNEY MUST NOT BE RETURNED TO ATTORNEY-IN-FACT BUT SHOULD REMAIN A PERMANENT PART OF COURT RECORDS.

George P. Wippreman
Notary Public My Commission Expires September 8, 1971

EXHIBIT I (Cont.)

918

POWER OF ATTORNEY THE STUYVESANT INSURANCE COMPANY New York, New York Bonding Department, 19C Microlob Road, Livingston, New Jersey 07039

AUTHORITY FOR	ITEM 1	ITEM 2	ITEM 3	ITEM 4	POWER NUMBER
	MELVIN LERNE	NOT VALID FOR BOND IN EXCESS OF	IF USED AFTER	EXPIRED AND NOTIFIED	
TO ACT AS ATTORNEY-IN-FACT	STATE	5544.2570 AND NO CENTS	12 MO. 11 DAY 73 YR.	4 MO. 11 DAY 73 YR.	441429

KNOW ALL MEN BY THESE PRESENTS:

SECTION 1 That The Stuyvesant Insurance Company, a New York corporation does hereby make, constitute and appoint the party(s) as set forth in Item One (1) above as its true and lawful attorney in fact with full power and authority hereby conferred to execute on behalf of the said Company, as sole surety only subject to the limitations as herein set forth, a criminal Bail Bond on behalf of

ITEM FIVE (5)	NAME OF PRINCIPAL TO BE INSERTED	Insert Bond Amount Void If Not Completed
to be given to	<i>Edwin P. Rubenstein</i>	\$ 2500

SECTION 2 That the authority of such attorney in fact to bind the Company shall not in any event exceed the amount set forth in Item Two (2) above on any one bond and the said attorney in fact is hereby authorized to insert in Item Five (5) the name of the person on whose behalf this bond is given.

SECTION 3 This power is not valid unless used on or before the date set forth in Item Three (3) above and can only be used once.

SECTION 4 The authority of such attorney in fact is limited to appearance bonds and cannot be construed to guarantee for failure to provide payments, back alimony payments, fines or wage law suits.

SECTION 5 This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the Board of Directors of the Company on November 19, 1958

ARTICLE III OFFICERS

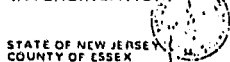
Section 6 Resident Officers and Attorneys in Fact. The President, the Executive Vice President, or any Vice President shall have power and authority to appoint, Revoke, Vice Presidents, Assistant Secretaries and Attorneys in Fact, and to authorize them to execute on behalf of the Company, bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and attach the seal of the Company thereto, except such seal shall not be necessary when any bond or other obligation shall be executed under a power of attorney to which the seal of the Company is attached and such power of attorney attached to such bond or other obligation.

SECTION 6 This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolution duly adopted by the Board of Directors of the Company on November 19, 1958

Resolved, that the signature of the President, or any Executive Vice President or any Vice President and the seal of the Company may be affixed by facsimile on any power of attorney, and the signature of the Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile on any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company.

SECTION 7 IN WITNESS WHEREOF, THE STUYVESANT INSURANCE COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereunto affixed on the date set forth in Item Four (4) above

SECTION 8 DO NOT ACCEPT A POWER OF ATTORNEY WHICH BEARS ANY ALTERATIONS, ERASURE OR INTERLINEATION.



STATE OF NEW JERSEY
COUNTY OF ESSEX

THE STUYVESANT INSURANCE COMPANY

By *Edwin P. Rubenstein*
Vice President

On the month day and year as set forth in Item Four (4) above before me personally came Edwin P. Rubenstein to me known, who, being by me duly sworn did depose and say that he resides in the City of Newark, State of New Jersey, that he is the Vice President of The Stuyvesant Insurance Company, the corporation described in and which executed the above instrument, that he knows the seal of the corporation and that the seal affixed to said instrument is such corporate seal and that the corporate seal was affixed to the said instrument pursuant to authority given by the Board of Directors, that the corporation is duly and legally authorized to transact business in the District of Columbia and all states and is duly and legally authorized to issue recognizances and bail bonds in the District of Columbia and all states and has complied with and is now complying with the provisions of the Act of Congress of August 13, 1894, and the insurance laws of the said states allowing certain corporations to be accepted as Surety on Bonds.

SWORN TO BEFORE ME ON THE DATE SET FORTH
IN ITEM (4) FOUR ABOVE

Charles P. Whippleman

Notary Public My Commission Expires September 8, 1975

NOTE

- (1) A SEPARATE POWER OF ATTORNEY MUST BE ATTACHED TO EACH BOND EXECUTED.
- (2) POWERS OF ATTORNEY MUST NOT BE RETURNED TO ATTORNEY-IN-FACT BUT SHOULD REMAIN A PERMANENT PART OF COURT RECORDS.

FROM THE RECORD
<i>Edward P. Rubenstein</i> Prothy, Clerk
<i>Dep. Prothy, Clerk</i>

Each surety agent is required to charge no more than the rate schedule approved for his company by the Insurance Commissioner.¹² The three companies currently operating in Pennsylvania; Allegheny Mutual Casualty Company, Midland Insurance Company, and Stuyvesant Insurance Company; are all currently limited to a rate of seven percent (7%). Public Service Mutual Insurance Company of New

12. See 40 P.S. §1184 (1971).

York, which withdrew from the bail bond business on June 30, 1975, was authorized to charge a rate of ten percent (10%).

Allegheny Mutual Casualty Company of Meadville is the only bail surety company incorporated in Pennsylvania. A relatively small company in the health and casualty insurance field, its business in Pennsylvania is almost entirely in bail bonds. All Pennsylvania business is directly overseen by J. Floyd Smith, president of the company. Since January 15, 1973, its approved bail rate is seven percent (7%), with a minimum premium of twenty-five dollars (\$25.00) per bond.¹³

Midland Insurance Company of New York, New York, is a large insurance company with more than thirty bail bond agents in Pennsylvania, with Harvey K. Childs of Greenville as the general state agent. Their lawful premium has been seven percent (7%) of the bond, with a minimum charge of fifteen dollars (\$15.00) since Midland entered the bail bond business in Pennsylvania on November 17, 1972.¹⁴

Stuyvesant Insurance Company, a New York corporation based in Allentown, Pennsylvania, operates its surety business in Pennsylvania through its state agent, Mid-Atlantic Agency. The agency is owned and operated by Albert Schwartz and Abraham Needleman, Esq., both of Philadelphia. All Stuyvesant agents previously authorized to charge ten percent (10%) on bail bonds were notified that, effective January 1, 1973, the lawful rate would be seven percent (7%), with a minimum premium of twenty-five dollars (\$25.00) per bond.¹⁵

Although improper practices varied among the agents investigated, certain illegalities fit general patterns across the state. The most prevalent is the overcharging of defendant-clients, in which the agent demands a fee higher than the stated premium or adds business expenses to the legal fee. In so doing, the agent may be misrepresenting the legal fee, and thus, criminally taking money or property under false pretenses.¹⁶ Many agents also require a friend or relative to guarantee a defendant's court appearance by signing an indemnity agreement and/or depositing tangible security, usually in the form of a car title, deed, cash or jewelry. Some agents, as shown in Exhibit 2, attempt to collect from indemnitors for payment of forfeiture debts. However, neither indemnitors nor security are permitted by the insurance rate schedule.

13. Allegheny Mutual Casualty Company surety rate sheet, approved January 15, 1973; Pennsylvania Insurance Department.

14. Midland Insurance Company surety rate sheet, approved November 17, 1972; Pennsylvania Insurance Department.

15. Stuyvesant Insurance Company surety rate sheet, approved January 1, 1973; Pennsylvania Insurance Department.

16. See 18 P.S. §3922 (1971).

EXHIBIT 2

Form letter to indemnitor on default of bail bond.

Leo Castelle, Agent
Indiana Insurance Company
425 Exchange Street
Jersey, Pa. 17333
October 14, 1975

Re. ~~Williamson, PA 17701~~
Williamson, PA 17701

Dear Mr. ~~Williamson~~:

This is to advise you that the bond in regards to ~~Williamson~~, in the amount of \$3000.00 has been forfeited.

I will have to ask you at this time to produce Mr. ~~Williamson~~ at once or otherwise forward to me the sum of \$3000.00, in that you agreed to indemnify my loss, should this situation arise.

I will proceed to take legal action to fulfill this agreement, if I do not hear from you.

Thank you very much.

Very truly, yours,
Leo Castelle
Leo Castelle, Agent

A surety agent may frequently defraud the courts, the Insurance Commissioner and his own company by misrepresenting his authority. Several surety agents, including Harvey Childs,¹⁷ John Creasy,¹⁸ Melvin Levine,¹⁹ and David Wander,²⁰ have employed persons not licensed as surety agents to solicit business and perform

17. Examination of records of Allied Fidelity Agents, Inc., Indianapolis, Indiana, pursuant to a subpoena issued by the Pennsylvania Crime Commission on November 7, 1975.

18. Testimony of Michael Klimpl, Esq., Assistant Public Defender, Bucks County, before the Pennsylvania Crime Commission, July 22, 1975 [hereinafter cited as Michael Klimpl], N.T. 20-21.

19. Testimony of Melvin Levine before the Pennsylvania Crime Commission, May 21, 1975 [hereinafter cited as Melvin Levine], N.T. 15.

20. Testimony of David Wander before the Pennsylvania Crime Commission, August 6, 1975 [hereinafter cited as David Wander I], N.T. 6.

other functions of the surety agent, in defiance of the Insurance Department Act.²¹ Further, both Mr. Childs²² and Mr. Levine²³ also post bail regularly without using corporate powers of attorney. This practice is prohibited by the Criminal Code and the Insurance Department Act, since the agent thereby retains his company's share of the bail fee,²⁴ and misrepresents his authority to the defendants and the courts.²⁵ In addition, many agents misuse their company's powers of attorney by ignoring the specific limitations previously described. The invalid use of these powers of attorney may prevent the county from establishing corporate liability for defaulted bonds, at an ultimate cost to the taxpayers.²⁶

The business practices of selected agents for each of the three active surety companies were carefully examined, and are discussed below.

a. Allegheny Mutual Casualty Company

David Wander

Operating primarily in Allegheny County, David Wander of Pittsburgh is the most prominent surety agent of Allegheny Mutual Casualty Company in Pennsylvania. In violation of the licensing laws,²⁷ Mr. Wander employs his cousin, professional bondsman Harvey Wander, as an assistant earning two percent (2%) commission on bonds he posts.²⁸ Harvey Wander acts as a surety agent in all respects, except that he does not sign his own name to bail bonds.²⁹ Although David Wander testified that he pre-signs bail certificates for Harvey's use,³⁰ Harvey also has a rubber stamp bearing David's signature.³¹

David Wander testified that he has charged a fee of seven percent (7%) since 1972,³² although further testimony and evidence revealed additional charges. Mr. Wander disclosed his practice of requesting security deposits, which may be as high as the full bond amount.³³ He frequently requires indemnity agreements,³⁴ and routinely charges a higher rate on federal bonds.³⁵ None of these exceptions is

21. See 40 P.S. §§234, 279 (Supp. 1975-76).

22. Testimony of Harvey K. Childs before the Pennsylvania Crime Commission, June 11, 1975 [hereinafter cited as Harvey Childs], N.T. 35.

23. Melvin Levine, N.T. 6.

24. See 18 P.S. §3921; 40 P.S. §470 (1971).

25. See 18 P.S. §§3922, 4114 (1971); 40 P.S. §§277, 279 (Supp. 1975-76).

26. The misuse of powers of attorney may constitute the criminal offense of misapplication of entrusted property, 18 P.S. §4113 (1971). The posting of bail bonds secured by void powers may constitute the criminal offense of securing the execution of documents by deception, 18 P.S. §4114 (1971).

27. See 40 P.S. §234 (1971).

28. David Wander I, N.T. 6; testimony of Harvey Wander before the Pennsylvania Crime Commission, September 19, 1975 [hereinafter cited as Harvey Wander], N.T. 5.

29. Harvey Wander, N.T. 7; David Wander I, N.T. 19.

30. David Wander I, N.T. 18; testimony of David Wander before the Pennsylvania Crime Commission, April 8, 1976 [hereinafter cited as David Wander II], N.T. 50.

31. Harvey Wander, N.T. 7, 12.

32. David Wander I, N.T. 8.

33. David Wander I, N.T. 11; David Wander II, N.T. 10-11.

34. David Wander I, N.T. 62-63.

35. David Wander I, N.T. 27-28; David Wander II, N.T. 9.

justified by the rate filing approved by the Insurance Commissioner. Thus, each such charge above the legal rate constitutes a criminal offense.³⁶

An examination of Allegheny County court records disclosed that Mr. Wander used expired powers of attorney and powers of attorney limited to amounts less than the bail which they secured. Use of these void powers enables Allegheny Mutual to limit its liability in the event of default, since the company is only liable for the use of its valid powers.³⁷ Thus, Mr. Wander misused powers of attorney to the ultimate detriment of the Allegheny County taxpayers by misrepresenting his authority to the courts, in violation of the criminal laws of the Commonwealth.³⁸

b. Midland Insurance Company

Samuel Bonanno

A hydraulic engineer by trade, Samuel Bonanno was a licensed professional bondsman in Berks County from 1968 until he received his surety agent's license in July, 1974, despite a prior criminal conviction.³⁹ Mr. Bonanno testified that he assisted Midland agent Leo Castello as an unpaid trainee for two years, until he passed the insurance agent's examination.⁴⁰ Mr. Castello, however, was not licensed as a surety agent during the first year of his association with Mr. Bonanno, and for several months the late James E. Smith, a Midland insurance agent, signed bail bonds for both men.⁴¹ During his training period, Mr. Bonanno accepted calls from potential clients, interviewed them, collected their fees, and accompanied Mr. Castello to the district justice's office.⁴² In addition, Mr. Bonanno called Midland general agent Harvey Childs to have several bonds transferred to Leo Castello because his nephew, John Bonanno, had overextended collateral on his property bonds.⁴³

Mr. Bonanno testified that he personally signed all documents related to his bail business.⁴⁴ After examining several documents purportedly signed by him, he stated that all family members, including his secretary, Georgine Bonanno,⁴⁵ have powers of attorney to sign his name.⁴⁶ Further, Mr. Bonanno employs police officers to apprehend bail fugitives.⁴⁷ Thus, he is able to operate a lucrative bail business without leaving his office to sign bonds before the district justice, as required,⁴⁸ or to find his recalcitrant clients.

36. See 18 P.S. §3922 (1971).

37. See notes 25 and 26 *supra*, and accompanying text.

38. See note 27 *supra*, and accompanying text.

39. Testimony of Samuel Bonanno before the Pennsylvania Crime Commission, May 8, 1975 [hereinafter cited as Samuel Bonanno], N.T. 9.

40. *Id.*, N.T. 10-17, 49.

41. Interview with James E. Smith, March 21, 1975.

42. Samuel Bonanno, N.T. 33-34.

43. *Id.*, N.T. 50.

44. *Id.*, N.T. 84.

45. *Id.*, N.T. 86.

46. *Id.*, N.T. 89.

47. *Id.*, N.T. 68-69.

48. *Pa. R. Crim. P.* 4014.

Mr. Bonanno admitted that he collects a ten percent (10%) fee,⁴⁹ and also requires indemnity agreements.⁵⁰ He contended, however, that Mr. Castello instructed him to collect the three percent (3%) overcharge as a returnable collateral deposit, and that he has continued that practice in his own business.⁵¹ Quarterly reports filed by Mr. Bonanno with the Berks County Clerk of Courts, however, indicate fees of ten percent (10%) on all \$500 bonds.⁵² Mr. Bonanno also reported

EXHIBIT 3

Receipts for Midland powers of attorney used by Samuel Bonanno in December, 1974 showing overcharges.

POWER AMOUNT \$500.00		HOME OFFICE COPY		MB5 180848	
REMARKS					
<p style="text-align: center;">DEC 5 1974</p> <p> Bond Amount <u>500.00</u> Appearance Date _____ Premium <u>50.00</u> Attorney _____ Defendant _____ Address <u>FLEETWOOD RD. PENNA.</u> City _____ State <u>PENNA.</u> County <u>BERKS</u> City <u>READING</u> Original No. _____ Office <u>LEGALLY BINDING PERSON</u> Collateral (Circle) _____ Examining Agent <u>SAMUEL BONANNO</u> Date of Birth <u>6/25/34</u> Date of Death <u>12-11-72</u> </p>					

POWER AMOUNT \$500.00		HOME OFFICE COPY		MB5 180849	
REMARKS					
<p style="text-align: center;">KTH DEC 7 1974</p> <p> Bond Amount <u>500.00</u> Appearance Date _____ Premium <u>50.00</u> Attorney _____ Defendant _____ Address <u>407 S. 4TH ST. PENNA.</u> City <u>RDG.</u> State <u>PENNA.</u> County <u>BERKS</u> City <u>RDG.</u> Original No. _____ Office <u>FAILURE TO STOP AT</u> Collateral (Circle) _____ Examining Agent <u>SAMUEL BONANNO</u> Date of Birth <u>6/25/34</u> Date of Death <u>12-11-72</u> </p>					

49. Samuel Bonanno, N.T. 99.

50. *Id.*, N.T. 136.

51. *Id.*, N.T. 44.

52. Examination of Berks County records, and interview with Clerk of Courts Donald Dissinger, November 25, 1974 and January 30, 1975.

overcharges in receipts filed with Midland Insurance Company.⁵³ (See Exhibit 3.) Moreover, Mr. Bonanno testified that he believes that bondsmen cannot exist on a seven percent (7%) fee.⁵⁴

Leo Castello

Leo Castello of Berwick was a licensed professional bondsman for ten years. In July, 1973 the Insurance Department refused to renew his license after finding that he was posting surety bonds for Midland Insurance Company. According to Mr. Castello, Midland agents Harvey Childs and James Smith⁵⁵ covered his bail for the

EXHIBIT 4

Receipts for Midland powers of attorney used by Leo Castello in November, 1972—ten months before he obtained his license.

HOME OFFICE COPY		MD5 58408
<p>17 POWER OF ATTORNEY EX-100</p>		
<p>27-28</p>		
<p>Bond Amount \$ 450.00 Appointment Date 11/21/72 Expiration Date 11/21/73 Agent Thomas McCready</p>		
<p>Endorsed: City Philadelphia State PA</p>		
<p>Court 12th J.D. City Philadelphia State PA</p>		
<p>Office 12th J.D. City Philadelphia State PA</p>		
<p>Issued Date 11/21/72 Issued By Leo Castello Date of Issue 11/21/72 Fee \$ 19.00</p>		

HOME OFFICE COPY		MD5 58409
<p>17 POWER OF ATTORNEY EX-100</p>		
<p>27-28</p>		
<p>Bond Amount \$ 750.00 Appointment Date 11/21/72 Expiration Date 11/21/73 Agent Thomas McCready</p>		
<p>Endorsed: City Philadelphia State PA</p>		
<p>Court 12th J.D. City Philadelphia State PA</p>		
<p>Office 12th J.D. City Philadelphia State PA</p>		
<p>Issued Date 11/21/72 Issued By Leo Castello Date of Issue 11/21/72 Fee \$ 19.00</p>		

53. Examination of records of Allied Fidelity Agents, Inc., pursuant to subpoena issued by the Pennsylvania Crime Commission on November 7, 1975.

54. Samuel Bonanno, N.T. 137.

55. Mr. Smith was a general insurance agent for Midland, who had no exposure to the bail business except this alliance with Leo Castello, undertaken at the request of his superiors. See also note 41, *supra*.

next few months, until Mr. Castello was licensed as a Midland agent on September 27, 1973.⁵⁶ A review of court records verified a confidential informant's allegation that Mr. Castello actually posted bail before receiving his license. (See Exhibit 4.) Further, he was allegedly reimbursed by Mr. Childs for bail fees he collected.⁵⁷

Since receiving his license, Mr. Castello has posted bail in some thirty counties, and trained Midland agents Samuel Bonanno and William Higgins. Mr. Castello claimed to charge only seven percent (7%), but admitted adding travel expenses to his fee.⁵⁸ Further evidence revealed that Mr. Castello usually requires a fee of ten percent (10%) and up to one-half the bond amount as a security deposit, which may include personal property such as stereo equipment.⁵⁹ Mr. Castello also posted bail last year with unlicensed bondsman Jack Smith.⁶⁰

Mr. Castello admitted presenting gifts of liquor to all of the magistrates in Columbia County, and the prison guards in Lycoming and Northumberland Counties.⁶¹ Confidential sources revealed that Mr. Castello paid kickbacks to magistrates, police officers and prison officials in Columbia, Lehigh, Schuylkill, Snyder and Union Counties.⁶² In addition, Mr. Castello allegedly receives preferential treatment on bail forfeitures from the Columbia County Commissioners.⁶³

In Berks County, Mr. Castello was cited by Common Pleas Judge Warren K. Hess for misrepresentation of facts to the court in a forfeiture hearing. Mr. Castello told the court that he and bondsman John Bonanno⁶⁴ were responsible for the return of a bail fugitive. The court then reduced the cost of the \$2500 bail forfeiture to \$200. Later information, however, revealed that law enforcement officers of Canada and Pennsylvania were actually responsible for the defendant's return.⁶⁵

Although Mr. Castello voluntarily explained many details of his bail bond business in a personal interview with Crime Commission agents on March 21, 1975, he subsequently chose to ignore a Crime Commission subpoena for a hearing on May 22, 1975 until Commonwealth Court proceedings were initiated. Mr. Castello thereafter appeared with counsel at a hearing on August 13, 1975 in which he refused, on Fifth Amendment grounds, to answer sixty-two questions related to his bail business.

Harvey K. Childs

Former Stuyvesant agent Harvey Childs now operates his bail business and general state agency for Midland Insurance Company from his home in Greenville. Mr. Childs was licensed as an agent of the Stuyvesant Insurance Company, but resigned in September 1973 to go with Midland because the Stuyvesant

56. Interview with Leo Castello, March 21, 1975.

57. Interview with confidential informant B-1, October 8, 1976; testimony of confidential informant B-2 before the Pennsylvania Crime Commission [hereinafter cited as testimony of B-2], N.T. 65.

58. Interview with Leo Castello, March 21, 1975.

59. Interview with confidential informant, Luzerne County Legal Services, May 10, 1974; testimony of B-2, N.T. 14-18, 26-27.

60. Interview with confidential informant B-3, April 2, 1975.

61. Interview with Leo Castello, March 21, 1975.

62. Interview with B-1, *supra*, note 57; testimony of B-2, N.T. 30, 31, 68, 69, 90-93.

63. Interview with B-1, *supra*.

64. See notes 242-248, *infra*, and accompanying text.

65. "Judge Irked by Action in Bail Case," *Reading Times*, April 4, 1975, p. 14.

management "wanted to tell me what to do."⁶⁶ As Midland state agent, he must "oversee the writing of bail throughout Pennsylvania through our agents."⁶⁷ Although Stuyvesant Insurance Company notified him in December, 1972 that the rate in 1973 would be seven percent (7%), Mr. Childs claimed that he never discussed rates with Midland.⁶⁸

Mr. Childs instructed potential Midland agents that they could earn more money with Midland as long as their fees did not exceed ten percent (10%), and that they could add travel expenses.⁶⁹ Mr. Childs also endorses the use of indemnitors as "a psychological thing to make sure they appear."⁷⁰ Midland Agent Ralph Mustello testified that he was not notified of any rate reduction until June, 1975, when he received a letter from Mr. Childs' office.⁷¹ Moreover, Mr. Childs admitted in June, 1975 that he usually charges a nine percent (9%) bail fee.⁷²

As state agent, Mr. Childs also recommends new agents, and testified that he would not accept an agent who was "pushy, money hungry [or] a conniver," but that prior revocation of an applicant's professional bondsman's license would not be relevant.⁷³ Mr. Childs, in fact recommended former professional bondsman Leo Castello, whose license renewal application was denied by the Insurance Department.

Mr. Childs employs both his wife, Linda, and his mother-in-law, Roseanne Hinkson in his bail business, part of which is incorporated into H.L.C., Inc. Both women,⁷⁴ and Ronald Swartwood,⁷⁵ a Midland agent and employee of H.L.C., Inc., are authorized to sign Mr. Childs' name, and use Midland powers of attorney. Further, Mr. Childs employs some fifteen other licensed and unlicensed persons as subagents using his powers of attorney and liability to Midland, including: Ann Cook, Dean Cornblower, Charles Hess, Robert Hinkle, Perry Kosoy, Jack Kramer, Nicholas Mirolli, Ralph Mustello, Felix Pallone, Norman Peters, Eugene Rabenstine, John Rabenstine, Thomas Shade, John Wasco, Gordon Weldon and Robert Weyant.

Harvey Childs and Ronald Swartwood frequently post bail in Crawford and Mercer Counties without Midland power of attorney or other collateral, often using a surety license number as identification.⁷⁶

66. Harvey Childs, N.T. 14.

67. *Id.*, N.T. 6.

68. Harvey Childs, N.T. 50-51.

69. *Id.*, N.T. 60.

70. *Id.*, N.T. 102.

71. Testimony of Ralph Mustello before the Pennsylvania Crime Commission, August 6, 1975 [hereinafter Ralph Mustello], N.T. 15.

72. Harvey Childs, N.T. 48.

73. *Id.*, N.T. 32.

74. Testimony of Ronald Swartwood before the Pennsylvania Crime Commission, August 5, 1975 [hereinafter Ronald Swartwood], N.T. 15-16.

75. *Id.*, N.T. 8.

76. Examination of court records in both counties revealed this practice, although Mr. Childs and Mr. Swartwood admitted doing so only in Crawford County. See Harvey Childs, N.T. 35; Ronald Swartwood, N.T. 18-19.

Bond posted by Harvey Childs in Crawford County without power of attorney or collateral.

FAILURE TO STOP NT VS. NAME WILLIAM R. MITCHELL
 (charge) SECURITY ACCIDENT ADDRESS 4422 BROWN STREET
BRIDGEVIEW PA
 We and each of us, the undersigned DEFENDANT and SURETIES, on this 20th day of SEP, 1968, do hereby
 bind to pay to the Commonwealth of Pennsylvania the sum of Five Hundred Dollars (\$500.00)

[illegible]

And further, we do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the files of the Department of the Interior, Bureau of Land Management, at Washington, D.C.

DEFENDANT'S
SIGNATURE
DEFENDANT'S
ADDRESS:

NOTE: MAIL ROOMS OF THE FBI ARE NOT TO BE USED FOR THE STORAGE OF ANYTHING OTHER THAN MAIL. ANYTHING OTHER THAN MAIL SHOULD BE PLACED IN THE APPROPRIATE STORAGE AREA.

COUNTY OF _____

[illegible]

I am (I'm) the owner of real estate in the _____ in the _____ of _____ County, _____ follows.

The said property was obtained by me last by _____ Deed _____ Will from
year _____, the title is in my four barrels; stone and the Deed or Will is recorded in the above noted Court
Deed _____ Will _____ Back _____, Vol. _____, Page _____.

The above described property is assessed by the County for the purpose of taxation in the sum of \$ _____.

The only encumbrances upon said property are _____

I am (We are) not surety on any other bond of any kind except as follows:

I (We) do not contemplate the sale of the property above described and am (are) not now negotiating any sale of

I (We) have carefully read this, or have had explained to me (us), the foregoing affidavit and know it is true & c

I, _____, prosecutor,
do hereby acknowledge myself indebted to the Commonwealth of
Pennsylvania in the sum of \$____, to be levied, etc., conditioned
that he and appear at and throughout the next term of the Court
of Common Pleas of the above named County, to testify, etc.,
and to abide and not desert the Court without leave.

(AFFILIATE)

Taken and acknowledged before me this 15th day of November
 1964
 JUSTICE OF THE PEACE MAGISTRATE DRS

EXHIBIT 6

Bond posted by Harvey Childs in Mercer County without power of attorney or collateral.

JUSTIFICATION OF SURETY OTHER THAN CASH BAIL

(Questions 3, 4, 5, 7, 8 and 9 are applicable only when real estate is posted as security.) (Cash Bail justification shown on reverse.)

The undersigned about to become Surety in the case cited herein, being duly sworn (or affirmed) deposes and says:

- I reside at _____ and my occupation is _____ and I work for _____ my phone No. is _____
- I have no undisposed of criminal cases against me pending in the Courts of _____ County, except as follows: _____
- ☐ I am/are the sole owner(s) of _____ real estate situated in the said County of _____, as follows, viz.: a parcel of ground, in size _____, situated at _____ in the _____ Ward, in the _____ Borough, ☐ Township, ☐ City of _____ which is improved with the following buildings: _____
(All other joint tenants or tenants by the entirety must assign this bond and state their addresses at the bottom of this page or on an attachment hereto.)
☐ I am/are not tenant(s) in _____
☐ I am/are not tenant(s) by the entirety in _____
- The said property was obtained by me by ☐ Deed ☐ Will from _____
- The ☐ Deed ☐ Will is dated _____ and is recorded in the office of the ☐ Recorder of Deeds ☐ Register of Wills of _____ County, ☐ Will Book Vol. _____ Page _____, and the title is in ☐ my name ☐ and my spouse's name. Also a parcel of ground, in size _____, situated at _____ in the _____ Ward, in the _____ Borough, ☐ Township, ☐ City of _____ The said property was obtained by me by ☐ Deed ☐ Will from _____ The ☐ Deed ☐ Will is dated _____ and is recorded in ☐ Deed ☐ Will Book Vol. _____ Page _____ of _____ County, and is in ☐ my name ☐ and my spouse's name.
- I am not Surety on any bond of any kind except as follows:
DATE _____ AMOUNT _____ DEFENDANT _____
- There are no mortgages, or other liens or encumbrances of any kind or description, upon the said premises, and there are no judgments against me except as follows:
Mortgages as set forth in the Recorder of Deeds on first property _____
Mortgages as set forth in the Recorder of Deeds on second property _____
Judgments and Liens _____
Real estate taxes have been paid except: _____
- The assessed valuation of said premises is _____
- No judgment has been entered or action instituted against me upon a forfeited recognizance except _____
- I have read carefully the foregoing affidavit and know that it is true and correct.

Sworn (XXXX) and subscribed before me this _____ day of _____ 1974.

Harvey Childs
(Notary of Court or Notary Public)

Notary Public
JANUARY 1974 (REV. 12/22/73)
MC DUCHEMINOM 1 5 EARLITE & ASSOCIATES HANOVER, PA 17344 (11/19/73)

SEAL

SEAL

SEAL

8 Collopa Avenue, Greenville, Pennsylvania 16145
Address

Mr. Childs alleged that the Crawford County courts permitted them to post bail without powers of attorney.⁷⁷ However, this action violates criminal and insurance laws by perpetrating frauds against their clients, the courts, the state, and Midland Insurance Company.⁷⁸ Further, Mr. Childs stated that defense and prosecuting attorneys, magistrates and judges refer clients to him.⁷⁹

Mr. Childs is also the chief founder and president of the Pennsylvania Association of Bailbond Underwriters (PABU). In that capacity, he has attempted

77. Harvey Childs, N.T. 36-37.

78. See 18 P.S. §§3921, 3922, 4113; 40 P.S. §§273.1, 470 (Supp. 1975-76).

79. Harvey Childs, N.T. 38.

to thwart the Crime Commission's bail investigation by directing PABU members and officers to ignore Commission subpoenas.

Floyd W. Kellogg

Floyd Kellogg was a Monroe County magistrate for twenty-two years, until his last term expired on January 3, 1970.⁸⁰ In a hearing before the Crime Commission, Mr. Kellogg testified that he had assisted Melvin Levine⁸¹ in his bail business from 1960 through 1974.⁸² For ten years, Mr. Kellogg's responsibilities in arraignments were, in his words, "either jailing them or bailing them."⁸³ Mr. Kellogg became a licensed surety agent for Midland on January 1, 1975.⁸⁴

While working with Mr. Levine, Mr. Kellogg interviewed potential clients, collected the fee, and signed the bail certificates; Mr. Levine merely sent the signed powers of attorney to him.⁸⁵ Mr. Kellogg regularly charged a ten percent (10%) fee, adding fifteen dollars (\$15.00) if a call came late at night.⁸⁶ He told clients that he was not a bondsman, and never issued receipts, believing that the "fact they were out of jail is their receipt."⁸⁷ Mr. Kellogg testified that he received neither salary nor commission during this period.⁸⁸ He claimed that Mr. Levine merely reimbursed his expenses, and added a small fee of up to twenty-five dollars (\$25.00) sporadically.⁸⁹ Mr. Levine's testimony, and an examination of records pertaining to transactions between them, however, disclosed that Mr. Kellogg remitted only the portion of the fees remaining after taking his commission of about three percent (3%).⁹⁰

As a Midland agent, Mr. Kellogg still charges ten percent (10%), as instructed by Harvey Childs.⁹¹ Mr. Kellogg still requires indemnitors,⁹² and revokes bail without repaying the fee received.⁹³

Ralph Mustello

Ralph Mustello has been in the insurance business in Butler County since 1961.⁹⁴ He started posting bail bonds through Harvey Childs in 1971, first with Stuyvesant Insurance Company and then with Midland.⁹⁵ However, he testified that he has never received any instructions in his surety business from Mr. Childs.⁹⁶

80. Testimony of Floyd W. Kellogg before the Pennsylvania Crime Commission, June 10, 1975 [hereinafter Floyd Kellogg], N.T. 8.

81. See discussion of *Melvin Levine*, *infra*.

82. Floyd Kellogg, N.T. 8.

83. *Id.*, N.T. 27.

84. *Id.*, N.T. 6.

85. *Id.*, N.T. 7.

86. *Id.*, N.T. 13.

87. *Id.*, N.T. 24-25.

88. *Id.*, N.T. 9-10.

89. *Id.*, N.T. 9-10, 20, 24.

90. Melvin Levine, N.T. 109.

91. Floyd Kellogg, N.T. 36, 47-48. See, discussion of Harvey Childs, *supra*.

92. Floyd Kellogg, N.T. 10.

93. *Id.*, N.T. 73.

94. Ralph Mustello, N.T. 5.

95. *Id.*, N.T. 11.

96. *Id.*, N.T. 15-16.

Mr. Mustello is a subagent of Mr. Childs' company, H.L.C., Inc., and posts bail under Harvey Childs' liability with Midland.

In a Crime Commission hearing, Mr. Mustello testified that he never charges less than \$35.00 for any bail bond, charges \$50.00 on a \$500 bond, and charges seven or eight percent (7 or 8%) on bonds over \$1,000.⁹⁷ He further admitted to adding travel expenses to his fees and not issuing receipts.⁹⁸ By contract, he must remit four percent (4%) to Mr. Childs and Midland. Mr. Mustello stated that he was first informed of the reduction in bail rates in June 1975, when Roseanne Hinkson of H.L.C., Inc. sent a letter to all Midland agents advising them of the seven percent (7%) rate.⁹⁹ The letter followed inquiries by Commission agents concerning the Midland rate schedule.

Mr. Mustello stated that he never accepts security, although he has required indemnitors.¹⁰⁰ He also admitted using police, prison officials, and magistrates in his bail business, but refused, on Fifth Amendment grounds, to provide more specific information concerning such practices.¹⁰¹

Gigi (Gisela) Siers

Gigi Siers and her husband, Allan Siers, have operated a bail bond business in Lehigh and Northampton Counties since 1976.¹⁰² Mr. Siers was licensed as a professional bondsman in Pennsylvania from August 31, 1970, until August 31, 1972. During that time, Mr. Siers acted as a surety agent for Cosmopolitan Insurance Company of New York, supervised by James Rochelle.¹⁰³ Mrs. Siers passed the Pennsylvania insurance agent's examination on March 30, 1971, and was licensed as a Cosmopolitan agent on April 7, 1971. Mr. Siers passed the examination on February 22, 1972, but was not granted his license. The Insurance Department fined him \$2,000 for posting surety bonds as a professional bondsman. Since he did not pay the fine, he was not licensed as an insurance agent.¹⁰⁴ Mr. Siers has, however, continued to perform all functions of a surety agent, including signing bonds and powers of attorney.¹⁰⁵

In December, 1972 James Rochelle left Cosmopolitan for Public Service Mutual Insurance Company, for which Mrs. Siers became a licensed agent on January 1, 1973.¹⁰⁶ Public Service terminated its bail business on May 15, 1975, and Mr. Rochelle joined the bail management of Midland Insurance Company. Mrs. Siers was accepted as a Midland agent shortly thereafter.¹⁰⁷

97. *Id.*, N.T. 17.

98. *Id.*, N.T. 19-20.

99. *Id.*, N.T. 15.

100. *Id.*, N.T. 50.

101. *Id.*, N.T. 42, 47, 60, 62, 64, 72.

102. Testimony of Gigi Siers before the Pennsylvania Crime Commission, May 22, 1975 [hereinafter Gigi Siers], N.T. 9-10.

103. Testimony of Allan Roger Siers before the Pennsylvania Crime Commission, May 22, 1975 [hereinafter Allan Siers], N.T. 8-9; Gigi Siers, N.T. 20.

104. Allan Siers, N.T. 9-10; Gigi Siers, N.T. 7.

105. Allan Siers, N.T. 16-17, 20-21.

106. Gigi Siers, N.T. 7.

107. *Id.*, N.T. 42-44.

Throughout Mrs. Siers' career as a surety agent, she presigned bail certificates and powers of attorney for her husband's use.¹⁰⁸ Interviews with confidential informants confirmed Mr. Siers' active participation in the bail business,¹⁰⁹ although Mr. Siers identifies himself merely as an interviewer for his wife.¹¹⁰ In addition, both Mr. and Mrs. Siers have collected excessive fees,¹¹¹ added costs of \$10.00 or \$20.00 for installment payments,¹¹² and required indemnitors and security deposits of cash or property.¹¹³ In 1975, they sued an indemnitor for payment of a bail forfeiture.¹¹⁴ In other cases, the Siers revoked bonds without returning the fees paid, even after agreeing to post another bond.¹¹⁵ Since the Siers maintain no record of fees received,¹¹⁶ their income and its various sources can only be estimated.

Allan Siers testified that he had been approached by a prison official for illegal kickbacks, but refused, on Fifth Amendment grounds, to elaborate.¹¹⁷ He also refused to discuss the solicitation of bail business in magisterial offices or prisons, or the attempted bribery of law enforcement or judicial officers.¹¹⁸ Mrs. Siers further denied ever being asked for or paying a kickback.¹¹⁹ Several officials in Lehigh County, including a district justice¹²⁰ and a law enforcement official,¹²¹ however, disclosed that Mr. Siers attempted to bribe them. Thus, Mrs. Siers considers bail bonding "a very crooked business."¹²²

Ronald Swartwood

A former law enforcement officer, Ronald Swartwood has been a salaried employee of Harvey Childs since July 1, 1973, and a licensed Midland bail agent since June 21, 1974.¹²³ Mr. Childs testified in a Crime Commission hearing that Mr. Swartwood also earns a commission of one percent (1%).¹²⁴ Mr. Swartwood, however, denied any such arrangement.¹²⁵

108. *Id.*, N.T. 38-39.

109. See, interview with confidential informant B-4, May 20, 1974; interview with confidential informant B-5, January 15, 1975; interview with confidential informant B-6, February 18, 1975.

110. Allan Siers, N.T. 5-6.

111. See, interview with confidential informant B-7, May 16, 1974; interview with confidential informant B-8, February 18, 1975.

112. Allan Siers, N.T. 33.

113. *Id.*, N.T. 68, 87; Gigi Siers, N.T. 29-30.

114. Gigi Siers, N.T. 62.

115. Allan Siers, N.T. 76.

116. Gigi Siers, N.T. 47-48.

117. Allan Siers, N.T. 94.

118. *Id.*, N.T. 95.

119. Gigi Siers, N.T. 58-60.

120. Testimony of District Justice Edward F. Pressman before the Pennsylvania Crime Commission, August 12, 1975, N.T. 14-16.

121. Interview with Michael Holubowsky, Chief of Detectives, Allentown, May 20, 1974.

122. Gigi Siers, N.T. 74.

123. Ronald Swartwood, N.T. 8.

124. Harvey Childs, N.T. 7.

125. Ronald Swartwood, N.T. 30.

Mr. Swartwood operates primarily in Crawford and Mercer Counties, where he signs Mr. Childs' name to bonds posted without collateral or Midland power of attorney.¹²⁶ (See Exhibit 7.) By so doing, Mr. Swartwood is defrauding the insurance company of its contractual share of the bail premium,¹²⁷ defying the statutory requirements of the licensing laws,¹²⁸ and illegally misrepresenting his authority to his clients¹²⁹ and the courts.¹³⁰ He testified that he charges a fee of seven

EXHIBIT 7

Various signatures used on bail bonds posted by Ronald Swartwood in Crawford County, without power of attorney or collateral.

December 31, 1973

Corporate Surety Harvey E. Childs
 Attorney in Fact R. M. Swartwood
 COUNTY OF CRAWFORD, ss.

March 15, 1974

Corporate Surety Harvey E. Childs
 Attorney in Fact R. M. Swartwood
 COUNTY OF CRAWFORD, ss.

December 19, 1974

(X) [Redacted] (SEAL)
 Signature of Defendant
Ronald Swartwood (SEAL)
 Signature of Surety (May be Bondsman, Bail Agent, or private individual or organization). Except when defendant is released on his own recognizance (ROR), this must be signed in all bail situations, including nominal bail.
R. M. Swartwood
 ADDRESS OF SURETY, SURETY COMPANY OR DEFENDANT
224-7400 31 Dec 74
 Surety No. or Professional Bondsman License No. & Expiration Date

126. Mr. Swartwood and Mr. Childs admitted this practice in Crawford County. See Ronald Swartwood, N.T. 30; Harvey Childs, N.T. 35. An examination of court records revealed this practice in Mercer County as well.

127. See 18 P.S. §4113 (1971).

128. See 19 P.S. §90.1 (1971).

129. See 18 P.S. §3922 (1971).

130. See 18 P.S. §4114 (1971).

percent (7%) whether a power of attorney is used or not,¹³¹ and adds travel expenses, as directed by Harvey Childs.¹³² Mr. Swartwood enlists the aid of police officers to locate bail fugitives,¹³³ and still has access to police data concerning his bail clients.¹³⁴

Harvey Childs relies on Mr. Swartwood's investigative experience to locate bail fugitives,¹³⁵ and to help evaluate potential Midland agents.¹³⁶ Mr. Swartwood has also served as an investigator for the Pennsylvania Association of Bailbond Underwriters.¹³⁷

c. Stuyvesant Insurance Company

Salvatore C. Cali

Salvatore Cali, Registrar of Wills in Lackawanna County, owns the S. C. Cali Insurance Agency in Dunmore. He is the only surety agent in Pennsylvania licensed to represent both Stuyvesant and Midland Insurance Companies for bail bonds, in breach of his exclusive contract with Stuyvesant.¹³⁸

In a hearing before the Crime Commission, Mr. Cali testified that he charges the lawful premium rate¹³⁹ and issues receipts to his clients,¹⁴⁰ although he admitted adding travel expenses¹⁴¹ to his fee, and requesting security.¹⁴² Any such addition to the lawful rate must be considered an overcharge, in violation of insurance¹⁴³ and criminal laws.¹⁴⁴

Mr. Cali has used employees of his agency to assist in the bail bond business. He testified that his office manager, Frank B. Muraca, used to post bail, but has not been licensed for the last five years.¹⁴⁵ An examination of court records, however, revealed numerous bail bonds posted by Mr. Muraca within that period. Moreover, Mr. Cali regularly relies on his nephew, John Wasco, to post bail.¹⁴⁶ Mr. Wasco, like Mr. Cali, is licensed to represent both Midland and Stuyvesant, without the knowledge of Stuyvesant.¹⁴⁷

131. Ronald Swartwood, N.T. 18.

132. *Id.*, N.T. 34.

133. *Id.*, N.T. 35.

134. *Id.*, N.T. 51.

135. *Id.*, N.T. 6.

136. *Id.*, N.T. 31-33. *See also*, Harvey Childs, N.T. 7.

137. Ronald Swartwood, N.T. 37.

138. Interview with Edwin Rubinstein, Vice President, Stuyvesant Insurance Company, April 10, 1975.

139. Testimony of Salvatore Cali before the Pennsylvania Crime Commission, August 12, 1975 [hereinafter Salvatore Cali], N.T. 19.

140. *Id.*, N.T. 47.

141. *Id.*, N.T. 48.

142. *Id.*, N.T. 15.

143. *See* 40 P.S. §1184 (1971).

144. *See* 18 P.S. §3922 (1971).

145. Salvatore Cali, N.T. 30.

146. *Id.*, N.T. 29.

147. *See*, interview with Edwin Rubinstein, Vice President, Stuyvesant Insurance Company, April 10, 1975.

Robert Chalphin

Robert Chalphin is a very successful surety bond agent, with a principal office in Norristown, close to the Montgomery County courthouse, and seven other offices throughout Pennsylvania and New Jersey. Mr. Chalphin maintains significant contacts with, and obtains referrals from attorneys, district justices, and law enforcement personnel.¹⁴⁸ While his primary business is title insurance, Mr. Chalphin was instrumental in thwarting the adoption of bail rules by the Montgomery County courts, which would have established a schedule of penalties for forfeitures, determined by the time elapsed before the defendant appeared in court.¹⁴⁹

In a hearing before the Pennsylvania Crime Commission, Mr. Chalphin claimed ignorance of the lawful premium rates,¹⁵⁰ and freely admitted that his customary fee is ten or eleven percent of the bail bond,¹⁵¹ a clearly illegal overcharge.¹⁵² Although the courts adopted a new bail form in late 1973, Mr. Chalphin still employs the old forms in his office.¹⁵³ He further stated that he only issued receipts when requested to do so, notwithstanding his frequent acceptance of deeds and judgment notes as collateral.¹⁵⁴

Mr. Chalphin is careful to prevent default of his bonds by customarily notifying his clients of their court dates.¹⁵⁵ If a client fails to appear, Mr. Chalphin contacts friends and relatives of the client before hiring a "headhunter"¹⁵⁶ to locate a fugitive.¹⁵⁷ Mr. Chalphin is responsible for payment of his own forfeitures.¹⁵⁸ However, he settles all outstanding forfeitures by payment of a nominal amount, as determined in a semi-annual out-of-court settlement with the Montgomery County Solicitor's Office.¹⁵⁹

John Creasy

John Creasy has been a licensed surety agent in Bucks and Montgomery Counties since 1973, with an average annual net income of \$38,000.¹⁶⁰ Prior to obtaining his license, Mr. Creasy assisted Leo Castello and other bondsmen as a headhunter.¹⁶¹ He also acted as a general subagent of former Stuyvesant agent Herbert Levine,¹⁶² in violation of the licensing laws.¹⁶³ He acquired the office and

148. Testimony of Robert Chalphin before the Pennsylvania Crime Commission, May 7, 1975 [hereinafter cited as Robert Chalphin], N.T. 11, 34.

149. Interview with John J. Newett, Montgomery County Clerk of Courts, November 14, 1974.

150. Robert Chalphin, N.T. 50.

151. *Id.*, N.T. 19.

152. See 18 P.S. §3922 (1971).

153. Robert Chalphin, N.T. 17. See *Pa. R. Crim. P.*, Rule 4014, adopted July 23, 1973 (Supp. 1975).

154. Robert Chalphin, N.T. 20-21.

155. *Id.*, N.T. 25.

156. A "headhunter" or bounty hunter is an individual employed by a bail bondsman or surety agent to retrieve a defendant who has "skipped" bail by not making his scheduled court appearance.

157. *Id.*, N.T. 28, 35, 36.

158. *Id.*, N.T. 37.

159. Testimony of Alonzo Horsey, Assistant Solicitor for Montgomery County, before the Pennsylvania Crime Commission, May 8, 1975, N.T. 7, 11.

160. Testimony of John Creasy before the Pennsylvania Crime Commission, May 7, 1975 [hereinafter cited as John Creasy], N.T. 101.

161. Testimony of B-2, N.T. 100-101.

162. John Creasy, N.T. 14.

163. See 40 P.S. §234 (Supp. 1975-76).

territory of Mr. Levine upon the latter's forced retirement¹⁶⁴ and still pays Mr. Levine a portion of the bail fees collected in Bucks County.¹⁶⁵

Although Mr. Creasy and Mr. Chalphin both work for Stuyvesant in Montgomery County, they do not compete; rather, they have divided the territory between them geographically. Both men receive frequent referrals from local police officers, district justices, and their staffs, who acknowledge this territorial division.¹⁶⁶ Further, Mr. Creasy admits to an average premium charge of ten or eleven percent, with some charges as high as fifteen percent.¹⁶⁷ Although any such excessive premium is clearly illegal,¹⁶⁸ Mr. Creasy claims that the overcharge is a returnable security deposit allegedly maintained in an account with general agent Mid-Atlantic Agency until the case is settled.¹⁶⁹ Commission agents examined Mid-Atlantic records, but were unable to verify Mr. Creasy's claims.¹⁷⁰ Moreover, several attorneys in the Bucks County Public Defender's Office lodged complaints against Mr. Creasy with the Insurance Department and with the Crime Commission for allegedly overcharging their clients.¹⁷¹

Commission agents compared court records maintained in Bucks County and Montgomery County with reports prepared by Mr. Creasy for Stuyvesant Insurance Company. By so doing, agents verified Mr. Creasy's illegal use of powers of attorney. Mr. Creasy foisted void powers on the court, misrepresenting his authority to his clients¹⁷² and the courts¹⁷³ by using powers limited to less than the bond amount, expired powers, and altered powers. In addition, Mr. Creasy apparently embezzled corporate funds by not reporting all bonds posted,¹⁷⁴ and thereby retaining his company's share of the premiums.

164. John Creasy, N.T. 39. Herbert Levine was terminated as an agent for Stuyvesant Insurance Company on July 30, 1973. His license was subsequently revoked by the Pennsylvania Insurance Department on April 24, 1974.

165. Examination of records of John Creasy, pursuant to subpoena issued by the Pennsylvania Crime Commission, May 1, 1975.

166. John Creasy, N.T. 29-31; Robert Chalphin, N.T. 11, 34.

167. John Creasy, N.T. 50-53.

168. See, 18 P.S. §3922 (1971).

169. John Creasy, N.T. 59.

170. Examination of records of Mid Atlantic Agency, Inc., pursuant to subpoena issued by the Pennsylvania Crime Commission, September 29, 1975.

171. Michael Klimpl, N.T. 10-11, 14-22.

172. See 18 P.S. §3922 (1971).

173. See 18 P.S. §4114 (1971).

174. See 18 P.S. §4113 (1971).

EXHIBIT 8

False reporting of bail bonds by Stuyvesant agent John Creasy.

POWER OF ATTORNEY
THE STUYVESANT INSURANCE COMPANY
 New York, New York
 Bonding Department, 19C Microfilm Road, Livingston, New Jersey 07039

AUTHORITY FOR		DO NOT VALID FOR		ITEM 3		ITEM 2		ITEM 1	
JOHN CREASY		BOND IN EXCESS OF		IF USED AFTER		EXPIRATION AND		POWER NUMBER	
TO ACT AS ATTORNEY-IN-FACT		1000		12/74		74		671662	
STATE		MO.		DAY		MO.		DAY	
NEW YORK		11		12		74		671662	

KNOW ALL MEN BY THESE PRESENTS

SECTION 1. That The Stuyvesant Insurance Company, a New York corporation, in does hereby make, constitute and appoint the party(ies) as set forth in (Item 1) above as its true and lawful attorney-in-fact with full power and authority hereby conferred to execute on behalf of the said Company, as sole surety only to the limitation as herein set forth, a criminal bail bond on behalf of

ITEM FIVE (5) Michael K. Mullen NAME OF PRINCIPAL TO BE INSURED

to be given to: \$1000 (Bond Amount)

SECTION 2. That the authority of such attorney in fact to bind the Company shall not in any event exceed the amount set forth in (Item 3) and (2) above and one bond and the said attorney in fact is hereby submitted to Item Five (5) the name of the person whose behalf this bond is given.

AID ATLANTIC AGENCY
 101 South 13th Street
 Suite 200
 Philadelphia, Pennsylvania 19107

THE STUYVESANT INSURANCE COMPANY, NEW YORK, NEW YORK

I report execution of the following bonds and attach hereto checks and/or cash in settlement thereof. Please receipt on the attached carbon copy for my file.

John Creasy 1 of 2 pages 10/14/74
 (AGENT)

FOR THE WEEK ENDING

Bond Number	Defendant's Name	Date Effective	Am't. of Liability	Premium	B. U. F. Coll.
✓ 1170943	Michael K. Mullen	08/05/74	500.00	10.00	5.00
✓ 1170944	Michael K. Mullen	08/29/74	500.00	10.00	5.00
✓ 1170945	Michael K. Mullen	08/29/74	500.00	10.00	5.00
✓ 1171662	MULLEN, MICHAEL	09/29/74	500.00	10.00	5.00
✓ 1174594	Michael K. Mullen	09/01/74	1,000.00	20.00	10.00

EXHIBIT 8 (Cont.)

POWER OF ATTORNEY									
THE STUYVESANT INSURANCE COMPANY									
New York, New York									
Bonding Department, 19C Microhls Road, Livingston, New Jersey 07039									
AUTHORITY FOR		ITEM 1		NOT VALID FOR		ITEM 3		POWER NUMBER	
JOHN CREASY									
TO ACT AS ATTORNEY-IN-FACT		STATE		NOT VALID FOR		ITEM 3		POWER NUMBER	
FIVE THOUSAND AND NO/100 DOLLARS									
KNOW ALL MEN BY THESE PRESENTS, I, S.									
SECTION 1. That The Stuyvesant Insurance Company, a New York corporation does hereby man, constitute and appoint the party(s) set forth in the above as its true and lawful attorney-in-fact with full power and authority hereby conferred to execute on behalf of the said Company, as sole surety only, to the limitations as herein set forth, a original Bail Bond on behalf of									
ITEM FIVE (5)		<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> <div> <p><i>Loren News</i></p> <p>NAME OF PARTY TO BE INSTALLED</p> </div> <div> <p>to be given to</p> </div> </div> </div>							
SECTION 2. That the authority of such attorney-in-fact to bind the Company, shall not be in any event less than the amount set forth in Item Two (2) and one bond and the said attorney-in-fact is hereby authorized to invest in it in Five (5) to a share of									

MID-ATLANTIC AGENCY
101 South 13th Street
Suite 200
Philadelphia, Pennsylvania 19107

THE STUYVESANT INSURANCE COMPANY, NEW YORK, NEW YORK

I report execution of the following bonds and attach hereto checks and/or cash in settlement thereof. Please receipt on the attached carbon copy for my file.

Date Recd		Total	
4/70997	10.00	10.00	10.00
4/70998	10.00	10.00	10.00
4/70999	3.00	3.00	3.00

Melvin Levine

Melvin Levine, owner of the A.B.E. Bail Bond Agency in Allentown, posts bail bonds throughout the eastern part of the state. Although licensed in Pennsylvania as a surety agent for the last five years, Mr. Levine regularly posts bail in Northampton County without power of attorney or other collateral.¹⁷⁵ In a hearing before the Crime Commission, Mr. Levine testified that he not only signs his name and license number to such bonds, but charges an illegal fee of seven to ten percent.¹⁷⁶ Moreover, he does not report these bonds to his company.¹⁷⁷ Mr. Levine thereby illegally misrepresents his authority to his clients,¹⁷⁸ and the courts¹⁷⁹ and embezzles Stuyvesant's share of the premiums,¹⁸⁰ all in violation of criminal laws.

To expand his business, Mr. Levine has employed several persons whose primary employment would make them very accessible to clients and the courts, although presenting a substantial conflict of interest. For fifteen years, he employed Floyd Kellogg, now a Midland surety agent, to post bail in Monroe County.¹⁸¹ Mr. Kellogg was not licensed as a surety agent until 1975,¹⁸² and thus violated insurance laws.¹⁸³ Further, Mr. Kellogg served Monroe County as a district justice for ten years of his association with Mr. Levine.¹⁸⁴ Jack Silberlicht, a Wayne County constable, posted bail in his area for Mr. Levine several years ago, without a license.¹⁸⁵ Currently, Margaret Purcell, the wife of a district justice, posts bail for Mr. Levine in Schuylkill County.¹⁸⁶ Mrs. Purcell, however, is a licensed insurance broker.¹⁸⁷ Nevertheless, Mr. Levine directed the bail activities of each of his subagents, and instructed them to charge illegally high fees.¹⁸⁸

Continuing to ignore insurance licensing requirements, Mr. Levine still transfers bail bonds to former Stuyvesant agent Mary Wann, notwithstanding the expiration of her license in 1974.¹⁸⁹ Mr. Levine further admitted that he attempted to bribe two district justices in Allentown,¹⁹⁰ and that other district justices and attorneys refer clients to him.¹⁹¹

175. Melvin Levine, N.T. 50.

176. *Id.*, N.T. 50-51. See 18 P.S. §3922 (1971).

177. Examination of reports prepared by Melvin Levine for submission to Stuyvesant Insurance Company.

178. See 18 P.S. §3922 (1971).

179. See 18 P.S. §4114 (1971).

180. See 18 P.S. §4113 (1971).

181. Melvin Levine, N.T. 15.

182. Floyd Kellogg, N.T. 6.

183. See 40 P.S. §234 (1971).

184. Floyd Kellogg, N.T. 8.

185. Melvin Levine, N.T. 18-19.

186. *Id.*, N.T. 41, 109.

187. Testimony of Margaret Purcell before the Pennsylvania Crime Commission, August 12, 1975 [hereinafter cited as Margaret Purcell], N.T. 20.

188. *Id.*, N.T. 7-8.

189. Melvin Levine, N.T. 93-94.

190. See 18 P.S. §4701 (1971).

191. Melvin Levine, N.T. 99-101.

Stephen C. Levitt

Mr. Levitt owned and operated the Schwartz-Sills Bailbond Agency of Pittsburgh until May 1, 1973.¹⁹² At that time, he sold the agency to his former employee, Michael Isaac.¹⁹³ Mr. Levitt retained his contract with Stuyvesant, and thus his liability for all forfeitures incurred.¹⁹⁴ Several years ago the Pennsylvania Insurance Department pursued allegations of excessive fees paid to Mr. Levitt's agency.¹⁹⁵ Mr. Levitt subsequently paid a fine to the Department, and repaid all overcharges received.¹⁹⁶

Currently, Mr. Levitt and his former subagent, Victor Kozlowski, are being held in protective custody, allegedly as potential witnesses in a federal investigation of kickbacks related to bailbonding in Pittsburgh.¹⁹⁷ In earlier testimony before the Commission, Mr. Levitt was evasive about the payment of kickbacks, but categorically denied any such payments during a specific time period.¹⁹⁸

Margaret Purcell

Margaret Purcell, a licensed insurance broker, earns a one or two percent commission on bail bonds posted through Stuyvesant agent Melvin Levine¹⁹⁹ and Midland agent Leo Castello.²⁰⁰ She has collected fees ranging from eight to twelve percent (8 to 12%), depending upon the size of the bond, as directed by Mr. Levine.²⁰¹ Although operating generally as a subagent of Melvin Levine, Mrs. Purcell does confer with the general agent, Mid-Atlantic Agency, and received powers of attorney directly from them.²⁰² Nevertheless, she has stacked powers illegally on bonds.²⁰³

Mrs. Purcell is a county employee serving as secretary to her husband, a district justice in Pottsville.²⁰⁴ Although she testified that she is not permitted to post bail in his office,²⁰⁵ an inspection of court records revealed that she frequently does so. Mrs. Purcell is responsible for more bail bonds in Schuylkill County than any other individual.²⁰⁶

192. Testimony of Michael Isaac before the Pennsylvania Crime Commission, August 5, 1975 [hereinafter cited as Michael Isaac], N.T. 10.

193. *Id.*, N.T. 28.

194. Testimony of Stephen C. Levitt before the Pennsylvania Crime Commission, August 4, 1975 [hereinafter cited as Stephen Levitt], N.T. 13.

195. Michael Isaac, N.T. 20.

196. *Id.*, N.T. 35.

197. "Bail Bond Kickbacks Probed," *Erie Morning News*, January 20, 1976; "U.S. Probes Bail Bonding Here, Threatens Grant Street Shakeup," *Pittsburgh Post Gazette*, January 19, 1976.

198. Stephen Levitt, N.T. 60-61, 80-81.

199. Margaret Purcell, N.T. 7.

200. *Id.*, N.T. 27.

201. *Id.*, N.T. 8.

202. *Id.*, N.T. 19, 22.

203. *Id.*, N.T. 40. See 18 P.S. §4114 (1971).

204. Margaret Purcell, N.T. 5.

205. *Id.*, N.T. 37.

206. Report on examination of court records, Schuylkill County, January 10, 1975.

Mary Wann

Mary Wann has been active in bail bonding in Berks County since she first obtained a professional bondsman's license on December 13, 1968. The history of her licensing and her career exemplify many of the problems inherent in the current system.

Within a year of her initial licensing, Ms. Wann requested an application for licensing as a surety agent for Allegheny Mutual Casualty Company. The Insurance Department informed her that both licenses cannot be held concurrently, and she routinely renewed her professional bondsman's license. In June, 1971 the Department learned that she was executing bonds with powers of attorney from the Southern General Insurance Company.²⁰⁷ It thereupon directed the Berks County courts not to accept any bonds executed by Mary Wann for a surety company. Since Southern General apparently revoked the powers of attorney given her, the Insurance Department took no further action. Her license lapsed on December 13, 1971.

Notwithstanding the above-mentioned violations of the licensing regulations, Ms. Wann was permitted to take the insurance agent's examination in December, 1971, and was subsequently licensed as a surety agent for Stuyvesant Insurance Company on July 13, 1972. By March, 1974, however, Ms. Wann was again barred from posting bonds in Berks County, for failure to satisfy outstanding forfeitures totalling more than \$130,000.

Although her license was not renewed in 1974, Mary Wann has continued to post bail through transfer bonds from current Stuyvesant agents. Stuyvesant recently settled her debt to Berks County. Since the Insurance Department never brought formal charges against her, and took no final action, it is possible that she will again be relicensed.

3. PROFESSIONAL BONDSMEN

The professional bondsman is governed by the Professional Bondsman's Act,²⁰⁸ which defines his fee as ten percent (10%) of the first one hundred dollars (\$100) of bail, and five percent (5%) of each hundred dollars thereafter,²⁰⁹ not to exceed a total fee of eight percent (8%).²¹⁰ An applicant must be free of prior criminal convictions²¹¹ in order to be licensed by the Insurance Commissioner, at an annual fee of fifty dollars (\$50.00).²¹² He must also maintain an office in each county in which he posts bail,²¹³ and list each county and office on his annual license application.²¹⁴

207. Southern General Insurance Company is the predecessor in interest to Stuyvesant Insurance Company.

208. See generally, 19 P.S. §90.1 *et. seq.* (1964).

209. 19 P.S. §90.9 (1964).

210. 19 P.S. §94 (1964).

211. See 19 P.S. §§90.6, 90.7 (1964).

212. 19 P.S. §90.4.

213. 19 P.S. §90.5.

214. The Insurance Commissioner requires this information on a form which he must, by law, prescribe. See 19 P.S. §90.3 (1971).

Notwithstanding these statutory requirements, virtually every bondsman investigated overcharged his clients and violated the bail laws. George Wentzler (Lebanon County) and Frank Al Bock (Fayette County), for example, generally misrepresented the lawful fee by stating flat rates of ten percent (10%),²¹⁵ and six percent (6%) respectively.²¹⁶ Washington County bondsmen John P. Longo²¹⁷ and Charles Losko²¹⁸ simply claimed ignorance of the legal rates, although required to affirm their knowledge of the pertinent laws on their license applications.²¹⁹

In addition to the excessive fees, many professional bondsmen create another obstacle for the impoverished defendant by requiring protection against the risk of forfeiture. James Costopoulos²²⁰ (Cumberland County), Finis Esters²²¹ (Lancaster County), and Robert Marcus²²² (Dauphin County), have all demanded tangible security, usually in the form of a deed, car title, cash or jewelry. Peter Pope²²³ (Dauphin County) and others demand instead that a friend or relative of the defendant sign a third-party indemnity agreement, purporting to relieve the professional bondsman of liability for the defendant's failure to appear.

Several individuals have avoided the licensing requirements of the Professional Bondsman's Act. Gus Giovinco²²⁴ (Montgomery County), Jack Smith²²⁵ (Luzerne County), and Midland agent Samuel Bonanno²²⁶ (Berks County) obtained professional bondsman's licenses although legally prohibited by prior criminal convictions. Others, including Allegheny County professional bondsmen Harvey Wander²²⁷ and Zachquo Winston,²²⁸ violated the licensing laws by acting as surety agents. Northampton County residents Lawrence Marra, his wife, and son, posted bail regularly without licenses.²²⁹ Licensed professional bondsmen John Longo²³⁰ (Washington County), Michael Smith²³¹ (Luzerne County), and George Wentzler²³² (Lebanon County) employ unlicensed family members to assist in their

215. Interview with George Wentzler, April 10, 1975.

216. Testimony of Frank Al Bock before the Pennsylvania Crime Commission, August 4, 1975, N.T. 11, 25.

217. Interview with John P. Longo, March 24, 1975.

218. Testimony of Charles Losko before the Pennsylvania Crime Commission, August 5, 1975, N.T. 242.

219. See note 214, *supra*.

220. Testimony of James Costopoulos before the Pennsylvania Crime Commission, June 30, 1975, N.T. 9.

221. Testimony of Finis Esters before the Pennsylvania Crime Commission, June 30, 1975, N.T. 24.

222. Testimony of Robert Marcus before the Pennsylvania Crime Commission, July 1, 1975, N.T. 9.

223. Interview with Peter Pope, March 18, 1975.

224. Testimony of Gus M. Giovinco before the Pennsylvania Crime Commission, May 8, 1975, N.T. 15.

225. Interview with Russell J. Polley, Jr., Chief, Division of Agents and Brokers, Pennsylvania Insurance Department, July 31, 1973.

226. Samuel Bonanno, N.T. 9.

227. Harvey Wander, N.T. 5.

228. Testimony of Zachquo Winston before the Pennsylvania Crime Commission, August 5, 1975, N.T. 85-95.

229. Examination of court records, Lehigh County and Northampton County.

230. Interview with John P. Longo, March 24, 1975.

231. Testimony of District Justice Edward F. Pressman before the Pennsylvania Crime Commission, August 12, 1975, N.T. 21-23.

232. Interview with George Wentzler, April 10, 1975.

bail businesses. Similarly, Luzerne County former professional bondsmen John Hakim²³³ and Jack Smith²³⁴ continued to post bail after the Insurance Department refused to renew their licenses, and subsequently obtained licenses for their wife and son, respectively, to circumvent the Professional Bondsman's Act.²³⁵

Further, nearly every one of the bondsmen investigated posted bond outside of their home counties in direct violation of the county-office rule,²³⁶ and illegally added travel expenses to their fees.²³⁷ Some, like Luzerne County former bondsman Jack Smith, revoke bail when concerned about a client's reliability, without returning his bail fee.²³⁸ Most bondsmen, moreover, neither issue receipts to their clients nor maintain other records sufficient to verify their bail income.

The lax record-keeping of most bondsmen creates additional problems for the county courts. Every bond posted by a professional bondsman must be supported by sufficient collateral.²³⁹ This collateral is usually in the form of real property, which must be of unencumbered value greater than the bail amount. If the same property is used as collateral on more than one bail bond, all prior bonds must be considered as encumbrances. Thus, many bondsmen have overextended their collateral, an offense for which Berks County bondsmen John Bonanno and Vincent Smith were suspended from the bail business.²⁴⁰

The professional bondsman must post collateral to protect the county against the nonpayment of bail forfeitures. Most counties, however, are extremely lax in requiring collateral for the posting of bonds. And, collection procedures are further complicated in instances where the professional bondsman maintains no office or other property subject to attachment in the county where the forfeiture debt is incurred.²⁴¹

Several of the most prominent professional bondsmen and former professional bondsmen are described in some detail below. Each exemplifies particular problems in the licensing and regulation of professional bondsmen, and illustrates violations committed by others as well as themselves.

John A. Bonanno

A used car dealer in Reading, John Bonanno acquired a professional bondsman's license in February, 1974. By May, 1974, Mr. Bonanno had overextended his collateral in the posting of bail bonds,²⁴² and used property other than his own as additional collateral.²⁴³ The Berks County court consequently

233. Examination of court records, Luzerne County.

234. *Id.*

235. See 19 P.S. §90.6 (1971).

236. See note 213, *supra*, and accompanying text.

237. See note 209, *supra*, and accompanying text.

238. Interview with confidential informant B-9, April 3, 1975.

239. See *Pa. R. Crim. P.* 4006(c).

240. Interview with Donald W. Dissinger, Berks County Clerk of Courts, November 25, 1974; see also, court records, Berks County.

241. Testimony of Chester Krushefski, Chief Deputy Sheriff, Luzerne County, before the Pennsylvania Crime Commission, August 13, 1975, N.T. 5-6.

242. Testimony of John A. Bonanno before the Pennsylvania Crime Commission, June 10, 1975 [hereinafter cited as John Bonanno], N.T. 25.

243. *Id.*, N.T. 16.

suspended his license for six months, and ordered all his outstanding bail transferred to other bondsmen. Mr. Bonanno remitted all fees collected to Midland agent Leo Castello, who accepted the bail bonds involved.²⁴⁴

In testimony before the Crime Commission, Mr. Bonanno admitted his culpability for overextending collateral, but expressed his belief that he was unfairly singled out for a common offense.²⁴⁵ Moreover, he refused, on Fifth Amendment grounds, to discuss his bail fees,²⁴⁶ except to assert that the fee should be at least ten percent (10%) of the bond.²⁴⁷ Evidence gathered by Commission agents verified allegations that Mr. Bonanno actually charges an illegal fee of ten percent (10%).²⁴⁸

John Hakim

John Hakim²⁴⁹ was a licensed professional bondsman from 1970 until 1974, listing offices in Luzerne and Wyoming Counties. In testimony before the Crime Commission, however, Mr. Hakim admitted posting bail in seven other counties of northeastern Pennsylvania in which he had no office.²⁵⁰ Included among these counties is Lackawanna County, where the District Attorney prohibited him from posting bail since he had not met the county requirement of a \$10,000 collateral deposit.²⁵¹

Evidence gathered by Commission agents verified allegations that Mr. Hakim regularly overcharged his clients. In addition, Mr. Hakim admitted that he added travel expenses to his fees, and that his income records do not reflect all fees received.²⁵²

In 1973, Mr. Hakim was approached to become a surety agent for Midland Insurance Company by state agent Harvey Childs, who told him that the fee was nine and one-half percent (9½%).²⁵³ Mr. Hakim subsequently received a contract and a general power of attorney from Midland, which he filed in the Columbia County courts.²⁵⁴ After these negotiations were unsuccessfully terminated, Mr. Hakim began using the address of retiring District Justice Lewis A. Williams as his Carbon County office, even though Mr. Williams had refused to join Mr. Hakim's bail business or allow his office to be so used.²⁵⁵

244. *Id.*, N.T. 10. See also discussion of surety agents generally and Mr. Castello, *infra*, pp. 193, 202-203.

245. John Bonanno, N.T. 41-42. See discussion of similar charges lodged against former Berks County bondsman Vincent Smith, *infra*, p. 227.

246. John Bonanno, N.T. 19-22.

247. *Id.*, N.T. 46.

248. Interviews with confidential informant B-10, December 19, 1974; confidential informant B-11, December 19, 1974; confidential informant B-12, January 2, 1975; confidential informant B-13, February 5, 1975; confidential informant B-14, February 6, 1975; confidential informant B-15, February 13, 1975.

249. John Hakim is an associate of organized crime member Russell Bufalino, identified in the 1970 Pennsylvania Crime Commission *Report on Organized Crime*. See testimony of John Hakim before the Pennsylvania Crime Commission, May 21, 1975 [hereinafter cited as John Hakim], N.T. 108-109.

250. John Hakim, N.T. 17-19.

251. Interview with William Murray, Chief Clerk for the Lackawanna County District Attorney, February 20, 1975.

252. John Hakim, N.T. 81.

253. *Id.*, N.T. 20-24.

254. Examination of court records, Columbia County.

255. Testimony of Lewis A. Williams, former Carbon County District Justice, before the Pennsylvania Crime Commission, August 13, 1975, N.T. 11, 15.

EXHIBIT 9

Card used by John Hakim in Carbon County.

L. A. WILLIAMS - REPRESENTATIVE
258 N. 4TH. STREET
LEHIGHTON, PA. 18235
PHONE (215) 377-1721



JOHNNY HAKIM
PROFESSIONAL BAIL BONDSMAN
NO. 479
24- HOUR SERVICE

PHONE: 824-6018
824-7084
333-4873

565 SOUTH MAIN STREET
WILKES-BARRE, PA. 18701

Thus, Mr. Hakim attempted to perpetrate a fraud on the Carbon County courts, which had required him to maintain a local office.²⁵⁶

The Insurance Department suspended Mr. Hakim's license because of overcharges and out-of-county operations. Further investigation by the Crime Commission revealed that Mr. Hakim continued to post bond after suspension of his license. When the Insurance Department refused to relicense Mr. Hakim, his wife, Mary Jane Hakim, applied for and was granted a license. With Michael Milkanin, a licensed professional bondsman and head of Milkanin Detective Agency, John and Mary Jane Hakim continue to operate their bail bond business in Wilkes-Barre, Pennsylvania.

Lawrence Marra

Lawrence Marra, his wife Francesca, and his son Lawrence Marra, Jr., have all posted bail bonds in Lehigh and Northampton Counties without a license. Mr. Marra is ineligible for licensing because of two convictions in 1961 for bribery and solicitation to commit bribery. In addition, the family allegedly charges excessive bail fees.

The Marras, who live in Northampton County, purchased numerous low-valued properties at tax sales for use as bail collateral.²⁵⁷ On March 4, 1974, President Judge Koch of the Lehigh County Court of Common Pleas banned the Marras from posting bail in Lehigh County because they had overextended their collateral.²⁵⁸

²⁵⁶. See 18 P.S. §§4903, 4904 (1971).

²⁵⁷. Interview of Lehigh County Assistant District Attorney Dean Foote, December 17, 1974.

²⁵⁸. Order of Lehigh County Court of Common Pleas, March 4, 1974.

John D. (Jack) Smith

Former professional bondsman Jack Smith is associated with his son Michael in a Wilkes-Barre bail bond agency, as well as the American Taxi Company and the American Construction Company. During 1972 and 1973, Commission agents gathered evidence documenting numerous illegal fees paid to Mr. Smith and bail bonds posted by him in counties in which he did not maintain an office. The Commission referred this evidence, with Mr. Smith's criminal conviction record, to the Insurance Department during the summer of 1973. On August 24, 1973, the Department refused to renew Mr. Smith's license, and he did not challenge the action.

In a hearing before the Commission on May 23, 1975, Jack Smith testified that he did not know the legal bail fee, but always charged the legal rate.²⁵⁹ As a professional bondsman, Mr. Smith required security deposits and indemnity agreements from his clients,²⁶⁰ and employed indigent clients in his other businesses to work for their bail fees.²⁶¹ Mr. Smith also revoked bail without returning the client's payment.²⁶² On at least one occasion after losing his license, he posted a second bail for a client's later arrest, collected the second fee, and then revoked the earlier bail, causing the client to remain in prison.²⁶³ (See Exhibit 10). Further, a recent examination of court records for Luzerne County confirmed allegations that Mr. Smith has continued to post bail bonds without a license.

259. Testimony of John D. Smith before the Pennsylvania Crime Commission, March 23, 1975 [hereinafter cited as Jack Smith], N.T. 44.

260. Jack Smith, N.T. 57.

261. *Id.*, N.T. 23.

262. *Id.*, N.T. 58.

263. Interview with confidential informant B-16, April 3, 1975.

EXHIBIT 10

Bond revoked by Jack Smith in Lehigh County after posting a second bond for the defendant and retaining both fees. Note action taken on February 27, 1975—six months after his license expired.

TRANSCRIPT	
From Criminal Docket of <u>Edward F. Prossmann</u> Justice of the Peace	
Commonwealth of Pennsylvania	
vs.	
Magisterial District: <u>31-2-02</u>	
Charge: <u>Theft by Unlawful Taking or</u>	
<u>Disposition</u>	
Address: <u>Lehigh County Prison</u>	
On Oath of Prosecution: <u>Det. Sgt. Ronald Moynoyar</u>	
Date of Birth: _____	
Address: <u>Allentown Police Dept.</u>	
Complainant sworn to: <u>June 13, 1974</u>	
Date _____	
Now _____ 197____ Summons issued.	
Now <u>June 13</u> 197 <u>4</u> Warrant issued to: <u>Det. Sgt. Ronald Moynoyar</u>	
(Delete if inapplicable)	
Now _____ 197____ Defendant appears in response to Summons.	
Now <u>July 15</u> 197 <u>4</u> Defendant arrested by virtue of above recited Warrant, and bail required	
in the sum of \$ <u>20,000.00</u> for a hearing on the <u>27</u> day of <u>February</u> 197 <u>5</u>	
a <u>10:30</u> a.m. Defendant _____ committed to jail in default of bail	
(Delete if not applicable)	
Now <u>February 27</u> 197 <u>5</u> _____ the time fixed for a hearing is had	

RECEIVED - JAMES E. GANLEY & ASSOCIATES, TAYLOR, PA. TEL-1234 432 2345	
A 43030	
CERTIFICATION OF BAIL AND DISCHARGE No. _____ (Signature of Bailor) <u>Lehigh, Pa.</u> <input type="checkbox"/> ROR (no surety) <input checked="" type="checkbox"/> Bail (total amount set, if any) \$ <u>50,000.00</u> <input type="checkbox"/> Conditions of Release (attach addendum, if necessary)	POLICE CASE NO. _____ J. P. No. <u>CL-570, CL-571, CL-572, CL-573, CL-574, CL-575, CL-576, CL-577, CL-578, CL-579, CL-580, CL-581, CL-582, CL-583, CL-584, CL-585, CL-586, CL-587, CL-588, CL-589, CL-590, CL-591, CL-592, CL-593, CL-594, CL-595, CL-596, CL-597, CL-598, CL-599, CL-600</u> CHARGE(S) <u>Criminal Conspiracy (2 counts)</u> <u>Theft by unlawful taking (6 counts)</u> DATE OF ARREST <u>June 13, 1974</u> DATE AND _____

Mr. Smith was legally authorized to post bail only in Lackawanna and Luzerne Counties, where he allegedly had offices.²⁶⁴ As required by the Lackawanna County District Attorney, he also maintained a \$10,000 savings account with that county.²⁶⁵ However, Mr. Smith admitted that he operated in any county from which he was called.²⁶⁶ In Susquehanna County, Mr. Smith presented a perjurious affidavit to the

²⁶⁴ Jack Smith, N.T. 16.

²⁶⁵ Testimony of William Murray, Chief Clerk for the Lackawanna County District Attorney, before the Pennsylvania Crime Commission, August 14, 1975, N.T. 8-9.

²⁶⁶ Jack Smith, N.T. 36.


EXHIBIT 11

STATE OF PENNSYLVANIA: SS:
COUNTY OF SUSQUEHANNA:

JACK SMITH BEING DULY SWORN ACCORDING TO LAW DEFUSES
AND SAYS THAT HE IS LICENSED BY THE INSURANCE COMMISSIONER
OF THE COMMONWEALTH OF PENNSYLVANIA FOR THE YEAR 1972, AND
THAT HE IS QUALIFIED TO DO BUSINESS IN SUSQUEHANNA COUNTY.

JACK SMITH

SWORN AND SUBSCRIBED TO BEFORE ME
THIS 5th DAY OF AUGUST, 1972.
Donal C. Catlin
PROTHONOTARY



Certified and attested from the records
of Susquehanna County, Pa.
the 5th day of May, 1975.
Donal C. Catlin
Prothonotary

courts, claiming that he was legally authorized to post bail there.²⁶⁷ (See Exhibit 11). He regularly operated in Susquehanna and Columbia Counties without proper authority, and forfeited substantial bonds in both counties.²⁶⁸ Because Mr. Smith

267. Interview of Ulric J. McHaley, Esq., Susquehanna County Solicitor, April 10, 1975.

268. Examination of court records in Columbia County and Susquehanna County.

transferred his real property to his corporations and to other family members,²⁶⁹ neither county was able to satisfy their judgments in full.²⁷⁰

When the Insurance Department failed to renew his license, Mr. Smith did not challenge the decision or request a hearing. Since he never reapplied for a license, no final determination was made. Thus, it is conceivable that he could be relicensed.

Michael Smith

Michael Smith received his first professional bondsman's license in June, 1973, just two months before his father, Jack Smith, was denied renewal of his license. By September, Michael Smith had ostensibly taken over their Wilkes-Barre bonding firm, although Jack Smith has continued to participate actively in the bail business without a license. Father and son are also active partners in construction and taxicab companies.

In a hearing before the Pennsylvania Crime Commission, Michael Smith testified that he always charges the legal fee,²⁷¹ although he was unable to document payments received from several known clients.²⁷² Mr. Smith admitted requesting security deposits and indemnification agreements from bail clients and their families,²⁷³ and revoking bail on a client without returning the fee paid.²⁷⁴

Mr. Smith lists real property as his bail collateral, and admits that most was given to him by his father.²⁷⁵ Yet, he stated that he did not know why many of those properties were transferred several times between his father and himself.²⁷⁶ He further testified that, at age 21, he posted \$10,000 in a collateral account in Luzerne County.²⁷⁷ Although he claims to be legally operating in Lackawanna County, Mr. Smith does not maintain a \$10,000 collateral account, as that county requires of professional bondsmen; the only such account in Lackawanna County is still maintained in his father's name.²⁷⁸ Mr. Smith further explained that his "office" in Lackawanna County is really the office of a telephone answering service, in which he occasionally uses a spare desk.²⁷⁹

269. Testimony of Chester Krushefski, Chief Deputy Sheriff, Luzerne County, before the Pennsylvania Crime Commission, August 13, 1975, N.T. 5-6.

270. Interview with Donald C. Catson, Susquehanna County Clerk of Courts, November 27, 1974.

271. Testimony of Michael Smith before the Pennsylvania Crime Commission, May 23, 1975 [hereinafter cited as Michael Smith], N.T. 46.

272. *Id.*, N.T. 39-40.

273. *Id.*, N.T. 44, 59.

274. *Id.*, N.T. 56-60.

275. *Id.*, N.T. 22, 23.

276. *Id.*, N.T. 33, 34.

277. *Id.*, N.T. 31.

278. See note 265, *supra*.

279. Michael Smith, N.T. 6, 19.

Vincent Smith

Vincent Smith, a former Berks County bondsman, started posting bail with a power of attorney from his mother, Frances Smith, a licensed professional bondsman. On November 10, 1971, Mr. Smith obtained his own license. By the spring of 1972, however, he had overextended his collateral. The district attorney, therefore, prevented renewal of his license in November, 1972. Litigation concerning his bonds continued until September, 1973. Since Mr. Smith paid his forfeiture debts and was not relicensed, no further punishment was exacted. Mr. Smith was recently convicted of several felony offenses, and is, consequently, ineligible for relicensing.²⁸⁰

Harvey Wander

Harvey Wander uses his professional bondsman's license in the bail bond business of his cousin, Allegheny Mutual surety agent David Wander.²⁸¹ In defiance of the licensing laws, bondsman Wander performs all duties of the surety agent except signing the bond;²⁸² he uses a rubber stamp of David Wander's signature to do so.²⁸³ Mr. Wander is responsible for approximately ninety percent (90%) of the firm's bonds,²⁸⁴ on which he collects the bail fee, as directed by David Wander, and retains a commission of two percent (2%).²⁸⁵ Although David Wander admitted demanding both security and third-party indemnity agreements,²⁸⁶ Harvey Wander insisted that he requires only indemnification.²⁸⁷

All forfeitures are the sole responsibility of David Wander,²⁸⁸ although Harvey Wander often locates fugitives for him.²⁸⁹ Since Allegheny County first required bondsmen to maintain a collateral deposit of \$25,000, Harvey Wander has not qualified to post bond.²⁹⁰ He does, however, post bonds for Allegheny Mutual Casualty Company in federal court, with specific authorization from the company.²⁹¹

280. On February 9, 1976, the Superior Court remanded this case for a hearing on whether certain new evidence warrants granting a new trial.

281. Harvey Wander, N.T. 5.

282. Harvey Wander, N.T. 7. See 40 P.S. §234 (Supp. 1975-76).

283. David Wander II, N.T.

284. Harvey Wander, N.T. 12.

285. *Id.*, N.T. 15; David Wander I, N.T. 8.

286. David Wander I, N.T. 56, 62.

287. Harvey Wander, N.T. 26.

288. *Id.*, N.T. 24.

289. *Id.*, N.T. 32.

290. *Id.*, N.T. 6, 19.

291. *Id.*, N.T. 21.

4. PENNSYLVANIA ASSOCIATION OF BAILBOND UNDERWRITERS

The Pennsylvania Association of Bailbond Underwriters (PABU), a purportedly non-profit²⁹² organization, was founded in 1971 by a group of bondsmen spurred by Harvey K. Childs of Greenville.²⁹³ With the professional advice of a public relations firm,²⁹⁴ Mr. Childs wrote to all known bondsmen, enclosing questionnaires suggesting formation of an association to present a more professional public image of bondsmen and augment their influence on the legislature and the courts.²⁹⁵ About forty professional bondsmen and surety agents responded to those questionnaires.²⁹⁶ On September 25, 1971, about twenty people met to form the Pennsylvania Association of Bailbond Underwriters.²⁹⁷ They met again two weeks later to elect officers, and chose Mr. Childs as president.²⁹⁸

According to Mr. Childs, the purpose of the association has always been to upgrade bail, and not to lobby for the bondsman's interests.²⁹⁹ The activities of the association since inception, however, belie this purpose.

The prevalence of bail reform movements was, in fact, a primary impetus for formation of PABU. During 1971, both Philadelphia and Allegheny Counties were preparing to establish percentage cash deposit bail and court-run bail agencies, with significant efforts to limit the activities of bondsmen.³⁰⁰ The Pennsylvania legislature was actively considering a bill to expand such programs across the state.³⁰¹ Lobbying against such measures was considered a primary goal of the association by many of its members.³⁰² After the supposed reform bill overwhelmingly passed the House, PABU initiated a letter-writing campaign in which members wrote to their state senators, reminding them of the forthcoming 1972 election and their constituents' interest in bail.³⁰³ In addition, former Senator

292. In correspondence and newsletters directed by president Harvey Childs, Pennsylvania Association of Bailbond Underwriters is referred to as a "non-profit" organization, and members are instructed that their dues payments may be treated, for tax purposes, as charitable contributions. However, no charter or other document has ever been filed with any agency of the state or federal government for qualification as a non-profit, charitable, or tax-exempt organization.

293. Mr. Childs is currently state agent for Midland Insurance Company. *See* notes 66-78, *supra*, and accompanying text.

294. Mr. Childs employed the firm of Graphic Horizons, operated by Richard H. Miller, to coordinate and organize the bondsmen. *See* note 336, *infra*, and accompanying text.

295. *See* records of PABU provided on February 17, 1976, pursuant to a subpoena issued by the Pennsylvania Crime Commission on September 23, 1975, as ordered by the Commonwealth Court on January 20, 1976.

296. *Id.*

297. *See* note 295, *supra*; memorandum of first meeting.

298. *See* note 295, *supra*; minutes of meeting October 9, 1971.

299. Harvey Childs, N.T. 10-11.

300. These efforts culminated in late 1971 and early 1972 in the creation of the Pretrial Services Division, Philadelphia Common Pleas and Municipal Courts, and the Allegheny County Court Bail Agency, both under the aegis of the Common Pleas courts.

301. *See*, H.B. No. 634, General Assembly of Pennsylvania, Session of 1971; "Bail Reform Attempt from the Bar," Pretrial Justice Quarterly, 5 (March, 1972).

302. *See, e.g.*, James Costopoulos, N.T. 32; John T. Fields, N.T. 21; Stephen Levitt, N.T. 27; Robert Marcus, N.T. 33; Ralph Mustello, N.T. 74-79.

303. *See* note 295, *supra*.

Mazzei invited his constituent, Stuyvesant agent Stephen C. Levitt, to address the committee members concerned with the bill.³⁰⁴ Although Senator Mazzei sponsored a bail reform bill in 1969, he subsequently opposed the 1972 bill.³⁰⁵ The Senate's defeat of the bill was generally attributed to the lobbying efforts of the bondsmen and PABU.³⁰⁶

Moreover, little effort has been made by PABU to improve the bail system, or to police it from within. No membership requirements were ever determined.³⁰⁷ Harvey Childs, however, claimed that he performed a background check on each potential member, and refused to approve some individuals.³⁰⁸ Nevertheless, no member was ever rebuked, suspended, or expelled for illegal activity, although the Insurance Department refused to renew professional bondsman's licenses for charter member John Hakim,³⁰⁹ current vice president Leo Castello,³¹⁰ and former secretary Jack Smith.³¹¹ Only Mr. Castello was subsequently relicensed, but not as a bondsman. He is now a Midland surety agent, recommended and supervised by Harvey Childs.³¹²

Throughout its existence, the aims and activities of PABU have been directed by Harvey Childs. Within its first year, the association suffered a major rift because of discord between Mr. Childs and his company.³¹³ Mr. Childs expected financial support for PABU from Stuyvesant Insurance Company, then the principal surety company in the bail business in Pennsylvania.³¹⁴ At the same time, he had begun negotiations to become state agent for Midland Insurance Company, which was interested in entering the Pennsylvania bail market, and pledged support for PABU.³¹⁵ The other Stuyvesant agents quickly grew disenchanted with the association, viewing it as a political tool for Harvey Childs' personal ambitions.³¹⁶ When Mr. Childs left Stuyvesant, the Stuyvesant agents left PABU.

PABU never again exceeded thirty-five dues-paying members, despite efforts by Mr. Childs. He enticed new members to join by offering to pay their first year's dues, and sending them free membership cards.³¹⁷ The dues, however, were not paid.³¹⁸

304. Stephen Levitt, N.T. 27. See Newsletter, Pennsylvania Association of Bailbond Underwriters (November, 1971).

305. See "House-Passed Bail Bond Still in Fight, Senate Opposition Coming to Rescue of State Bondsmen," *Pittsburgh Press*, October 3, 1971.

306. Confidential interviews with Pennsylvania Senate staff members, March 6, 1975, March 7, 1975, June 12, 1975, and July 24, 1975.

307. See note 295, *supra*.

308. Harvey Childs, N.T. 31.

309. See pp. 221-222, *supra*, and accompanying text.

310. See note 55, *supra*, and accompanying text.

311. See pp. 223-226, *supra*, and accompanying text.

312. See note 56, *supra*, and accompanying text.

313. See John T. Fields, N.T. 23.

314. See Harvey Childs, N.T. 24.

315. *Id.*, N.T. 25.

316. See, e.g., Stephen Levitt, N.T. 62.

317. Floyd Kellogg, N.T. 43; Ronald Swartwood, N.T. 18.

318. See Harvey Childs, N.T. 18. See also note 295, *supra*. The majority of these records were not provided or accounted for on that date, as ordered by the Commonwealth Court, necessitating its Order of April 19, 1976, holding PABU in contempt of court.

- Further, Mr. Childs has misrepresented the size of the association to the public, legislators, and the Crime Commission, boasting of as many as two hundred members, and claiming state-wide political significance.³¹⁹ For example, in June, 1975, Mr. Childs claimed approximately sixty-five (65) members, by adding wives, business associates, and former members to the thirty-two (32) members who paid dues for 1975.³²⁰

As many former PABU members predicted, Mr. Childs has used his position as president of PABU in various election campaign efforts since 1972.³²¹ He also corresponds with elected officials on behalf of their constituents.³²² To catch their attention, he lists seventeen officers and two staff members on the PABU stationery.³²³

Among the seventeen "officers" are ten individuals who either pay no dues, or quit the association several years ago.³²⁴ Further, only the president and treasurer have any duties at all. The treasurer, appointed by Harvey Childs and later voted in by the members, records dues and signs checks as directed by the president.³²⁵ Mrs. Childs, the public relations director, and her mother, Mrs. Hinkson, the executive director, actually prepare all minutes and newsletters.³²⁶ Thus, the secretary and vice president have no duties. Thirteen other individuals are listed as regional vice presidents and members of an executive committee. None have any duties.³²⁷ Each person is listed by home county, intending to show a broad membership base. However, only five are current members.³²⁸

Nevertheless, the most significant aspect of Mr. Childs' abuse of the members' confidence is his treatment of the limited PABU treasury as his personal expense account. He falsely advised members that their dues payments could be considered charitable contributions,³²⁹ although the association never applied for tax-exempt status.³³⁰ He devised a dues schedule based upon the members own assessment of his bail income, with most payments ranging from \$100 to \$500 annually,³³¹ although minimal payments were accepted from inactive members.³³² But, as former treasurer George Leslie said, there never seemed to be any reason for such high dues.³³³

Mr. Childs has reduced his own payments over the years from \$500 to \$200,³³⁴

319. See correspondence, note 295 *supra*.

320. Harvey Childs, N.T. 16.

321. See correspondence, note 295 *supra*.

322. *Id.*

323. *Id.*

324. Comparison of financial records with stationery, see note 318, *supra*.

325. Testimony of John D. Smittle before the Pennsylvania Crime Commission, August 5, 1975 [hereinafter cited as John Smittle], N.T. 171, 177.

326. Harvey Childs, N.T. 7; records, note 295 *supra*.

327. See, e.g., James Costopoulos, N.T. 26; Ralph Mustello, N.T. 74-79.

328. See note 324 *supra*.

329. See notes 292 and 295 *supra*.

330. Testimony of George Leslie before the Pennsylvania Crime Commission, January 5, 1976 [hereinafter cited as George Leslie], N.T. 25.

331. Letter to members from Harvey Childs, September 29, 1971.

332. See note 295 *supra*.

333. George Leslie, N.T. 51.

334. Examination of financial records, see note 318 *supra*.

while claiming to pay dues for up to fifteen persons.³³⁵ During the first year, over sixty percent of the PABU treasury was allocated to the Graphic Horizons public relations firm owned by Richard H. Miller, then a close friend and business associate of Harvey Childs.³³⁶ Although records for later years have disappeared, the trend of payments is clear. In 1975, over ninety percent (90%) of all disbursements from the PABU treasury were issued to Mr. Childs and his family, as salary or reimbursement for association expenses.³³⁷ (See Exhibit 12). The current fiscal year shows the same pattern, although the largest single expenditure, \$750, is to the law firm which represented the individual interests of Mr. Childs in a hearing before the Crime Commission.³³⁸ According to current treasurer John D. Smittle, however, he issues any check Mr. Childs requests "without any question, because I trust Mr. Childs."³³⁹ The other members were never given an opportunity to approve even such a major disbursement,³⁴⁰ even though the expense was anticipated nearly a year before the debt was incurred.³⁴¹

335. *Id.*

336. *Id.* Miller and Childs were associated in the Conoquenessing Trucking Firm, which was the subject of hearings before the Gleason Committee investigating PennDOT, and a recent trial in Crawford County.

337. Examination of financial records, *see* note 318 *supra*.

338. *Id.* *See also*, subpoena to Harvey K. Childs, issued by the Pennsylvania Crime Commission May 12, 1975.

339. John Smittle, N.T. 182.

340. *See, e.g.*, Robert Marcus, N.T. 26, 46.

341. *See* note 338, *supra*.

EXHIBIT 12

PABU ledger showing expenditures from November, 1974 to November, 1975, with 90% of disbursements to Harvey Childs and family.

PABU. Expenditures

	Date	Name	Chk	Amt	Reason
1	11-74	Harvey Childs	101	42.13	Kopy Kat Printing
2	12-27-74	Roseanne Hinkson	102	250.00	Salary Nov. + Dec 1974
3	1-9-75	Harvey Childs	103	66.50	Printing + Stamps
4	1-17-75	Roseanne Hinkson	104	125.00	Salary For Oct 1974
5	1-9-75	Roseanne Hinkson	105	125.00	Salary For Nov. 1974
6	1-31-75	Roseanne Hinkson	106	125.00	Salary For Dec 1974
7	1-27-75	Roseanne Hinkson	107	125.00	Salary For Jan 1975
8	2-1-75	Harvey Childs	108	151.50	STAMPS PRINTING TONER PAPER
9	3-25-75	Roseanne Hinkson	109	125.00	Salary For APRIL 1975
10	4-11-75	MARRIOTT INN	110	26.50	EXPENSES AT MARRIOTT
11	4-11-75	HARVEY CHILDS	111	465.79	EXPENSES FOR CONFERENCE
12	5-28-75	Roseanne Hinkson	112	125.00	SALARY FOR MAY 1975
13	6-2-75	Roseanne Hinkson	113	125.00	SALARY FOR JUNE 1975
14	6-3-75	HARVEY CHILDS	114	309.50	STAYCARRS 36.53
15					HOLIDAY INN 41.34
16					SUPERATION 38.84
17					HOTEL BIRWICK 4.06
18					TELEPHONE BILL 187.74
19	6-25-75	Roseanne Hinkson	117	125.00	SALARY FOR July
20	7-16-75	FBI Graduate convention	118	150.00	
21	7-24-75	Roseanne Hinkson	119	125.00	SALARY FOR Aug
22	8-25-75	Roseanne Hinkson	120	125.00	SALARY For Sept
23	9-15-75	Roseanne Hinkson	121	125.00	SALARY For Oct
24	9-16-75	Linda Childs	122	274.90	PA WALK FOR CRIME COMMISSION
25	10-15-75	HARVEY CHILDS	123	125.00	MOTEL FEES
26	11-15-75	Roseanne Hinkson	124	125.00	SALARY FOR Nov
27	11-14-75	SUMMERS OFFICE EQUIPMENT		3.18	OFFICE SUPPLIES
28	11-14-75	ROSEANNE HINKSON	126	125.00	SALARY FOR DEC
29	12-9-75	Linda Childs	127	63.00	HOTEL ROOMS FOR BOUNDING MC
30	12-11-75	ROSEANNE HINKSON	128	125.00	SALARY FOR JAN 1976

Mr. Childs, speaking for PABU, continually refused to cooperate with the Crime Commission's bail bond inquiry. Rather than providing information concerning the state's bail system with suggestions for its improvements, president Harvey Childs attempted to obstruct the investigation at every turn. Mr. Childs threatened Commission staff members that he was "investigating" each individ-

ual,³⁴² and that he would use his political allies to eradicate the Commission.³⁴³ Although opposed by the general membership,³⁴⁴ Mr. Childs identified these efforts as official acts of the Pennsylvania Association of Bailbond Underwriters, and appropriated most of its 1975 and 1976 budget for such purposes.³⁴⁵

Moreover, Mr. Childs advised PABU members that Crime Commission subpoenas could be avoided, and need not be honored.³⁴⁶ He refused to make any association records available to the Commission until so ordered by the Commonwealth Court on January 20, 1976.³⁴⁷ Even then, he misled the Court and the Commission regarding the existence of certain membership records.³⁴⁸ Finally, the Commonwealth Court cited the association for contempt on April 19, 1976, because of Mr. Childs' actions.³⁴⁹ In short, Mr. Childs purported to represent the official position of the Pennsylvania Association of Bailbond Underwriters in impeding this duly authorized investigation into the bail system which PABU allegedly strives to improve.

5. CONCLUSIONS

The Pennsylvania Crime Commission discovered widespread disregard for the laws, rules and regulations intended to govern the activities of bondsmen in Pennsylvania. Both professional bondsmen and surety agents, although licensed by the state Insurance Department, operate without any effective control and, often, in flagrant violation of the criminal and insurance laws of the Commonwealth.

The Commission found evidence of criminal violations allegedly committed by thirty-four (34) individuals engaged in the bail bond business, including professional bondsmen and agents of all three insurance companies: Allegheny Mutual, Midland, and Stuyvesant. This evidence has been referred to the appropriate authorities for possible prosecution.

The Pennsylvania Association of Bailbond Underwriters, in addition to attempting to thwart this investigation, has not produced any real improvements in the bail system. The bail businesses of over half of the recent (1974-75) dues-paying members of the association were examined by the Commission, and found to violate the criminal and insurance laws of the Commonwealth. Despite the purportedly educational goals of the association, the membership is generally ignorant of the laws applicable to the bail bond system. The major success of the association has been its prevention of legislative bail reform through concentrated and effective lobbying.

342. See, e.g., memo from Harvey Childs, April 11, 1975; letter from Harvey Childs to the Pennsylvania Crime Commission, July 25, 1975; newsletter from Harvey Childs, August 20, 1975.

343. Interview with Harvey Childs, September 30, 1975.

344. See Robert Marcus, N.T. 22-25, 27.

345. See note 318, *supra*.

346. See, Floyd Kellogg, N.T. 58-60; Robert Marcus, N.T. 43-44.

347. See, *In re: Petition for Enforcement of a Subpoena to the Pennsylvania Association of Bailbond Underwriters*, Commonwealth Court of Pennsylvania, 1975 Docket No. 1588.

348. *Id.*

349. *Id.*

In sum, the business relations between defendants and bondsmen are tainted by widespread ignorance and illegal activity. Only rarely are bondsmen expected to pay monetary forfeitures to the courts for fugitive clients. Often, any expenses incurred by the bondsmen are reimbursed by security deposits and indemnification from defendants, or their friends and family. The insurance companies involved in the bail surety business exercise limited control over their agents. All bondsmen operate under ambiguous state and local regulatory schemes, which are effectively ignored.

6. RECOMMENDATIONS

Based on the findings of the Pennsylvania Crime Commission, a general revision of the existing legal structure pertaining to bail is clearly necessary. The current laws are ineffective, vague, and difficult to enforce. Before a legislative modification of bail bonding can be proposed, a thorough investigation of the current bail system must be completed.

It is, therefore, recommended that the Pennsylvania Crime Commission further examine:

1. the enforcement of current laws, rules, and regulations pertaining to bail, to determine how the effectiveness of current controls can be improved;
2. the relation of bail to the judicial system, with particular attention to the education of and ethical restrictions on the minor judiciary;
3. the internal regulatory practices of insurance companies engaged in the bail bond business, to ascertain their effect on bail surety agents; and
4. recent reform efforts in the bail bond system, and their effectiveness in meeting the needs of both the criminally accused and the law-abiding majority.

APPENDIX

CRIMINAL VIOLATIONS RELATED TO BAIL BONDING

During the course of the bail bond investigation, the Pennsylvania Crime Commission found evidence of numerous acts committed by bondsmen, in apparent violation of the laws of the Commonwealth. A summary of the most common offenses, and their potential penalties, is listed below.

Offense	Penalty
Soliciting or arranging for the furnishing of bail without a professional bondsman's license (19 P.S. §§90.9, 94).	Misdemeanor; \$1,000 fine, 6 months in prison (19 P.S. §90.10(b)).
Failure of a professional bondsman to maintain an office in each county where he does business (19 P.S. §90.5).	Misdemeanor; \$500 fine, 6 months in prison (19 P.S. §90.10(d)).
Overcharging by a professional bondsman (19 P.S. §§90.9, 94).	Misdemeanor; \$500 fine, 6 months in prison (19 P.S. §90.10(d)).
Surety agent acting as a professional bondsman (19 P.S. §§90.1, 91).	Misdemeanor; \$1,000 fine, 1 year in prison (19 P.S. §90.10(a)).
Acting as a surety agent without a license (40 P.S. §234).	Misdemeanor; \$500 fine (40 P.S. §234).
Securing execution of documents by deception (18 P.S. §4114).	Misdemeanor; \$5,000 fine, 2 years in prison (18 P.S. §§1101, 1104).
Overcharging by surety agent, theft by deception (18 P.S. §3922).	Misdemeanor; \$10,000 fine, 5 years in prison (18 P.S. §§1101, 1104, 3903).
Larceny by a surety agent of bail fees owed to his corporate principal (40 P.S. §273).	Misdemeanor; \$10,000 fine, 5 years in prison (18 P.S. §§1101, 1104, 3903).
Tampering with witnesses for an official proceeding (18 P.S. §4907).	Misdemeanor; \$5,000 fine, 2 years in prison (18 P.S. §§1101, 1104).
Bribery or attempted bribery in official matters (18 P.S. §4701).	Felony; \$15,000 fine, 7 years in prison (18 P.S. §§1101, 1103).

PART II

OTHER CRIME COMMISSION ACTIVITIES

During the 1975-76 period, the Commission has been involved in a large number of activities in addition to those reflected in the major reports contained in Part I. These activities involved other investigations as well as efforts to work with the state legislature in an attempt to improve the criminal justice system of the Commonwealth of Pennsylvania.

Some of the investigations described in this section will be completed in the near future. Following completion, full reports will be issued. Some of the other investigations which are mentioned herein were not so extensive. All investigations were an important part of the Commission's work during this period, however, and the Commission believes it should report on those of special significance and make known its other activities so that members of the legislature and the general public may be fully aware of the Commission's efforts.

I. Investigative

Introduction

The Crime Commission is an investigative—fact finding agency. It does not possess the power or authority to institute criminal prosecutions. In some reports, but not all, the Commission has recommended that local law enforcement agencies consider filing criminal charges against certain named individuals. However, the final responsibility for determining whether or not criminal charges should be brought rests with the local authorities.

One of the primary responsibilities vested in the Pennsylvania Crime Commission by its enabling statute is "to investigate all fields of organized or syndicate crime."¹ Since its formation, the Commission has been gathering and analyzing intelligence about organized criminal activities in the Commonwealth, both through its own efforts, and in cooperation with other local, state, and federal law enforcement agencies.

While most investigations of organized crime provide valuable information, not all investigations justify the issuance of a full public report. Moreover, those investigations that warrant a public report take a great deal of time to complete; the accuracy of the information and the soundness of the conclusions and recommendations must be weighed carefully.

The Commission published a report on organized criminal activities during 1975-76. That report is included in Part I of this volume. Three of the other investigations involving organized crime are reported *infra*. A fourth investigation, involving the fencing of stolen antiques is also included in this section.

1. Act of July 31, 1968, P.L. 754, No. 235, §3, 71 P.S., §307-7(4) (Supp. 1976-77).

A. Racketeering in the Casualty Insurance Industry

On approximately March 8, 1975, the Pennsylvania Crime Commission became aware of allegations concerning the infiltration of organized crime figures and racketeers into the insurance industry and more specifically the surety bond industry. A preliminary inquiry into these allegations was conducted in order to ascertain their validity.

The Crime Commission learned that Wisconsin Surety Corporation, a small insurance company doing business throughout Pennsylvania, had recently collapsed because it was extremely undercapitalized. The Commission also learned that Michael Grasso, Jr., had made an abortive attempt to gain control of this insurance entity. Grasso, the subject of a previous Commission report, and the nephew of reputed Philadelphia organized crime leader Angelo Bruno, has a federal conviction for the crime of fraud and is under a local indictment in Philadelphia for the crime of embezzlement and other charges relating to his activities in an alleged fraudulent scheme to obtain bank loans.² The Crime Commission immediately commenced a full-scale investigation of this matter in close cooperation with the Wisconsin Justice Department and the Florida Department of Law Enforcement.³ The scope of the investigation began to expand rapidly as Commission agents probed into Grasso's activities in the insurance area. In June, 1975, the Commission became aware of an investigation of Wisconsin Surety Corporation being commenced by the United States Strike Force on Organized Crime in Philadelphia. A subsequent meeting between representatives of the Crime Commission and the Strike Force resulted in a mutual agreement to conduct a joint investigation and to concentrate upon Grasso's involvement in Wisconsin Surety Corporation.

The focus of the investigation centered upon the Cumberland County insurance agency of Hul-Mar, Inc., which was owned and operated by Morton F. Hulse and Charles W. Schatzman, Jr.

Morton F. Hulse had assumed control of Wisconsin Surety Corporation in September, 1974, and had moved its corporate headquarters from Madison, Wisconsin, to Camp Hill, Pennsylvania, in December, 1974. The corporate headquarters remained in Camp Hill until February, 1975, when the office returned to Wisconsin.

To gain control of Wisconsin Surety Corporation, Hulse had to borrow \$100,000 from two Pennsylvania banks. However, by December, 1974, Wisconsin Surety had lost its reinsurance agreements with other insurance companies and was still having financial problems.⁴ In order to reinforce Wisconsin Surety Corpora-

2. See Pennsylvania Crime Commission, *Criminal Infiltration of Legitimate Business in the Philadelphia Area, 1973-74 Report*, p. 90 (June 1974).

3. Michael Grasso, Jr., had moved his residence to Florida from Pennsylvania in late 1971. However, Grasso still maintained his business contacts in Pennsylvania and was involved in transactions within Pennsylvania through several entities such as J. Michaels Enterprises.

4. Reinsurance agreements are commitments between insurance companies to assume a portion of the total liability in order to eliminate the burden of a possible 100% loss to the insuring company in case of a claim.

tion financially, Hulse attempted to find additional investors to infuse capital into the floundering entity. One of the individuals Hulse sought out as a new investor into Wisconsin Surety Corporation was Michael Grasso, Jr. The attempt to obtain Grasso money initially failed when Grasso did not put up sufficient cash and ultimately when Wisconsin Insurance Department officials learned of Grasso's background.

Hulse had been provided surety bonds for Grasso's clients since September, 1974, through Galaxy Financial Services, Inc., an entity controlled by Grasso. Grasso's clients consisted primarily of poor risk contractors who were having difficulty in obtaining bonds. The Commission learned that, in obtaining bonds from Hulse for his clients, Grasso would charge a fee in the same amount as the premium charged; and in several cases, two or three times more.

Hulse, in addition to being an agent for Wisconsin Surety Corporation (as well as a member of its Board of Directors), was also an authorized agent of American Empire Insurance Company, a large company doing business throughout the United States. During the period between September, 1974, and April, 1975, Hulse, acting in concert with Grasso, obtained surety bonds in the penal amount of \$12.9 million for individuals or entities from three surety companies. The bonds were presented to the obligees as legitimate bonds.⁵ In fact, the bonds were fraudulent in that the sureties had no knowledge of the bond or, in the case of Wisconsin Surety Corporation, the surety did not have sufficient assets to cover the liability imposed by a possible claim on the bond. In addition, the bond holders were forced to pay illegal premiums for these fraudulent bonds. In some cases, Hulse simply failed to remit the collected premiums to the surety companies.

Evidence of this scheme was presented to a federal grand jury by the Strike Force and on June 8, 1976,⁶ an indictment was returned against Grasso, Hulse, and three other defendants in the United States District Court for the Middle District of Pennsylvania. The defendants were charged with mail fraud, racketeering, and conspiracy.⁷

Presently, the Crime Commission is continuing its investigation into other areas of possible criminal infiltration into the surety insurance industry as well as practices within the industry itself which made it vulnerable to such infiltration. During 1975, property and casualty insurers lost \$4.01 billion in their underwriting operations.⁸ Of the five insurance companies being examined within the scope of the Crime Commission's investigation, it is anticipated that the potential losses will be in the area of \$32,350,000 for surety bonds.

5. Obligee is the receiver of the bond and the individual or entity to which the surety is obligated.

6. Although several different Pennsylvania criminal statutes were violated, due to such factors as manpower and statutory considerations it was determined that the federal government would initiate prosecution. The Crime Commission did consult with the Cumberland County District Attorney and information concerning this scheme has been turned over to the District Attorney for his consideration as to whether or not state criminal charges should also be filed.

7. Others indicted consisted of Ralph Puppo, son-in-law of Angelo Bruno and former real estate salesman in Grasso's office in 1971; Lloyd Davidson, a Florida associate of Grasso, and Charles W. Schatzman, Jr., partner of Morton Hulse.

8. Result of research conducted by A. M. Best Company, Park Avenue, Morristown, New Jersey, 07960.

B. Large Scale Gambling in Western Pennsylvania

In the latter part of 1974, the Pennsylvania Crime Commission received information from local police officers that a large gambling operation was flourishing in both Charleroi and Monessen (Washington and Westmoreland Counties), Pennsylvania. According to these sources, both establishments were operated by individuals who had a long history of gambling arrests, especially, for operating illegal gambling establishments. One of the operators, in his early 70's, was reported to have operated gambling establishments in the Mon Valley area since the 1930's. Working with these sources, the Commission was able to determine that the two establishments in Monessen and Charleroi were not only flourishing but were also attracting a large number of players with extensive criminal backgrounds.

In early January, 1975, the Pennsylvania Crime Commission developed confidential sources who had personal knowledge concerning the gambling establishments. Information provided by the sources concerning the Monessen operation indicates that the most popular game was barbut. This fast moving form of gambling provided sufficient excitement and monetary potential to attract 100 to 200 participants each night. The game usually began around midnight and lasted until 6:00 a.m. or 7:00 a.m.

According to sources, the stakes could run as high as \$70,000 to \$100,000 on any given night. The Monessen establishment provided employment for at least four or five dealers and a door man. These individuals were paid \$50.00 an evening for their work. A local catering service was used to provide food and drink for the participants. Through on-going surveillances, it was determined that the players came from every rung of the social ladder, including many locally prominent individuals. However, at least 10 to 15 of the regular customers had prior arrests which ranged from lottery violations to murder.

Although the main attraction at these establishments was gambling, several ancillary activities were part of the operation. Several individuals worked at the establishment as numbers writers, and loansharking was also said to take place. The loansharks loaned money to players who became short of cash due to their gambling and charged them exorbitant interest rates on the loan. According to information, a few players owed substantial sums of money to the operators as well.

During the four month investigation period in 1975, it was ascertained that knowledge concerning the gambling activities was a widely known fact in the Mon Valley area, especially at the Monessen operation. The operators did little to conceal the purpose of the establishment and, in fact, openly paid individuals to transport players to the games from as far away as Johnstown and Altoona. As in any operation of this magnitude, access to the games was difficult unless an individual was known by the operators or approved by a regular participant. Once access to the location was gained, the only requirement for participants was a substantial bank roll.

On January 31, 1976, the FBI raided the establishment known as the "Joint—ABC" Club on Donner Avenue in Monessen, Pennsylvania. Thirteen individuals were arrested and charged with violation of the Federal gambling laws. On August 25, 1976, all thirteen were indicted on those charges. The indicted individuals will be tried in Pittsburgh, Pennsylvania.

C. Operation of a Construction Company by a Racketeer Figure

During the Spring of 1975, the Commission received information that a large number of judgments had been entered in Philadelphia Court of Common Pleas against Dominic DeVito, a "soldier" in Angelo Bruno's LaCosa Nostra family.⁹ The Commission also learned that DeVito's business, Industrial Concrete Company, was using an address which had previously been used by other concrete or construction companies associated with criminal elements in the recent past. The Commission determined that a closer look was in order.

DeVito operated the Industrial Concrete Company on a low overhead, high-profit, no-risk basis. His pattern of operation was a variation of a "scam." The business apparently owned almost nothing; it rented its office and leased all heavy equipment. There were only three or four permanent employees at any given time. Workers, including heavy equipment operators, were hired on a short-term basis at a union hall as needed. DeVito failed to pay the union's health and welfare benefits or make required contributions to the Pennsylvania Unemployment Compensation Fund.

The victims of DeVito's business methods were his suppliers. Accounts would be opened, often on the recommendation of some more reliable contractor, and the bills paid fairly regularly for several months. Then, after he had established his credit, a large balance would be accumulated and never paid. The Industrial Concrete Company left behind a trail of large unpaid balances based upon relatively short-term relationships with some suppliers. Except for his cement suppliers, who demanded guaranteed payments from the general contractors, DeVito appears to have made partial payments to suppliers only to extend his credit further.

Several of the general contractors who dealt with DeVito's Industrial Concrete Company were confused as to the identity of the organization with whom they were dealing. Industrial Concrete had the same business address as had been used since 1968 by other companies doing similar work. Also, DeVito's business associate ran a corporation called Industrial Foundations, Inc. The two individuals and two businesses were so closely associated in the minds of the general contractors that at times the contractors were confused as to which man ran which company and who was to perform the work.

Despite a trail of unpaid bills, bounced checks, forged check endorsements and recorded judgments, DeVito has not filed for bankruptcy, although Industrial Concrete Company has suspended business operations. Records subpoenaed¹⁰ from various businesses and individuals who did business with DeVito indicate that in its 18 months of operation, Industrial Concrete was paid over \$680,000 for work performed. Its debts, including unpaid bills and open judgments, totaled over \$75,000.

9. Pennsylvania Crime Commission *Report on Organized Crime* at 33 (1970).

10. The records of Industrial Concrete Company were subpoenaed by the Pennsylvania Crime Commission, but DeVito invoked his privilege against self-incrimination under the Fifth Amendment not to produce them.

D. The Theft and Fencing of Antiques

In late July, 1975, the owners of the Conestoga Auction Company (CAC), Manheim, Pennsylvania, contacted the Pennsylvania Crime Commission and indicated that they were concerned that an individual who had recently brought a large quantity of antiques to their auction to be sold might be handling stolen merchandise. The individual had identified himself as Myron Snow, Jr., with a Richmond, Virginia address.

The Commission checked with the Criminal Intelligence Unit (CIU), Virginia State Police (VSP), Richmond, and determined that a Myron Snow, Jr., resided in Charlottesville, Virginia, and had recently received a duplicate automobile operator's license. Virginia authorities also advised that they had been experiencing a rash of house burglaries involving the theft of antiques, sterling silver, and other household valuables.

On August 20, 1975, Snow was observed driving an automobile with a U-Haul trailer attached and delivering a large quantity of antiques to CAC. Commission agents surveilled Snow from CAC to Richmond, where the VSP took over the surveillance.

The following day a member of the CIU, VSP, and a Crime Commission agent photographed the items delivered by Snow to CAC. Descriptive data was obtained from CAC auctioneers and the pictures were returned to Virginia to be displayed to recent house burglary victims.

On August 28, 1975, three couples whose homes had been recently burglarized in the Richmond vicinity and who had tentatively identified items in the above mentioned photographs were brought to CAC by detectives from the Henrico County Police Department (HCPD), Richmond, and agents from the Crime Commission. The three couples were able to identify almost one hundred items as having been stolen from their homes during burglaries.

By mid-September, the VSP and HCPD investigators had determined that Snow was actually one of two escapees from the State Prison at Dannemora, New York, who fled the prison in September, 1974. Snow was actually Bernard Welch, Jr., known as a "cat burglar", serving a lengthy sentence for convictions on six counts of burglary and grand larceny. His partner in the escape was Paul David Marturano who had been serving a twenty year sentence for first degree manslaughter and was a suspect in at least one other murder investigation in New York. Both were wanted by the FBI for Unlawful Flight to Avoid Prosecution and the New York State Police for escaping from prison. On September 22, 1975, an attempt by federal, state and local authorities to arrest Marturano was unsuccessful when he escaped into a wooded area in rural Virginia.

On September 23 and 24, 1975, CAC was again surveilled, this time by the FBI and Pennsylvania State Police who hoped to arrest Welch if he delivered another consignment of antiques. Welch failed to make his regularly scheduled delivery to the auction. It was later determined that he had fled the Richmond area, for reasons unknown to investigators, during the Labor Day weekend of 1975. The vehicle he was last known to operate was located in the Byrd International Airport outside Richmond.

Subsequent investigation revealed that Welch had been assisted in the burglaries by Marturano. Welch and Marturano had burglarized over one hundred residences in Virginia and Welch had fenced most of the stolen goods through legitimate outlets. One sterling silver dealer alone paid Welch almost \$60,000 for sterling silver at "scrap value" on items Welch sent him. This figure may represent as little as one tenth the value of the actual silver pieces Welch stole and forwarded to the dealer.

During November, 1975, the items delivered by Welch to CAC in August and those picked up by agents of the Commission and HCPD investigators, were returned to Richmond. Burglary victims were allowed to identify those items belonging to them during a three day display of the articles at the HCPD. Through this effort, some stolen items were returned to victims of over forty house burglaries involving the theft of personal property in excess of \$300,000.

Acting on informant information, VSP, FBI and local authorities arrested Marturano in June, 1976, near Charleston, West Virginia. Marturano estimated that he and Welch had committed over one hundred fifty house burglaries since their escape from prison. Marturano was subsequently returned to New York where he was again imprisoned. Welch has not yet been apprehended.

II. Cooperation With Law Enforcement Agencies

The Commission has established a good working relationship with a number of federal and state and local law enforcement agencies which are responsible for prosecuting crimes. This relationship has enabled the Commission to receive information from the other agencies and to distribute information to appropriate agencies for intelligence purposes and/or for possible action.

A. Dauphin County District Attorney

As part of the investigation involving alleged kickbacks to members of the York Police Department for tow truck referrals, York tow truck operator James Weitkamp and York Police Chief Elmer C. Bortner were called to testify at Commission hearings.¹ During the hearings, which were held in Harrisburg (Dauphin County) testimony given by Weitkamp and Bortner appeared to conflict with the testimony of other witnesses. The Commission referred the matter to the Dauphin County District Attorney's Office for its consideration as to whether or not Weitkamp and Bortner had perjured themselves. Perjury charges were filed against both individuals. On January 20, 1975, both defendants were adjudged to be guilty as charged. In January, 1976, Weitkamp and Bortner were each sentenced to imprisonment for a period of one year and ordered to pay a fine of \$500. Each defendant has appealed his conviction.

1. The results of this investigation were published in 1974. See Pennsylvania Crime Commission, *Corruption in the York Police Department, 1973-74 Report*, p. 78 (June 1974).

B. Internal Revenue Service

In February, 1972, the Commission initiated a formal investigation into the nature and extent of criminal activity and official corruption in Montgomery County. The investigation was to look into allegations of bribes and kickbacks to local public officials and political figures by companies which sold equipment to governmental units in return for the purchase by those governmental units of equipment manufactured by the companies.

During the course of this investigation, it was determined that William H. Riley, President of Thru-Way Equipment Company, Conshohocken, Pennsylvania, which sells trash trucks and bodies to municipalities, had been engaged in a scheme to divert company monies. The scheme involved the issuance of checks to Thru-Way salesmen who in turn cashed the checks and returned the proceeds to Riley. Those checks were recorded in the company's books as "commission", and the value of these checks was reflected in the W-2 forms which were sent to the employees for personal income tax purposes. According to the information uncovered by the Crime Commission, the salesmen were compensated through the issuance of corporate checks for the difference in the income tax payable on that amount which they actually earned and the income tax made necessary due to the inflated W-2 form.

In November, 1972, the Commission turned over copies of its file dealing with Riley and the alleged "cash generation" scheme to the Internal Revenue Service and the Office of the U.S. Attorney for further investigation.

Riley was indicted for income tax evasion and on June 18, 1975, a federal jury in Philadelphia convicted Riley on charges of failing to include \$27,800 of income in his personal income tax returns for 1968-69. On July 29, 1975, Riley was placed on probation for a period of five years and ordered to pay a fine of \$2,000.

C. State of Florida Attorney General's Office

In March, 1976, the Commission received a request for assistance from the Attorney General's Office, Jacksonville, Florida. The Commission was informed that Florida authorities were investigating a large interstate gambling operation centered in Miami, Florida. The estimated weekly illegal betting activity allegedly handled by the members of the group was more than \$100,000. According to the Florida authorities certain of the illegal activities were being performed in the Philadelphia area.

The Commission agreed to assist the Florida authorities and numerous interviews and surveillances were conducted. Based upon the information obtained in Florida and Pennsylvania, a Florida state-wide grand jury indicted eight individuals on various charges of illegal gambling. The charges were subsequently dismissed due to alleged technical violations in the grand jury's charter. The government has appealed the dismissal.