

1977-78 Report

Pennsylvania Crime Commission

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Pennsylvania Crime Commission
P.O. Box 45
523-527 East Lancaster Avenue
St. Davids, Pennsylvania 19087

(215) 687-6500

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1977-78 REPORT

PENNSYLVANIA CRIME COMMISSION

MAY, 1979



**COMMONWEALTH OF
PENNSYLVANIA**

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Foreword

The Pennsylvania Crime Commission is a unique public agency in the Commonwealth. The legislation that created the Commission in 1968, established it as an investigative fact-finding body with the responsibility of inquiring into the problems of crime and criminal justice—with specific attention to be focused upon organized crime and corruption. In order to expose the full dimensions of problems within its jurisdiction, the Commission is empowered to subpoena witnesses and records, to conduct hearings, and to issue reports of its investigations.

The Commission's powers and duties distinguish it from enforcement and prosecutive agencies, which devote their energies to the development and prosecution of criminal cases. As a fact-finding body which conducts investigations and issues reports containing its findings and recommendations, the Commission is equipped to shed light upon the fundamental causes of criminal justice problems in ways that the arrest and prosecution of individuals could rarely accomplish.

The pages that follow contain the activities of the Crime Commission for the past two years. These activities include reports on major investigations that have been conducted by the Commission. Also included are reports on the cooperative efforts of the Pennsylvania Crime Commission with other law enforcement authorities, which have served to establish a more uniform network of law enforcement. Finally, this report contains information which has been supplied by the Commission to the lawmakers of Pennsylvania in an attempt to enact more effective legislation for the protection of the citizens of the State. The Commission wishes to express its sincere gratitude to State Police Commissioner Paul J. Chylak, whose assistance during the past two years has been essential to the work of the Commission.

Through the public dissemination of the information contained herein, it is the goal of the Commission to educate, inform and caution both the public and the Legislature as to the ever present existence of large scale criminal activities that permeate their communities. It is only through the exposure of these patterns of activity that an impact can be made in the areas of organized crime and the conduct of public affairs.

It should be noted that the year 1978 was significant for the law enforcement community in general and for the Crime Commission in particular. In October, 1978, legislation was enacted restructuring and reorganizing the Crime Commission. The legislation more clearly defines the Commission's authority and furnishes the Commission with the investigative tools needed to more effectively fulfill its mandate. Included in this report is an analysis of the legislation, describing the authority and structure of the new Crime Commission.

PART 1

**CRIME COMMISSION
REPORTS**

I. Organized Crime in Pennsylvania

A. A Chester City Racketeer: Hidden Interests Revealed*

1. INTRODUCTION

The infiltration and control of legitimate businesses by organized crime is a matter of grave concern for the community. Legitimate holdings of racketeers are derived mainly from profits taken from illicit enterprise. Thus, legitimate holdings represent the consummation of the criminal enterprise.

The dangers of such infiltration were recognized by the Pennsylvania Legislature when in 1972, the Corrupt Organizations Act was enacted. This Act's preface acknowledges that vast amounts of money and power accumulated by organized crime are increasingly used to infiltrate and corrupt legitimate businesses within the Commonwealth. This Act outlaws the acquisition of, or any interest in, or control over a legal enterprise through a pattern of racketeering activity, or acquisition of such enterprise with funds derived from racketeering.

The Pennsylvania Crime Commission has completed an exhaustive investigation into a multi-million dollar a year "numbers racket". The inquiry focused on the channeling of the illicit numbers income into legitimate enterprises.

By revealing the systematic flow of illicit funds into legitimate community enterprises, and by eliminating the base of operations, the Commission believes that there will be a concomitant deterioration of many related criminal activities that stem from that operation.

2. THE NUMBERS RACKET

For those unfamiliar with the "numbers" game, basically it involves placing a wager on a daily three-digit number. The bettor may play any number from 000 through 999. Accordingly, the odds are 1000 to 1. In general, the payoff is 600 to 1, with the numbers writer taking off another 10% "tip" on a winning number.

* This report was approved by the Commissioners and published in March, 1978.

1. December 6, 1972, P. L. _____, No. 334, §1, effective June 6, 1973, 18 C.P.S.A. §911.

The numbers operation itself is quite structured, basically insulating the "boss" of the racket from the street writing activities. ¹

Throughout the years, the Pennsylvania Crime Commission has received information on a continuing basis relating to a multi-million dollar illegal numbers operation thriving in the City of Chester, Delaware County. The Crime Commission has established that an individual named Frank H. Miller is the boss of this operation. Today, Frank Miller's numbers racket is one of the largest independent numbers network in the region, grossing between \$22,000 and \$30,000 a day.

Before 1976, Miller ran his numbers operation six days a week, day and night. Since 1976, the operation runs seven days a week and includes a day number and night number, both obtained through a complex calculation of race track results. Also sold through the Miller racket is a lottery number determined by the daily winning number of the Pennsylvania Lottery. Thus, Miller is directly competing with the state lottery system. Winners through Miller's illegal system avoid any declaration of winnings for tax purposes.

As vast as Miller's operation is, and as independent as it may be, Miller still must rely on the use of organized crime "lay-off" banks in Philadelphia since only they have sufficient resources to absorb the "edge" for a racket as large as Miller's. ²

However, Miller's operation is still large enough to service neighboring numbers racketeers. Miller has received a large amount of action from James "Sonny" Bryant, who controls a sizeable portion of the numbers rackets in Coatesville, West Chester, and Southern Chester County. A few years ago, Bryant got "hit" hard by a series of winning numbers and was unable to continue financing his bank. Accordingly, he began to write numbers in his area for Frank Miller. In the first months of 1977, Bryant was able to re-establish a sufficient financial base, ceased turning in his action to Miller, and re-opened his own numbers bank. Bryant continues to "edge off" his large bets to Miller.

1. The action begins with the player placing a wager with a "writer". The writer is usually the only contact that the public has with a numbers organization. The writer works at a "spot" which may change from time to time, depending on considerations such as police pressure. The writer usually receives a 25% commission on the gross play for the day, and also withholds 10% of the winnings of the players as a gratuity for himself. The next person in line is the "pickup man". The pickup man's job is to collect the day's play from the writers and transport it either directly to the "bank" or to a "drop" where other pickup men have left their "work". Everything is then moved to the "bank". The "bank" is a location where slips and money are tallied, winning bets are recorded, and all records are kept. The location of the bank changes periodically so as to avoid detection. Each day the "banker" will contact his bank workers and inform them of the bank's location for that day. Pickup men usually work on a flat salary basis. The banker directs the activities of the entire organization.

2. A numbers banker keeps a running tab on the amount of bets placed on a given number on any one day. When the sum reaches a certain figure, the banker will arrange to "lay off" or "edge off" with an operator who specializes in handling such bets. This lay off bet is actually a numbers banker himself betting on a particular number that was played heavily that day. In effect, it insures that the banker does not get wiped out if a particular number hits.

The Crime Commission has established that Miller's connection to organized crime's edge-off operation is a long-time Philadelphia racketeer and numbers banker, Mike Caserta.

Illegal numbers gambling may appear to be relatively inoffensive; bets are usually made from the player's loose change. However, illegal gambling supplies organized crime with its economic base. In 1970, estimates of organized crime's annual net profits from gambling in the United States were \$6 to \$7 billion.³ Numbers gambling itself is conservatively estimated to gross \$4 billion a year.⁴ Virtually all of this is handled by organized criminal groups who have established a complete monopoly over numbers game operations throughout the country.⁵ The fact that estimates of such a magnitude are sometimes berated as preposterous reflects an advantage inherent in the numbers business; the daily trickle of dimes and quarters seems quite innocuous, and rarely stimulates public concern.⁶ However, these gambling profits constitute a vast stream of cash which finances other organized crime activities. This reservoir also provides the economic power to maintain the system of protection from law enforcement, "the essential ingredient of a successful operation."⁷

Testimony received by the Crime Commission from a member of Frank Miller's numbers operation reveals that official protection has led to actual participation in the racket itself by a Chester police officer:

Q: Do you have any knowledge of any Chester City Police Officers being involved in the numbers operation?

A: Yes . . . his name is [X X X].⁸ I don't know what rank he holds.

* * *

3. Estimates of net profits from gambling have been derived indirectly from estimates of annual gross betting volume. The President's Task Force Report on Organized Crime reported estimates of gross revenues ranging from \$7 to \$50 billion per year. Taking \$20 billion as a conservative estimate of these revenues, and setting profits at some 1/3 of the gross, the Task Force put the annual net profits from gambling at \$6 to \$7 billion. National Institute of Law Enforcement and Criminal Justice, *The Penetration of Legitimate Business by Organized Crime*, U. S. Department of Justice, April 1970, p. 12.

4. Rufus King, *Gambling and Organized Crime* (Washington: Public Affairs Press, 1969) p. 59.

5. Ralph Salerno, *The Crime Confederation*, (Garden City: Doubleday and Company, Inc., 1969) p. 356.

6. Of all types of gambling prevalent in America, none has more appeal for the poor than the numbers game. The lure of a big "hit" is especially great for people whose efforts to achieve long-term goals have resulted only in frustration. Thomas Farrell, *Numbers Gambling and Crime in America*, Senior Thesis, Princeton University, 1970.

7. *National Institute of Learning and Criminal Justice* supra, p. 45.

Since no numbers operation can be run on a basis substantial enough to make it profitable without becoming well known in the community, the corruption of police and public officials is a functional imperative. It is not necessary to corrupt each and every police officer or public official. The targeting of a few key personnel is sufficient to do this job.

The Miller operation understands this need and has established a "protection" system within the city's official hierarchy. A well-placed member of Miller's racket has confirmed to the Crime Commission that Frank Miller, through his associate, Herman Fontaine, has made payoffs to certain politicians and police officers. These payoffs have served two functions: first, to avoid any crackdown on the Miller operation; and second, to ensure that the police would raid any competing operation that moved into Miller's territory.

8. The police officer's identity is being withheld by the Crime Commission pending further investigation.

Q: What was his role?

A: A number writer.

* * *

Q: Where would he write his numbers?

A: Police station.

Q: He would take them from other police officers?

A: Yes.

Q: . . . After he would accept these numbers bets from fellow police officers, what would he do with the bets?

A: He would take his numbers to the Belaire Lounge . . . ' He would drop the number slip off and the money.

* * *

Q: Would this be considered numbers for Frank Miller's organization?

A: Yes.

Q: . . . You would identify Police Officer [X X X] as a numbers writer for Frank Miller?

A: Yes.¹⁰

The Crime Commission has established that this police officer has been writing numbers in the police station for Frank Miller as recently as the last months of 1977.

3. ORGANIZED CRIME INFILTRATION OF LEGITIMATE BUSINESS

For Frank Miller, as for any numbers banker, a numbers operation is an attractive business proposition. Overhead is very low, consisting chiefly of the cost of paper, adding machines, a few rooms and other incidental costs. Even though the banker must pay for protection from the police, the odds so favor the operator in numbers gambling that he is able to make a handsome profit after meeting the payroll.

By investing in legitimate enterprises, the racketeer can provide a source of reportable income to cover probable expenditures, thus making it possible to evade taxes on the bulk of illicit profits. At the same time, legitimate business ventures can provide a cover for illegal activities. Employees can be carried on a company payroll while actually involved in illegal activities. The businesses also provide ways of laundering illegal incomes, provide "fronts" for dealing with public officials, and make it almost impossible to trace illicit money to its criminal source. With the aid of lawyers and accountants, racketeers can ensure that it will be extremely difficult to catch them evading income taxes.

In April, 1977, the Crime Commission resolved to study the situation in the City of Chester and to assess the allegations that Frank Miller has funneled large sums of illicit cash into legitimate enterprises.

9. The Belaire Lounge is a bar owned by Frank Miller but listed in the name of a front corporation. Details of the bar's ownership will be discussed later in this report.

10. Testimony of Mr. Z before the Pennsylvania Crime Commission, November 30, 1977, N.T., 55-57.

The Crime Commission focused its attention on this infiltration process because of a strong general consensus that such infiltration by criminal elements are socially destructive. In studying the activities of Frank Miller it became clear that Miller has undertaken legitimate ventures, concealing his transactions and investments through the use of fictitious names and nominees.

The use of "fronts" is a common mechanism used by organized crime figures and others to conceal their ownership. While such use is not, per se, illegal, fronts are of particular importance to Frank Miller.

Miller's gambling operation is so vast, that the Internal Revenue Service currently has on file more than \$3 million in liens against Frank Miller for unpaid wagering taxes and income taxes. The IRS has executed on several of these liens, levying against all known property held in Miller's name. For instance, in 1975, Frank Miller sold the house in which he and his family live, for a sale price of \$65,000. Of this amount, the IRS confiscated \$63,700 against the liens.¹¹ Thus, the IRS is ready and has the power to levy against any and all property held in the name of Frank Miller.

Since apparently on paper Miller does not own any property, the IRS has been unable to collect the remaining outstanding taxes. However, the Crime Commission has been able to establish that Frank H. Miller does indeed own an extensive amount of real estate and several bars in the City of Chester.¹² Miller maintains a personal repair crew to renovate and maintain his properties. This crew of approximately twenty men is used exclusively to work on properties owned and controlled by Miller. All members are paid by Miller in cash every Friday at a bar owned by Miller.

4. FINDINGS

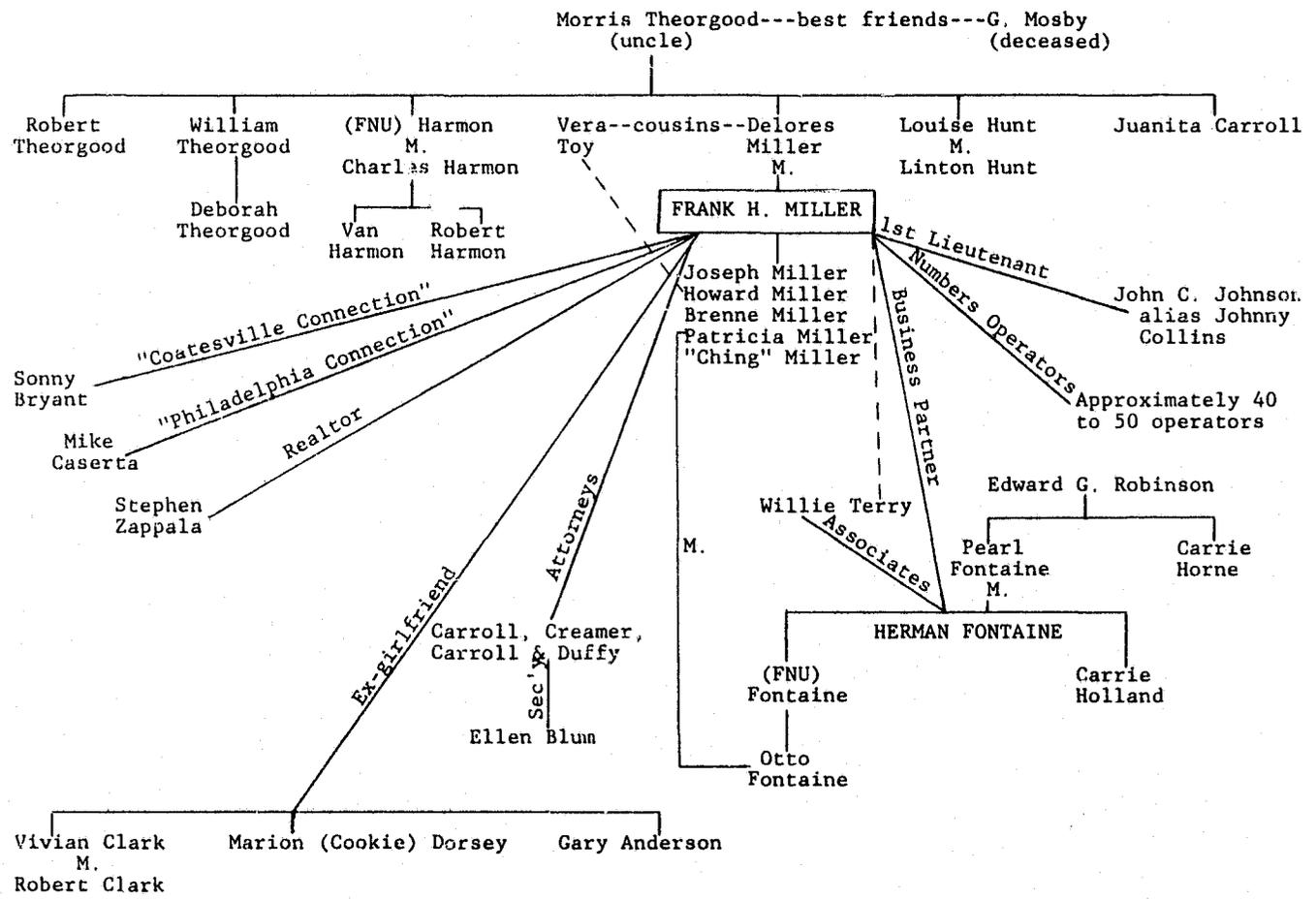
Through the use of public records, on-site surveys, personal interviews and confidential informants, the Crime Commission has been able to piece together a profile of Frank Miller's enterprises.

a. The "Fronts" and Associates of Frank Miller

Information developed by the Crime Commission indicates that many family members and associates of Frank Miller are fronting for Miller in his acquisition of bars and real property. While some of these fronts appear to be unwitting or unwilling participants in the scheme, most are voluntary actors. The relationships of those involved in Miller acquisitions are as follows:

11. In September 1975, Frank and Delores Miller sold their home at 1000 Conchester Highway, Chester Township, to Eddystone Equipment Company. Eddystone Equipment is owned by one of Miller's neighbors. The Crime Commission interviewed this neighbor for details of the sale. The neighbor stated that he had been approached by Miller and Miller's attorney, John Rogers Carroll, to buy the property. He decided to purchase the house and permit Miller to continue residing there. Miller presently rents the house from the neighbor under an oral lease. The neighbor refuses to disclose the amount of Miller's rent and states that Miller pays his rent in cash.

12. While the Crime Commission had endeavored to expose Frank Miller's entire infiltration scheme, because of the difficulty in determining actual ownership, it is impossible to discern the exact extent of Miller's holdings.



The persons listed in the above chart appear in Frank Miller-linked business enterprises as follows:

G. MOSBY, INC. (1966)

1st Directors: George Mosby
Frank Miller (Pres.)
Morris Theorgood

VERA TOY, INC. (1967)

1st Pres. - Morris Theorgood
1st V.P. - Carrie Holland
1st Secy. - Vera Toy
[1973 - all stock and offices
transferred to Morris Theorgood]

PARADISE LOUNGE, INC. (1971)

Juanita Carroll - Pres.
Marion Dorsey - Secy. - Treas.
[1975 - all stock and offices
transferred to Juanita Carroll
1976 - Robert Harmon replaced
Juanita Carroll as Pres. & Secy.]

NU-TREND, INC. (1975)

Incorp'r. and Director:
Gary L. Anderson - Pres., Secy.,
Treas.

**2446 GERMANTOWN AVENUE
CORP. (1976)**

Incorp'r. - Ellen Blum

**PITTS FUEL OIL COMPANY
(unincorporated)**

**THEORGOOD COMPANY, INC.
(1966)**

1st Directors: Frank Miller
Delores Miller
Morris Theorgood

DePEARL CORPORATION (1969)

Incorp'r. - Willie Terry - Pres.
Directors - Howard Miller -
Former Pres. (resigned after 6 mos.)
Willie Terry - Secy. - Treas.
Edward G. Robinson

**FAIRCHILD DEVELOPMENT CO.
(1973)**

Incorp'r. and Directors:
Linton Hunt
Carrie M. Horne
Louise Hunt

GLEN ENTERPRISES, INC. (1975)

Incorp'r. - John Johnson - Pres.

**CHARLIE SOAP'S COCKTAIL
LOUNGE, INC. (1976)**

Incorp'r. - Charles Woodbury - Pres.,
Secy., Treas.

**9TH AND SPROUL
CORPORATION (1977)**

Incorp'r. - Patricia Miller

b. The Center of the Action—The Paradise Lounge

The common denominator for persons and corporations linked to Frank Miller is the Paradise Lounge, a bar located at 901-905 Morton Avenue, Chester, Pennsylvania. The Paradise Lounge, Inc., was incorporated in 1971 by Juanita Carroll, Frank Miller's sister-in-law. Carroll was listed as President. Listed as Secretary-Treasurer of the corporation was Marion (Cookie) Dorsey, at that time a girlfriend of Frank Miller.¹³ When Miller broke up with Dorsey in 1975, the

13. At the time Marion Dorsey was listed as a Paradise Lounge officer and shareholder, she was also listed in Liquor Control Board records as having been employed at the bar for six years. During an interview with Crime Commission agents, Dorsey stated emphatically that she had never had any interest, financial or otherwise, in the Paradise Lounge, Inc. She also denied ever having been employed by the Paradise Lounge.

corporation was reorganized with Juanita Carroll holding all corporate offices. ¹⁴ In July 1976, Juanita Carroll was arrested and charged with illegal lottery. Following this arrest, another reorganization took place, with Robert Harmon, Frank Miller's nephew, replacing Juanita Carroll as officer of the Paradise Lounge, Inc.

Frank Miller is the true owner of the Paradise Lounge; Juanita Carroll, Marion Dorsey and Robert Harmon were or are acting as fronts.

A former owner of the property advised the Crime Commission that negotiations for the sale of the premises and the transfer of the liquor license were made personally with Frank Miller. The agreement reached left the realty in the name of the former title holder, with the business and license being transferred to Miller. Miller took possession of the property through the assumption of the existing mortgage of approximately \$13,000. Miller has made his monthly installment payments of \$400 in cash.

Based on information that will be presented subsequently in this report, it is absolutely clear that the Paradise Lounge is equitably owned by Frank Miller and used as his base of operations and mailing address for his various enterprises. In addition, an admitted numbers writer for Miller states that the Paradise Lounge serves as a central deposit for the turning in of Miller's numbers action.

Indeed, in March, 1977, the Paradise Lounge was fined \$250.00 by the Liquor Control Board for permitting the operation of a lottery on the premises.

c. The Realtor

Stephen Zappala, a real estate broker in the City of Chester, has figured prominently in the investigation of realty purchases by Frank Miller. Many of the property transfers to be described in this report were handled personally by Zappala. On a few of these transfers, Zappala himself provided part of the purchase money required at settlement. Zappala has admitted that on several occasions he was contacted by Frank Miller and informed that Miller would be purchasing property under the names of particular individuals and corporations. For each and every purchase ultimately completed by these fronts through Zappala's office, Miller had called Zappala and stated that he wanted to purchase particular properties and that the appropriate front names should appear on the agreements of sale and the deeds. In each case, Zappala was advised by Miller that the deposit money could be picked up by Zappala from the bartender at the Paradise Lounge. It was also arranged and understood that all necessary transfer papers which were required to be signed by the "fronts" would be routed through the Paradise Lounge for pickup and delivery by Zappala.

d. The Acquisitions and Interests

A brief description of the interplay of the above mentioned individuals and corporations is offered to illustrate the manner in which Frank Miller has infiltrated legitimate enterprises.

14. At that time, Carroll was employed as the night cook in the Paradise Lounge kitchen.

i. Willie Terry—1005 Upland Street

Willie Terry, a Pennsylvania constable, is a close associate of Herman Hunt Fontaine, the number two man in Frank Miller's numbers operation and Miller's business partner. Fontaine, a convicted gambler and Republican committeeman in Chester, is responsible for a substantial amount of Frank Miller's numbers action on the west side of Chester.¹⁵

In 1972, Willie Terry purchased property at 1005 Upland Street for \$2,000. A reliable source has confirmed that Willie Terry holds this property as a front for Frank Miller. When approached with this allegation by Crime Commission agents, Terry, while insisting he was the true owner, did not deny Miller's involvement in the property. Terry stated that at the end of 1975, he decided to lease the property to Frank Miller under an oral lease. Terry does not know the identities of the tenants and is unable to estimate the amount of rent that they pay to Miller.

It was conceded by Terry that major renovations have been done on the property and that Frank Miller hired the workers to complete the remodeling. All three tenants at this address told Crime Commission agents that they pay their rent to Frank Miller's brother-in-law, Linton Hunt. None of the tenants mentioned the name Willie Terry when discussing the owner of the property.

An employee of Miller's numbers operation has told the Crime Commission that on occasion he was instructed by Miller to collect the rent for Miller from the tenants at 1005 Upland Street. It should also be noted that certain utility bills for this property have been paid out of the corporate checking account of Fairchild Development Corporation. This is a front corporation for Frank Miller, to be discussed in detail later in this report.

ii. DePearl Corporation

DePearl Corporation was established in June 1969, incorporated by Willie Terry.

The first directors and officers of DePearl Corporation are listed as Willie Terry, Howard W. Miller (Frank Miller's son), and Edward G. Robinson (Herman Fontaine's father-in-law).

The Crime Commission has learned that the name "DePearl" was derived by combining the first names of the wives of Frank Miller and Herman Fontaine, those names being Delores and Pearl.

Willie Terry has insisted in interviews with the Crime Commission that he is the sole party in interest in the corporation. When asked to explain how he chose the name "DePearl," Terry said that he selected that name for no particular reason, and that the possible combination of "Delores" and "Pearl" is a mere coincidence.

Despite Terry's denial, the Crime Commission has established that the DePearl Corporation is owned and controlled by Frank Miller and Herman Fontaine.

15. Fontaine had been sentenced to serve 42 months for his conviction of operating a gambling house, procuring people to gamble, and certain liquor law violations. On December 4, 1958, his sentence was commuted to 23 months.

New Belaire Bar

The centerpiece of the DePearl holdings is the New Belaire Bar located at the corporate address, 1101 West Second Street, Chester. In October 1969, this property was purchased by DePearl Corporation for \$14,500. The former owner of this bar has stated that he never met the buyer, dealing solely with realtor Stephen Zappala throughout the transaction. The Crime Commission has obtained a copy of the settlement sheet, showing the names of Frank Miller and Herman Fontaine as the purchasers. Their names were crossed out; the name DePearl Corporation was inserted.

When the new Belaire Bar first opened, Willie Terry served as the bar's manager. More recently, an individual by the name of John C. Johnson, a/k/a Johnny Collins, assumed that position. Johnny Collins is Frank Miller's number 2 man in the numbers operation on the east side of Chester, and a front for Miller in other business enterprises. Willie Terry has stated that although he manages the bar, he seldom goes there and, since all employees are paid in cash, he does not know any of the current employees other than one barmaid.

A source very close to the ongoing operations of the DePearl Corporation, in describing the corporation as a front for Miller and Fontaine, stated that Willie Terry has signature authority for all DePearl Corporation checks. In this regard, Willie Terry signs DePearl checks in blank and turns them over to Frank Miller. Terry is not advised by Miller as to the payees or amounts subsequently written on these checks.¹⁶

A check with the vending company that services the New Belaire Bar revealed that all arrangements for the placement of vending machines in the bar were made with Herman Fontaine, not Willie Terry.¹⁷

A sizeable vending company check for vending machine commissions made payable to "Belaire DePearl Corporation" has the endorsement "Willie Terry, Pres. DePearl Corp." on the back of the check. In fact, the correct spelling of the name is "Willie Terry." This check was cashed. Crime Commission agents took a copy of this cancelled check and showed it to Willie Terry. Terry stated that the signature on the back of the check is definitely not his signature. Sources have indicated that this check was personally received by Frank Miller.

16. In an interview with Crime Commission agents, Terry denies having presigned blank DePearl checks for Miller. The Crime Commission has examined the cancelled checks of DePearl Corporation. On many checks, the handwriting on the face of the checks appears to be substantially different from the signature of Willie Terry that also appears on the checks.

17. In September 1971, the vending company apparently loaned the DePearl Corporation \$10,000. A promissory note for this amount was signed by Willie Terry. In return, the vending company issued two checks to DePearl, each in the amount of \$5,000. Willie Terry says that this loan was taken in order to renovate property owned by DePearl and to pay delinquent taxes. Terry said that he endorsed both \$5,000 checks and deposited them into the DePearl checking account. The Crime Commission has established that, in fact, only one of these \$5,000 checks was deposited by Willie Terry. When advised of this fact, Terry could offer no explanation. The Crime Commission found that the other \$5,000 loan check was deposited into the bank account of the vending company. When asked to explain why a check ostensibly issued for a loan would be deposited into the lender's account, the vending company could offer no explanation. When the Crime Commission reviewed the vending company's records, it was found that on five of the six payment records relating to the DePearl Corporation account, the name "H. Fontaine" was printed on top. The vending company identified this person as Herman Fontaine.

In tracing the course of this check, the Crime Commission found that the second endorsement on the back of the check read "Rose and M. McLaughlin." When Commission agents interviewed Rose McLaughlin, she disavowed any knowledge of DePearl Corporation or the vending company check in question. She identified M. McLaughlin as her brother Michael and suggested that he may have cashed that particular check. When asked how her brother could have the same surname as her married name, she stated that her brother's real name is "Caserta", and that he uses her last name for business purposes. The Crime Commission has established that this Michael Caserta is a known racketeer and numbers banker who handles Frank Miller's edge-off business. ¹⁸

Rental Property

In addition to the New Belaire Bar, Miller and Fontaine through DePearl Corporation own twelve rental properties in the City of Chester.

1128 West Third Street

In November 1970, DePearl Corporation purchased a property located at 1128 West Third Street for \$11,000. This property contains five apartments and the Eighth Ward Republican Headquarters, which was a former turn-in site for Miller-Fontaine numbers action. A source very close to management of this property has stated that although Willie Terry collects the rent, all rentals are divided equally between Frank Miller and Herman Fontaine.

124 Lamokin Street

223-235 Ivy Street

111, 113, 115 Norris Street

In December 1970, DePearl Corporation purchased these eleven properties in one transaction. The total purchase price was \$15,000.

The former owner of the properties has told the Crime Commission that a Chester City official advised him that certain men had recently purchased numerous city properties and might be interested in buying the seller's properties. The official told the seller to go to Chester City Hall at an appointed time to meet one of the proposed buyers. When the seller arrived at City Hall, the official introduced him to Herman Fontaine. After some negotiating, Fontaine stated that all of the seller's properties would be purchased. At settlement, Fontaine arrived in the company of Frank Miller. When it came time to transfer the money to the seller, Fontaine and Miller began emptying cash from their pockets, paying the full purchase price in cash.

18. The Crime Commission has learned that the owner of a food market in Chester fenced stolen checks, buying them at substantially less than their face value from junkies and check thieves. The grocer also was a numbers writer for Frank Miller. In early 1976, some of these checks were passed to Johnny Collins, Miller's right-hand man. Several of these stolen checks were ultimately deposited into the account of Rose and M. McLaughlin (a/k/a Michael Caserta).

III. John C. Johnson a/k/a Johnny Collins

John C. Johnson has admitted to Crime Commission agents that he is involved in the numbers operation of Frank Miller. Johnson described Miller as the major numbers banker in the City of Chester. Johnson has an extensive criminal record including several lottery and gambling convictions.¹⁹ Several numbers writers in Miller's organization contend that "Johnny Collins" is Miller's right-hand man in the gambling enterprise and that a substantial number of writers turn in their numbers action to Johnson at the Paradise Lounge and the New Belaire Bar. Johnson officially describes himself as the manager of the Paradise Lounge and the New Belaire Bar.

In addition to his numbers activity and his management of two Frank Miller taverns, John C. Johnson is used by Miller as a front for realty purchases.

*725 Morton Avenue
727 Morton Avenue
(a/k/a 603-609 East 8th Street)
602 East 8th Street*

In September 1975, these properties were deeded in the name of John C. Johnson for the sum of \$9,000.²⁰

The Crime Commission interviewed ten tenants residing at these addresses. With the exception of one tenant who did not know the identity of her landlord, all the tenants stated that their landlord is Frank Miller. All the rent is collected by Miller's nephew, Robert Harmon. Not one of the tenants mentioned the name of John C. Johnson (Johnny Collins) when discussing the ownership or management of the building.

921 Morton Avenue

In September 1975, John C. Collins purchased this property from the Department of Housing and Urban Development for \$500. The property was renovated by Miller's work crew and has been used by Frank Miller as the site of his numbers bank.

915 Walnut Street

In September 1975, John C. Johnson (Johnny Collins) purchased this property for \$1,900. The seller of the property has stated to the Crime Commission that she was having difficulty in selling the property. She contacted realtor Stephen Zappala. Zappala assured her that he could sell the property because he knew a man who was buying up all the property in that neighborhood. Two days later, Zappala made the seller an offer on behalf of this unidentified buyer. When the seller asked to meet with this mystery buyer, Zappala stated that the buyer

19. In 1971, a numbers bank in the rear of a Chester dry cleaners was raided by the Chester Police. At the time, police described it as one of the largest lottery operations ever uncovered in Delaware County. John C. Johnson, one of two persons arrested during the raid, was charged with traffic in lottery tickets.

20. The tax bills for the three properties are sent to the office of realtor Stephen Zappala.

generally calls Zappala by phone, designates a meeting place, and brings the purchase money in cash to that place in a paper bag. The seller never meets the buyer.

The address of the buyer typed on the deed is 901 Morton Avenue. This is the address of the Paradise Lounge.²¹

529 East 9th Street

In September 1975, John C. Johnson purchased this four-apartment structure for the sum of \$8,000. The former owner of the property has told the Crime Commission that all matters were handled through realtor Stephen Zappala. At settlement, Zappala produced a package wrapped in newspaper. When Zappala unwrapped the package, he revealed \$8,000 in cash, counted it, and turned it over to the title officer. The seller never met the buyer.

An interview with one of the tenants at 529 East 9th Street revealed that the landlord is Frank Miller, and the rent collector is Miller's nephew, Robert Harmon. The name of John C. Johnson (Johnny Collins) was not mentioned by the tenant.

The Crime Commission has discovered that utility bills on this property have been paid by one of Frank Miller's front corporations, Fairchild Development.

Interview with John C. Johnson

In checking the financial affairs of John C. Johnson, the Crime Commission discovered that in November 1975, Johnson had purchased a new 1975 Lincoln Continental Mark IV automobile, putting down \$3,000 in cash towards the purchase price. This was approximately two months after Johnson appears to have paid \$19,400 in cash within one month for the purchase of real property.

The Crime Commission interviewed John C. Johnson and questioned him about his outlay of over \$22,000 in cash in a two-month period. Johnson admitted that before he bought the automobile he had to get Frank Miller's permission for the purchase. As for the cash used to buy the real estate, Johnson suggested that perhaps this was money he had saved over the years.

iv. Glen Enterprises, Inc.

Glen Enterprises, Inc., was incorporated in November 1975, by John C. Johnson, a/k/a Johnny Collins, who is also the President of the corporation. The corporate address is the Bethel Professional Center in Boothwyn, which serves solely as a paper address for the company. All documents pertaining to real estate purchased by the corporation are forwarded to the address of the Paradise Lounge in Chester.

During an interview with Crime Commission agents, Johnson stated that he had no knowledge of any corporation by the name of Glen Enterprises, Inc.

It appears that Glen Enterprises, Inc., is used by Frank Miller as a corporate front to purchase real property in Chester. When the Crime Commission interviewed realtor Stephen Zappala, Zappala stated that he was personally advised by Frank Miller that Miller would be purchasing property under the name of Glen Enterprises.

21. All tax bills are sent to the office of realtor Stephen Zappala.

1103, 1109 Upland Street

In April 1976, Glen Enterprises, Inc., purchased these two properties for the sum of \$2,150. The former owner of the property told the Crime Commission that she had contacted realtor Stephen Zappala, knowing that Zappala had previously been involved in the sale of numerous dilapidated buildings in Chester. Not long thereafter, Zappala notified her that Glen Enterprises, Inc., would purchase the properties. No representative of Glen inspected the properties, and only Zappala appeared at settlement.

Crime Commission agents interviewed the tenants in these two buildings. When asked to identify their landlord, not one of the tenants mentioned Glen Enterprises, Inc., or John C. Johnson. While one of the tenants said the landlord was someone named "Robert," the others were sure that their landlord was Frank Miller, and that their rent was collected by Miller's nephew, Robert Harmon.²²

625, 626 Morton Avenue

In May 1976, Glen Enterprises, Inc., purchased these two properties for the sale price of \$3,500.

The seller has told the Crime Commission that although her son-in-law handled the details on her behalf, she does remember the name of Frank Miller being mentioned as the buyer of her properties.

The son-in-law advised the Crime Commission that he had heard from several sources that Frank Miller was buying and renovating many properties in Chester through the office of realtor Stephen Zappala. Accordingly, the son-in-law contacted Zappala in an effort to sell the properties. Zappala advised that indeed Frank Miller would buy both buildings.

It was at settlement that the son-in-law first heard the name Glen Enterprises, Inc. No representative for the buyer other than Stephen Zappala appeared at settlement.²³

The realtor who originally represented the seller was contacted by the Crime Commission. This realtor recalled that in May 1976, Stephen Zappala had advised that a buyer for the two properties had been found. The seller's realtor had heard rumors that numbers racketeer Frank Miller was buying up cheap properties in Chester through the office of Stephen Zappala. The seller's realtor had also heard that whenever Miller is involved as the buyer in a property transaction, the buyer always pays in cash and never requests to see the property prior to the purchase. Suspecting that Frank Miller was the buyer Zappala was proposing, and not wishing to do business with such a notorious character, the seller's realtor

22. The Crime Commission went to look at these properties a few months after the sale. The houses were being renovated. During a conversation with an unidentified black male standing on the sidewalk, a Commission agent inquired as to who owned the properties. The young man said that he believed the new owner to be Frank Miller.

23. Zappala had given his own check for \$350 to the seller as a deposit for the purchase. The remaining \$3,150 was paid in cash at settlement, having been brought to the settlement by an unidentified male. Zappala advised that he was reimbursed in cash by Glen Enterprises for the \$350 deposit.

told Zappala, "No thanks." Zappala, however, assured the realtor that the proposed buyer was not Frank Miller. Accordingly, the deal was consummated.

Six months after the sale was completed, Crime Commission agents went to 625 Morton Avenue. A black male answered the door. When asked about the owner of the building, the man said that the property had recently been sold to "a colored fellow named Miller," and that Miller had converted the home into two apartments.

v. Morris Theorgood--S. E. Corner of 9th & Morton

Morris Theorgood, an uncle of Frank Miller's wife, is a key figure in the every day functioning of Miller's legitimate enterprises. Theorgood has been described by Miller's associates as Miller's business manager and confidant, overseeing all of Miller's corporations.

In June 1970, Morris Theorgood purchased the lot on the southeast corner of 9th Street and Morton Avenue for the sum of \$7,631. The return address used by Theorgood on the deed was 901 Morton Avenue, the address of the Paradise Lounge.

Associates of Frank Miller have confirmed in interviews with the Crime Commission that this property is owned by Frank Miller and used by him as a parking lot for patrons of the Paradise Lounge.

vi. G. Mosby, Inc.

G. Mosby, Inc., was incorporated in June 1966. This is one of the first corporations established by Frank Miller and one in which he displays an overt rather than a hidden interest. The first directors of the corporation are listed as Frank Miller, Morris Theorgood, and George Mosby.²⁴ Miller is the president of the corporation. The corporation has purchased several properties in the City of Chester.

307 Central Avenue

In January 1972, the corporation purchased a property at 307 Central Avenue for the sum of \$6,500. Frank Miller appeared at settlement on behalf of the corporation and signed the settlement papers.

549 East 9th Street

In 1972, G. Mosby, Inc., also purchased a two-apartment property on East 9th Street for \$3,000. An agreement of sale reveals that the purchaser of the property was to be Frank Miller's nephew, Van Harmon. The Agreement of Sale was subsequently changed so that the buyer was G. Mosby, Inc. At settlement, realtor Stephen Zappala and Frank Miller appeared for the corporation.

One of the tenants of this property states that his landlord and rent collector is a person named "Robert" (believed to be Robert Harmon, Frank Miller's nephew).

This property has been used by Frank Miller as the site of his numbers bank.

24. George Mosby, now deceased, was a close friend of Morris Theorgood.

215 Woodrow Street

In 1971, G. Mosby, Inc., purchased this property for the sum of \$1,300.

The Crime Commission interviewed two of the tenants at this property. Both tenants identified their landlord as Linton Hunt, Frank Miller's brother-in-law. Linton Hunt has no legal connection to G. Mosby, Inc.

vii. Joseph H. Miller, 609 Morton Avenue

Joseph H. Miller, a son of Frank Miller, is an occasional worker in his father's numbers bank. Records reveal that in January 1972, Joseph H. Miller purchased the property at 609 Morton Avenue for \$5,500. Frank Miller is registered to vote from this address.

The seller of this property indicated that his son handled all details regarding the sale. Accordingly, the Crime Commission interviewed the seller's son. The son advised that he had contacted realtor Stephen Zappala in an effort to find a buyer for the property. Zappala appeared with a proposed buyer, described by the seller's son as a middle-aged black man named "Miller." (The son had heard from various sources that a "Mr. Miller" was buying numerous properties in the Morton Avenue area.) A copy of the Agreement of Sale shows the buyer to be G. Mosby, Inc. However, the settlement sheet describes the buyer as Joseph Miller. On the day of settlement, the seller, the seller's son, and Stephen Zappala were driven to the settlement by "Mr. Miller" in a Lincoln Continental. "Mr. Miller" paid cash for the purchase.

The son of the seller says that he assumed that the first name of the middle-aged black male with whom he dealt was "Joseph" because that is the name which appeared on the settlement sheet. However, the Crime Commission has determined that at the time of that settlement, Joseph Miller was only 19 years old. The seller's son was shown photographs of five black males to see if any one of them was the "Mr. Miller" who purchased his father's property. The seller's son immediately picked out the picture of Frank H. Miller.

The subject property contains a store front and two apartments. A tenant of one of the apartments told the Crime Commission that his landlord and rent collector is "Robert" (believed to be Frank Miller's nephew, Robert Harmon). The store on the first floor previously housed a confectionery called the Crow's Nest, operated by an individual who admits writing numbers at 609 Morton Avenue for Frank Miller.

The Crime Commission has interviewed two numbers writers in Miller's organization regarding this property. One writer once worked at 609 Morton Avenue and confirmed that the property is owned and controlled by Frank Miller. The second writer was instructed by Miller on several occasions to collect the rent from the tenants at this address.

viii. Rudy's Place

Rudy's Place was located at 609 Morton Avenue. This is the property previously described as listed in the name of Joseph Miller, but known as the Crow's Nest and formerly used as a location in Frank Miller's numbers operation.²⁵

25. Rudy's Place was in operation at 609 Morton Avenue prior to the Crow's Nest.

While checking through the subpoenaed records of Leco Vending Company, Inc., the vending company that services Miller-owned properties, the Crime Commission found that a commission deficit of \$1,150 relating to the vending machines in Rudy's Place was transferred to the DePearl Corporation's vending account.²⁶ Another card reflecting a \$790 deficit at Rudy's Place shows that the deficit was transferred to the account of the Paradise Lounge. When asked to explain why these debts of Rudy's Place were transferred to DePearl and the Paradise Lounge, the vending company officials were unable to explain. In addition, Leco's records contain an instruction to send all Paradise Lounge commission checks to Rudy's Place. Leco officials also failed to explain these instructions.

ix. Robert and Vivian Clark

Vivian Clark is the sister of two associates of Frank Miller: (1) Gary Anderson, a former member of Miller's numbers operation and a front for one of Miller's bars; and (2) Marion (Cookie) Dorsey, a former long-time girlfriend of Frank Miller, and once listed as a shareholder in the Paradise Lounge.

Vivian and her husband Robert, appear to be unrelated to any of Frank Miller's numbers operations but were made a part of his infiltration scheme.

631 Morton Avenue

Official records report that in August 1972, Robert and Vivian Clark purchased 631 Morton Avenue for \$3,500. The Crime Commission interviewed the former owner of this property. She stated that various people had told her that a "Mr. Miller," a "big man" in Chester, was buying up all the property on Morton Avenue. Her own realtor brought a black man named Miller to her home to negotiate a sale price. She did sell the property and is under the impression that she sold it to Mr. Miller. Deed records show the purchasers as Robert and Vivian Clark.

Subpoenaed records from the seller's realtor establish that Frank Miller purchased this property. An Agreement of Sale lists the buyer as "Frank Miller or his assignees." A title report for the transfer lists three federal tax liens against Frank Miller. Several letters from the realtor were found addressed to Frank Miller at the Paradise Lounge. One of these letters advises Miller that the title search has been completed and that settlement may be scheduled at Miller's convenience. Another of these letters advised Miller of the planned settlement date. A copy of the settlement sheet shows Frank Miller's name as the buyer crossed out and the names of Robert and Vivian Clark placed in its stead.

It should be noted that Morris Theogood, Frank Miller's business manager, is registered to vote from this address, and uses the address for his automobile registration. The property is actually the residence of one of Miller's numbers operatives, and formerly housed Miller's ex-girlfriend and her brother. The property has recently been used by Miller as the site of his numbers bank.

²⁶ Leco Vending is a Pennsylvania corporation with offices at 128 East 5th Street, Chester. The president is Frank Lee. His brother, Ronald Lee is secretary of the corporation.

1116, 1126 West 7th Street

In February 1973, properties at 1116 and 1126 West 7th Street were transferred into the names of Robert and Vivian Clark. The sale price for this purchase is listed as \$3,200.

The seller of the properties has no idea who made the purchase, stating that the entire matter was handled by his realtor. This realtor advised the Crime Commission that although the Clarks are listed as the buyers, he never actually met them, having handled the transaction exclusively with the buyers' realtor, Stephen Zappala. At settlement, Zappala appeared for the buyers, paying the purchase price in cash.²⁷

The Crime Commission has found that utility bills for these two properties have been paid by the Fairchild Development Corporation, a front corporation controlled by Frank Miller, to be discussed further in this report. The tax bills are sent to the office of realtor Stephen Zappala.

Interview with the Clarks

Crime Commission agents approached Robert and Vivian Clark regarding their apparent ownership of these three properties. The Clarks stated that they had no knowledge whatsoever regarding the properties located on West 7th Street. Regarding 631 Morton Avenue, the Clarks said that several years ago they had resided at that address for approximately six months. While in residence, they paid rent to Frank Miller's brother-in-law, Charles Harmon. The Clarks remember that while tenants at that address, Frank Miller asked them to sign some papers that the Clarks are unable to identify.

The Crime Commission has established that Robert and Vivian Clark were used as fronts for Frank Miller's acquisition of these properties and that the Clarks were unaware that their names were on the deeds. It has also been discovered that because of the Crime Commission's inquiry into this matter, Frank Miller has since taken steps to have the properties transferred out of the names of the Clarks.

x. Charles Harmon

Charles Harmon is Frank Miller's brother-in-law. Between 1969 and 1972, Harmon purchased several properties in the City of Chester that appear to be owned by Frank Miller.

706, 711 Potter Street

In October 1972, Charles Harmon purchased these two properties for the sum of \$1,400. The transaction was conducted by realtor Stephen Zappala.

The tenants at 706 Potter Street have advised the Crime Commission that their landlord is Frank Miller's nephew, Robert Harmon. One of the tenants has stated that on occasion, Frank Miller has personally collected the rent. The property at 711 Potter Street is presently vacant.

27. During the interview, this realtor stated his belief that Stephen Zappala has sold numerous properties in Chester to Frank Miller.

During the Crime Commission's interview with the seller of these Potter Street properties, the seller recalled trying to sell another property located on Rose Street. The proposed buyer was represented by realtor Stephen Zappala. At settlement Zappala failed to come up with the purchase money and explained that the buyer, Frank Miller, was short of fast cash due to a recent "run" on the numbers. When the seller said he did not understand, Zappala explained that Frank Miller was a major Chester numbers operator who had been "hit hard" by a series of winning numbers. The settlement was called off and the transaction was never completed.

613, 615 Morton Avenue

In October 1972, Charles Harmon purchased these two properties for the sum of \$2,200. Robert Harmon, Frank Miller's nephew, usually collects the rents from the tenants.

A numbers writer in Miller's organization has told the Crime Commission that Frank Miller has instructed him on several occasions to collect the rent for Miller from the tenants at these properties.

816, 822, 824 Morton Avenue

In August 1972, Charles Harmon purchased these three properties for the sum of \$2,500.²⁸

The Crime Commission interviewed the former owner of these properties. The seller stated that his realtor notified him that Frank Miller wished to buy the three properties. The seller left the matter in the realtor's hands and assumed that Miller in fact purchased the buildings.

Documents subpoenaed by the Crime Commission reveal that Frank Miller negotiated for the purchase of the properties and had them placed in the name of Charles Harmon. A letter from the realtor addressed to Frank Miller at the Paradise Lounge contained an Agreement of Sale identifying the buyer as "Frank Miller or his nominee." Other letters to Miller advised Miller of the completion of the title report and of the exact settlement date. The only manner in which the name Charles Harmon appears is in one letter from the realtor addressed to Frank Miller advising Miller of the amount of money Charles Harmon would need in order to complete settlement on the three properties. No correspondence whatsoever is addressed to Charles Harmon; all matters were handled by Frank Miller. Even notices of insurance cancellations regarding the property were addressed to Frank Miller at the Paradise Lounge.

28. 816 Morton Avenue is presently a vacant building. The properties at 822-824 Morton Avenue are vacant lots.

616 West 5th Street

In October 1972, this property was deeded into the name of Charles Harmon for a \$2,750 consideration.²⁹ The Crime Commission interviewed the former owner of the property and discovered that the transaction was negotiated entirely by realtor Stephen Zappala. Zappala indicated that he was representing Joseph Miller, Frank Miller's son, as the buyer. At settlement on the property, Charles Harmon's name was inserted on the deed as the recorded purchaser.

Fairchild Development Connection

The Crime Commission has discovered that certain utility bills corresponding to 706 Potter Street, 615 Morton Avenue, and 616 West 7th Street, all Charles Harmon properties, have been paid out of the corporate checking account of the Fairchild Development Corporation. This is a front corporation for Frank Miller and will be discussed in detail later in this report.

xi. "John Doe"
XXX West 3rd Street
XXX West 7th Street³⁰

In 1972, "John Doe," owner of these two properties, came upon hard times and was unable to pay the taxes on the properties. Doe had known Frank Miller as a major gambling figure in the area for years. He approached Miller to see if Miller would be interested in purchasing the properties. Miller agreed to the purchase, stating he would pay all delinquent taxes and in addition, pay Doe \$3,000 in cash. Miller explained that he would arrange for one of his front corporations to buy the properties.³¹ An Agreement of Sale was drawn up by Miller's attorney and a settlement date was scheduled. Prior to settlement, Miller's attorney gave Doe \$3,900 in cash for back taxes. Doe paid the delinquent real estate taxes.

At settlement, it was found that approximately \$3,000 worth of school taxes remained unpaid on the properties. Miller's attorney, representing the front corporation, insisted that Doe would have to pay these taxes. Doe refused. Accordingly, the transfer was never completed and Doe is still the record owner.

Since 1972, however, Frank Miller has taken de facto control over the properties without Doe's consent. Miller, in fact, has renovated the property on West 3rd Street and receives the rental income. Doe has not paid any real estate or school taxes since 1972, although tax payments have been made on these properties by Miller's attorney since that time.

Doe has attempted to regain control of his properties with the assistance of an attorney. He has also tried to remove the tenants. However, one of the tenants, identified as an associate of Frank Miller, physically assaulted Doe, putting Doe

29. This house is presently vacant.

30. For the safety and protection of the individual involved, the Crime Commission is withholding the name of this involuntary "front" and the address of the subject properties.

31. Miller identified this corporation to Doe as Fairchild Development Corporation, a front corporation to be discussed infra.

in the hospital. Doe states that he was told by Frank Miller that Miller would kill Doe if Doe attempted to sell the properties. A confidential informant has confirmed the situation, stating that Frank Miller owns XXX West 3rd Street, and that the property is used for the sale of narcotics.

Utility bills for the two properties have been paid out of the account of one of Miller's front corporations, Fairchild Development.

Crime Commission agents recently interviewed tenants at Doe's properties. The property on West 7th Street is vacant. The West 3rd Street property contains two apartments. Both tenants identified their landlord as Frank Miller and stated that Miller's nephew, Robert Harmon, collects the rent.

Doe has advised the Crime Commission that Frank Miller owns other properties in the area. When asked to point them out, Doe refused, expressing fear of physical reprisals by Frank Miller.

xii. Linton and Louise Hunt

Linton and Louise Hunt are in-laws of Frank Miller, Louise Hunt being the sister of Miller's wife. Linton Hunt was a worker for Sun Oil Company, retiring in December, 1973. In 1974, Linton Hunt purchased a new Lincoln Continental Mark IV sedan. In November 1975, he traded in this car for a new 1976 Lincoln Continental. Both of these cars have been driven exclusively by Frank Miller.³² Linton Hunt has been seen at the locations of several Miller-controlled properties, directing the renovations on the buildings. Within a three month period in 1972, Linton Hunt purchased six properties in the City of Chester.

1024 West 7th Street

In March 1972, Linton Hunt purchased this property for \$2,500. The property address is the location of Duke's Variety Store which is operated by the brother of a Frank Miller numbers writer. The settlement sheet for the property transaction had originally listed Frank Miller's son, Joseph Miller, as the buyer, but Miller's name was crossed out and the name of Linton Hunt was inserted as the buyer. According to a cooperating realtor in the transaction, realtor Stephen Zappala represented Linton Hunt at settlement.

605 West 3rd Street

In April 1972, Hunt purchased this property, paying the sum of \$1,000.

The Crime Commission interviewed three tenants at this address. None of the tenants mentioned the name of Linton Hunt when discussing the building. Two tenants stated that their landlord and rent collector was Frank Miller's nephew, Robert Harmon. The third tenant identified the landlord as Frank Miller.

One tenant provided the telephone number of the rent collector, Robert Harmon. When the Crime Commission checked this number, it was found that the subscriber was Frank Miller's son, Joseph H. Miller. The telephone itself is

32. In addition to this Lincoln Continental, Frank Miller also drives a 1977 Cadillac El Dorado registered in the name of Delsie Muse. Muse is the mother of Estella Cunningham, Miller's present girlfriend. A ranking member of Miller's numbers operation has identified Cunningham as the general manager of Miller's numbers bank. Cunningham's residence has been used as the site of Miller's numbers bank.

located inside 549 East 9th Street, a property listed in the name of Frank Miller's company, G. Mosby, Inc.

715, 719, 721, 723 Morton Avenue

In June 1972, Hunt paid \$3,250 for the purchase of these four properties.

The seller never met Linton or Louise Hunt. All negotiations were handled by realtor Stephen Zappala. The settlement sheet shows Zappala signing for Linton Hunt and using the return address of 901 Morton Avenue. This is the address of the Paradise Lounge. All tax bills for these properties are sent to Linton Hunt at the Paradise Lounge address.

The buildings at 719, 721 and 723 Morton Avenue are vacant. The Crime Commission interviewed three tenants at 715 Morton Avenue. While two of the tenants identified the landlord as Linton Hunt, one of the tenants insisted that the landlord was Frank Miller.

xiii. Fairchild Development Corporation

Fairchild Development was incorporated in February 1973. Its incorporators and first directors are listed as Linton Hunt, Louise Hunt and Carrie Horne, Herman Fontaine's sister-in-law. The Crime Commission has established that Fairchild Development is a front corporation for Frank Miller.

The bank records of Fairchild Development show that the corporation has used corporate funds to pay water, electric, license and tax bills for properties not owned by Fairchild Development; properties previously described in this report as being owned by Frank Miller but recorded in the names of others. The properties for which Fairchild Development has paid bills are as follows:

| <i>PREMISES</i> | <i>RECORDED OWNER</i> |
|----------------------|-----------------------|
| 615 Morton Avenue | Charles Harmon |
| XXX West 3rd Street | "John Doe" |
| XXX West 7th Street | "John Doe" |
| 616 West 7th Street | Charles Harmon |
| 1116 West 7th Street | Robert Clark |
| 1126 West 7th Street | Robert Clark |
| 529 East 9th Street | John C. Johnson |
| 706 Potter Street | Charles Harmon |
| 1005 Upland Street | Willie Terry |

In examining items deposited into the Fairchild Development bank account, the Crime Commission found several checks made payable to Charles Harmon. In addition, Fairchild Development deposited checks written by tenants living in previously described properties listed in the names of Robert Clark, Willie Terry and John C. Johnson.

Fairchild Development Corporation, in addition to servicing these other Miller-linked enterprises, has itself been used to purchase parcels of real property for Frank Miller. During an interview with realtor Stephen Zappala, Zappala stated that when Frank Miller discussed using various fronts for his real estate purchases, Fairchild Development Corporation was named by Miller as one of these fronts.

414, 416 Rose Street

In June 1973, Fairchild Development purchased two warehouses on Rose Street.

The former owner of the warehouses states that Frank Miller personally expressed an interest in purchasing the properties. The seller took Miller on an inspection tour of the buildings and agreed with Miller on the sale price of \$10,000. It was at settlement that the name Fairchild Development Corporation was mentioned for the first time.

328 East 8th Street

In May 1974, Fairchild Development purchased this property for \$2,400. The transaction was a cash deal between the seller and realtor Stephen Zappala. No representative of the corporation participated in any part of the transfer.

Zappala says that Morris Theorgood brought the buyer's cash to Zappala's office for settlement. After settlement, Zappala put a copy of the settlement sheet in an envelope and gave it to the bartender at the Paradise Lounge.

The tenant of this property says that his rent is collected by a man named "Robert" (believed to be Frank Miller's nephew, Robert Harmon).

1109 Chestnut Street

In July 1974, Fairchild Development purchased this property for \$2,000. The former owner had contacted realtor Stephen Zappala in an effort to sell the property. Approximately two months after this initial contact, Zappala appeared at the owner's home with settlement papers. On the papers was the name of Fairchild Development. The seller never met any representative of the corporation.

Zappala says Morris Theorgood provided the cash for the purchase. After settlement, Zappala put a copy of the settlement sheet in an envelope and gave it to the bartender at the Paradise Lounge.

A survey of the tenants at this address revealed that the landlord is Frank Miller.

306-310 East 15th Street

228 West 7th Street

In July 1974, Fairchild Development paid \$6,500 for the purchase of these four properties.

The former owner has related the circumstances of the sale to the Crime Commission. The seller received a telephone call from Linton Hunt. Hunt advised the seller to go to the Paradise Lounge and ask for a man named Johnny Collins. This the seller did. Johnny Collins and the seller inspected the four properties. Following the inspection, Johnny Collins took the seller to a warehouse where they were met by Morris Theorgood. An agreement of sale was prepared and signed. Johnny Collins was about to give the seller a \$500 cash deposit from a roll of bills in Collins' pocket, but Theorgood advised Collins not to use that money. Theorgood reached into a desk drawer and withdrew \$500 in twenty-dollar bills which he handed to the seller. At settlement, the name of Fairchild Development was used on the documents. The balance of the \$6,500 sale price was paid in cash by Louise Hunt representing Fairchild Development.

Crime Commission agents have examined the properties on East 5th Street. Agents have questioned the mail carrier who services these houses. The agents were advised that the property is in the name of a corporation but is under the supervision of Frank Miller.

In checking on the property at 228 West 7th Street, three of the tenants told the Crime Commission that their landlord was Frank Miller and that their rent was collected by "Robert" (believed to be Robert Harmon). Members of Miller's work crew have recently done work on the property at Miller's instruction, being paid by Miller personally for their work.

xiv. Nu-Trend Bar—Gary Anderson

The Nu-Trend was incorporated in September 1975, its incorporator, director, and officer listed as Gary L. Anderson. Gary Anderson is the brother of Marion (Cookie) Dorsey, an ex-girlfriend of Frank Miller. Both Dorsey and Anderson are long-time workers in Miller's numbers operation, Anderson working in the numbers bank since his graduation from high school.

The Nu-Trend corporation was established to operate the Nu-Trend Bar located at 2601 West 2nd Street, also the corporate address. The building and business were purchased by Gary Anderson in March 1975, for \$8,500. At the time of the purchase, Gary Anderson was twenty years old. When the Crime Commission interviewed Anderson, he had no idea how or when the Nu-Trend was incorporated. The Crime Commission has firmly established that Frank Miller is the true owner of the Nu-Trend Bar. Gary Anderson was merely fronting for Miller.

The Crime Commission has interviewed several realtors and attorneys who participated in the sale of the bar. Gary Anderson was represented by an attorney who has been described by Miller associates as Miller's lawyer. The sellers' attorney states that prior to settlement, he was contacted by Anderson's attorney on many occasions to change the name of the buyer on the transfer documents. The sellers' lawyer was first advised that the buyer would be Gary Anderson. Subsequently, the name of the buyer was changed four times at the direction of Anderson's attorney to Corrine Hollingsworth (a former worker at the Paradise Lounge), Fred Ellis (a suspected associate of Frank Miller), John Johnson a/k/a Johnny Collins (previously described as Miller's right-hand man), and finally back to Gary Anderson.

The sellers' realtor explained these name changes. He said the bar was actually being purchased by Frank Miller; the names were being changed because of problems getting approval of ownership by the Liquor Control Board (LCB). Gary Anderson's name was used to win such approval.

When a liquor license is transferred as was the case with the Nu-Trend, the L.C.B. requires a detailed application for the liquor license along with an explanation of how the transaction is to be financed. Complying with these regulations, Gary Anderson advised the L.C.B. that he was going to receive a \$5,000 loan from Leco Vending and was going to finance the rest of the deal with his personal savings. As further compliance with the financing requirements, a letter from Leco Vending in February 1976, to the L.C.B. stated that Leco "has advanced to Gary L. Anderson and the Nu-Trend Bar, Inc., the sum of \$9,500.00."

In fact, there was no loan made to Gary Anderson, even though this was the foundation for the L.C.B. approval. Further examination of the situation has

conclusively established that Gary Anderson never had any personal savings to finance the bar; and the true financing for the purchase came from the pockets of Frank Miller.³³ The lawyers representing Frank Miller in this purchase were aware that Gary Anderson was merely a front for Miller and knowingly coached Anderson on what to say to the L.C.B. agents during the liquor license transfer process so as not to raise suspicions as to the true ownership of the bar.

Until early 1977, Gary Anderson served as the manager of the Nu-Trend Bar.³⁴ The building in which the bar is situated also contains five rooms which are rented out for \$20 a week. The rentals are collected by the bar manager and mingled with the bar receipts. Once a week, all bar and rent money is turned over to Frank Miller or Morris Theorgood.

The Crime Commission has obtained a payroll ledger sheet listing four individuals as employees of the Nu-Trend. The individuals are Gary Anderson, John Derrickson, Ann Jackson, and Charles Woodbury. The Commission has established that John Derrickson and Ann Jackson were never employed by the Nu-Trend. Both of these individuals are numbers writers for Frank Miller and were included in the Nu-Trend's payroll so they would be able to prove a legitimate source of income for tax purposes. Frank Miller would pay all corresponding taxes in their names so it would appear that they were lawfully employed.

Other facts establishing Frank Miller's ownership and control of the Nu-Trend may be summarized as follows:

1) Employees of the Nu-Trend Bar have included a niece, a girlfriend, and three children of Frank Miller.

2) In 1976, a storage room was built onto the rear of the Nu-Trend bar. Frank Miller's work crew built the room. The workers were paid in cash by Miller himself.

3) All mail delivered to the Nu-Trend is turned over to Miller's business manager, Morris Theorgood.

4) All employees of the Nu-Trend are paid in cash out of the bar receipts. If the receipts are not sufficient to cover salaries, additional cash is obtained from Frank Miller.³⁵

5) A numbers writer for Miller was arrested in 1976 for writing numbers in the Nu-Trend Bar. This resulted in the L.C.B. citing the bar for allowing illegal gambling on the premises. Gary Anderson was summoned to appear at a hearing on behalf of the bar. Frank Miller took Anderson to the office of Miller's lawyer, John Rogers Carroll, to prepare for the hearing.

33. During an initial interview with Ronald Lee of Leco Vending, the Crime Commission was told that the company has indeed loaned Gary Anderson \$9,500. When the company subsequently was confronted with the Crime Commission's findings and shown a copy of the company's letter to the L.C.B., Lee explained that the letter to the L.C.B. does not necessarily mean that Anderson actually received the money. It merely indicates that Anderson requested a loan; perhaps Anderson obtained alternate financing.

34. The Crime Commission has learned that Frank Miller is presently arranging to have the Nu-Trend transferred out of the name of Gary Anderson and into the name of another front. The identity of the new owner is unknown.

35. The average weekly gross receipts from the Nu-Trend are \$2,300. Expenses average \$1,200. Accordingly, the average weekly amount of cash turned over to Frank Miller is \$1,100.

6) The Nu-Trend's checking account was opened in April 1976. Frank Miller personally provided the funds for the account's initial deposit. Gary Anderson has sole signature authority. The Crime Commission has established that on occasion Anderson would be asked to presign Nu-Trend checks and hand the blank checks to Morris Theorgood, Frank Miller, or Miller's accountant.

Frank Miller would often give Anderson a batch of checks to be deposited into the Nu-Trend account. Many of these checks were from Miller's numbers writers and players representing gambling debts. In addition to these checks, Miller often gave cash to Anderson to deposit in the Nu-Trend account.

On many occasions, Frank Miller would tell Anderson to go to the bank and draw out certain amounts of money. Anderson would do so by making out checks to "Cash." The cash was turned over to Miller.

7) All Nu-Trend vending machine commissions are turned over to Frank Miller.

8) A check made out to the Nu-Trend was endorsed on the back by "Nu-Trend Morris Theorgood."

9) In the summer of 1977, Johnny Collins (manager of the New Belaire Bar) and Gary Anderson were together complaining about not making enough money from Frank Miller. Miller overheard the conversation and became enraged. Miller screamed that he does not need the two bars and would close them down altogether. In fact, those two bars were subsequently closed for a few days.

10) The Nu-Trend Bar has been used by Frank Miller as the site of his numbers bank.

While investigating the ownership of the Nu-Trend Bar, the Crime Commission discovered two matters of interest concerning the actual operation of the bar.

In checking on the liquor supply of the bar, the Commission found that the Nu-Trend was advised by Miller's accountant that for tax purposes the bar should limit its legal purchase of liquor from the Pennsylvania State Store to \$150 a week. Accordingly, the bar would only have to report income based on the sale of that amount of liquor. However, the Nu-Trend purchases a much greater quantity of liquor, bringing untaxed whiskey across the border into Pennsylvania from Delaware and Maryland. This cache of liquor is stored in the basement of the Nu-Trend and is used to serve all the bars owned by Miller.

The second item of interest regarding the bar's operation relates to its Sunday Sales Permit. In Pennsylvania, a bar may remain open and serve liquor on Sundays if it possesses an appropriate permit. Eligibility for a permit rests on the average percentage of food trade served in the bar. The Nu-Trend possesses a Sunday Sales Permit but does not meet the requirements for eligibility. In December 1976, Frank Miller closed the kitchen in the bar and it has not been used since then. The bar continues to sell liquor on Sundays. In order to maintain its Sunday Sales Permit, Frank Miller has devised a paper shuffling scheme for the benefit of the L.C.B. Merchants who supply food to the Paradise Lounge are often requested to make the bill out in the name of the Nu-Trend. These food bills then serve as evidence that the Nu-Trend maintains a food trade, justifying its Sunday sales of liquor even though its kitchen has not been open in over a year.

xv. Deborah Theorgood a/k/a Deborah Thorogood

Deborah Theorgood, a niece of Frank Miller, has tended bar at the Nu-Trend.³⁶ For many years, she lived in Frank Miller's home and has been known as his "daughter." She now lives with one of Miller's daughters in Delaware.

Within a four-month period in 1976, Deborah Theorgood paid almost \$12,500 in cash for the purchase of eight properties in the City of Chester.

During an interview with realtor Stephen Zappala, Zappala admitted that he had been advised by Frank Miller that Miller would be purchasing property and putting them in the names of fronts. One of the fronts mentioned by Miller was Deborah Theorgood.³⁷

216, 218, 226, 228 East 4th Street

In October 1976, Theorgood purchased these four properties for a total consideration of \$10,000. The sellers of the properties were all members of the same family. The Crime Commission interviewed a member of the family who had negotiated the sale of all four properties.

This seller had initially contacted realtor Stephen Zappala in an effort to find a buyer. Zappala responded by bringing Frank Miller to inspect the properties. After inspection, Miller offered the seller \$5,000 for each property. Zappala prepared four Agreements of Sale, using the name "Deborah Theorgood" as the buyer. Miller paid \$1,000 in cash as a deposit. Zappala says Miller left this money for Zappala to pick up at the Paradise Lounge. One hour prior to settlement, Zappala advised the sellers that Miller could not go through with the purchase at the time, but would complete the transaction within one month. Several months passed without settlement. Accordingly, the deposit money was forfeited to the sellers. Two weeks after this forfeiture, the seller notified Zappala that the sale price would be reduced to \$2,500 per property in an effort to make a quick sale. Zappala told the seller he was going to advise Frank Miller of the new price. One hour later, Zappala called to say that Miller would buy the properties. Zappala said he was going to lend Miller some money for the purchase. The transfer was completed in the name of Deborah Theorgood. The return address for Deborah Theorgood listed on the deed is the address of the Paradise Lounge.³⁸

The property at 228 East 4th Street is vacant. However, the Crime Commis-

36. A surveillance of the Nu-Trend Bar by Crime Commission agents showed Deborah Theorgood tending the bar. During the 45-minute surveillance, the telephone in the bar rang six or seven times. On each occasion, Deborah Theorgood answered the phone and advised the callers that the day's winning number was "995".

37. While examining Stephen Zappala's business records, the Crime Commission found a file folder labeled "Deborah Theorgood". In addition to documents relating to Theorgood, this file also contained real estate documents concerning property transfers to Glen Enterprises and John C. Johnson.

38. In March 1977, a Chester realtor had a chance meeting with Frank Miller on the street. Miller advised the realtor that Miller owned a block of properties in the 200 block of East 4th Street and would be willing to sell them for \$50,000.

sion interviewed eight tenants residing at 216, 218, and 226 East 4th Street. Six of these eight tenants stated that their landlord was Frank Miller.³⁹

In October 1977, the F.B.I. secured a search warrant for an apartment located at the 226 East 4th Street address, suspected of being a numbers bank site for Frank Miller. With sledge-hammers the federal agents broke through a metal plate door separating the targeted apartment from the public hallway. Inside the apartment, the agents found boxes of suspected gambling paraphernalia, including numbers slips, adding machines, and journals.

*543 East 9th Street
838 West 6th Street
625 DuPont Street*

In August 1976, Deborah Theorgood purchased the 9th Street and 6th Street properties from the Department of Veterans Affairs for \$500 and \$200 respectively. In November 1976, she purchased the property on DuPont Street from the Department of Housing and Urban Development for \$285. All three properties are presently vacant, although the house on 9th Street is in the process of being renovated.

269 East 7th Street

Stephen Zappala informed Commission agents that Zappala sold this property to Deborah Theorgood in 1977, for the sum of \$1,500. The only person who inspected the property was Morris Theorgood.

The tenant at this address advised the Crime Commission that the landlord is Frank Miller, and that rent is paid to Miller's nephew, Robert.

**xvi. Robert Theorgood a/k/a Robert Thorogood
217 Yarnall Street
1919 Mary Street**

Robert Theorgood is the brother of Frank Miller's wife, Delores.

In April 1977, Robert Theorgood purchased the above properties for the sum of \$4,000.

The Crime Commission interviewed the former owner of the property and was advised that a buyer was obtained by realtor Stephen Zappala. Zappala gave the seller a \$500 cash deposit. Zappala's records indicate that this deposit money

39. When asked to identify the rent collector, all tenants gave the names of Judy and George Hunter. The Hunters say they turned all the rent money over to Frank Miller's nephew, Robert Harmon. The tenants provided the telephone number of the Hunters. The Crime Commission checked this number and found that the phone is situated in a property at 915 Walnut Street, a Frank Miller owned property listed in the name of John C. Johnson a/k/a Johnny Collins. A further check of the telephones at 915 Walnut Street showed a telephone listed in the name of Karen Northern. A Commonwealth check made payable to Karen Northern was found by the Crime Commission deposited into the checking account of the Nu-Trend Bar.

was picked up by Zappala at the Paradise Lounge. An Agreement of Sale identified the buyer as Deborah Theorgood. An examination of the settlement sheet shows the name of Deborah Theorgood crossed out and the name of Robert Theorgood inserted as the buyer.⁴⁰

Tenants at these two properties identified their landlord as Frank Miller and their rent collector as Miller's nephew, Robert Harmon.

The Yarnall Street property has been used by Frank Miller as the site of his numbers bank.

xvii. Theorgood Company

The Theorgood Company was incorporated in April 1966. The first directors of the corporation are listed as Frank Miller, Delores Miller, and Morris Theorgood.

The corporate address of Theorgood Company is the location of Miller Cut Rate Drugs, a store owned and operated by Howard Miller, Frank Miller's son. In 1974, the Lincoln Continental Mark III sedan operated by Frank Miller was registered in the name of the corporation.

xviii. Vera Toy, Inc.

Vera Toy, Inc., was incorporated in 1967. Its first officers were: President, Morris Theorgood (Frank Miller's business manager); Vice President, Carrie Holland (Herman Fontaine's sister); Secretary, Vera Toy (a cousin to Miller's wife and an employee at Miller Cut Rate Drugs described above). In 1973, Holland and Toy transferred their stock and offices to Morris Theorgood, leaving him the sole officer and stockholder.

Vera Toy, Inc., trading as the Stardust Inn, owns a liquor license for a tavern on Conchester Road in Chester. Since the Stardust Inn was destroyed by fire in 1975, the L.C.B. has held the liquor license in safekeeping at the request of attorney John Rogers Carroll.

A former employee of the Stardust Inn has confirmed that Vera Toy, Inc., is owned and controlled by Frank Miller; Morris Theorgood manages the corporate affairs. This corporation has also been used as a front corporation by Frank Miller at auctions where Miller buys large quantities of merchandise. These auction purchases will be discussed in detail later in this report. However, for the moment, an example of this scheme will show Miller's use of the name Vera Toy, Inc.

In December 1975, Frank Miller purchased a truck at an auction in Chester. Auction records show that Miller instructed the auctioneer to report that the truck was purchased by Vera Toy, Inc., 1000 Conchester Highway, Chester Township, Pennsylvania. This is Frank Miller's home address.

xix. Charlie Soap's Cocktail Lounge, Inc.

The Crime Commission has learned that in early 1976, Charles Woodbury was approached by Frank Miller and asked to operate a bar which Miller intend-

40. Robert Theorgood's return address on the deed is listed as 329 Lamokin Street. This is the residence of Frank Miller's brother-in-law, Charles Harmon, previously identified as a front for Miller.

ed to purchase. Woodbury agreed and in June 1976, Charles Woodbury, alias Charlie Soap, signed an Agreement of Sale for the purchase of Stanley's Cafe located at 1233 West 2nd Street. The purchase price of the building, business and liquor license was \$8,000.

Following the signing of the Agreement of Sale until settlement, Charles Woodbury operated Stanley's Cafe for Frank Miller receiving \$200 per week in salary and using the remaining profits for the purchase of building materials which were used to renovate the bar and the rooms located above the bar. The renovations were made by a construction crew which has been employed exclusively by Frank Miller to renovate his various properties.

In August 1976, Woodbury signed an Exclusive Location Agreement which gave Leco Vending Company the right to install vending machines in the bar in exchange for a loan commitment from Leco Vending Company in the amount of \$10,000. Leco Vending officials, when questioned regarding the \$10,000 loan, were unable to specifically identify who had negotiated the loan for Charlie Soap's Lounge. They believed, however, that the loan may have been negotiated by a local attorney. The identified attorney was the same attorney who negotiated the previously described loan between the Nu-Trend Bar and Leco Vending. The Crime Commission has learned that Frank Miller secured the loan for Charles Woodbury and personally picked up the \$10,000 check from Leco Vending Company. Miller's purpose for securing the \$10,000 loan for Woodbury was to provide a source of capital for Woodbury which would satisfy the Pennsylvania Liquor Control Board's requirement that a liquor license applicant reveal his financing arrangements. The Crime Commission subpoenaed the cancelled check of the \$10,000 loan made to Woodbury by Leco Vending Company. The first endorsement on the back of the check was "Charles Woodbury", but confidential sources have revealed that Charles Woodbury had never received or endorsed the check. The second endorsement on the back of this check was "Rose and M. McLaughlin". As previously explained, M. McLaughlin a/k/a Michael Caserta is Frank Miller's "lay-off" connection in Philadelphia.

In September 1976, Woodbury incorporated, using the name Charlie Soap's Cocktail Lounge, Inc. On the corporate papers, Woodbury listed his address as 2601 West 2nd Street, the address of the Nu-Trend Bar.⁴¹

In March, 1977, the Liquor Control Board approved the transfer of the liquor license to Woodbury.⁴²

In June 1977, Woodbury went to settlement, completing his purchase of Stanley's Cafe.⁴³

Following settlement, Frank Miller set up a lease arrangement in which Woodbury paid \$200 per week in rent and \$100 per week for various tax pay-

41. Charles Woodbury has been known to live in one of the rooms located above the Nu-Trend Bar.

42. The Crime Commission has inspected Woodbury's liquor license application on file at the L.C.B. On this application, Woodbury stated that he had been an employee of Stanley's Cafe since 1974. The seller of Stanley's Cafe insists that he had never met Charles Woodbury prior to Woodbury's purchase of the bar in 1976.

43. Settlement was held in the office of Philadelphia Attorney John Rogers Carroll.

ments. After making the \$300 per week payment, which was collected by Morris Theorgood, Miller's business manager, Woodbury was to keep profits realized through the bar operation, rent collection and vending machine commissions. However, checks from Leco Vending Company were not received by Woodbury because of an arrangement made by Miller with the vending company in which the vending machine commissions were being credited toward payment of the \$10,000 loan provided by Leco Vending Company. Woodbury's claim to the vending machine commissions stems from the fact that Woodbury never received the \$10,000 loan, nor even knew that the loan was made. In December 1977, Woodbury returned to a \$200 per week salary paid by Miller. Under this arrangement, Miller made daily stops at Charlie Soap's Cocktail Lounge, Inc., to pick up the receipts from the previous day's bar operation.

The Crime Commission has found that the true owner of Charlie Soap's Cocktail Lounge is Frank Miller. Charles Woodbury manages the bar for Miller.

A surveillance of Frank Miller's activities by the Crime Commission has established that Miller regularly visits his bars. A typical surveillance showed: 2:50 p.m.—Frank Miller exited the New Belaire Bar and went to Stanley's Cafe (Charlie Soap's Cocktail Lounge); 3:10 p.m.—Frank Miller left Stanley's Cafe and went to the Nu-Trend Bar; 3:30 p.m.—Frank Miller left the Nu-Trend Bar.

xx. 2446 Germantown Avenue Corporation

The 2446 Germantown Avenue Corporation was incorporated in July 1976. The incorporator is Ellen Blum, identified by the Crime Commission as a secretary in the office of Philadelphia Attorney John Rogers Carroll. Carroll's firm has represented many of the individuals and corporations mentioned in this report in matters such as realty negotiations and transfers, L.C.B. hearings, incorporations, criminal trials, and litigating Crime Commission subpoenas.

At an auction in June 1976, the 2446 Germantown Avenue Corporation made the winning bid on the properties at 2446-50, 2452 Germantown Avenue, Philadelphia. The bid was for \$13,250.

The Crime Commission interviewed the auctioneer who had conducted the sale. This auctioneer provided copies of the Agreements of Sale for the properties. These agreements show the buyer listed as "Deborah Theorgood or nominee."

The Commission then interviewed the attorney who had represented the former owner of the properties at settlement, and who had been present at the time the Agreements of Sale were signed. This attorney identified the person who signed the Agreements of Sale as Frank Miller. The attorney stated that the settlement on the transfer took place in the office of John Rogers Carroll in October 1976. Attending the settlement was Frank Miller. Frank Miller had paid the seller's attorney \$2,900 as a cash deposit and subsequently, paid an additional \$10,350 in cash at the time of settlement. The deeds for the property list the buyer as 2446 Germantown Avenue Corporation.

The Crime Commission has learned that these properties are used by Frank Miller as warehouses for his many auction purchases.

When the Crime Commission tried to subpoena the business records of the corporation from Ellen Blum, the Commission was advised by a member of John Rogers Carroll's law firm that Ellen Blum did not know anything about the

corporation's records and that the person who did have knowledge of the corporation's records was Carroll himself. However, the Crime Commission subpoenaed Ellen Blum for these records since her name appeared on the official corporate records. At the time she was served with the subpoena, Blum stated that she was not an officer, stockholder or incorporator of the 2446 Germantown Avenue Corporation. When advised by a Crime Commission agent that her name appeared on the corporation's papers she replied, "If your boss puts something in front of you and tells you to sign it, you sign it."

xxi. 9th and Sproul Corporation

The Rainbow Diner, located at 9th and Sproul Streets, was put up for sale at auction in March 1977. Frank Miller had attended the auction in order to buy restaurant equipment for the Paradise Lounge. While there, he purchased the diner itself.

The Crime Commission interviewed the auctioneer who had conducted the sale. The auctioneer confirmed that Frank Miller had purchased the diner and its contents, paying \$2,500 in cash for the equipment and \$300 as cash deposit on the diner at the time of the auction. Several days later, when Miller paid the \$1,700 balance in cash, he advised the auctioneer that the property would be titled in a name other than Miller's.

In April 1977, attorney John Rogers Carroll filed incorporation papers for the 9th and Sproul Corporation. The corporate address is the location of the Rainbow Diner. The incorporator and officer of the corporation is Patricia Miller, Frank Miller's daughter.

To date, Miller has not gone to settlement on the property although he has taken possession.⁴⁴ The auctioneer recently contacted John Rogers Carroll and inquired as to when Frank Miller intended to take title to the diner. Carroll responded that there are existing liens against the property that must be resolved before his client is prepared to go to settlement.

The Commission has learned that Frank Miller gave the Rainbow Diner to his daughter Patricia as a wedding present. Patricia was recently married to Otto Fontaine, a nephew of Miller's partner, Herman Fontaine.

xxii. Pitts Fuel Oil—Thomas Pitts

Thomas Pitts has been identified as one of the "pickup men" in Frank Miller's numbers operation. He is a trusted member of the organization, one of a few persons in the higher echelon of the racket.⁴⁵ Pitts lives at 529 East 9th Street, a property previously described as being owned by Frank Miller but listed in the name of John C. Johnson. Numbers action has been turned in to the Miller organization at this address.

The Crime Commission has received information that Frank Miller controls a company called Pitts Fuel Oil. A member of Miller's organization has stated that

44. A member of Miller's work crew has informed the Crime Commission that on Miller's instructions, the crew made repairs on the diner after it was purchased by Miller. During the last week in March 1977, agents of the Crime Commission observed Miller and his brother-in-law Linton Hunt, at the Rainbow Diner giving instructions to workers cleaning equipment.

45 Thomas Pitts' sister, Ann Pitts Jackson, is also a numbers writer in the Miller organization.

Thomas Pitts and Lester Stewart, another numbers pickup man, manage the company for Miller. This informant has witnessed Frank Miller giving instructions to Pitts and Stewart regarding the operation of the business, and has seen Miller give money to the employees of the company for the purchase of oil.

Miller owns four Pitts Fuel Oil trucks. The trucks are used by Miller's work crew in making repairs on Miller properties and to haul the merchandise Miller purchases at auctions.

Three of the trucks are registered in the name of Pitts Fuel Oil Company. The address of the company listed on the vehicle registration certificates is 901 Morton Avenue, the address of the Paradise Lounge.

The Commission has been able to trace the purchases of two of these three trucks.⁴⁶ One truck was purchased at auction in September 1975, for \$1,750. The auctioneer's records show that the telephone number listed for Pitts Fuel Oil is the telephone number of the Paradise Lounge. However, the address of Pitts Fuel Oil is listed as 549 East 9th Street, Chester. This is the address of a previously described Miller property listed in the name of G. Mosby, Inc. The second truck was purchased at an auction in December 1975, in Chester for \$1,100. The auctioneer confirmed that the truck in question was purchased by Frank Miller. The auctioneer's records show that Miller instructed the auctioneer to list the buyer as Vera Toy, Inc., (previously described in this report as a front for Miller).

The fourth truck is the only Pitts truck which is, in fact, an oil truck. The name "Pitts" and a telephone number are painted on the truck. The telephone number traces back to Lester Stewart, previously described as a numbers pickup man for Miller.⁴⁷ This Stewart telephone is found in the premises 310 East 5th Street, a property previously described as a Miller-owned property listed in the name of Fairchild Development Corporation. The truck is registered in the name of "Eddystone Hardware," located at 1014 Saville Avenue, Eddystone. A check at this address shows that it is also the address of Rutledge Electric Company, whose president is William Rutledge. Several members of the Miller organization have identified William Rutledge as an electrical contractor who does work on properties owned by Frank Miller.

xxiii. William Rutledge 619-621 Edgemont Avenue

This same William Rutledge has also fronted for Frank Miller in the acquisition of a warehouse on Edgemont Avenue. Rutledge purchased this property in

46. The principals involved in the sale of the third truck have gone out of business and cannot be located.

47. The Crime Commission has learned that Frank Miller is presently in the process of opening a new bar in the 600 block of Morton Avenue. Miller has purchased this bar, using the name of Lester Stewart as his front man. The address of this new bar is the same address G. Mosby, Inc., uses to receive the tax bills for its property at 549 East 9th Street.

January 1976, for the sum of \$22,000. ⁴⁸ Documents regarding the purchase reveal that all negotiations for the financing and settlement was made with Frank Miller. An investigative report done at the request of the mortgagee clearly states the situation:

The subject (William Rutledge) is actually fronting for another man who is interested in purchasing the property . . . We find that the applicant is fronting for a businessman in Chester, Pa., known as Frank Miller . . . Mr. Miller is a well known gambling figure in the Chester, Pa. area, being involved in the numbers racket of Chester, Pa., for many years and has had an extensive arrest record over the years for gambling . . . Mr. Miller is said to be a man of substantial financial worth.

The lending company and the realtor representing the buyer knew of Miller's involvement throughout the transaction. The realtor was personally told by William Rutledge that Frank Miller was the true purchaser. An interoffice memo indicates that the lending company urged the buyer's realtor "to press Mr. Miller and his front man" to straighten out certain problems with the financing. All correspondence and memoranda refer to Frank Miller as the true party in interest and to William Rutledge as the front.

e. Auctions

As this report has noted, through the years Frank Miller has purchased real estate, motor vehicles, and equipment at several auctions. The transactions described have involved Miller making these purchases in the names of his various associates and corporations. The Crime Commission has also established that Miller has made numerous auction purchases in his own name or aliases. In discussing the activities of Frank Miller with many auctioneers in Philadelphia, Miller is invariably described as attending auctions on a regular basis, buying large quantities of supplies, always paying cash for his purchases, and sometimes using 40-foot vans to transport his purchases from the auctions. Some of Miller's auction purchases are described briefly: ⁴⁹

1) In 1973, Frank Miller's work crew razed a hotel near the Valley Forge Music Fair. Miller paid the owner of the hotel \$1,900 for the opportunity to demolish the structure. From the wreckage, Miller salvaged all the metal, selling it for approximately \$15,000.

2) Prior to this demolition, the equipment and supplies of the hotel were sold at auction. Of the total \$27,700 worth of supplies sold, \$10,800 worth was sold to an individual identified in the auction records as "F.M." The auctioneer has verified that "F.M." is Frank H. Miller. The auctioneer added that Frank Miller is a "heavy buyer" at the auctions.

3) In November 1973, Frank Miller purchased \$8,549 worth of material at a liquidation auction. Included among the articles purchased were a 2 1/2 ton

48. Rutledge put down \$8,000 in cash and received a \$14,000 purchase money mortgage.

49. The Crime Commission has received information regarding many more auction purchases than are described in this report. Only the information that has been confirmed at the time of the publication of this report is included herein. It should also be noted that it is virtually impossible to document all of Miller's auction purchases; the Crime Commission has merely scratched the surface.

truck, a camper, and a trailer. The trailer may be seen every day in the parking lot owned by Miller across the street from the Paradise Lounge. The trailer is registered in the name of Thomas J. Irvine. The address used by Irvine on the registration certificate is 901 Morton Avenue, the address of the Paradise Lounge.

4) As previously described, in 1975 Frank Miller purchased a truck at auction for Pitts Fuel Oil Company. The auction records reveal that this truck sale represented only \$1,100 of a total of \$48,000 worth of goods purchased by Frank Miller at a three-day auction. The auctioneer stated that Miller paid the entire \$48,000 in cash over the three-day period.

5) At an auction in 1976, Miller purchased virtually the entire contents of a Mr. Plywood Store in New Jersey. Shortly thereafter, Miller resold the goods at auction, selling the merchandise for a total of \$72,000. The auctioneer received a commission of almost \$13,000. Miller received a first cash payment from the auctioneer of \$35,500. The auctioneer still owed Miller approximately \$23,600 when the I.R.S. discovered the sale. The I.R.S. placed a lien on the transaction; the \$23,600 is being held in escrow by the auctioneer pending appropriate disposition by the I.R.S.

In discussing Frank Miller's auction activities with the auctioneer, the Crime Commission was told that Frank Miller is a regular buyer at auctions and sometimes uses the aliases N. Holmes, Webb, Webbs, F.M. and G.M.

6) In September 1977, a wholesale and retail hardware company was liquidated at auction. An examination of the auction records revealed that Frank Miller paid approximately \$14,900 for hardware supplies. This merchandise was transferred by Miller's work crew from the auction to two of Miller's warehouses in Chester.

7) In October 1977, Frank Miller attended an auction in Plymouth Meeting for the sale of restaurant and bar equipment. Although the auctioneer remembered that Miller was at the auction, he could not find Miller's name in the records of sale. Upon closer examination of the auctioneer's records, Crime Commission agents discovered a buyer of \$3,300 worth of equipment listed as "John Mills." The address of "Mr. Mills" was 901 Morton Avenue, Chester. This is the address of Frank Miller's Paradise Lounge. The auctioneer stated that Frank Miller often uses an alias at auctions.

One of Miller's workers has confirmed that this merchandise was purchased by Miller. The items were transported to one of Miller's warehouses and to Miller's Rainbow Diner.

8) In October 1977, Frank Miller purchased a substantial portion of the inventory of an electrical supply store on Baltimore Avenue in Springfield. This merchandise was transferred by Miller's workers to a property owned by Miller on East 4th Street listed in the name of Deborah Theorgood.

5. CONCLUSIONS AND RECOMMENDATIONS

The Internal Revenue Service has more than \$3 million in liens for unpaid taxes issued against Frank H. Miller. If Miller owned properties in his name, the I.R.S. could levy against the properties and collect the delinquent taxes. By using fronts for his acquisitions, Frank Miller has avoided I.R.S. execution on his assets and has been able to acquire a significant amount of legitimate interest in the

City of Chester. In addition, Miller has been able to put his illegal numbers profits to work, thus gaining additional profits.

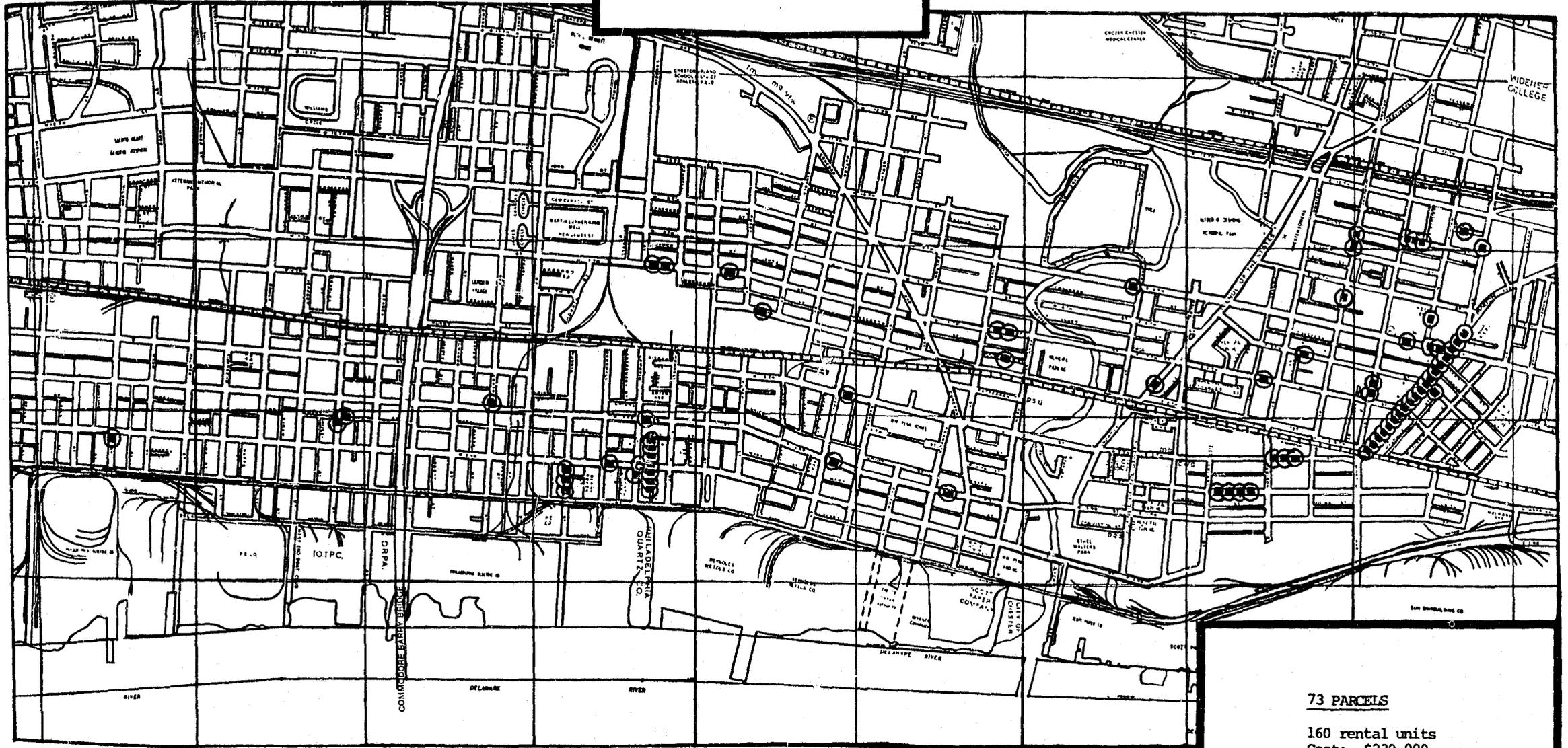
It is impossible to determine the exact extend of Miller's holdings since it is not known if persons other than those mentioned in this report are participating in Miller's schemes. The Crime Commission has issued numerous subpoenas for the testimony and/or business records of persons involved in Miller's legitimate enterprises in an effort to gain a better understanding of the extent of Miller's holdings. Virtually all of the persons and companies subpoenaed are being represented by the Philadelphia law firm of Carroll, Creamer, Carroll & Duffy, the firm employed by Frank Miller. With only a few exceptions, all of those subpoenaed have refused to give evidence. In order to gain more precise information on Frank Miller's activities, the Crime Commission has pursued these matters in the Commonwealth Court of Pennsylvania. In each case, the Court has granted the request of the Commission and ordered the witnesses to comply with the Crime Commission's subpoenas. All witnesses have appealed these orders to the Pennsylvania Supreme Court, employing John Rogers Carroll as their attorney.

The Crime Commission has discovered that at least several of these subpoenaed witnesses have never, in fact, retained the law firm of Carroll, Creamer, Carroll & Duffy to represent them. When they were served with Crime Commission subpoenas, they merely turned their subpoenas over to Frank Miller. Miller then turned the subpoenas over to his own lawyer. The witnesses had no part in choosing their lawyer, did not know the identity of their lawyer, and did not pay any legal fee to the law firm. All was arranged and paid for by Miller himself. Despite the fact that these witnesses knew nothing about their legal representation, the law firm of Carroll, Creamer, Carroll & Duffy has advised the Crime Commission that the firm represents these individuals. The firm continues to fight the Crime Commission subpoenas in court on behalf of these witnesses without the knowledge of the witnesses. Several other witnesses, while not stating that they had nothing to do with retaining their legal counsel, have admitted to the Crime Commission that Frank Miller pays for all their legal fees.⁵⁰

Despite this grand effort to keep the Crime Commission from gathering needed evidence, the Commission has been able to produce this incomplete profile of Miller's activities. The following map illustrates the 73 pieces of real estate and bars presently owned by Miller but listed in other names:

50. For example, John C. Johnson told Crime Commission agents that Frank Miller pays all of Johnson's legal fees owing to John Rogers Carroll. Also, when a Crime Commission subpoena was served on one of Frank Miller's accountants, the accountant stated that he would not honor the subpoena on the advice of John Rogers Carroll. The accountant added that he himself was not paying his attorney's fees.

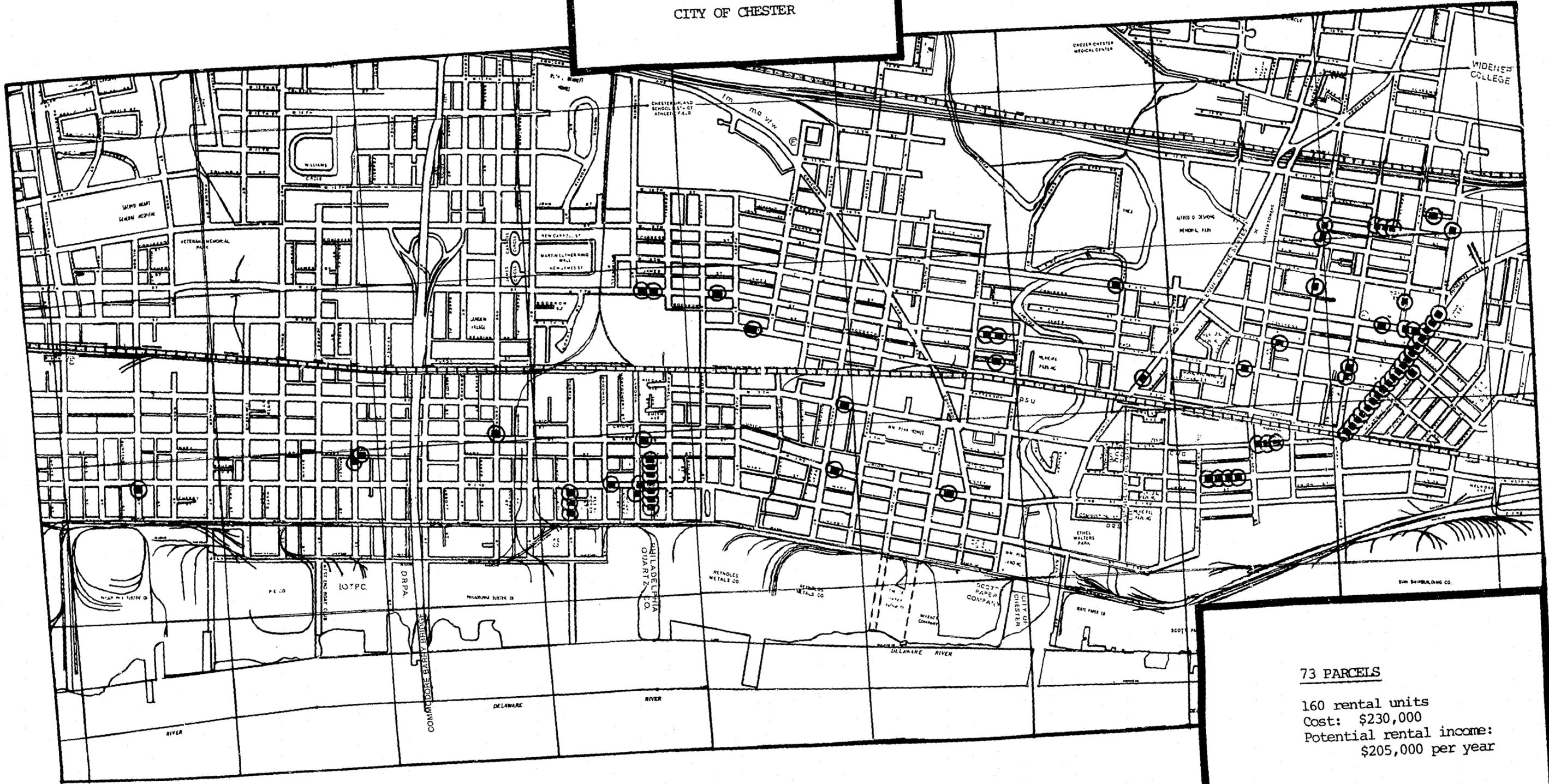
CITY OF CHESTER



73 PARCELS

160 rental units
Cost: \$230,000
Potential rental income:
\$205,000 per year

CITY OF CHESTER



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Miller paid approximately \$230,000 for the purchase of these properties. Based on the estimate of 160 rental units and the rentals charged per unit as stated by the tenants surveyed, assuming full occupancy, Frank Miller has a potential rental income of approximately \$205,000 per year. Based on information received concerning gross profits for the four bars owned by Miller, it is estimated that Miller receives an additional \$135,000, making a total annual gross income of \$340,000. This sum does not include the unknown profits made by Miller on his auction activities or oil business. It must be remembered that these income figures are derived from apparently legitimate enterprises, and are in addition to the millions of dollars made by Miller each year from his illegal numbers racket.

The objective of this report has been to gain a perspective on the character and magnitude of Frank Miller's infiltration into legitimate enterprises. It is the duty of law enforcement programs to pay special attention to the growth prospects of such activities in order to assess their ultimate economic and social impact. Legitimate holdings of racketeers are derived mainly from profits taken from illicit enterprise. Thus, these legitimate holdings represent the consummation of the criminal enterprise. Frank Miller's holdings stand as a reservoir of economic power, strengthening the position of Miller and his associates not only with respect to their illicit enterprises, but also with respect to opportunities for expansion into other modes of infiltration. Frank Miller's profile may appear to be only a minor, local infiltration in the larger perspective of organized crime, but there is a real danger in assuming such a posture.

This danger was recognized by the Pennsylvania Legislature when in 1972, the Corrupt Organizations Act was enacted.⁵¹ This Act's preface acknowledges that vast amounts of money and power accumulated by organized crime are increasingly used to infiltrate and corrupt legitimate businesses operating within the Commonwealth, and that such infiltration provides an outlet for illegally obtained capital. The statute's purpose is explicitly stated: In order to successfully resist and eliminate this situation, it is necessary to provide new remedies and procedures.

Accordingly, the Act provides:

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity⁵² in which such person participated as a principal, to use or invest, directly or indirectly, 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.

Included in the statute's definition of "racketeering activity" is any act which is indictable under the Pennsylvania gambling statutes. In Pennsylvania, a person is guilty of a crime if he "sets up, or maintains, any lottery or numbers game."⁵³

It is virtually indisputable that Frank Miller has derived income from a pattern of racketeering activity, having set up and maintained a multimillion dollar

51. 1972, December 6, P. L. _____, No. 334, §1, eff. June 6, 1973, 18 C.P.S.A. §911.

52. A "pattern of racketeering activity" refers to a course of conduct requiring two or more acts of racketeering activity, one of which occurred after the effective date of this section, i.e., June 6, 1973.

53. 1972, December 6, P. L. _____, No. 334, § 1, eff. June 6, 1973, 18 C.P.S.A. §5512.

numbers operation in the City of Chester. It is also evident from the facts established in this report that Frank Miller has used this income to acquire interest in a large number of real properties, bars, and corporations.

Accordingly, it is the recommendation of the Pennsylvania Crime Commission that the District Attorney of Delaware County and the Attorney General of Pennsylvania examine the information contained in this report to determine whether the institution of criminal proceedings against Frank H. Miller is warranted under the provisions of the Corrupt Organizations Act.

It is also apparent that Frank Miller could not have successfully insulated himself from exposure in his business transactions as long as he did, without the counsel and expertise of various professionals. With the knowledge that Frank Miller was a racketeer, a battery of attorneys, realtors, accountants, and other businessmen knowingly aided Miller in his acquisition of real estate and legitimate business. While the advice given to Miller by these professionals was often general business advice, on several occasions the advice was tailored to the particular needs of a racket figure who needed a means to hide his illicit income. For example, this professional advice and assistance resulted in the falsification of P.L.C.B. records and the subsequent presentation of false information to representatives of the L.C.B.

Accordingly, the Pennsylvania Crime Commission will make available to the appropriate licensing boards and professional associations, all available information relating to the licensed professionals who knowingly fostered Frank Miller's infiltration of legitimate business, for whatever action they deem appropriate.

The Pennsylvania Crime Commission shall also make available to the Pennsylvania Department of Revenue, all financial data relating to Frank Miller and his "fronts". Throughout the investigation it became apparent that, for the most part, the "front" owners of properties and officers of "front" corporations had little or no knowledge of the financial structure of the various "front" entities. For this reason, it is imperative that the Department of Revenue investigate to determine the extent of possible tax liability and criminal violations of the Pennsylvania tax statutes.

The citizens of the Commonwealth, and particularly the citizens of Chester in this case, have a right to know the true owners of their community.

Organized crime activities continue to be viewed as a harmless little game. But the game is neither harmless nor little. Organized criminals are gradually but inexorably stealing our nation. ⁵⁴

EPILOGUE

When the Commission released this report to the public, the findings were forwarded to appropriate law enforcement agencies for review.

On March 2, 1978, Frank Miller and Herman Fontaine were indicted by a federal grand jury in Philadelphia on charges of racketeering, bribery, gambling and conspiracy.

On April 20, 1978, seven alleged members of the Miller numbers organization were indicted on gambling charges. They were John C. Johnson, Estella Cunningham, Patricia Ann Brown, Ethel Johnson, Alma Mae Cottman, James

54. Donald Cressley, *Theft of the Nation* (New York: Harper and Rowe, 1969), p. ix.

“Sonny” Bryant and Robert Kinlaw, a Chester City police inspector. In August, 1978, all but Kinlaw entered guilty pleas.

On May 18, 1978, Chester City Mayor John H. Nacrelli was indicted on charges of receiving \$2,000 a month from Miller and Fontaine to protect their numbers racket.

On June 27, 1978, the Pennsylvania Liquor Control Board revoked the liquor license of the Nu-Trend Bar based upon the findings of the Pennsylvania Crime Commission.

On July 28, 1978, Miller and Fontaine pleaded guilty in federal court to all charges. On that same date, Miller pleaded guilty to separate charges that he had invested the proceeds of his numbers racket in legitimate enterprises. The evidence that would have been used against him at trial was the information contained in the Pennsylvania Crime Commission report. As part of this guilty plea, all but seven of Miller's properties were to be forfeited to the federal government. The remaining seven properties are subject to civil proceedings by the I.R.S. to recover back taxes owed by Miller.

In September, 1978, Miller and Fontaine testified as prosecution witnesses in the trial of Mayor Nacrelli. On October 5, 1978, that proceeding ended in a mistrial. In January, 1979, Nacrelli was retried and found guilty on all charges.

In March, 1979, the Liquor Control Board revoked the liquor licenses of Charlie Soap's Cocktail Lounge and the Paradise Lounge. The basis for this action was the information reported by the Pennsylvania Crime Commission. Also, in March, 1979, police inspector Robert Kinlaw was found guilty of taking numbers bets for Frank Miller.

B. THE INTERSTATE SHIPMENT OF GAMBLING PARAPHERNALIA INTO PENNSYLVANIA AND ITS DISTRIBUTION AND SALE WITHIN THE COMMONWEALTH*

1. INTRODUCTION

The Pennsylvania Crime Commission has recently completed investigations into illegal gambling enterprises in the Commonwealth.

This report furnishes an insight into the interstate shipment of unlawful gambling paraphernalia into Pennsylvania, tracing the sale and distribution of this paraphernalia within the central region of the state. Collateral surveys were also undertaken in the northeast, southeast and western regions. These collateral surveys substantiated the Commission's preliminary thesis that the gambling paraphernalia business flourishes on a statewide basis.

Undoubtedly, most citizens are unaware of and cannot comprehend the vast scope, strength and influence of the organizations which accommodate gambling activities. The Crime Commission has attempted to describe the enormity of these operations and the consequences occasioned by these activities.

The effects of such gambling operations upon the state are clearly numerous. There is a tremendous loss of revenue to the Commonwealth treasury, a

* This report was approved by the Commissioners and published in February, 1977.

tremendous waste of law enforcement and judicial resources futilely attempting to enforce the gambling laws, and widespread corruption, with an undermining of the integrity of the police and public officials resulting from bribes to prevent enforcement of the laws.

At some point in time, society must make a judgment whether it will continue incurring substantial moral, political, economic and social costs or turn to alternative approaches to the problem. The damage to society continues to be too fundamental and too great to accept the status quo.

Through this report, the Pennsylvania Crime Commission attempts to give an insight into the nature, extent and effect of illegal gambling activities in Pennsylvania, documenting numerous violations of both state and federal law. The Crime Commission, as in the past, continues to recommend the adoption of new and more effective approaches to both the enforcement and modification of gambling legislation.

2. ORIGIN OF THE INVESTIGATION

In February of 1973, agents of the Pennsylvania Crime Commission learned that for several years large quantities of unlawful gambling paraphernalia were being shipped into the Southcentral area of the Commonwealth via a motor freight carrier based in Sunbury, Pennsylvania. These shipments most often originated from Empire Press, Inc., 644 New Orleans Street, Chicago, Illinois, and the cartons were variously labeled "printed advertising matter," "salesboards," or "punchboards." On several occasions a reliable informant observed that such cartons contained punchboards and black-market lottery tickets, ¹ and were addressed to individuals and businesses located in such Central Pennsylvania towns as Sunbury, Berwick, Williamsport, and Milton. Shipments of such cartons were frequently designated for platform pick-up at the motor freight carrier's truck terminal, with freight charges paid in cash.

A preliminary inquiry by the Central Regional Office of the Commission revealed that Empire Press was owned and operated by Abraham and Sylvia Zimmerman of Chicago, Illinois, who were both under federal indictments in Billings, Montana on charges of interstate transportation of gambling with the aid of racketeering. ² The Commission further identified four local recipients of gambling paraphernalia, including two individuals using fictitious names of non-existent and unregistered business firms as consignees of the gambling paraphernalia.

Physical surveillances of motor freight terminals pinpointed several storage locations of the gambling paraphernalia. Shipments were observed moving from the platform pick-up to their eventual storage location, usually a rented facility such as a barn, garage or office. The clandestine behavior of the individuals observed receiving and carrying away these shipments clearly indicated that the individuals realized the unlawful nature of their operation.

On April 18, 1973, the Commission furnished specific information revealed by its preliminary inquiry to officers of the Pennsylvania State Police. Using both

1. The phrase "black-market lottery tickets" as used in this report does not refer to counterfeit or bogus Pennsylvania Lottery tickets but to unlawful, independent lottery games that bear no resemblance to the legitimate state lottery.

2. The indictments were dismissed in 1973. The case is discussed further in this report.

the Commission's findings and other information, the Pennsylvania State Police conducted a series of raids in Berwick, Milton and Sunbury. Approximately 175 cartons of punchboards and black-market lottery tickets with a total estimated street market value of nearly \$1,500,000 were seized and several individuals were arrested.

In March of 1974, Crime Commission agents learned that there had been no shipments of gambling paraphernalia via the Sunbury Truck Terminal since the Pennsylvania State Police raids and arrests, but that several other motor freight carriers were now being used. Based on this new information, the Pennsylvania Crime Commission, on October 10, 1974, resolved that a full scale investigation be conducted.

3. FINDINGS

a. The Nature of the Gambling Operation

i. Manufacturers

With the cooperation and assistance of federal, state, and local law enforcement agencies, the Crime Commission identified the 17 companies in nine states which were engaged in the manufacture of punchboards and black-market lottery tickets.³

Crime Commission agents, using various fictitious names, wrote to all 17 companies asking how to enter the business of distributing or selling punchboards and black-market lottery tickets. Ten companies responded, some enclosing gambling paraphernalia catalogs, samples of punchboards and lottery tickets, order blanks, confidential price lists, or ordering instructions. One company, Free State Products, of Baltimore, Maryland, replied that, "We only sell through jobbers, and our Mr. _____ of Annville, Pa., will contact you shortly. Sincerely yours, [signed] Free State Products, inc., Ada Tabakoff."

ii. Sales Representatives and Distributors

Several of the manufacturing companies doing a major share of the business of distributing this gambling paraphernalia in the Commonwealth handle sales through their own agents or representatives. The Crime Commission identified five of these sales representatives, all Pennsylvania residents, each of whom is affiliated with at least one out-of-state company. The Commission subpoenaed four of the five representatives to appear and testify at private hearings. Relying on the Fifth Amendment privilege against self-incrimination, each sales representative refused to answer questions about his activities in the gambling business or to produce the financial records pertaining to his gambling business transactions.

The Crime Commission also identified more than 100 purchasers of gambling paraphernalia in the Commonwealth. These individuals generally act as independent distributors of punchboards and black-market lotteries, ranging from very small operators handling one or two cartons per month, to large-scale distributors, dealing in such quantities as 20 to 50 cartons each month. Most of the

3. See Appendix I.

large-scale distributors use fictitious trade names, labeling their businesses as "novelty," "vending," "trading," "gift," or "tobacco and candy" companies. The Commission subpoenaed five large-scale distributors to appear and testify at private hearings. The five also relied on the Fifth Amendment privilege against self-incrimination when asked questions about their involvement in the gambling business.

iii. Betting Establishments and Players

The manufacturers' sales representatives and independent distributors generally sell their merchandise to private social clubs and public taverns, which then sell punchboard chances and black-market lottery tickets to the public. The great majority of sales are made to the private social clubs located in the smaller cities and towns of the Commonwealth. The taverns that purchase punchboards and black-market lottery tickets are generally neighborhood bars with an established clientele.

In those areas, almost any club or lodge member, or regular patron of a bar may purchase a punchboard chance or black-market lottery ticket at any given time. The proceeds for the sale of chances and tickets usually go into the coffers of the club or tavern, or, in some instances, into the club steward's or bartender's pocket.

Interviews taken of a sampling of punchboard and black-market lottery players revealed that such games are preferred over the legitimate Pennsylvania Lottery for specific reasons. The private club player is motivated by the knowledge that his club profits more from selling the unlawful games than the legal state game. (On the illegal games, approximately 40% of the play is retained by the club; for handling the legal games, the clubs are paid 5% of the gross). Both the club and tavern players are motivated by the fact that punchboard chances and black-market lotteries are cheaper than a comparable legitimate game, the instant lottery. (A punchboard chance normally costs 25¢; the state's instant lottery tickets cost \$1). In addition, the players also recognize the advantages of unreported winnings.

iv. The Games

The most popular punchboard game (the "Charley Board") has 1,400 plays which sell for 25¢ per play. In this game, the player purchases a chance to punch a peg through any one of up to 1,400 available holes in the "Charley Board." The board is covered by a colorful sheet of paper that not only conceals each hole, but also lists the winning numbers. As the player presses the peg, a slip of paper emerges from the back of the board on which is printed a number. If that number corresponds to a number on the face of the board, the player has won \$5. If there is no match, the player has lost.

The total payout on a 1,400 hole "Charley Board" is \$200 - 40 winners of \$5 each. Of these 40 winners, 39 are chances with numbers that correspond to numbers on the face of the board. The other \$5 prize is awarded to the player who punches the last remaining hole. This is an inducement that enables the club or tavern to accomplish its goal of selling every chance. If every chance were sold, the 1,400 hole "Charley Board" would gross \$350 and net \$150 (less the cost of the board which varies from \$2 to \$4). The payout percentage for this game is

57% of receipts. The club or tavern retains the remaining 43% of the receipts.

The most popular black-market lottery game (the "Bankers Club") has 13,300 tickets that sell for 20¢ each, although most betting establishments require the player to purchase five tickets for \$1. In the "Bankers Club" game, the player purchases a chance to dip his hand into a fish bowl and take out the ticket or tickets of his choice. On the face of the ticket, the winning numbers, colors and corresponding payoffs are listed. On the back of the ticket are five sealed strips. The player pulls off these strips one at a time. If the color and number combination match any of the combinations listed on the face of the ticket, the player has won the corresponding prize (anywhere from \$1 to \$50).

The total payout on a "Bankers Club" lottery game is \$1,860. If every ticket were sold, the game would gross \$2,660 and the club or tavern would realize a profit of \$800 (less the cost of the game). The payout percentage is 70% of receipts. The club or tavern retains the remaining 30%.

b. The Extent of the Gambling Operation

Five motor freight carriers located in Cumberland, Dauphin, Lancaster, Lebanon, and York Counties cooperated with the Crime Commission in an attempt to determine the scope of this unlawful gambling operation in the five county area. With the assistance of these carriers, Commission agents examined shipping documents and freight bills for the years 1974 and 1975 pertaining to the 17 identified manufacturers of punchboards and black-market lotteries. These records revealed that ten of those companies shipped over 6,300 cartons of gambling materials into Pennsylvania during the two year span, representing a street market value of approximately \$53,000,000.⁴

The \$53,000,000 figure may not represent the total amount of money involved, since not every motor freight carrier in the five county region cooperated with the Commission's investigation. Although the number of shipped cartons reported to the Commission decreased from 1974 to 1975, there is some evidence that this decline may not represent an actual decline in volume. By 1975, some of the manufacturers had apparently switched to other motor freight carriers because of the previous State Police arrests and the manufacturer's knowledge of the Commission's investigation. In addition, the Commission discovered that some of the large-scale distributors were driving out-of-state to pick up their deliveries in an effort to avoid the Commission's scrutiny.

In December of 1974, the Commission undertook collateral surveys in its Northeast, Southeast, and Western Regional Offices. This limited investigation revealed that quantities of gambling paraphernalia were being shipped into smaller cities and towns throughout the Commonwealth. The interstate shipment of punchboards and black-market lotteries thus appears to be a statewide problem.

⁴. See Appendix II.

c. The Relationship Between the Manufacturers

The operation uncovered by the Commission investigation appears to be highly organized on a national scale. The manufacture and distribution of gambling paraphernalia is carried on through a vast communication network connecting all the principal individuals engaged in this business. Many of the manufacturing firms have common ownership and some even share the same address. During the course of the investigation, the Commission learned that the majority of the manufacturing firms used the same interstate motor freight carriers. As soon as a sales representative or distributor was arrested, the firms immediately change, in unison, to another motor freight carrier. In addition, when the Commission subpoenaed four known manufacturers' sales representatives doing business in the Commonwealth, three of the four were represented at the hearings by the same York, Pennsylvania attorney, albeit the three were from diverse regions of the State as Berks, Chester and York Counties. Each of the three refused, on Fifth Amendment grounds, to state whether in fact they or someone else was paying for the attorney's services.

4. CRIMINAL VIOLATIONS

a. Pennsylvania Law

The Pennsylvania Crimes Code provides criminal sanctions for the activities of the manufacturers' sales representatives, independent distributors, and betting establishment proprietors. Under 18 C.P.S.A. §§5512 and 5513, any person who "sets up, or maintains, any lottery . . .", or ". . . sets up, maintains, sells, . . . or offers for sale . . . any punchboard . . ." is guilty of a first degree misdemeanor. Conviction for such an offense may result in imprisonment up to five years, and a fine not exceeding \$10,000. (See 18 C.P.S.A. §§1105(1), 1101(3)).

b. Federal Violations

There have been no successful federal prosecutions of the manufacturers of punchboards for their activities in shipping punchboards into states which prohibit the sale of punchboards. In 1972, a federal grand jury in Montana indicted four punchboard manufacturing companies and their principal officers for shipping punchboards and black-market lotteries to various locations in Montana. The United States District Court dismissed the indictments and the Ninth Circuit Court of Appeals affirmed that action, *United States v. Gibson Specialty Company*, 507 F.2d 446 (1974). The Court stated that the Government's case was defective because the Government failed to show:

that the manufacturer in some significant manner associated himself with the purchaser's criminal venture for the purpose of its advancement.

507 F.2d at 449. However, Chapter 96 of the federal crimes code, Racketeer Influenced and Corrupt Organizations (RICO), may provide a basis for federal prosecutions. The RICO statute makes it unlawful:

for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. 1962(b). Racketeering activity is defined as:

any act . . . involving . . . gambling . . . which is chargeable under state law and punishable by imprisonment for more than one year.

18 U.S.C. 1961(i) (a). Since Pennsylvania law, as previously discussed, clearly prohibits the distribution and sale of punchboards and black-market lotteries, and makes such activity punishable by imprisonment up to five years (18 C.P.S.A. §§5512, 5513), the RICO statute appears to permit federal prosecution for anyone acquiring or maintaining an interest in the manufacture and subsequent interstate transportation and sale of punchboards and black-market lotteries destined for Pennsylvania. Therefore, under RICO, the federal authorities apparently have jurisdiction over the out-of-state manufacturers for a prosecution in Pennsylvania.

c. Tax Evasions and the Loss of Revenue

The gambling operation described in this report, beside being illegal, appears to be costing the Commonwealth of Pennsylvania a vast loss of revenue. This revenue may be lost in the following five ways:

(1) The out-of-state manufacturers are not registered to do business in the Commonwealth, and thus do not pay any corporate income tax on income they generate in Pennsylvania by wholesaling punchboards and black-market lotteries.

(2) The Pennsylvania residents who act as manufacturers' sales representatives and independent distributors do not report on their state income tax returns the income they derive from their activities in the gambling operation.

(3) The Pennsylvania residents who act as manufacturers' sales representatives and independent distributors do not collect or report the 6% state sales tax on the sale of the gambling paraphernalia to the clubs or taverns.

(4) The Pennsylvania residents who play the unlawful games probably do not report their winnings on their state income tax returns.

(5) The Senior Citizens Tax Relief Fund is probably being reduced to the extent that the unlawful games compete with the legitimate lottery. The Bureau of State Lotteries has advised Crime Commission personnel that they have noted a decline in the number of social and fraternal clubs in smaller cities and towns that are not now willing to act as sales agents for the legitimate lottery. As this investigation has shown, those clubs are the ones most likely to deal with the illegal punchboards and lottery tickets. If the unlawful games were not available and punchboard and lottery players turned to the legitimate game, the Senior Citi-

zens fund would have been increased to some degree upwards to \$20,000,000.⁵

5. ADMINISTRATIVE AND LEGISLATIVE GOALS

Throughout this investigation, the Pennsylvania Crime Commission has worked with various state and federal agencies, and certain committees of the Pennsylvania General Assembly to help develop solutions to the problems caused by the unlawful gambling operation described in this report. These cooperative efforts and the matters yet to be resolved are discussed below.

a. Pennsylvania State Police

The Pennsylvania State Police, acting on information provided by the Crime Commission, conducted a series of raids in Berwick, Milton, and Sunbury in 1973. Thereafter, the State Police conducted independent surveillances, records checks, and interviews concerning the unlawful distribution of punchboards and black-market lotteries in Pennsylvania, producing nearly 60 arrests and confiscations of enormous quantities of gambling materials. During the spring, summer and autumn months of 1975, the Commission again provided detailed investigative information to the vice details of the State Police in York, Harrisburg and Lebanon, who then arrested six distributors and confiscated quantities of punchboards and black-market lotteries with a street market value of close to \$2,000,000.⁶

b. Pennsylvania Department of Revenue

In the course of the investigation, the Pennsylvania Crime Commission discovered several illegal sources of income derived in Pennsylvania by Pennsylvania residents and out-of-state corporations doing business in the Commonwealth. The Commission contacted the Pennsylvania Department of Revenue to discuss the tax consequences of this information as it concerned the manufacturers' sales representatives, independent distributors and retailers of punchboards and black-market lotteries.

Based on the information developed by the Crime Commission, the Personal Income Tax Bureau has already levied a tax assessment against one of Pennsylvania's largest independent distributors of gambling paraphernalia, who immediately capitulated, offering no protest to the Bureau's action. In addition, the

5. The Pennsylvania Lottery, after prize payouts and operating expenses realizes a net profit of approximately 40% of receipts. The \$20,000,000 amount is figured on 40% of \$53,000,000 in documented, estimated potential gross sales of unlawful gambling paraphernalia in the five county region for the years 1974 and 1975.

6. In March of 1975, a York man was caught with \$40,000 worth of punchboards and black-market lotteries. In April of 1975, a Harrisburg man was caught with \$350,000 worth of such gambling paraphernalia. In July of 1975, a Lebanon man was caught with \$200,000 worth of such gambling paraphernalia. In September of 1975, a York man was caught with \$20,000 worth of such gambling paraphernalia. In October of 1975, a Lebanon man was caught with \$40,000 of such gambling paraphernalia. In November of 1975, a Milroy man was caught with \$320,000 worth of such gambling paraphernalia. In March of 1976, a \$216,000 shipment was seized at a York motor freight carrier trucking terminal.

Corporate Income Tax Bureau is contacting the out-of-state manufacturers, to facilitate the proper collection of taxes from these firms. More taxes may be collected through the Sales and Use Tax Bureau, which is currently reviewing its statutes to determine if the sales tax is applicable to the sale of punchboards and black-market lotteries.

c. Federal Law Enforcement Authorities

During the course of the investigation, certain of the information developed by the Commission has been made available to the Office of the United States Attorney for the Middle District of Pennsylvania. That Office is examining this data to determine whether to initiate prosecutions against the out-of-state manufacturers of gambling paraphernalia under the RICO statute. No definitive action has been taken at this time.

d. Pennsylvania General Assembly

On September 10, 1976, a member of the Crime Commission staff testified before the House Sub-Finance Committee on the Lottery and State-Wide Gambling chaired by Representative Joseph Rhodes. This Committee received testimony on the Crime Commission's findings pertaining to the types and extent of illegal gambling paraphernalia used in Pennsylvania. Furthermore, Crime Commission personnel have been invited to testify before the Senate State Government Committee considering Senate Bills 456 (authorizing the use of slot machines in private clubs) and 829 (authorizing the game of bingo). The Crime Commission intends to present to the committees information on the extent of the problem created by the distribution and sale of punchboards and black-market lotteries.

6. CONCLUSIONS

a. The Unlawful Gambling Operation Exists Throughout Pennsylvania

Although the Crime Commission based its investigative effort in its Central Regional Office, evidence gathered in the Western, Northeastern, and South-eastern Offices substantiated the Commission's preliminary thesis that the business of selling punchboards and black-market lotteries flourishes on a state-wide basis. This investigation further revealed that the prime markets for this unlawful gambling activity are in Pennsylvania's small cities and towns, particularly in private social or fraternal clubs.

b. This Unlawful Gambling Operation is Draining The Commonwealth of Tremendous Amounts of Revenue

During the course of this investigation, the Commission discovered that the consequences of the illegal gambling operation transcend the state and federal criminal violations. The entire state-wide community is affected by the activities of the individuals involved in this gambling operation. As a result of their illegal activities, the Commonwealth loses tremendous amounts of revenue both

through the tax evasions perpetrated by the individuals and the unlawful games' competition with the state's legitimate lottery games.

c. Sales Generated by the Unlawful Games Rival the Legitimate State Lottery

For the fiscal year of 1974 (July 1, 1974 to June 30, 1975), the Bureau of State Lotteries reported gross sales of \$116,000,000. For the calendar year of 1974, the Crime Commission established a conservative estimate of gross sales of unlawful punchboards and black-market lotteries in Cumberland, Dauphin, Lancaster, Lebanon and York Counties to be \$30,000,000. Since this estimate is restricted to a region of the state that represents only 10% of the entire state population, the statewide gross sales of the unlawful games is probably much higher than the \$30,000,000 figure and conceivably could go as high as the gross sales of the legal lottery.

7. RECOMMENDATIONS

It is generally agreed among law enforcement officials that, in confronting a widespread unlawful gambling problem, the state has four alternatives to choose from to eliminate the problem: 1) continued prohibition coupled with strong law enforcement efforts; 2) decriminalization; 3) legalization of the particular form of gambling with operation by private licensed enterprise; 4) legalization of the particular form of gambling with government operation.

The Commission believes that the legislature must soon decide which of the available alternatives, or combination thereof, should be used to deal with punchboards and black-market lotteries. The Commission lacks the hard data necessary to make an unqualified recommendation to the legislature as to which of the alternatives would work best. However, the Commission has observed that law enforcement officials in Pennsylvania have, in this investigation, attempted to control the problem. The State Police have conducted raids and made arrests. The Pennsylvania Department of Revenue has sought tax assessments against tax evaders involved in this unlawful gambling operation. The United States Attorney for the Middle District of Pennsylvania is considering seeking federal indictments against some of the out-of-state manufacturers under the RICO statute.

Despite all of these efforts, it appears that the problem of the unregulated illegal lotteries and punchboards has continued. It seems likely that the problem will continue in the future as the identification of every seller and distributor of this gambling paraphernalia is virtually impossible, unless the Commonwealth expends extraordinary amounts of money and law enforcement time to combat the problem. The out-of-state manufacturers cooperatively use common carriers to ship these materials and switch to other carriers after arrests have been made in the effort to help the local distributors to avoid police detection. The local distributors also take measures to avoid police detection, in some instances driving out-of-state to pick up their shipments. Furthermore, the arrest of many of these distributors has thus far failed to deter the individuals from carrying on their unlawful enterprise. In this instance, strict law enforcement does not seem to be the optimum solution. Moreover, the history of gambling in America indicates that

harrassing legal tactics have never been successful in totally eliminating a gambling problem.

Occasionally, the public is aroused sufficiently to deal with some of the undesirable side-effects of illegal gambling such as corruption of law enforcement officials, but it has never supported vigorous, long-term suppression of gambling.⁷

Moreover, the social attitudes towards gambling have changed drastically in the past few years. Gambling, once considered immoral, was illegal in America for most of the 20th Century. As late as the early 1960's, outside of Nevada, state-countenanced gambling was almost entirely confined to track betting. Yet even during this period of prohibition, the anti-gambling laws that were enacted were generally not enforced or contained so many loopholes as to be unenforceable.⁸ Even when the state made a concentrated effort to crack down on illegal gambling, it rarely won the battle. In the past decade, however, legalized gambling has literally swept the nation. Today, 44 states have some form of legalized gambling and the kinds are growing. Legislation to permit new and expanded types of wagering is pending in 37 states.⁹ The most dramatic evidence of this shift in public opinion toward favoring the legalization of gambling is the recent New Jersey referendum where by a margin of three to two, the voters sanctioned casino gambling for Atlantic City. Furthermore, the National Gambling Commission has stated in its 413 page study, "Gambling in America," that "gambling is inevitable." According to the Commission, an overwhelming majority of Americans (more than 80%) regard gambling as an acceptable activity. Even more significantly, nearly two-thirds of the American people make wagers of one kind or another.¹⁰ In light of the New Jersey referendum and the findings of the National Gambling Commission, it could hardly be said that the public still views gambling as immoral or criminal.

Pennsylvania already has two forms of legal gambling—track betting and the lottery. The House Sub-Finance Committee on the Lottery and Statewide Gambling has decided to introduce a bill that would add bingo to this list. Nonetheless, numerous other forms of gambling, many with similar characteristics to the legal forms, are still illegal in Pennsylvania. Therefore, there exists in the Commonwealth an inconsistent policy toward gambling that only serves to further undermine the effort of the police to enforce existing gambling prohibitions. The legislature must immediately debate and decide the goals and feasibility of continued gambling prohibitions versus the other alternatives as they apply to punchboards and illegal lotteries.

7. D. Weinstein and L. Deitch, *The Impact of Legalized Gambling*, (New York: Praeger Publishers, 1974), p. 145.

8. *Ibid.*

9. "Gambling Goes Legit," *Time*, (December 6, 1976), p. 54.

10. *Id.* at 56.

APPENDIX I

Companies engaged in the manufacturing of punchboards and black-market lottery tickets:

Benmar Sales Company
633 South Plymouth Court
Chicago, Illinois

Peerless Products
633 South Plymouth Court
Chicago, Illinois

Empire Press, Inc.
644 Plymouth Court
Chicago, Illinois

Gibson Specialty Company
2222 South Michigan Avenue
Chicago, Illinois

Zurla Sales
2222 South Michigan Avenue
Chicago, Illinois

Douglas Press, Inc.
3223 Armitage Avenue or
1140-1150 North Kostner Avenue
Chicago, Illinois

Specialty Sales
810 Locust Street
Kansas City, Missouri

Universal Manufacturing Company
411 East Eighth Street
Kansas City, Missouri

Bernard Fisher Company
P.O. Box 5082
Charleston, West Virginia

Columbia Sales Company
302 Main Street
Wheeling, West Virginia

Free State Products
425 Eastern Avenue
Baltimore, Maryland

J and S Independent Company
16 Opal Drive
Plainview, New York

S.J.C. Manufacturing Corporation
333 West Merrich Road
Valley Stream, New York

Smith Printing Company
Cincinnati
Ohio

Tri-State Sales, Inc.
622 Elm Street
Manchester, New Hampshire

Werts Novelty Company
1520 West Fifth Street
Muncie, Indiana

World Wide Press, Inc.
110 Third Street
Great Falls, Montana

APPENDIX II

Benmar Sales

| | |
|---------------------|---------------------------|
| 1974 | 877 cartons |
| 1975 | <u>1,476</u> |
| Total | 2,353 cartons |
| Street Market Value | \$20,000,300 ¹ |

Free State Products

| | |
|---------------------|---------------|
| 1974 | 1,614 cartons |
| 1975 | <u>490</u> |
| Total | 2,104 cartons |
| Street Market Value | \$17,884,000 |

Gibson Specialty

| | |
|---------------------|--------------|
| 1974 | 217 cartons |
| 1975 | <u>338</u> |
| Total | 555 cartons |
| Street Market Value | \$ 4,717,500 |

Universal Manufacturing

| | |
|---------------------|--------------|
| 1974 | 297 cartons |
| 1975 | <u>200</u> |
| Total | 497 cartons |
| Street Market Value | \$ 4,224,500 |

Peerless Products

| | |
|---------------------|--------------|
| 1974 | 158 cartons |
| 1975 | <u>109</u> |
| Total | 267 cartons |
| Street Market Value | \$ 2,269,500 |

Empire Press

| | |
|---------------------|--------------|
| 1974 | 165 cartons |
| 1975 | <u>43</u> |
| Total | 208 cartons |
| Street Market Value | \$ 2,768,000 |

World Wide Press

| | |
|---------------------|--------------|
| 1974 | 108 cartons |
| 1975 | <u>37</u> |
| Total | 145 cartons |
| Street Market Value | \$ 1,232,500 |

1. Inventories performed of seized cartons of gambling paraphernalia by the Pennsylvania State Police and Crime Commission agents revealed that the average carton of punchboards or black-market lottery tickets has a street market value (potential gross sales) of \$8,500.

Total street market value was computed by multiplying the total number of cartons by \$8,500. "Potential gross sales" closely approaches actual gross sales in that the frequent re-order of this merchandise by the clubs and taverns indicates that most all punches and tickets are in fact sold.

| | | |
|---------------------|----------------------|-------------|
| | <i>Werts Novelty</i> | |
| 1974 | | 95 cartons |
| 1975 | | <u>35</u> |
| Total | | 130 cartons |
| Street Market Value | | \$1,105,000 |

| | | |
|---------------------|------------------------|------------|
| | <i>Specialty Sales</i> | |
| 1974 | | 4 cartons |
| 1975 | | <u>59</u> |
| Total | | 63 cartons |
| Street Market Value | | \$ 535,000 |

| | | |
|---------------------|-----------------------|------------|
| | <i>Columbia Sales</i> | |
| 1974 | | 10 cartons |
| 1975 | | <u>0</u> |
| Total | | 10 cartons |
| Street Market Value | | \$ 85,000 |

| | | |
|---------------------|------------------------|---------------|
| | <i>Total Shipments</i> | |
| 1974 | | 3,545 cartons |
| 1975 | | <u>2,787</u> |
| Total | | 6,332 cartons |
| Street Market Value | | \$53,822,000 |

C. RACKETEERING IN THE CASUALTY INSURANCE INDUSTRY*

1. INTRODUCTION

In its *Report on Organized Crime, 1970*, the Pennsylvania Crime Commission stated that criminal syndicates had become involved in defrauding insurance companies by means of fraudulent claims and illegal diversion of insurance company assets. ¹ Recent investigative efforts of the Crime Commission have shown that the infiltration of organized crime figures and other racketeers into legitimate insurance companies has attained a high degree of sophistication and reaches to the highest levels of the companies. Insurance companies involved in the property and casualty line appear to be very susceptible to such infiltration.

During 1975, property and casualty insurance nationwide lost \$4.01 billion in their underwriting operations. ² Part of this loss is attributable to the general state of the economy. An inflationary trend, coupled with a depressed economy, caused the securities held by insurance companies to decrease in value while the dollar value of claims increased.

Fraudulent and deceptive practices by insiders also contributed to the large losses suffered by some of the companies. The Crime Commission examined the

* This report was approved by the Commissioners and published in July, 1977.

1. Pennsylvania Crime Commission *Report on Organized Crime*, at 53-54 (1970).

2. Result of research conducted by A. M. Best Company, Park Avenue, Morristown, New Jersey, 07960.

records of five companies. Each of those companies suffered losses due to the fraudulent manipulations of persons connected with the companies. Four of the individuals associated with the companies had prior criminal records.

The Commission's investigation focused upon the surety practices of the companies. Surety bonds are used to guarantee that a contractor performs as promised. For example, if City "A" determined to construct a new municipal hospital, the general building contractor who promised to do the job for the lowest price would normally be given the contract. Before work could begin, the building contractor would be required to obtain a surety bond. For a fee, some insurance company, probably one specializing in surety bonds, would issue the bond. This bond would guarantee to City "A" that if the contractor failed to satisfactorily perform or failed to pay his subcontractors, the issuing insurance company would pay City "A" for the damages caused by the contractor's failure.

In the above example, the contractor would be called the principal and the individual or entity to whom the insurance company must pay if the contractor does not satisfactorily perform would be called the obligee. The terms principal and obligee are used throughout this report.

2. THE VICTIMS: FIVE INSURANCE COMPANIES

a. Overview

On March 8, 1975, the Pennsylvania Crime Commission learned that Financial Fire and Casualty Company of Fort Lauderdale, Florida, a wholly owned subsidiary of an insurance holding group known as Penn State Group, located in Lombs Bridge, South Fork, Pennsylvania, had been placed in liquidation by the Florida Insurance Department on February 21, 1975. The Commission was advised that there was some evidence that reputed organized crime figures had been involved with Financial Fire and Casualty. The Florida Department of Law Enforcement and the Florida Insurance Department advised the Crime Commission that one of the causes of the financial collapse of the Financial Fire and Casualty Company was unreported surety bonds.

A preliminary investigation was instituted by the Commission. As more information became available, it became apparent that Financial Fire and Casualty Company was not the only company which had been damaged by the issuance of unreported surety bonds. The Commission discovered that at least five companies had been victimized by this practice. Persons associated with the companies had issued numerous surety bonds. The persons issuing the bonds had received at least \$738,108 in payment and fees. Generally, the bonds were never reported to the respective companies and the money never was forwarded to the companies. Three of the companies involved in this situation ultimately collapsed.

The beneficiaries of this illegal practice of unreporting were the individuals who issued the bonds and their associates. Those individuals received and retained the premiums. The companies who were not aware of the bonds never received the money and thus, in some instances, would not honor the bonds. In those instances, the individuals who paid the money, received in exchange, only invalid bonds.

b. Wisconsin Surety Corporation

In April, 1975, the Wisconsin Justice Department advised the Commission that Michael Grasso, Jr.,³ had attempted to gain control of Wisconsin Surety Corporation⁴ by placing his associates John R. DePhillipo⁵ and Harry Rutenberg, Esq.,⁶ on the Board of Directors of Wisconsin Surety.

The Commission was advised that Michael Grasso, Jr., had led the Wisconsin Insurance Department to believe that he was acting as an agent for a potential investor into Wisconsin Surety. At that time, the Chairman of the Board of Wisconsin Surety was Morton Hulse, an insurance agent from Camp Hill, Pennsylvania. Hulse, doing business as Hul-Mar, Inc., was one of the principal writers of surety bonds for the corporation. Charles W. Schatzman, Jr., Hulse's partner in Hul-Mar, Inc., was Vice President of Wisconsin Surety.

Wisconsin officials learned from their preliminary investigation that Morton Hulse was the primary sponsor for Michael Grasso's involvement with Wisconsin Surety. As Morton Hulse and Charles Schatzman were the most accessible individuals in this matter, the Pennsylvania Crime Commission's investigation focused upon the Cumberland County insurance agency of Hul-Mar, Inc.

The Hul-Mar, Inc., agency was primarily involved with providing the type of surety bond called performance bonds to contractors. These bonds are issued by insurers in order to guarantee that the contractor will perform the work according to the specifications in the contract. Virtually all governmental bodies and agencies require this type of surety bond. Before issuing this type of bond, the insurer must ascertain the contractor's capability of performing the type of work specified as well as evaluate the contractor's financial condition. In Pennsylvania, it is required by law that no insurer issuing surety bonds exceed 10% of its own capital and surplus on any single bond.⁷ Thus, for example, if a company has a total capital and surplus of \$750,000, it may not issue any single bonds valued at over \$75,000. There is an exception to this rule for companies which have reinsurance agreements with other companies.⁸ In those instances, the insuring company may legally insure single surety bonds which exceed the 10% rule.⁹

3. Michael Grasso, Jr., is the nephew of Angelo Bruno, alleged Cosa Nostra leader in Philadelphia. He was one of the principal participants in a massive conspiracy to defraud the now defunct City Bank of Philadelphia, which was the subject of a Crime Commission report in 1971. "Report on Criminal Infiltration of Legitimate Business in Philadelphia," reprinted in Pennsylvania Crime Commission 1971-72 Report, at 90-108.

4. Wisconsin Surety Corporation, [hereinafter referred to as Wisconsin Surety], was placed in liquidation by the Wisconsin Insurance Department by means of a court order on March 26, 1975.

5. In 1971, DePhillipo was involved with Grasso as a co-purchaser of a tract of land in Delaware County known as the Karakung Tract.

6. Harry Rutenberg had represented Grasso as a business agent and as an attorney on numerous occasions in the past.

7. Act of May 17, 1921, P.L. 682, [hereinafter referred to as "The Insurance Company Law of 1921"], §661, 40 P. S. §832.

8. Reinsurance agreements are commitments between insurance companies to assume a portion of the total liability on a bond. Reinsurance protects the initial insuring company in cases where large claims are filed against the bond.

9. The Insurance Company Law of 1921, *supra*, §§661(a)-(c), 40 P. S. §§832(a)-(c).

Examination of the financial records of Hul-Mar, Inc., and its successor, H & S, Inc., revealed that the apparent primary function of these entities was to produce a high premium volume. Little attention was paid to the ability of the contractor to do the job or the financial condition of the contractor.

As early as April, 1974, Morton Hulse tried to form his own surety company with little success. In the Summer of 1974, the opportunity arose for Hulse to buy controlling interest in Wisconsin Surety Corporation. In September, 1974, Hulse assumed voting control of the majority of stock in Wisconsin Surety, but in order to do so, he had to borrow \$100,000 from two separate Pennsylvania banks.¹⁰

The primary reason that Wisconsin Surety became available to Hulse was that the volume of claims had already started to drain the company's assets. It appears that Hulse felt that the solution to the problem was to increase total premiums by doing a greater volume of business. Thus, in October, 1974, Hulse began doing business on a regular basis with Michael Grasso¹¹ and Lloyd Davidson.¹²

The clients that Grasso or Davidson¹³ brought to Hulse consisted primarily of poor risk contractors who were having difficulty in obtaining surety bonds. In other cases the Grasso connected clients needed a specific kind of bond which was of a high risk nature, such as a subdivision bond.¹⁴ 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.

By the end of 1974, Wisconsin Surety had lost its reinsurance agreements and had been removed from the United States Treasury list of approved insurers due to its poor financial condition. Hulse's hope of reviving Wisconsin Surety by means of premium volume had not succeeded. The company could not be saved without the infusion of new capital into the entity from additional investors. Grasso, in fact, devised various plans in an effort to save the company. Certain of the schemes are discussed in detail in a later portion of this report.

The Crime Commission's investigation regarding the business transactions among Grasso, Davidson and Hulse documented that at least 11 surety bonds were issued by Hulse on Wisconsin Surety on behalf of Grasso and/or Davidson. The face value of these 11 bonds was \$2,564,707.72, with an aggregate premium received in the amount of \$81,429.88. Five of these 11 bonds were not reported to Wisconsin Surety; the premiums were paid to the individuals and not forwarded to Wisconsin Surety.

10. Hulse in turn collateralized one of these loans with Wisconsin Surety Corporation stock as well as a Wisconsin Surety Corporation bond executed by himself as attorney in fact for Wisconsin Surety Corporation with one of the banks as obligee.

11. Hulse had first met Grasso on December 17, 1971, the same date Grasso was arrested by the Philadelphia District Attorney's Office on evidence transmitted by the Pennsylvania Crime Commission.

12. Davidson, a former Philadelphia tire salesman, was President of Galaxy Financial Services, Inc., a Miami, Florida, entity. The Pennsylvania Crime Commission had been aware that Grasso was conducting his business dealings through Galaxy Financial Services, Inc., for some time even though he was not an officer of that entity.

13. Grasso and Davidson used Galaxy Financial Services, Inc., as a conduit for their business activities. In addition, Grasso used J. Michaels Enterprises as a conduit. J. Michaels Enterprises was a fictitious name under which Grasso traded and he had used the alias "J. Michaels" on numerous occasions.

14. A subdivision bond is usually a guarantee to potential purchasers of undeveloped property of a guarantee to a municipality that the real estate developer will follow guidelines of the initial design and will comply with all local ordinances.

In addition to the bonds Hulse wrote for Grasso, another 42 surety bonds were written by Hulse on Wisconsin Surety, which subjected that corporation to a risk of \$1,879,870.33. Hulse's agency, Hul-Mar, Inc., received premiums of \$17, 323 on those bonds. Hul-Mar, Inc., neither reported the premiums or the bonds to Wisconsin Surety nor informed the contractors or the obligees who held the bonds that Wisconsin Surety had no knowledge of their issuance.

In order to understand the activities of Grasso, Hulse and others, a few selected Wisconsin Surety bond transactions will be discussed in detail.¹⁵

i. Allegheny Contracting Industries, Inc. Pittsburgh, Pennsylvania

This entity was a wholly owned subsidiary of Penn Star Corporation and was engaged primarily in the business of resurfacing highways. In the Fall of 1974, Allegheny Contracting Industries, Inc.,¹⁶ had bid \$521,004.72 on a contract with the Pennsylvania Department of Transportation (PennDOT), for highway improvements on a state highway in Moon and Crescent Townships, Allegheny County, Pennsylvania. Because Allegheny already had prior commitments on a long term contract which was bonded by their normal insurer, Allegheny experienced difficulty in obtaining a bond for this PennDOT contract.

In early December, 1974, the Penn Star Corporation Chairman of the Board, David Cohen, Esq., a Philadelphian, was returning to Philadelphia from Harrisburg by train. Upon boarding the train in Harrisburg, Cohen met Grasso, whom he had known previously, and was introduced to Ralph Puppo.¹⁷ During the course of the conversation, Cohen mentioned that he was having difficulty in obtaining a surety bond for Allegheny. Grasso informed Cohen that he could obtain surety bonds for Cohen for a fee.

The legal premium normally charged for a \$521,000 bond is approximately \$3,737. On December 11, 1974, Cohen, at the direction of Grasso, had a check issued in the amount of \$15,000, as payment for the bond. The check was made payable to an entity which has served as a front for some of Grasso's financial dealings.¹⁸ On December 13th, the Hul-Mar, Inc., agency issued a Wisconsin Surety performance bond to Allegheny for the \$521,004.72 PennDOT contract.

Hul-Mar, Inc., received \$6,000, of the \$15,000 paid by Cohen, for issuing the bond. An examination of the records shows that the money was forwarded to

15. On June 8, 1976, Grasso, Hulse, Schatzman, Davidson and Ralph Puppo were indicted by a federal grand jury in Harrisburg, Pennsylvania. The case was presented to the grand jury by the staff of the United States Department of Justice, Philadelphia Strike Force on Organized Crime. The charges were based upon information gathered jointly by the Crime Commission, the Philadelphia Strike Force, the United States Postal Inspection Service and various other state and federal agencies. The defendants were charged with mail fraud and illegal racketeering activity.

John DePhillipo and Harry Rutenberg were named as unindicted co-conspirators in the indictments. Schatzman entered a plea of guilty and on March 14, 1977, Grasso and Hulse were found guilty. Davidson and Puppo were acquitted of all charges.

The release of this report was delayed until the trial was completed.

16. Hereinafter referred to as Allegheny.

17. Ralph Puppo was formerly a real estate salesman in the office of Michael Grasso in 1971. Puppo is the son-in-law of Angelo Bruno.

18. The entity, One Roosevelt Boulevard Corporation, was formed by Lawrence Rutenberg, Esq., son of Harry Rutenberg, Esq.

Hul-Mar, Inc., by Galaxy Financial Services, Inc., Miami, Florida, a Grasso "front" entity. The money was deposited to Hul-Mar, Inc.'s, account on December 16th.

After Cohen had paid Grasso for the surety bond, he notified the President of Allegheny, Joseph Cascardo, that a bond had been obtained for the PennDOT contract. Not until the bond was provided, was Cascardo aware of the name of the surety company or the name of the issuing agency.

Since Wisconsin Surety's reinsurance agreements were still in effect until the end of December, 1974, the risk on this Allegheny bond was shared by four other insurance companies, with Wisconsin Surety holding the smallest amount.¹⁹ The bond was then forwarded to PennDOT by Hul-Mar, Inc.

Following its normal procedure, PennDOT reviewed this Allegheny bond with the Pennsylvania Insurance Department.²⁰ From this review, PennDOT learned that one of the reinsuring companies was not licensed to do business in Pennsylvania and notified Hul-Mar, Inc., to obtain a new reinsurer or the Allegheny bond would be rejected. It appears that Hulse then contacted Grasso at his Miami office and informed him of the problem. Subsequently, Hulse directed one of his employees to mail Grasso a reinsurance acceptance form for the Allegheny bond, as Grasso was going to obtain a new reinsuring company. Within a few days, the bond was presented again to PennDOT with a reinsurance acceptance form to take the place of the unlicensed reinsurer.

This reinsurance acceptance form was executed on behalf of Summit Insurance Company of New York, by Daniel Culnen, a New Jersey agent. Culnen, who had numerous prior dealings with Grasso to provide surety bonds on behalf of Summit Insurance Company, was, at the time, under a federal court order not to write any more bonds. Thus, the reinsurance agreement and the bond that it supported were both invalid.

Additional bonds were provided Allegheny in March and July of 1975, by Hul-Mar, Inc. The premiums and fees, in the amount of \$34,316.61, were shared by Hulse, Grasso and Puppo. This amount was in excess of the normal premium by over \$14,000. Neither Grasso nor Puppo were ever licensed insurance agents or brokers.

In addition to deceiving Allegheny and PennDOT as to the validity of the bond, the invalid guarantee also damaged Allegheny in that the company was unable to obtain a release of final payment. Normally, both the obligee of the bond and a representative of the surety company inspect the completed work in order to determine if the specifications in the contract were fulfilled. If the work is

19. The capital surplus of Wisconsin Surety was approximately \$500,000; therefore, the largest risk Wisconsin Surety could assume was approximately \$50,000.

20. Several years ago, before there was any review procedure, an invalid surety bond was issued to the Pennsylvania General State Authority. The invalid bond was provided by the Philgo Insurance Agency, 1909 South Broad Street, Philadelphia, Pennsylvania, to the General State Authority, on the construction of a dormitory for West Chester State Teachers College in 1969. The issuing agent was Nick D'Andrea as attorney in fact for Prudence Mutual Casualty Company of Chicago, Illinois, an entity in which Nick D'Andrea had a financial interest. This bond was written without having proper reinsurance and exceeded the limitation requirement of Prudence Mutual.

On July 28, 1971, Edward Wuensch, an admitted fence for stolen securities, identified Nick D'Andrea as a Philadelphia mobster. "Hearings Before the Permanent Subcommittee on Investigation of the Senate Committee on Government Operations," 92nd Congress, 1st Session, Part 3, at 851 (1971).

judged to have been completed satisfactorily, the final payment on the contract will be made. Normally, this final payment will represent the majority of the contractor's profit margin. Since Allegheny was relying upon an invalid bond, it was unable to obtain a final release of payment. Its cash flow was severely hampered and funds had to be borrowed in order to meet payroll and other overhead expenses at prime plus interest rates.²¹

ii. Greenbriar Development Company, Milford, Pennsylvania

This entity was created as a real estate development corporation for property in the Pocono mountains. In order to guarantee the local municipality that the filed plan of development was followed and that local ordinances were obeyed, a subdivision bond was required by the Township of Dingman, Pike County, Pennsylvania. Dingman Township required that the face value of the surety bond be at the full cost of the development.

In October, 1974, one of the principal officers of Greenbriar Development Company,²² Davis R. Chant, contacted several individuals in the insurance industry and other real estate developers in search of a surety bond. One person contacted by Chant was fellow real estate developer Daniel Hirtenstein of New York City, who agreed to assist him. Hirtenstein contacted Howard Meyers and Al Mack of United Coverage Consultants, 124 East 39th Street, New York City, New York.²³

Meyers contacted the offices of Galaxy Financial Services in Miami, Florida, in search of a surety bond for Greenbriar. Meyers emphasized that the bond was needed on or before December 17, 1974, in order to be presented to the Dingman Township Commissioners at their monthly meeting.

Several weeks went by without any contact between Chant and Hirtenstein. On about December 16, 1974, Hirtenstein telephoned Chant and advised him that the bond would cost approximately \$30,000 and would be provided the next day in Harrisburg, Pennsylvania. Chant was further advised that Hirtenstein would meet him the following afternoon in the lobby of the Holiday Inn Town Hotel in Harrisburg, where the bond would be provided. Chant advised Hirtenstein that he was unable to come up with the money on such short notice and Hirtenstein stated that he would provide a portion of the premium for which Greenbriar could later reimburse him. Hirtenstein also told Chant that the premium would be paid in the form of a cashiers check for \$17,438, payable to Galaxy Financial Services and also to bring \$12,500 in cash to Harrisburg.

On the next day Chant and two other principals of Greenbriar chartered a private plane and flew from East Stroudsburg to Harrisburg. Chant met Hirtenstein

21. Testimony of Joseph Cascardo, President, Allegheny Contracting Industries, Inc., before the Pennsylvania Crime Commission on March 31, 1976, p. 59.

22. Hereinafter referred to as Greenbriar.

23. United Coverage Consultants, i.e., Howard Meyers and Al Mack, obtained two other Wisconsin Surety Corporation surety bonds through Grasso, who in turn induced Morton Hulse to issue these bonds. United Coverage Consultants received \$18,500 in fees for the issuance of Wisconsin Surety bonds to Smith Plumbing and Heating, Inc., of Fort Walton Beach, Florida, and to Alagia Masons, Inc., of North Bergen, New Jersey. Neither bond was reported to Wisconsin Surety and no premium was forwarded.

in the lobby of the hotel and was introduced to Mack, Meyers and Lloyd Davidson of Miami, Florida. Chant was led to believe that Davidson was the underwriter for the surety company, as Davidson requested financial statements on Greenbriar and asked additional questions regarding the real estate development project.

While the individuals were awaiting the delivery of the surety bond, Chant was requested by Meyers to accompany him into the men's room in the hotel. Inside the men's room, Meyers requested the \$12,500 in cash which Chant handed over in a brown paper bag. After returning to the lobby of the hotel, Davidson informed the others that the bond was on its way.²⁴

Morton Hulse directed one of his employees, Eric L. Moss,²⁵ to deliver the Greenbriar bond in the amount of \$435,950 to Davidson at the Holiday Inn Town Hotel. Although Moss had never met Davidson, he had conversed with him over the telephone regarding other bonds. After the bond was delivered to Davidson, it was turned over to Hirtenstein in return for the cashier's check in the amount of \$17,438. Upon receipt of the bond, Chant and his associates returned to Dingman Township for the conclusion of the Commissioner's meeting and the Wisconsin Surety bond was provided to the Dingman Township Commissioners. Not until the bond was provided by Hirtenstein to Chant, was he or any of his associates aware of the name of the insuring company.

Pennsylvania Crime Commission examination of the Hul-Mar, Inc., financial records failed to indicate any premium received for the Greenbriar bond. Several billing notices were mailed from Hul-Mar, Inc., to Greenbriar requesting a premium payment; however, as Greenbriar had already paid \$29,938 for the bond whose legal premium was approximately \$3,578, it refused to make any additional payments. Since Hul-Mar, Inc., did not receive any premium payments, it did not report the issuance of this bond to Wisconsin Surety.

c. American Empire Insurance Company

Morton Hulse and Charles Schatzman, Jr., in addition to being agents for Wisconsin Surety, were also agents for American Empire Insurance Company of Watertown, New York.²⁶ On January 9, 1975,²⁷ George Fowler, the bond manager for Empire, telephoned Morton Hulse and informed him that Empire had decided to withdraw from the contract surety bond field and would only continue to provide the low risk licensing bonds involving small amounts of money.

24. Testimony of Davis R. Chant before the Pennsylvania Crime Commission on February 10, 1976, pp. 25-26, *passim*.

25. Prior to working for Hul-Mar, Inc., Moss had been employed by Wisconsin Surety Corporation. He later returned to Wisconsin Surety and eventually was appointed President of the corporation.

26. Hereinafter referred to as Empire. Hulse and Schatzman obtained the agency agreement in October, 1972.

27. On February 10, 1975, Fowler began working for Wisconsin Surety.

Although Hulse and Schatzman were aware that Empire had withdrawn from the surety bond market, this fact did not prevent them from issuing bonds under the seal ²⁸ of Empire. Examination by Pennsylvania Crime Commission agents of the Hul-Mar, Inc., financial records and other investigative efforts by Crime Commission agents in conjunction with federal authorities, revealed that Hulse and Schatzman issued a total of 72 bonds on Empire in the eight weeks between February 26, 1975, and April 22, 1975. These 72 bonds exposed Empire to a risk of \$6,290,736.16. A total of \$174,813.52 in premiums was collected by Hulse and Grasso. None of these bonds were reported to Empire and all of the premiums were apparently retained by Hulse and Grasso. Several of the unreported Empire bonds were written to replace Wisconsin Surety bonds after Wisconsin Surety was declared insolvent; however, one-half of the Empire unreported bonds were written upon initial request by contractors.

Some of the major Empire transactions will be discussed in detail, *infra*.

i. Sage Corporation Hallandale, Florida

As a result of negotiations between Michael Grasso, Jr., and Lloyd Davidson, representing Galaxy Financial Services, Inc. ²⁹ and George Wuagneux, President, and Donald Granda, Vice President of Sage Corporation, a real estate development firm, a secondary mortgage and accompanying note were executed in favor of Galaxy on January 24, 1975, in the amount of \$300,000. The purpose of this transaction was to guarantee any insurance company that if any claims arose against bonds provided to Sage Corporation, through Galaxy, payment would be made on the claims up to \$300,000 by Sage Corporation and not the insurance company that issued the bond. This document was an attempt to entice a surety to issue bonds for Sage Corporation. In reality, however, this secondary mortgage was worthless as collateral to any insurance company which issued bonds, because it was already recorded in favor of Galaxy.

From March 20, 1975, to April 17, 1975, Morton Hulse and Charles Schatzman issued a total of 33 release of lien bonds ³⁰ against Empire for Sage Corporation. These Empire bonds were filed in the Broward County Court in Florida, in order to release judgments filed by subcontractors against Sage Corporation for work performed on various construction jobs. The release of the judgments permitted Sage Corporation to sell its properties, condominiums, etc., without paying off the subcontractors. The Empire bonds, in theory, guaranteed the subcontractors that they would be paid regardless of what Sage Corporation did with its assets.

The total face value of these bonds was \$479,864.64 and premiums were paid to Galaxy in the amount of \$108,000. Of the total premiums paid by Sage Cor-

28. Empire did not remove the Hulse and Schatzman powers of attorney and did not physically reclaim and take possession of its corporate seal until April 17, 1975.

29. Hereinafter referred to as Galaxy.

30. A release of lien bond is a type of bond wherein the issuing insurance company guarantees payment of a lien or judgment if the contractor fails to pay.

poration, \$88,000 was retained by Galaxy and \$20,000 was forwarded to Hul-Mar, Inc.³¹

In addition to the fact that Empire had ceased underwriting contract bonds some 70 days before the first Sage Corporation bond was issued, Hulse and Schatzman had no authority whatsoever to write release of lien bonds without approval of the Empire home office. Moreover, neither Grasso, Davidson, Hulse nor Schatzman were licensed to conduct insurance business in the State of Florida.

The fact that these Empire bonds were invalid was brought to light by a licensed Empire agent in Florida who reported their existence to Empire. Subsequently, these 33 release of lien bonds were removed from the dockets of the Broward County Court.

ii. B. Bornstein and Son, Inc. Philadelphia, Pennsylvania

On April 17, 1975, the very day that Empire was removing its powers of attorney and corporate seal from the possession of Morton Hulse in Cumberland County, Lloyd Davidson was presenting a performance bond in the amount of \$564,450, to B. Bornstein and Son, Inc.,³² in Philadelphia. This bond was executed and dated on April 17, 1975, over the signature of Morton F. Hulse.

Bornstein had been awarded a contract from the Planned Parenthood Association of Southeast Pennsylvania for the renovation of their building located at 1220 Samson Street in Philadelphia. Bornstein had problems in obtaining a performance bond for this contract. Eventually, Bornstein was referred to Galaxy by Philadelphia contractor Pat D'Andrea.³³ Barry Bornstein, principal officer of the company, telephoned Lloyd Davidson in Florida on or about April 16, 1976, Davidson flew from Florida to Philadelphia and presented Barry Bornstein with an Empire bond. A premium of \$6,330 was paid by Bornstein to Galaxy and in addition, a \$3,000 check was issued by Bornstein to Lloyd Davidson as a "consulting fee for work performed in obtaining further bonding" for Bornstein.

Subsequent to the work being performed by Bornstein, several subcontractors placed claims against Bornstein for failure to receive payment for the work that had been performed. The obligee, Planned Parenthood Association of Southeast Pennsylvania, forwarded these claims to Empire. Empire in turn, notified the Planned Parenthood Association of Southeast Pennsylvania, that they had no knowledge of this bond and stated that the issuing agent, Morton Hulse, had no authority to issue this bond.

31. The Hul-Mar, Inc., share of the Sage Corporation premiums was forwarded by means of a \$5,000 Galaxy check made payable to Hul-Mar, Inc., and a \$15,000 Galaxy check payable to Morton Hulse.

32. Hereinafter referred to as Bornstein.

33. Pat D'Andrea, whose full name is Pasquale D'Andrea, is a Philadelphia concrete contractor. D'Andrea had purchased a condominium in Florida for over \$2 million in 1973, from a company with which Michael Grasso is associated.

Pat D'Andrea is a second cousin of Nick D'Andrea, an alleged racketeer. Nick D'Andrea was one of the principals in the issuance of an invalid surety bond in 1969, to the General State Authority for the Commonwealth.

d. American Fidelity Fire Insurance Company

By May of 1975, Wisconsin Surety had been placed in liquidation and Empire had removed their corporate seal and powers of attorney from the offices of Hul-Mar, Inc. As Hul-Mar, Inc., was left without any bonding authority, the danger existed that contractors would stop doing business with them for other lines of liability insurance.

In searching for a new source of bonds, Schatzman negotiated on June 6, 1975, an agency agreement between American Fidelity Fire Insurance Company³⁴ and a corporate entity of Hulse's and Schatzman's, called H & S, Inc.³⁵ The agreement³⁶ limited H & S, Inc., to a maximum risk of \$50,000 on any single bond unless the bond was guaranteed by the Small Business Administration. If the bond was guaranteed, H & S, Inc.'s, limitation was increased to \$200,000 on any single bond.

Once the agency agreement had been signed, Schatzman began issuing Fidelity bonds to replace Wisconsin Surety and Empire bonds previously issued, as well as to write new bonds without any regard to the limitations within the agency agreement. From June 6, 1975, up to at least August 25, 1975, Schatzman and Hulse issued or caused to be issued a total of 138 surety bonds in the name of Fidelity, all of which were either unauthorized by or unreported to the company. Premiums were collected on these 138 surety bonds in the amount of \$270,131.69 and the bonds subjected Fidelity to a total risk of \$7,760,744.72.

H & S, Inc., attempted to replace previously issued bonds with Fidelity bonds. On or about July 28, 1975, H & S, Inc., and Sage Corporation entered an agreement wherein H & S, Inc., would issue 156 release of lien bonds with a total value of \$2,822,924.47 in return for the sum of \$200,000.³⁷ In actuality, H & S, Inc., issued 76 release of lien bonds for Sage Corporation. Thirty-three of these Fidelity bonds replaced the previously written Empire bonds.

Hulse and Schatzman led Sage Corporation to believe that they were licensed to do business in the State of Florida and had the authority to issue Fidelity release of lien bonds. Neither of these representations was correct. Hulse and Schatzman also acted to deceive Fidelity. Fourteen Fidelity bonds were issued to Allegheny Contracting Industries, Inc., (three of the 14 were replacements for previously issued Wisconsin Surety bonds). The total value of the bonds was \$1,183,486.23 and a premium of \$12,301.61 was charged.³⁸ The 11 new Fidelity bonds were in excess of the \$50,000 limitation placed upon H & S, Inc., and four of the eight excessive Fidelity bonds contained an annotation on the accompanying power of attorney which stated that the bonds were guaranteed by the Small Business Administration. The 11 bonds and the premiums were not reported to

34. Hereinafter referred to as Fidelity.

35. Hulse was removed as a corporate officer with H & S, Inc. Schatzman was named President and two employees were named as corporate officers of H & S, Inc.

36. Not until after the agreement was signed did Fidelity have any knowledge that Morton Hulse was associated with H & S, Inc.

37. On July 31, 1975, Sage Corporation wired \$200,000 to the Minersville Bank, Minersville, Pennsylvania, for a certificate of deposit and the use of H & S, Inc.

38. As Michael Grasso had initiated the contact with Allegheny, he received the sum of \$4,500 in the name of J. Michaels Enterprise for his services.

Fidelity and the Small Business Administration did not approve any of the four Fidelity bonds for Allegheny.

e. Summit Insurance Company of New York

Summit Insurance Company of New York,³⁹ had agency agreements with C & H Agency, Inc., for the territory of Pennsylvania and New Jersey and with a Florida agency for the territory of Georgia and Florida. One of the principals of C & H Agency, Inc., was Daniel Culnen of Bloomfield, New Jersey, who had become acquainted with Michael Grasso, Jr., socially during 1972-1973. In approximately September, 1973, Grasso suggested a business arrangement with Culnen. Culnen would apply for an agency agreement with Summit and Grasso would provide him with enough clients to make the agency agreement profitable for Culnen. When Culnen appeared hesitant, Grasso added that financial backing for such an agreement might be obtained from Pat D'Andrea.⁴⁰ In October, 1973, a \$250,000 letter of credit was issued by Continental Bank, Philadelphia, Pennsylvania, on behalf of P. D'Andrea in favor of Summit. Subsequently, a contract was executed between Summit and C & H Agency, Inc., granting power of attorney to Daniel Culnen.

Grasso obtained bonds from Culnen for his own clients as well as for clients of associates of his in Florida for which Grasso, according to Florida authorities, accepted fees. Up until July of 1974, when Summit became alarmed as to the latitude granted in their contract, Grasso obtained seven Summit bonds totaling \$1,217,700 for American Eastern Development Corporation;⁴¹ three Summit bonds totaling \$663,154 for his friend John R. DePhillipo; and a Summit bond totaling \$350,000 for One Roosevelt Boulevard Corporation. In addition, Grasso obtained reinsurance from Culnen for three Wisconsin Surety bonds issued by Morton Hulse. These were not reported to Summit⁴² and had a total face value of over \$200,000.

Until May, 1974, the Continental Bank letter of credit upon which the C & H Agency, Inc./Summit contract was based, was collateralized solely by the personal signature of Pat D'Andrea. In May, 1974, C & H Agency, Inc., began to collateralize the letter of credit in stages with certificates of deposit. By February 4, 1975, the date Summit was placed into receivership, the letter of credit was fully collateralized by certificates of deposit in the amount of \$250,000. On April 14, 1975, the letter of credit was cashed by the New York State Superintendent of Insurance based upon \$422,090.40 in losses suffered by Summit on bonds written by C & H Agency, Inc.

39. Hereinafter referred to as Summit. The company was ordered into liquidation by the Supreme Court of New York on February 4, 1975.

40. D'Andrea, a Philadelphia contractor, was not a licensed broker nor was he associated with any insurance agency. Nevertheless, he assisted Grasso in this instance and referred the B. Bornstein Company to an insurance agency in which Grasso appears to have a hidden interest, Galaxy.

41. American Eastern Development Corporation was a Delaware corporation with which Grasso had business dealings as early as May, 1971.

42. All three of the reinsurance commitments issued by Culnen on behalf of Summit were in January and February, 1975. Culnen was under federal court order, dated September, 1974, to refrain from issuing any further bonds or commitments on behalf of Summit.

C & H Agency, Inc., was not totally controlled by Grasso. For example, on November 14, 1974, Lloyd Davidson forwarded to Culnen a request for a performance bond in excess of \$500,000 for Smith Plumbing and Heating Company, Inc., of Fort Walton Beach, Florida. On November 27, 1974, Culnen returned Davidson's request stating that he was not interested in providing any bonding for Smith Plumbing and Heating Company, Inc., as the company was presently undergoing reorganization pursuant to Chapter XI of the Bankruptcy Act.⁴³ On December 11, 1974, Morton Hulse issued a Wisconsin Surety performance bond for Smith Plumbing and Heating Company, Inc., at the request of Grasso. As Smith Plumbing and Heating is a Florida corporation, "the actual performance bond indicated its address as 1833 South Broad Street, Philadelphia, Pennsylvania. The address provided Smith Plumbing and Heating was, in fact, the office of a long-time friend and a former business associate of Grasso's.

Summit's problems were not caused solely by the C & H Agency, Inc., bonds and subsequent claims, but also by bonds issued in Florida. Summit's agency in Florida was Equity Underwriters of Miami, Florida.

Summit's problems in Florida resulted from a series of complicated transactions. In early 1973, the International Surety Underwriters Agency, Miami, Florida, had a contract to be the agent for a Fort Lauderdale, Florida, company.⁴⁴ The principals of International Surety Underwriters were Norman Gerwitz, Bernard Kane,⁴⁵ and Daniel Cohen. Two other individuals were associated with International Surety Underwriters, Louis Mayo, Jr.⁴⁶ and Peter Haritos,⁴⁷ as "sub-agents." By June of 1973, International Surety Underwriters had lost its contract with Financial Fire and Casualty Company because it failed to report surety bonds and to remit premiums to the company. In the Fall of 1973, Kane, Mayo and Haritos left International Surety Underwriters and became involved with Alvin Terrill Associates, an insurance agency in Miami, Florida.

43. 11 U.S.C. §§701-799.

44. Neither Wisconsin Surety nor Morton F. Hulse were authorized to conduct insurance business in the State of Florida.

45. The company was the Financial Fire and Casualty Company, Fort Lauderdale, Florida. The financial affairs of that company are discussed in the next section of this report.

46. Bernard Kane, formerly of Philadelphia, was on federal probation for issuing an invalid bail bond in a narcotics case and failing to remit the premium to the insurance carrier. Kane was also convicted in 1970, in Philadelphia Court of Common Pleas for counterfeit use of power of attorney. Kane died of a heart attack in December, 1976, at his home in Florida.

Kane had a long history of involvement in apparently peculiar transactions. In the late 1960's, he was employed as an agent by Philgo Insurance Agency, Philadelphia. Philgo provided an invalid surety bond to the General State Authority for the Commonwealth in 1969. The issuing agent for that bond was accused racketeer Nick D'Andrea.

Kane was also an associate of Grasso's. Kane introduced Morton Hulse to John DePhillippo who, in 1971, introduced Hulse to Grasso.

47. Louis Mayo, Jr., formerly of Philadelphia, has been convicted for interstate transportation of stolen securities.

48. Peter Haritos, formerly of Cherry Hill, New Jersey, has been convicted for assault and was formerly associated with a racketeer who was a reputed member of the Angelo Bruno La Cosa Nostra family.

At Alvin Terrill Associates, Kane, Mayo and Haritos negotiated and received an agency agreement with Summit. Within two months, officials of Summit became aware of the prior criminal backgrounds of Kane and Mayo. Summit cancelled its agreement with Alvin Terrill Associates and negotiated a contract with Equity Underwriters.

Information received during interviews shows that Summit officials were unaware that Equity Underwriters had a verbal agreement to supply surety bonds to Alvin Terrill Associates. Thus, Kane and Mayo, acting through Alvin Terrill Associates, continued to have a source of surety bonds in the Florida-Georgia territory. Pertinent information shows that Norman Gerwitz, through International Surety Underwriters, also maintained a source of surety bonds by submitting clients to Alvin Terrill Associates, who in turn submitted these clients to Equity Underwriters. Documentation discovered by the Florida Department of Law Enforcement showed that the premiums on bonds issued by the companies controlled by the aforementioned individuals varied from 5% up to 40% of the face value of the surety bond.⁴⁹

Summit cancelled its contract with C & H Agency, Inc., and Equity Underwriters in July, 1974. It appears that this similarity of cancellation dates was no mere coincidence, as in many cases the two agencies supplied bonds to the same companies. For example, according to information received from Florida authorities, Louis Mayo, Jr., operated out of the offices of Galaxy and in several instances, operated under the name of C & H Agency, Inc., of Florida.

How these individuals worked in concert with one another can be demonstrated in the issuance of 21 Summit bonds by Alvin Terrill Associates in September, 1973. These bonds, with a total face amount of \$4,028,250.75 guaranteed the completion of a 10 year real estate development project called Buenaventura Lakes in Florida. The project developers requested the bonds from Norman Gerwitz of International Surety Underwriters. Gerwitz in turn contacted Peter Haritos of Equity Underwriters and Haritos in turn contacted Kane and Mayo of Alvin Terrill Associates. A premium of 5% of the face value was charged for these 21 Summit bonds and, of the \$221,410 in premiums, Summit received \$47,000, with the remainder being divided among the various middlemen. Of these 21 bonds, six were reported to Summit in December, 1973, and the remainder were reported in May, 1974. The last 15 were reported only after the Florida State Division of Land Sales had rejected the bonds because they exceeded Summit's limitation for one project.⁵⁰ All 15 bonds were defective in that the expiration date was stated as August, 1974, when in fact, the project was not expected to be completed until 1983.

f. Financial Fire and Casualty Company

Financial Fire and Casualty Company⁵¹ was one of several insurance companies within the Penn State Group, Lambs Bridge, South Fork, Pennsylvania.⁵² The entire Penn State Group was operated by Evan C. Stineman, Jr.

49. The premium normally charged during this time period for a surety bond was 1% of the face value of the bond for the first \$100,000 and \$6.50 for every \$1,000 of face value thereafter.

50. Summit's limitation as of 1973, was approximately \$862,000.

51. Hereinafter referred to as Financial Fire.

52. Financial Fire was only licensed to do business in the State of Florida.

In January, 1973, Stineman provided an agency agreement on behalf of Financial Fire to International Surety Underwriters as a result of negotiations between Stineman and Norman Gerwitz and Bernard Kane. By June, 1973, over 250 Financial Fire surety bonds had been written by International Surety Underwriters. The aggregate face amount on the bonds was \$13.8 million. At least 38 of these bonds were unreported to Financial Fire. No proof of the existence of these 38 bonds was found in the records when the Florida Insurance Department took possession, as a result of the February 21, 1975, court ordered liquidation, of Financial Fire. There was no record that any premiums had been remitted. The total face amount of the unreported bonds was \$7,878,285.85; the actual amount of premiums received on these unreported bonds cannot be documented at this time.

Peter Haritos acted as a "sub-agent" of International Surety Underwriters. One of the individuals for whom Haritos obtained surety bonds was Harry L. Walsh of Mount Vernon Agency, Inc., Atlanta Georgia. ⁵³ On at least three occasions, Walsh was provided Financial Fire surety bonds which totaled \$548,763. These bonds were not reported by International Surety Underwriters to Financial Fire.

By May, 1973, Financial Fire had become aware of unreported bonds issued by International Surety Underwriters and the circumvention of the limitation on one bond by the illegal practice known as "bond splitting." ⁵⁴ Immediately, Financial Fire attempted to cancel their agency agreement with International Surety Underwriters, however, International Surety Underwriters would not comply with the request until Financial Fire obtained a court order on June 14, 1973. During this time period, the Florida Insurance Department was conducting an examination of Financial Fire to determine the company's financial condition as of June 30, 1973. The report of this examination indicated a slight increase in direct losses; however, the majority of claims on the bonds written by International Surety Underwriters had not been filed as of the date of the audit.

The insolvency of Financial Fire as of February 21, 1975, was not based entirely on the bonds written by International Surety Underwriters. Heavy losses were incurred in other liability lines during 1974, and there was a decline in value of the assets held by Financial Fire. ⁵⁵ However, according to officials of the Florida Insurance Department, claims had been filed as of August, 1976, against Financial Fire in the approximate amount of \$55 million, of which almost \$19 million were related to surety bonds. Although all claims probably will not be honored, legitimate claimants are unlikely to receive full dollar amount on their claims, as the assets of Financial Fire totaled no more than \$1.3 million.

53. Harry L. Walsh and eight other individuals were indicted by a federal grand jury in Atlanta, Georgia, in 1976, for defrauding Interstate Fire Insurance Company, Chattanooga, Tennessee, in the issuance of financial guaranty bonds in the amount of \$1,856,000. The case has not yet been brought to trial.

54. Bond splitting is the practice whereby the amount of the contract exceeds the limitations of the issuing company and rather than issuing one bond for the full amount, several bonds are issued in smaller amounts to circumvent the legal limitations. It contravenes §661 of the Insurance Company Law of 1921, *supra*, 40 P.S. §832.

55. The decline in Financial Fire assets involve numerous complex transactions which have not been fully examined to date.

g. The Overview Revisited: The Grasso Conglomerate

According to information developed by the Crime Commission, when Grasso initially visited the offices of Wisconsin Surety in Madison, Wisconsin, on approximately February 27, 1975, he indicated his desire to obtain control of Colonial Assurance Company, King of Prussia, Pennsylvania, and the Roger Williams Insurance Company, Portland, Maine.

The evidence shows that Grasso, using individuals and companies as "fronts," took action to implement his plan to gain control of Colonial Assurance company. The Commissioner's examination of the Hul-Mar, Inc. financial records documented a paper transaction involving the transfer of \$40,000 from this agency relating to the Colonial Assurance Company.⁵⁶ The \$40,000 was shown as a receivable account in the name of Colonial Assurance Company. The credit was balanced by a series of debit entries. These debit entries were identified as a \$25,000 note payable "Rutenberg" and three certificates of deposit in the amounts of \$5,000 in the names of H & S, Inc., Nadia Hulse,⁵⁷ and Charles Schatzman. The Commission also obtained an unsigned and undated agreement from the Minersville Safe Deposit and Trust Company stating that Charles Schatzman would obtain the exclusive agency for issuing surety bonds on behalf of Colonial Assurance Company. In return, Schatzman would financially assist a Philadelphia contractor in gaining control of Colonial Assurance Company. Although un-named in this document, the contractor was John R. DePhillipo.

The Crime Commission also investigated the alleged plan to gain control of the Roger Williams Insurance Company. It was learned that Roger Williams Insurance Company was a subsidiary of North East Insurance Company of Portland, Maine. Officials of North East Insurance Company confirmed that Michael Grasso, Jr., and Harry Rutenberg had entered into negotiations in January, 1975, for the purchase of the Roger Williams Insurance Company. Included in these negotiations were proposals for the sale of another North East Insurance Company subsidiary, Allied Surety Company of Pittsburgh, Pennsylvania. Allied was only licensed to do business in Pennsylvania and was approximately the same size financially as Wisconsin Surety. Negotiations apparently broke down by the beginning of 1975, when the Maine Insurance Department requested biographical data on Grasso, which was never supplied. However, a new purchaser was offered by Harry Rutenberg as late as July, 1975, for Allied Surety Company. The draft of the purchase agreement showed the new purchaser to be Daniel J. Culnen. No final agreement was reached. (Culnen has denied any knowledge of being a proposed purchaser of Allied Surety Company.)

From the various sources of information developed in the Crime Commission investigation, it appeared that Grasso planned to form a small conglomerate of insurance companies capable of issuing surety bonds by means of a tax free ex-

56. Hul-Mar, Inc., General Journal, September, 1975.
No money was actually transferred by this paper transaction.

57. Nadia Hulse is the wife of Morton F. Hulse.

change of stock between the owners of Wisconsin Surety stock and the owners of Allied Surety Company stock. This plan was formulated around the first week in February, 1975, and by February 27, 1975, when Grasso was in Madison, Wisconsin, his plan was altered to include Colonial Assurance Company as a source of reinsurance for the merged entities of Allied Surety Company and Wisconsin Surety.

On March 4, 1975, Grasso appeared before the Board of Directors of Wisconsin Surety in Madison, Wisconsin. According to the corporate minutes and information received by officials of the Wisconsin Justice Department, Grasso represented himself as a financial consultant and stated that he represented three investors, Harry Rutenberg, his son, Lawrence, and John R. DePhillipo. Grasso informed the Board of Directors that Harry Rutenberg would immediately invest \$50,000 with an additional \$200,000 coming from the three investors after a recapitalization of Wisconsin Surety stock. (The evidence shows that the source of the funds would be Grasso himself, acting through several corporate entities.) At no time was there any mention of the proposed exchange of stock or merger of Wisconsin Surety.

The Pennsylvania Crime Commission traced the \$50,000 that was initially deposited by Rutenberg into Wisconsin Surety to the checking account of Galaxy in Miami, Florida. This \$50,000 found its way into the Galaxy account by means of two treasurers checks of Continental Bank in Philadelphia, in the amounts of \$10,000 and \$40,000, issued to John R. DePhillipo. One of DePhillipo's corporations, J. G. Construction Company, received the \$50,000 as a result of an interest free loan from P. D'Andrea, Inc.⁵⁸

Of the eight members of the Board of Directors of Wisconsin Surety present on March 4, 1975, at least three had knowledge of the proposed merger with Allied Surety Company. The three were Morton F. Hulse, Charles W. Schatzman, Jr., and Edward C. First, Jr., who was the attorney for Hul-Mar, Inc., H & S, Inc., and Morton Hulse. According to the Wisconsin Surety minutes of the Board meeting, after Grasso presented his proposal, Edward First moved for a corporate resolution to adopt Grasso's proposal; however, the subsequent vote resulted in a 4-4 tie. Agreement was later made on an amendment to First's motion providing for the presentation of alternative proposals at the next shareholders meeting.

The eventual collapse of Grasso's plan was the result of three factors: 1) the failure of Grasso to supply biographical data to the Maine Insurance Department in relation to the Allied Surety Company; 2) the poor financial condition of Wisconsin Surety and the follow-up investigative efforts of Wisconsin officials in the State's Insurance and Justice Departments which substantiated a fraudulent manipulation of Wisconsin Surety;⁵⁹ and 3) the breakdown in negotiations between

58. P. D'Andrea, Inc., is the corporate entity under which Pat D'Andrea conducts his concrete construction business.

59. Wisconsin Justice officials utilized two Pennsylvania Crime Commission reports, *Report on Organized Crime* (1970) and the *1971-72 Report*, for background information of Michael M. Grasso, Jr.

John R. DePhillipo and the Pennsylvania Insurance Department regarding the purchase of Colonial Assurance Company, ⁶⁰ caused by the failure of DePhillipo to provide the Pennsylvania Insurance Department with satisfactory proof of the source of his funds.

3. CONCLUSIONS

Of the five insurance companies examined in this investigation, their authorized agents and the unlicensed associates of these agents subjected the five companies to risks on surety bonds in excess of \$30.8 million. The insurance companies were totally unaware of the existence of these surety bonds. The Crime Commission's investigation documented that these individuals received \$738,108.09 in fees and "premiums". This money was not forwarded to the insurance companies. The actual amount that Grasso, Hulse, Kane, Mayo and others received is undoubtedly much higher.

Although the investigation centered around the racketeers involved, their successful manipulations would not have been possible without assistance of non-racketeer individuals. The avarice of certain of the licensed insurance agents and of a number of supposedly legitimate businessmen greatly contributed to the success of the schemes.

The defrauding of insurance companies, policyholders and beneficiaries is commonly called "white collar crime." The majority of such cases attract little public attention, as most citizens do not feel that they personally have been harmed when an insurance company is defrauded. The truth of the matter is that insurance fraud hurts every citizen. In many cases, the citizen may be forced to pay a higher premium. If, as illustrated by this report, a casualty insurance company is defrauded and ultimately goes bankrupt, additional tax dollars must be spent to complete the construction if the contractor defaults.

4. RECOMMENDATIONS

To propose additional legislation or regulations to prevent the recurrence of the types of irregularities highlighted in this report is a most difficult task. Indeed, statutes proscribing most of the individual actions discussed in this report are already on the books. For example, when an agent of an insurance company accepts money in return for an enforceable obligation of the company, and the money is not forwarded to the company, the agent has committed "theft by failure to make required disposition of funds received", (18 Pa. C.S. §3927). If the amount involved is over \$2,000, this is a felony of the third degree (18 Pa. C.S. §3903(a)), punishable by up to seven years imprisonment (18 Pa. C.S. §1103(3)), or a \$15,000 fine (18 Pa. C.S. §1101(2)).

Many businesses, including insurance companies, and many responsible spokesmen at all levels of government are calling for less regulation of com-

60. On March 31, 1975, the Pennsylvania Crime Commission advised the Pennsylvania Insurance Department of DePhillipo's past association and business dealings with Michael M. Grasso, Jr.

mercial dealings in general. This report shows, however, that some individuals and businesses are unwilling to abide by the present rules. It appears that there still is a need for some enforcement devices.

The Crime Commission believes that implementation of the following recommendations would represent a workable balance between government regulation and free enterprise.

a. Penalties

The basic regulatory provisions are already in the Insurance Company Law of 1921. However, many of the sanctions that were written into the Law in 1921, when the insurance industry was basically a gentlemen's club, are unrealistic in light of the evidence that the industry is now becoming a popular target for manipulation. It is recommended that the legislature, working with the Department of Insurance, examine the feasibility of increasing the penalties for violations of the criminal provisions of the insurance laws.

Increased jail sentences would hopefully be a major deterrent. However, the matter of sentencing is discretionary with the trial court. In many instances, courts have taken the attitude that a convicted "white collar" criminal has already "suffered enough" from the "shame" and "public exposure" of indictment, trial and conviction.

Recently there appears to have been a change in this attitude and some courts have imposed substantial jail sentences on "white collar" criminals. Regardless of the appropriateness of jail sentences for "white collar" criminals, the structure of fines imposed for such violations should be changed so that the potential fine is truly a deterrent, not just an annoying added cost of doing business. Surely a \$1,000, \$2,000, or even \$10,000, or \$20,000 fine is inadequate to deter an individual who can make many times that amount from his illegal activity.

The Crime Commission therefore recommends that all criminal provisions dealing with financial transactions and business fraud call for a *mandatory* fine of at least the amount by which the wrongdoer benefited, with discretion allowed to the trial judge to impose an additional fine up to a stated limit of some multiple of that amount.

b. Require Reinsurance

A surety company generally cannot expose itself to any one risk in excess of 10% of its capital and surplus unless the excess is covered by means of reinsurance. ⁶¹ However, the statute also provides for exceeding the limitation if the insuring entity is protected by means of co-suretyship with a licensed corporation; ⁶² by a mortgage in favor of the insuring company; ⁶³ or by conveyance of property in trust to the insuring company. ⁶⁴ These provisions are so broad that

61. The Insurance Company Law of 1921, *supra*, §661, as amended June 22, 1931, P.L. 613, §1, 40 P.S. §832 (subparagraph (a) of second paragraph).

62. *Id.* (Subparagraph (b) of second paragraph.)

63. *Id.* (Subparagraph (d) of second paragraph.)

64. *Id.* (Subparagraph (c) of second paragraph.)

they leave a wide area for manipulation; at the same time, the provisions may not be adequate to protect the company. For example, an insurer can receive a mortgage from a contractor to support the bond; however, if the mortgage is not a first mortgage, it may place the insurer in a secondary or tertiary lien position with very little equity.

A large insurance company does not have to worry about the 10% limitation because of its financial strength. A smaller company, one with a capital and surplus of \$1 million or less, does have to be concerned with this limitation.

The Crime Commission has seen that the mid-sized insurance companies rely primarily on reinsurance for risks they cannot fully cover. The basic problem lies in the fact that all of the provisions of exceeding the limitation can be contrived or falsified. However, reinsurance from a licensed insurer is the most difficult to fabricate and the soundest financial protection.

The Crime Commission recommends that the experts in the Pennsylvania Insurance Department examine the possibility of restricting the exceptions to exceeding the 10% limitation for the smaller casualty insurers solely to valid reinsurance from licensed insurers.

c. Statutes of Limitations

The Pennsylvania Crime Commission investigation detailed in this report was conducted over a period of 18 months, and certain aspects are still under investigation at this time. ⁶⁵ Financial and white collar crimes of this magnitude require thorough auditing of accounts and time consuming efforts to trace sources of frauds. The crimes are often not discovered until they have caused the ruination of a company many months or even years after the illegal transactions themselves were consummated. Once initiated, the investigative efforts are often delayed by procedural protection guaranteed to the subjects of an inquiry.

Generally, the crimes that would be called financial or white collar crimes, have a statute of limitations of two years. ⁶⁶ If fraud or breach of a fiduciary obligation is a "material element" of the crime, the limitations period can be extended by one year from the date of discovery, but not longer than five years. ⁶⁷ The limitations period for forgery is five years. ⁶⁸ Thus, while the limitations period can be just as long for crime involving fraud as for forgery, whether it is or not depends on the fortuitous event of its discovery.

The Crime Commission believes that justice would be better served if this anomaly were removed from the statute. Surely, if arson, burglary, robbery, forgery and perjury are all considered serious enough to be classified as "major

65. The Pennsylvania Crime Commission informed local prosecuting authorities of its findings in August, 1976. Members of the Organized Crime Strike Force in Philadelphia, also consulted with the local prosecutor. It was decided that since an indictment had already been brought against Hulse, Grasso, Schatzman, Puppo and Davidson in federal court on mail fraud and related charges stemming out of these transactions (M.D. Pa. Criminal Nos. 76-80-1 through 5), a state prosecution might be barred by 18 Pa. S.C. §§109-111. See also *Commonwealth v. Studebaker*, 362 A.2d 336 (Pa. Super. 1976).

66. 42 Pa. C.S. §5552(a).

67. 42 Pa. C.S. §5552(c) (1).

68. 42 Pa. C.S. §5552(b).

offenses" and assigned a limitations period of five years, regardless of when they are discovered, " and the statute for crimes involving fraud can run as long if discovery of the crime comes four years after its commission, no sensible end is served by shortening the period if discovery of the fraud comes sooner.

The Crime Commission recommends that the list of "major offenses" having a five year statute of limitations under 42 Pa. C.S. §5552(b) be extended to include at least the following when at least \$5,000 is involved:

18 Pa. C.S. §911 (relating to corrupt organizations).

18 Pa. C.S. §3922 (relating to theft by deception).

18 Pa. C.S. §3923 (relating to theft by extortion).

18 Pa. C.S. §3927 (relating to theft by failure to make required disposition of funds received).

18 Pa. C.S. §4108 (relating to commercial bribery).

18 Pa. C.S. §4111 (relating to fraud in insolvency).

Section 611 of the Insurance Company Law of 1921 (40 P.S. §832).

Any other crime, wherever defined, a material element of which is fraud or breach of a fiduciary obligation.

In the alternative, the Crime Commission recommends that 42 Pa. C.S. §5552(c) (1) be amended to extend the period of limitations when fraud is an element of the crime by two additional years (instead of the present one), with a limit on the total permissible extension of four years (instead of the present three).

d. Private Civil Remedy

Often the imminent threat of a substantial civil penalty is more of a deterrent to undesirable conduct than the remote threat of criminal prosecution (especially when the criminal penalties allowable or likely to be imposed are miniscule in relation to the wrongdoer's profit from his crime). The federal antitrust, civil rights, copyright, and securities laws are all excellent examples. All in effect reward the injured party for "prosecuting" his own case civilly rather than to put the burden on the government to do so. Through the mechanism of pecuniary damages, the private wrong and the public crime are both redressed in the same action with less expense to the taxpayers. It also answers the industry's plea not to be burdened with a mass of new rules and regulations.

The Crime Commission recommends that the legislature and the Insurance Department formulate legislation to create a private right of recovery by an insurance company against any person who fraudulently causes it to become subject to any risk for which it is not compensated, whether or not the company actually suffers a pecuniary loss, and with

69. 42 Pa. C.S. §5552(b).

damages equal to the amount of risk to which the company was exposed, not just the premium or fees to which it would normally be entitled to insure such a risk.

e. Assigned Risks

Many of the contractors who purchased surety bonds at exorbitant rates told the Crime Commission that they realized they were high risk customers for insurance. Being aware of this, they were quite satisfied to pay extra premiums or finder's fees to obtain the bonds that would keep them in business. Unfortunately for them, the middleman with whom they were dealing were not delivering a valid product.

The Crime Commission recognizes that real estate developers and construction contractors are usually knowledgeable in the ways of the world. People who transact business in cash in men's rooms are not in need of state protection from high insurance rates. However, an honest businessman should not be forced into this kind of situation merely because there is no place in the current rate structure for the kind of risk he represents.

Section 15 of the Insurance Rate Act of 1947 ⁷⁰ would allow the formation of an assigned risk pool for casualty insurance and guarantee bonds. ⁷¹ Such a pool would help prevent the kinds of abuses outlined in this report by allowing a willing buyer to deal directly with a willing seller to obtain a valid product at a realistic price, then eliminating so-called "finders" and other unscrupulous middlemen who cheat their customers and create distortions in the marketplace.

The Crime Commission recommends that the Insurance Department and responsible representatives of the insurance industry work together to devise a regulatory framework to implement Section 15 of the Insurance Rate Act to allow insurance companies to charge high risk and marginal customers higher rates for surety bonds.

EPILOGUE

Michael Grasso, Ralph Puppo, Lloyd Davidson, Morton Hulse and Charles Shatzman, Jr., were indicted by a federal grand jury on charges of pocketing over \$535,000 in premiums on fake bonds representing \$12.9 million in insurance coverage. Grasso, Hulse and Shatzman were found guilty.

70. Act of June 11, 1947, P.L. 538, No. 245, §15, 40 P.S. §1195.

71. Act of June 11, 1947, P.L. 538, No. 246, §2, 40 P.S. §1182.

II Abuses of the Public Trust

A. Macing and Extortion in The Pennsylvania* Department of Transportation

1. INTRODUCTION

A politician's ability to dispense favors has been described as being at the core of political power. It is a common practice, which is rooted deep within our society, that those individuals who are faithful to a particular political party will be rewarded with patronage positions, state contracts and other favors.

The report that follows examines such practices, and demonstrates how they resulted in widespread and systematic abuses in the Pennsylvania Department of Transportation (PennDOT). The basis of this report focused on the concept that individuals and organizations doing business with or employed by PennDOT must often pay a political and/or financial price for that privilege. The Crime Commission discovered that, in many instances, employees of PennDOT, as a requirement of their employment, were expected to yield 2% of their weekly wages to the political party in power. The Crime Commission also discovered that lessors of equipment to PennDOT were often expected to pay 10% of the money they received under their contract with PennDOT to the political party in power. Several of these lessors and employees were often threatened with loss of their contracts or jobs for failure to make the required payments.

As part of this report, the Crime Commission has made various recommendations for the reform of the Pennsylvania Department of Transportation. Included in these recommendations are provisions that would extend Civil Service protection to PennDOT employees and ban all political activity and collection of political contributions on PennDOT property. These recommendations also suggest that lessor payment checks should be computed in the Comptroller's office and mailed directly to the lessor, and that competitive bidding should be required on PennDOT contracts. The Commission also made a proposal for the public financing of political campaigns.

Following this report is an epilogue which sets forth the results of various criminal proceedings relating to the Commission's findings.

2. ORIGIN OF THE INVESTIGATION

During the summer of 1974, the Select Committee on State Contract Practices, Pennsylvania House of Representatives, headed by Representative Patrick Gleason, held public hearings regarding political fund raising practices and alleged kickbacks to contractors leasing heavy equipment to the Commonwealth. The Select Committee, known as the Gleason Committee, went out of existence when the session of the General Assembly ended in November, 1974. However, the Gleason Committee issued a final report indicating evidence of widespread and systematic abuses in the Pennsylvania Department of Transportation (Penn-

* This report was approved by the Commissioners and published in July, 1978.

DOT). This report covered complaints of corrupt and unlawful practices including allegations that lessors of equipment to PennDOT were forced to make payments to various political and governmental officials; that PennDOT employees in certain enumerated counties were subjected to macing; and that in regard to these issues, there were violations of the State Election Code, including the failure of political parties to file accurate financial disclosures.

The Committee submitted its findings to three United States Attorneys' Offices in Pennsylvania and to numerous District Attorneys in the Commonwealth with the recommendation that the investigation be continued by various law enforcement agencies.¹ In March, 1975, the Attorney General of the Commonwealth requested the Crime Commission to consolidate one of its own pending investigations with materials already gathered by the Gleason Committee and by the Pennsylvania Department of Justice. Pursuant to a March 27, 1975 resolution, materials from the Gleason Committee were turned over to the Crime Commission. Thereafter, the Crime Commission embarked upon the task of following up the information received and pursuing its own investigation in an effort to provide a fair perspective of PennDOT activities within the Commonwealth.

3. PROBLEMS OF THE INVESTIGATION

By the time the factual information was turned over to the Crime Commission, many of the allegations which had been publicly aired by the Gleason Committee had become a sort of "cause celebre". As might be expected, Commission investigators encountered many problems in their attempts to conduct a thorough

1. Included among the investigations conducted were the following:

a) In April, 1975, the United States Attorney's Office for the Western District of Pennsylvania, opened a federal investigation focusing on allegations that private contractors doing snow removal work for PennDOT were pressed to make political contributions to the Democratic Party by PennDOT supervisory personnel. A federal investigating grand jury was convened for this purpose. One probe particularly focused on Westmoreland County. Individuals were indicted. Other probes are continuing. [See Epilogue]

The United States Attorney's Office for the Middle District of Pennsylvania conducted full investigations of PennDOT irregularities in three counties. These ended with convictions in Monroe and Lackawanna Counties, and a decision not to prosecute in Tioga County. Preliminary investigations were made in the other 29 counties in the Middle District.

b) Mercer County District Attorney started an investigation in January, 1975. He petitioned for a special grand jury in June, 1975. He was assisted by the Pennsylvania State Police.

c) Cambria County District Attorney initiated an investigation in early 1975. No evidence of criminal activity was found.

d) Montour County District Attorney did not conduct a probe, claiming lack of adequate resources. Since the Gleason Report indicates possible problems in the County, PennDOT conducted its own investigation. Following this six month study, the Secretary of Transportation stated that there was no evidence of any criminal activity.

e) Delaware County District Attorney launched a probe in August, 1975. No official statement has been made concerning the progress of the investigation.

f) Butler County District Attorney empanelled an investigating grand jury in 1975, which led to indictments.

g) Westmoreland County District Attorney conducted an investigation and declared that he found no evidence of prosecutable offenses. Federal investigation led to federal indictments.

h) Monroe County had been investigated by the Justice Department prior to the release of the Gleason Report. Subsequent federal indictments were obtained.

non-partisan investigation. Many of the witnesses who appeared to have knowledge of certain events and whose cooperation was critical to a thorough investigation were uncooperative. Frequently, key witnesses informed Commission investigators that they had already been interviewed by numerous other investigative and law enforcement authorities and they could no longer afford the time or money to cooperate with another investigation.

Adding to the difficulty of the investigation was the fact that a number of the alleged offenses occurred several years ago. In several instances, Commission agents discovered that vital records had been lost or destroyed since the date of the alleged event. Moreover, the ability of the witnesses to recall particular details had been eroded by the passage of time. Ultimately, Commission agents were confronted with the problem that, in many of the matters, the statute of limitations had already run by the time the matters were referred to the Commission. Thus, the possibility of bringing criminal charges against the responsible individuals had been lost.

4. SCOPE OF THE INVESTIGATION

Because of the problems encountered in attempting to conduct a thorough investigation, the Commission determined to concentrate on a limited area, focusing on an examination of the practices of PennDOT in three Counties, Cambria, Montour and Allegheny. In Cambria County, Cambria local law enforcement authorities had not prosecuted any individuals and no federal indictments had been obtained for alleged violations of the criminal laws. In Montour County, neither the County nor federal authorities had conducted a probe. A PennDOT investigation of PennDOT practices had found no evidence of criminal offenses. The third County chosen, Allegheny, was a County in which the Commission had independently initiated an inquiry into the practices of PennDOT.

The basis of the Gleason Report regarding PennDOT focused on the conclusion that, in far too many cases, individuals and organizations doing business with the State must pay a political and/or financial price for that privilege. The Gleason Committee found what it considered a systematic and widespread pattern of political kickbacks and payoffs which were extracted from individuals and organizations doing business with the Commonwealth. Thus, the Crime Commission focused its attention on allegations of extortion and bribing in PennDOT.

While criminal prosecutions may emanate from this investigation or the various other probes into PennDOT's activities, such is not the primary purpose of this report. Rather, the Commission's object is to focus on the problems learned from the operations of PennDOT and to make recommendations to the administrative and legislative bodies interested in the proper functioning of governmental agencies in Pennsylvania. The Commission believes that the focus should not only be on the individuals involved in the alleged instances of wrongdoing (for the individuals change and the party designations change, but illegal practices continue), but should include an examination of the system itself. Without changes in the system, the problems that the Commission discovered in this investigation will continue.

5. SCOPE OF THE PROBLEM

Allegations of illegal fund raising activities in enumerated PennDOT districts may be summarized as follows:

a. Leasing of Equipment

In most cases, PennDOT does not own snow removal or special heavy equipment. Rather, PennDOT leases this equipment from private individuals or companies who most often provide both the equipment and the personnel to operate it. These are non-bid contracts.

Historically, in order to obtain a contract to lease heavy equipment to the State, the lessor must obtain political sponsorship. In return for the State contract, the lessor must make substantial monetary contributions to the Party or risk non-renewal of the contract by the State. In some cases, the lessors are required to pay to the Party a percentage of the rental payments they receive from PennDOT.²

b. Personnel

In the past, when an individual sought employment with PennDOT, he or she was required to first seek the sponsorship of the County Chairperson corresponding to the political Party of the incumbent administration in Harrisburg. Without Party approval, PennDOT employment generally was impossible. In most cases, the applicant was required to be a registered member of said Party, might be asked to make a political donation, and might be required to secure a stated number of new Party registrants. Once these prerequisites were filled, in return for the appointment, the new employee would be required to pledge to the Party a certain percentage of his or her weekly paycheck. If an employee failed to make this percentage payment, the worker might be terminated, transferred to an undesirable work situs, or be severely restricted in the amount of overtime hours granted.

When there is a change in administration in Harrisburg following an election, the de facto management and control of the PennDOT districts fall to the County Chairperson of the corresponding political Party. All PennDOT employees who were registered in the Party of the former administration were required to change

2. Such conduct may be in violation of the Anti-Macing Statute, April 6, 1939, P.L. 16 §1, 25 P.S. 2374:

It shall be unlawful for any political committee or any member, employe or agent thereof, or for any public officer or employe, or any other person whatsoever, *directly or indirectly*, to *demand* from any public officer, subordinate or employe, holding any office or position of honor, trust or profit under this Commonwealth, or otherwise engaged or employed in the service of the Commonwealth, or employed by, or in any way engaged in the service of, any political subdivision, or from any person receiving any public assistance whatsoever from the Commonwealth or the United States, directly or through employment on public works, or any person, association, or corporation desiring or having a contract with, or a certificate, license or permit from, the Commonwealth or any political subdivision, any assessment or percentage of any money or profit, or their equivalent in anything of value, with the understanding, express or implied, that the same may be used or shall be used for political purposes: Provided, however, that nothing in this act contained shall be construed to prohibit voluntary contributions to any political committee or organization for legitimate political and campaign purposes to the extent such contributions are not prohibited by law.

Other criminal charges would include bribery and extortion.

CONTINUED

1 OF 3

their registrations to the Party of the new administration if they wished to keep their jobs. The percentage payments continued, only now they were remitted to a different Party coffer.

6. FINDINGS

a. Cambria County

i. Leasing of Equipment

Allegations

The Gleason Report alleged widespread extortion of PennDOT lessors of equipment in Cambria County. The Report stated that under the present State administration, certain lessors have been required to contribute 10% of their earnings from PennDOT to the Democratic Party in order to continue leasing equipment to PennDOT. ³ Accordingly, the Crime Commission focused on the years 1971 and 1972, when the new administration was allegedly establishing its "political collections" network within the PennDOT structure. If the allegations proved true, the more contractual services let by PennDOT, the more income received by the county political party in power. ⁴

3. None of the information received by the Gleason Committee pertaining to Cambria County was received under oath.

4. On August 2, 1972, the PennDOT District Engineer for the district covering Cambria County was interviewed by the Justice Department. The District Engineer furnished the following figures from his records to compare the volume of contractual services within the various counties in his district:

| <i>District</i> | <i>Road Miles</i> | <i>1969/70</i> | <i>1970/71</i> | <i>1971/72</i> |
|--------------------------------------|-------------------|----------------|----------------|----------------|
| 9-1—Bedford County | 828 | \$ | \$113,658.10 | \$103,710.77 |
| 9-2—Blair County | 454 | | 153,156.64 | 100,648.27 |
| 9-3—Cambria County | 654 | 590,435.74 | 577,496.99 | 469,965.14 |
| 9-4—Fulton County | 368 | | 18,527.70 | 26,947.05 |
| 9-5—Huntingdon County | 686 | | 69,713.39 | 80,009.61 |
| 9-7—Somerset County | 949 | 370,243.88 | 327,038.89 | 327,224.83 |
| City of Johnstown— Cambria County | | | 32,008.86 | 17,065.30 |

It was pointed out that in the years 1969/70, 1970/71, and 1971/72, Cambria County, with 654 road miles, spent \$220,191.86, \$250,458.10, and \$142,740.31 more for contractual services than the next highest County, Somerset, a County which has substantially more road miles. The District Engineer stated he had no ready explanation why Cambria County had to depend more on contractual services than other counties. He added that it would be advisable to investigate and determine whether contractual services were being abused in Cambria County.

Percentage Contributors

The Crime Commission obtained cancelled checks and microfilms of cancelled checks payable to the Cambria County Democratic Committee from various lessors and the Committee's bank. ⁵ These checks from the lessors to the Committee were compared with the PennDOT payments received by those lessors during the first few months of 1971. This reconciliation demonstrated the existence of a correlation between the amount the lessors contributed to the Democratic Party and the amount the lessors received from PennDOT in payment for leased equipment. In many cases, the political contributions equaled exactly 5% of the State remittance. The following chart illustrates this relationship.

PennDOT Pay Period 1/31/71

| <i>Lessor</i> | <i>PennDOT Payment to Lessor</i> | <i>5% of Payment</i> | <i>Lessor Contribution to Cambria County Democratic Comm.</i> | <i>Date of Contribution Check</i> |
|---------------|--|--------------------------|---|---|
| Lessor A | \$3,711.50 | \$185.58 | \$185.00 | 2/05/71 |
| Lessor B | 816.00 | 40.80 | 41.00 | 2/04/71 |
| Lessor C | 1,056.00 | 52.80 | 52.80 | 2/03/71 |
| Lessor D* | 1,310.00 | 65.50 | 65.50 | 2/03/71 |
| Lessor E | 768.00 | 38.40 | 38.40 | 2/03/71 |
| Lessor F | 800.00 | 40.00 | 40.00 | 2/16/71 |

*Lessor D received a total payment of \$4,730.00. This amount represented work done during four pay periods at the end of 1970 and the beginning of 1971. The figure \$1,310.00, represents work done in 1971.

PennDOT Pay Period 1/27/71

| | | | | |
|----------|------------|----------|----------|---------|
| Lessor A | \$7,175.00 | \$358.75 | \$358.75 | 2/19/71 |
| Lessor G | 8,237.00 | 411.85 | 411.85 | 2/18/71 |
| Lessor B | 1,516.00 | 75.80 | 75.00 | 3/03/71 |
| Lessor C | 2,550.00 | 127.50 | 127.50 | 2/19/71 |
| Lessor H | 1,343.00 | 67.15 | 67.00 | 2/18/71 |
| Lessor D | 2,420.00 | 121.00 | 121.00 | 2/19/71 |
| Lessor I | 4,120.00 | 206.00 | 206.00 | 2/18/71 |
| Lessor J | 1,840.50 | 92.03 | 90.00 | 2/20/71 |
| Lessor J | 1,040.00 | 52.00 | 52.00 | 2/18/71 |
| Lessor K | 2,768.00* | 138.00 | 138.00 | 2/25/71 |

*This total represents payment for work done during the pay periods of 1/13/71 and 1/27/71.

5. The Crime Commission's investigation was based on its analysis of official PennDOT records, financial information received from the County Democratic Committee and financial records subpoenaed from various banks and lessors of equipment. In addition, the Crime Commission conducted interviews and private hearings to receive the statements of lessors, PennDOT employees and staff members of the Democratic Committee.

PennDOT Pay Period 2/10/71

| | | | | |
|----------|------------|----------|----------|---------|
| Lessor K | \$3,925.00 | \$196.25 | \$196.25 | 3/10/71 |
| Lessor C | 2,740.00 | 137.00 | 137.00 | 3/10/71 |
| Lessor H | 2,591.00 | 129.25 | 129.00 | 3/10/71 |
| Lessor F | 1,100.00 | 55.00 | 52.00 | 3/12/71 |

PennDOT Pay Period 2/24/71

| | | | | |
|----------|------------|----------|----------|---------|
| Lessor B | \$1,344.00 | \$ 67.20 | \$ 67.00 | 3/23/71 |
| Lessor H | 1,482.00 | 74.10 | 70.00 | 3/17/71 |
| Lessor L | 3,395.00 | 169.75 | 169.75 | 3/18/71 |
| Lessor F | 1,280.00 | 64.00 | 64.00 | 3/15/71 |

The extent of the payments may be illustrated by focusing upon a particular pay period. The Commission, at random, chose the January 27, 1971, period. Based upon available records, at least 40% of the lessors in Cambria County made a percentage contribution to the Cambria County Democratic Committee for that pay period. These lessors received 35% of the monies paid to lessors by PennDOT during this period. ⁶

The Crime Commission has found that not all lessors made percentage contributions, thus indicating that making kickbacks was not the only way to do business with PennDOT. However, a large number of lessors had been drawn into the system of political collections and had been led to fear that they would not be able to continue to do business with PennDOT without making such payments.

Method of Collection

Prior to 1971, PennDOT payment checks were distributed directly to the lessors of equipment by mail. However, the Crime Commission discovered that in 1971, there was some deviation from this method of payment.

Lessor K stated that early in 1971, he was visited by John George, an Assistant Superintendent of the PennDOT maintenance shed in Cambria County. Lessor K stated that George arrived at K's place of business with K's PennDOT checks in an envelope. On the envelope a figure was written which amounted to 5% of the PennDOT checks inside the envelope. This was the amount Lessor K subsequently contributed to the Cambria County Democratic Committee. ⁷

Another instance of hand delivered payment checks involved Lessor F-1 and his business partner F-2. Lessor F-2 handled most of the partnership's financial

6. More contribution checks may exist for this pay period and the other pay periods exhibited in the chart. The Commission's search of the bank's microfilm records was not a complete day-by-day search from January 1, 1971 to the end of the snow removal season of that winter. Selected dates were singled out to maximize success of the search. There still exist other bank dates for which records were not reviewed. In addition, cash contributions could have been made by other lessors.

7. Lessor K recalled paying George in cash. However, after confronting Lessor K with two checks payable to the Committee uncovered by the Crime Commission, Lessor K verified the checks as his own.

Interviews with Lessor K, November 6, 1975 and February 2, 1976, [hereinafter referred to as Interviews with Lessor K].

transactions with the State. However, Lessor F-1 recalled in his testimony before the Crime Commission that in the beginning of 1971, six weeks' worth of PennDOT checks had not been received by the partnership. Lessor F-2 had been advised by PennDOT to go to the maintenance shed to pick up the withheld checks. However, since he had always received the checks by mail under the previous administration, F-2 refused to go to the shed. Eventually, John George came to the lessors' place of business with the checks and a request for a donation to the Democratic Party in the amount of 5% of the total of the PennDOT checks. On this and other occasions, when John George arrived with the PennDOT checks, these lessors paid 5% of the checks' value to the Democratic Party. ⁸

Lessor M stated that when the Democratic Party took over, John George came to his house with a check for work done by Lessor M while the Republicans were still in office. George told Lessor M that a 5% kickback was required. Lessor M refused to pay the 5% to the Democrats for work done under the Republicans. Lessor M admits that he did pay 5% to John George for all work he received under the Democrats. Lessor M said that whenever he got a call to come to the PennDOT shed to pick up his check, he always made sure to take enough cash with him to cover the 5%. John George always had Lessor M's check in an envelope with a notation on the envelope showing the amount of the required kickback. Lessor M gave George the cash, and George turned over the check, while at the same time destroying the envelope. ⁹

In other cases, PennDOT checks were still mailed by PennDOT to the lessor. However, percentage payments were still collected by John George. Lessor A-1 received his payments by mail. In his testimony, Lessor A-1 could not recall who it was who made the initial request to him for the 5% payments, but he clearly remembered that it was John George who collected the money for the Party. ¹⁰

8. The Crime Commission has interviewed numerous lessors of equipment. Many of these lessors vehemently denied making percentage payments to the Democratic Committee. When some of these lessors were confronted with their own donation checks obtained by the Crime Commission from the Committee's bank, some lessors then admitted that they did indeed make percentage payments. A few lessors stated that these percentage payments were only a "one-time thing." However, several lessors continued to deny that they or anyone else calculated their donations to the Democratic Party based on a percentage.

9. Lessor M statement to Justice Department, June 7, 1972.

10.

Q: So it was a fact that during the year 1971, you were expected or it was demanded of you that you contribute 5% of the income you received from PennDOT.

A: That's right.

* * * * *

Q: You don't recall the person who first informed you of that in 1971, but you do remember that it was Mr. George who collected most of the payments, is that correct?

A: That's correct.

Testimony of Lessor A-1 before the Pennsylvania Crime Commission, January 9, 1976, N.T. 108 [hereinafter referred to as Lessor A-1].

***Percentage Checks Cashed
by the Democratic Committee***

Generally, the lessor contribution checks were treated differently than the non-lessor contribution checks. The lessor checks were cashed by the Cambria County Democratic Committee; the non-lessor checks were deposited into the Committee's bank account.

All of the lessor percentage checks listed in the preceding chart were handled in that manner. The checks were co-endorsed with the handwritten signature of John Torquato, Chairman of the Cambria County Democratic Committee. On a number of occasions in early 1971, lessor checks made payable to the Democratic Committee were cashed by the Committee on the same day that non-lessor checks were deposited by the Committee. ¹¹ It appears that some of the proceeds of the lessor checks that were cashed may have gone into the Committee's bank account.

11.

*Checks Cashed and Checks
and Cash Deposited the Same Day*

2/3/71

| | |
|---------------------------------------|----------|
| Deposit Slip Entries: | |
| Cash | \$406.00 |
| Checks | 191.15 |
| Total Deposit | \$597.15 |
| Committee Checks Cashed the Same Day: | |
| Payor: | |
| Lessor F | \$ 52.00 |
| Lessor J | 90.00 |
| Total Cashed | \$142.00 |

3/11/71

| | |
|--------------------------|----------|
| Deposit Slip Entries: | |
| Cash | \$276.00 |
| Change | 5.55 |
| Checks | 205.59 |
| Total Deposit | \$487.14 |
| Committee Checks Cashed: | |
| Payor: | |
| Lessor K | \$196.25 |
| Lessor C | 137.00 |
| Lessor B | 75.00 |
| Lessor H | 129.00 |
| Total Cashed | \$537.25 |

3/18/71

| | |
|--------------------------|----------|
| Deposit Slip Entries: | |
| Cash | \$287.00 |
| Change | 2.50 |
| Checks | 128.67 |
| Total Deposits | \$418.17 |
| Committee Checks Cashed: | |
| Payor: | |
| Lessor J | \$ 64.00 |

Even if the proceeds were handled as cash and then deposited as cash, there were still more checks converted to cash than there were cash deposits. For example, during the period February 22-March 11, 1971, \$1,970.85 worth of checks payable to the Democratic Committee were cashed. Cash deposits into the account during this period totaled only \$1,380.00.

Change in Structure: Cash Only

The Crime Commission's inquiry revealed a significant change in the structure of percentage contributions during the 1971-1972 snow removal season: the Democratic County Committee no longer would accept checks for percentage payments and insisted on cash only.

During the 1971-1972 winter season, Lessor K attempted to pay John George with a percentage check. George refused to accept the check, stating that "John doesn't want any checks."¹² Lessor K assumed that George was referring to John Torquato, Chairman of the Cambria County Democratic Committee.¹³

Lessor K recalled one incident when he did not have enough cash on hand for the percentage payment:

John (George) waited while I went to the Portage bank and cashed a PennDOT check. It was for less than the amount owed so I added some other cash I had and gave the payment to George. George told me that he once made a mistake on the amount he collected from another foreman and that John made him pay the difference.¹⁴

Lessor F-1 had been advised by his partner, Lessor F-2, that John George would not accept checks for the contributions, only cash. On one occasion, George made a telephone call from the garage of the lessors to ask if it would be permissible to accept a check from the lessors for the Party.¹⁵

Lessor A-1 began his percentage contributions to the Democratic Committee by issuing two checks. Then, like the others, the system changed to a cash basis.

Q: Who informed you that the payments were to be made in cash. The first two payments were by check. Who informed you that they were to be made in cash?

A: I believe Johnny.

Q: Johnny George?

12. Lessor K's bookkeeper was a witness to this conversation between Lessor K and the Assistant Superintendent.

A cancelled check in the possession of the Crime Commission shows that Lessor K had written the word "kickback" on the memo notation of a check payable to the Cambria County Democratic Committee.

13. Interviews with Lessor K.

14. *Ibid.*

15. Lessor F-2 did not know to whom John George placed the call, but, at the time, he assumed that George telephoned John Torquato.

Sworn statement of Lessor F-1 to the Pennsylvania Crime Commission, January 28, 1976.

A: Yes. Maybe the first time we gave him a check because we didn't have the cash and I am not mistaken, [my partner] gave it to him. He stopped in and—I believe it was \$100 and I told [my partner] to give it to him.

After that, I believe he said all right, he wanted cash. He said they would rather have it in cash then.

Q: Mr. George said that?

A: Yes.

Q: You offered to give him a check equal to the 5% of the income received from PennDOT, and he told you no, that he would rather have cash?

A: Yes. ¹⁶

Lessor M recalls receiving his PennDOT payment check from John George in April, 1972. When Lessor M went to make out a check for the amount of the 5% kickback, George said, "No dice, John wants cash." ¹⁷

Change in Substance: Percentage Increase

The year 1972, witnessed a further alteration in percentage payments: the percentage to be contributed jumped from 5% to 10%. Lessors have testified before the Crime Commission that John George notified them of the increase in percentage in January, 1972, and that George continued to collect the contributions. ¹⁸

While Lessor A-1 continued to make his percentage payments to the Democratic Party, Lessor K balked at paying the increased percentage during the 1972-1973 winter season. At that time, Lessor K received PennDOT payment checks totalling approximately \$1,300. Lessor K deposited these checks without paying a percentage contribution. Lessor K recalls receiving a telephone call from an un-

16. Lessor A-1, N.T. 113-114.

17. Lessor M, written statement to Justice Department, 1972.

18.

Q: But in 1972, the system changed. You were expected to give 10%.

A: Yes, then Johnny George came down.

Q: He was the one that came down and told you it was now expected of you to contribute 10%, is that right?

A: Yes.

Q: Did he tell you in December or when did he tell you the payments were going to increase, in January of 1972?

A: He never told me until I first got the check or something like that.

Q: When he came to collect from you, he told you then?

A: That's right. Mr. George continued to collect the payments.

Q: It was Mr. George who informed you about the increase to 10% from 1972 and he continued to collect most of the payments, is that correct?

A: That's correct.

Lessor A-1, N.T. 105-106.

identified person asking about K's contributions. The caller advised K that "somebody would be by." A PennDOT employee, Roy Kehn, did come to Lessor K's office but K did not make a contribution. Lessor K continued,

Later, Kehn and a PennDOT Foreman named Leginaie, returned, but they could not find me. Then, Assistant Superintendent Maruca came. That's when I decided not to make any more payments. I put my PennDOT agreements in an envelope and told Maruca that I no longer wanted to do business with the State and that there would be no payments. Maruca asked if I had made any arrangements with John. I understood him to mean John Torquato. I answered that I had none. I have not leased equipment to the State since that time. ¹⁹

Lessors who began to lease equipment to the State in 1972, were promptly advised of a 10% contribution. Lessor N-1 stated that he received his first PennDOT check in 1972. The check was personally delivered to Lessor N-1 by John George, who advised N-1 that a 10% cash payment was required. When Lessor N-1 asked where the money was going, John George replied that it was "John's" money. Lessor N-1 assumed that George was referring to John Torquato. George continued to personally deliver N-1's PennDOT checks and collect N-1's percentage contributions during 1972. ²⁰

Non-Percentage Contributions

In addition to the percentage contributions, lessors of equipment to the State were also requested to purchase advertisements and tickets to various political functions. Lessor A-1 recalled paying approximately \$100 a year for advertisements in the Democratic dinner book. He remembered paying almost \$200 more in 1973 for democratic dinner tickets. Lessor K and other lessors whom the Crime Commission identified as having made percentage donations have indicated to the Commission that they made additional donations to the County Democratic Party for raffle and dinner tickets.

ii. Personnel

Patronage-Getting a Job With PennDOT

In Cambria County, more often than not, the criterion for getting a job with PennDOT has been one's political sponsorship rather than one's work-related qualifications. When an individual sought work with PennDOT, that individual would not necessarily go to PennDOT offices. Rather, the individual sought out the local County Chairperson of the party in power. This Chairperson had no official position with PennDOT, but yet had job application forms at a party headquarters. John George, who has worked for PennDOT under the administration of Governors Scranton, Shafer and Shapp, explained to the Crime Commission that getting a job with PennDOT is in fact, getting a political job:

19. Interviews with Lessor K.

20. Interview with Lessor N-1, February 4, 1976.

Q: What was the procedure for receiving the job in the Department of Transportation from the beginning of the Scranton administration? Who did you see and what thereafter transpired?

A: Then you had to see Gleason [the Republican Chairman]. You had to see the County Chairman. It was all political. If you are familiar with political jobs, you know how it is done.

* * * * *

Q: And you went to Mr. Gleason?

A: Yes.

Q: And you indicated to him you wanted the job?

A: Yes, certainly.

Q: And what did he say to you?

A: . . . He said to me, "I think we are going to get a governor, and I would like you to work the polls with us and help us out politically, work the polls. We don't have any Republicans in your area."

* * * * *

Q: Were you registered with any political party at that time before you saw Mr. Gleason?

A: I was a Democrat, yes.

Q: You were a registered Democrat?

A: Yes.

Q: Did he indicate to you that you would have to change your registration?

A: He said to me, "I wish you would." They needed some Republican support in the area of town I live in.

* * * * *

Q: Did you have an interview with anyone with Department of Transportation prior to being hired?

A: No.

Q: How were you informed that you received the position?

A: I filled an application and I had a call from the Department of Transportation.

Q: You filled out the application and gave it to whom?

A: To Mr. Gleason. . . ²¹

21. Testimony of John George before the Pennsylvania Crime Commission, February 12, 1976, N. T. 32-37, [hereinafter referred to as George].

Apparently, the system of political sponsorship is engrained in the traditional structure of State government; it is not endemic to any one party. John Torquato, Chairman of the Cambria County Democratic Committee, admitted that these government jobs are used by the Democrats as political appointments. Torquato testified:

Q: [D]o you know who hires the employees for PennDOT in Cambria County?

A: Yes.

Q: Who would that have been?

A: I can make recommendations and the recommendation has to go to Harrisburg and, of course, the Secretary of Highways hires them.

* * * * *

Q: Do you know where an applicant would get an application for a job at PennDOT?

A: In our County, they do one thing. We have a committeeman and woman in each precinct. We have a District Chairman who may have 10 precincts under him and if somebody wants a job and they are qualified, they go back to the District Chairman and they sign the application and the District Chairman presents it to us and we in turn, send it to the Governor's personnel.

Q: Do you have applications in your office?

* * * * *

A: So does (sic) all the committeemen and women have applications.

Q: Do you have applications?

A: Yes.

* * * * *

Q: In general, an applicant would go to a political worker, fill out an application?

A: Yes.

Q: Would he return it to you?

A: Yes.

Q: Someone in the Democratic Party would make a recommendation to Harrisburg and that person would be hired, and oftentimes without any interview at PennDOT itself, is that correct?

A: That's right.

Q: In other words, these would be political jobs?

A: They are political jobs. ²²

John George explained that at the change to a Democratic administration in 1971, the workers at PenDOT feared the loss of their jobs:

Q: You indicated that when Governor Shapp was elected, you believed that you were going to lose your job, is that correct?

A: Yes, sir.

* * * * *

Q: Now, you had fear for loss of your job at what point?

A: Well, when the administration changed. You see, I don't know if you know this or not, Cambria County is a small County. And when the administration was changed, everybody was let go. This included the laborers, truck drivers, foremen. The superintendents was the first, and the assistants were next, and all the foremen, everybody was fired. Everybody, the whole County was fired. . . . ²³

Voter Registration

In the first weeks of 1971, when the Democrats were preparing to assume the reins of government in Harrisburg, John Torquato, the Democratic Chairman in Cambria County, was preparing to assume control of government jobs in the County. Although Mr. Torquato had absolutely no official connection with PennDOT, in January, 1971, he sent out letters to all PennDOT employees on the letterhead of the Cambria County Democratic Committee. ²⁴ This letter, signed by Torquato, instructed each employee to report to Torquato's office at Democratic headquarters in Ebensburg on a particular date. The reason for the arranged meeting was stated in the letter as follows, "We would like to talk to you about continuing you in your present position with the Commonwealth of Pennsylvania." ²⁵

At that meeting, Torquato explained that he wanted the employees to give the same loyalty to the Democratic Party that they had given to the GOP. Torquato suggested that the employees change their party registration to Democratic. In addition, the employees were instructed to obtain the endorsement of their District Democratic Chairperson and their Precinct Committeeperson. If they did so, Torquato assured them they would be retained in their jobs.

In fact, from February, 1971, to August, 1971, 57 PennDOT employees in Cambria County were terminated because of what PennDOT records describe as "dismissed due to reorganization." ²⁶ It appears that most employees followed

22. Testimony of John Torquato before the Pennsylvania Crime Commission, March 9, 1976, N. T. 54-59, [hereinafter referred to as Torquato].

23. George, N. T. 37-38.

24. George, N. T. 89.

25. George, Exhibit I.

26. In testifying before the Crime Commission, Torquato expressed astonishment that 57 employees had been fired. However, he admitted that four or five employees had been fired because they did not acknowledge Torquato's letter to report to the meeting. Torquato, N. T. 62-65.

Torquato's instructions; the voter registration records indicate that from 1971 to early 1973, out of 164 persons listed on the rolls of Cambria County PennDOT, 112 changed their Party registration from Republican to Democrat. Upon completion of Torquato's stated requirements, the employees were retained by PennDOT. A letter from Torquato (on Democratic Committee stationery) was sent to the employees acknowledging their retention. ²⁷ Thus, John Torquato, a person who had no official position with the State Department of Transportation and who owed no official duty to the citizens of Pennsylvania, by virtue of being Chairman of a political party, played a major role in the process of deciding who would be on the State payroll.

Percentage Contributions

At the January, 1971, meeting called by Torquato, he reminded the employees that it takes a lot of money to run a political party and that he wanted them to make monetary contributions to his Democratic Party. Few PennDOT employees were surprised by the statement.

Several PennDOT employees of long standing have explained that political contributions were part of the PennDOT employment scene. ²⁸ Under the Republican administration which controlled PennDOT in Cambria County until 1971, employees were required to make a kickback of 2% of gross pay out of every bi-weekly paycheck to Robert Gleason, Chairman of the County GOP. These 2% kickbacks were collected by a fellow PennDOT employee, Ernie Gibson, who kept a "black book" detailing an account of each employee's payments to the Party. The employees agreed that the 2% kickback requirement was continued under the Torquato Democratic regime in 1971, with Ernie Gibson continuing to collect until his death ²⁹ and John George then taking over as collection agent.

27. Torquato's letter read as follows:

My dear _____:

I wish to thank you for sending your application to me that you had duly endorsed by your District Chairman, Committeeman and Committeewoman. I have this day notified Governor Shapp that you have received my endorsement for continual employment at the institution you are now working in.

In the meantime, I would appreciate it if you would get as many people in your family to register as Democrats as it will enable us to have a stronger Democratic Party.
George, Exhibit II.

28. Statements and Findings of Fact—Gleason Report and 1972 Justice Department Investigation—Statements of employees A, B, C, D, E, F, G, H, I, J and K.

29. In 1968, Ernie Gibson worked in the PennDOT paint shop and acted as the Republican Party's collection agent. In 1972, Gibson worked from a desk in the garage foreman's office and was collection agent for the Democratic Party.

A Justice Department investigator who interviewed Gibson in 1972, described Gibson's "black book."

[The book was] of the ledger type with numbered pages. Across the top margin, dates were entered which appeared to be broken down by the week. Gibson explained the dates indicated biweekly pay and overtime pay periods. In the left margin were the names of employees and continuing across the page were entries ranging from three to seven, indicating dollar amounts contributed by each individual during that period.

Gibson explained to the investigator that "this entry indicated the percentage of the employee's gross pay - \$1 for every \$50 earned."

Gibson was advised that the book might be required as evidence and that it should be kept and safeguarded by Gibson. One day later, the book was "missing" and to date, has not been located.

Under the Republicans, the 2% payment was a condition to continued employment. But under Torquato, because of a law suit brought following unionization efforts in 1971, there was a variation in the consequences of not contributing. Failure to pay under the Democrats meant being transferred to less desirable assignments, receiving a decrease in overtime, and/or being passed over for promotion.

The Crime Commission has received statements from many employees to the effect that they were warned by PennDOT management and in some cases by Torquato himself, that they would be sorry if they did not contribute. ³⁰ Pressure and harassment by management and/or Torquato were common complaints in these employee statements. ³¹

In February, 1972, a meeting was held to discuss the problem of macing of Cambria County PennDOT employees. In attendance were the president of the union local, the union shop steward, a union representative, John George, and PennDOT Assistant Superintendent Anthony Maruca. ³² John George was told that if he would not pressure the men, they would probably make voluntary donations at election time. Those in attendance report that George replied,

This is not the way he wants it, he wants 2% every pay period. ³³

* * * * *

What the heck, they go to lunch at eleven, go home at 2:30 p. m., get five gallons of gas a day, why can't they give 2%.

While the Crime Commission has only found a small number of employees who actually suffered the consequences for not contributing, a substantially large number of employees appeared to believe that their jobs and security depended on their faithfully contributing 2%. Even after the unionization effort, one employee estimated that fully 80% of all Cambria County PennDOT employees were contributing 2% biweekly to the Democrats. Most employees knew how the system had worked for many years and had no reason to believe that it had changed in any way. Thus, while some employees stated that no one ever "demanded" that they kickback 2%, these employees sincerely believed that if they did not, they would suffer for it.

30. Employee A has stated that he was harassed by John George to pay. Employee G was told by Torquato, "You will be better off to pay." Employee E was told by Torquato to pay 2%. Employee J was continually reminded of his contribution delinquency. Employee L was told that transfer is possible if he did not honor his obligation to the Party. Employee I had been told by Torquato to pay 2% and had been approached by John George to get "caught up" or be terminated. Employee K was advised by a Foreman to pay 2%. Employee H said that John George made the following comments: 1) he did not care that macing was illegal; 2) Torquato does not want donations at election time, he wants 2% every payday.

31. The situation appeared to be quite compelling. On April 3, 1972, counsel for the union which organized Cambria County PennDOT, wrote a letter to the State Attorney General, protesting the macing of employees and requesting an investigation.

32. John Torquato was expected to attend this meeting but failed to show up. The participants did talk to him by telephone during the meeting.

33. Those attending the meeting say that John George was referring to John Torquato when George said, "He . . ."

iii. Election Code Reporting

Requirements

Every political committee must, within 30 days after every primary and general election, file a statement if aggregate receipts or disbursements and liabilities exceed the sum of \$150. This statement is supposed to be a full, true and detailed account of each and all of the receipts, expenditures, disbursements and unpaid debts and obligations of the committee.³⁴

Accordingly, all receipts of a political committee, including lessor and employee percentage contributions, and all disbursements by the committee should be reported under the Election Code.

Reconciliation of Bank Records and Election Records

In Cambria County in 1970, the reconciliation between the income of the Democratic Committee as reported in bank statements and the election reporting statement reveals an excess of \$1,000 on the election statement. However, in 1971, when the Democrats took over the State administration, Cambria County Democratic Committee records disclose an excess of \$25,000 of bank deposits over the income reported on the Committee's election statement. In 1972, the income figures are almost evenly matched. In 1973, there is an excess of \$5,000 in bank deposits over receipts reported on the election statement.

In terms of disbursements, again the bank records are not in agreement with the election statements filed by the Committee. In 1971 and 1972, disbursements according to bank records exceed by approximately \$5,000 the expenditures reported on the election statement. The year 1973, however, reveals a startling amount of almost \$18,000 excess of bank disbursements over reported Election Code expenditures.

John Torquato and the bank records differ as to when the Party received funds. Torquato testified that the Democratic Committee in the County did not receive significant amounts of money during the first half of any given year. Torquato said that only "Dollars for Democrats" tickets are sold throughout the year. However, bank records of the Committee show a different story. In the monthly periods January through June of 1970 through 1973, the Democratic Committee deposited the following amounts respectively: \$10,531.01, \$12,245.72, \$10,276.70 and \$7,564.22.

The election statement for the Cambria County Democratic Committee for the general election in 1971, (primary election account was filed with no receipts

34. July 17, 1973, P. L. 266, §1 as amended, 25 P. S. §3227.

Every such account should be accompanied by vouchers for all sums expended, amounting to more than ten dollars. The accounts concerning primary or election expenses incurred in regard to candidates for public offices to be voted for by the electors of the State at large are filed in the office of the Secretary of the Commonwealth. The accounts relating to other public offices are filed in the office of the County Board of Elections of the county wherein the candidate resides.

or expenditures),³⁵ showed the earliest contribution received on August 2, 1971. This excludes the "Dollars for Democrats" which is a lump sum figure and does not list individual contributions or dates. The total 1971 amount received from the "Dollars for Democrats" is less than just the January through June deposits mentioned above.

The earliest reported contribution in the general election report in 1972, was July 17, 1972. (No primary account was filed.) The deposits made prior to this date far exceed the "Dollars for Democrats" total—\$10,276.70 to \$7,882.50. Again, in 1973, the "Dollars for Democrats" was exceeded by the half year bank deposits. The earliest listed contribution was July 23, 1973. Therefore, it is inconceivable that the "Dollars for Democrats" income would account for all the deposited funds prior to the earliest reported contribution date.

Misreporting and Nonreporting

While some of the non-percentage contributions were properly recorded on the Election Code statement, many were not.³⁶ However, none of the percentage contributions made to the Party by lessors of equipment and PennDOT employees appears on the Party's Election Code statements despite the law's mandate to report in detail all political contributions.

b. Montour County

The investigation in Montour County did not indicate any solicitation of lessors. Montour County PennDOT utilizes virtually no leased equipment.

i. Patronage

After the 1970 gubernatorial election, Paul Becker, then Chairman of the Montour County Democratic Committee, although holding no official PennDOT position, completely took control of employment for the PennDOT district.³⁷ Numerous interviews with PennDOT employees revealed that job applicants generally were required to see Paul Becker as the first step in the employment process. Becker often informed the applicant that an immediate monetary contribution and an "assessment to be determined at a later date" would secure a job at

35. While primary election reports 1971 through 1973, indicate no receipts or expenses, Committee bank records indicate that money was received and expended in the periods prior to the primaries in each of those years.

36. For example:

a) A lessor's \$100 check in 1971, was not reported on the 1971 campaign report although the check had been cashed by the Party. The contribution later appears on a 1972 campaign report.

b) A lessor's \$100 check in 1971, was cashed by the Party. On the 1971 campaign report, it is listed as a \$50 contribution.

c) A lessor contributed a \$200 check and a \$100 check during the same week in 1972. While both checks were cashed by the Party, only the \$200 contribution appears on the campaign report.

37. As of 1977, Paul Becker retained control of patronage appointments in Montour County even though he was ousted from the Office of Chairman of the Montour County Democratic Committee.

PennDOT. In some cases, Becker also instructed the applicant to secure new registrants for the Democratic Party.³⁸ During this hiring process, the applicant's worth to the party was more important than the applicant's worth to PennDOT. As one employee described his application interview with Becker: ". . . [He] never questioned me about my qualifications for the job but gave it to me on the basis of the number of people I got to register Democratic."

A former PennDOT Supervisor, Employee Z, has described to the Crime Commission the strength of Becker's role in hiring PennDOT employees. The former Supervisor stated that there were times when he was told by PennDOT Personnel Managers in Harrisburg that the Supervisor could not hire additional workers for Montour County. The basis of this order was lack of money and lack of job openings. On occasion, during the hiring freeze, Becker would tell the Supervisor to place someone of Becker's choice on the payroll, assuring Z that he, Becker, would take care of PennDOT personnel in Harrisburg. Invariably, the hiring of Becker's choice would be subsequently approved by Harrisburg. Thus, what Z, a Montour county PennDOT Supervisor, could not do, Paul Becker, not employed by Montour County PennDOT in any way, could, by virtue of the political system.³⁹

In his testimony before the Crime Commission, Becker denied having control over patronage jobs at PennDOT. He described his role in the hiring process as merely making recommendations to Harrisburg. However, Becker did admit that he had PennDOT application forms in his office, that he did provide these forms to job aspirants, and that he did forward the applications to Harrisburg along with his written recommendations.⁴⁰ The Crime Commission discovered that from the end of 1970, (when the Democratic Party assumed the reins of State government), until the middle of 1972, approximately two-thirds of the Montour County PennDOT employees were fired because of "dismissal due to reorganization." Becker was asked:

Q: Would you say that the 41 employees who were terminated because of reorganization were registered Republicans?

A: I think that is a fair assumption.⁴¹

From November, 1970, to May, 1973, there were 13 Montour County PennDOT employees promoted. All 13 were registered Democrats. There were 67 appointments to PennDOT in that period. Virtually all were registered Democrats. Paul Becker was asked about this:

38. The Commission examined many statements by PennDOT employees in the County. The statements were obtained by the Division of Investigations of PennDOT, and by the Gleason Committee. Most of the statements confirmed the procedure described.

39. Interview with Employee Z, September 23, 1975.

40. Testimony of Paul Becker before the Pennsylvania Crime Commission, December 10, 1975, N. T. 15, [hereinafter referred to as Becker].

41. *Id.*, at 28.

Q: In other words, the PennDOT hiring, firing, personnel actions as of this period are largely based on political considerations, would that be a fair statement?

A: That is right. ⁴²

And While Becker firmly denied having control of the patronage, his responses to questions about Party finances indicate that control of County patronage played a large role in the prosperity of his Party.

The Crime Commission determined that deposits made in the Montour County Democratic Committee bank account were approximately as follows:

| | |
|-----------------|--------------------|
| 1966 — \$ 1,600 | Party not in power |
| 1967 — \$ 3,400 | Party not in power |
| 1968 — \$ 1,800 | Party not in power |
| 1969 — \$ 3,150 | Party not in power |
| 1970 — \$ 2,900 | Party not in power |
| 1971 — \$11,000 | Party in power |
| 1972 — \$ 9,000 | Party in power |
| 1973 — \$14,600 | Party in power |

Becker explained that this sharp increase in deposits was due to “incentive.”

Q: Is a large part of that incentive the fact that the Democratic Party in 1971, had patronage jobs available?

A: Precisely, you know. That is the incentive I am talking about.

* * * * *

Q: [T]he Party finances, Republican or Democrat, are tied largely to whether there are patronage jobs available; whichever Party has the patronage jobs prospers and the other Party does not prosper?

A: You know, it is just as simple as that. ⁴³

ii. Political Contributions

Political contributions to the Montour County Democratic Committee by PennDOT employees seemed to be accepted by the workers as a condition to employment and promotion.

Paul Becker counted on this acceptance when in 1971 and 1972, he mailed out letters to all State employees working in Montour County. These letters, typed on County Democratic Committee stationery, stated that the Party’s suggested “Donation for all State Employees is 1% of their salary under \$5,000 and 1 1/2% over \$5,000.” Although Becker held no position with PennDOT, it appears that he knew the salary of each PennDOT employee, for on each of these letters, the amount of the donation was filled in the blank following the words, “Your Donation for 1971 would be \$_____.” At the end of each letter, Becker added,

42. *Id.*, at 91.

43. *Id.*, at 52-53.

"[P]lease note that this is your total responsibility for the year." It appears that the employees did not question what relationship their State salaries had to their contributions to a political party. They knew that their State jobs were controlled by the Party and that contributions were part of the system of control.

PennDOT employees were often reminded of the power of the Party in relation to job security. Employee A tells of the time in 1973, he was approached by PennDOT Assistant Superintendent Garner Mapston. Mapston inferred to A that layoffs were imminent at PennDOT but a donation to the Montour County Democratic Party would enhance A's chances of remaining on the payroll. Mapston gave A a slip of paper on which the numerals "27" were written. Mapston said that this was A's "assessment." A was reminded by Mapston on many occasions of that assessment until A finally gave Mapston \$27 in cash. ⁴⁴

Employee B has stated that Paul Becker advised B that the "assessment" for a PennDOT skilled laborer is \$260. B stated that he received phone calls every other day and an occasional visit on his job site from Becker with reminders of this assessment. ⁴⁵

Employee C was told by Becker that C's PennDOT position called for an "assessment" of \$200. During this conversation, Becker cited instances to C where failure to make assessment payments had resulted in PennDOT dismissals. ⁴⁶

Employee E was approached by Garner Mapston, who relayed a message from Becker, indicating E's total assessment would include (1) \$150 for a promotion, (2) \$150 to Becker for the Montour County Democratic Committee, and (3) an additional \$100 for the State Democratic Committee. After several reminders from Becker, E paid the "assessments." One month later, E was promoted. ⁴⁷

Crime Commission files contain evidence of numerous other instances where pressure for contributions was applied to PennDOT employees by Becker and Mapston in return for promotions and supposed job security.

iii. The Century Club

In 1972, the Union began to organize the PennDOT workers in Montour County. Numerous PennDOT employees have testified that the workers gradually developed a sense of job security apart from their political and financial connections with Paul Becker and the local Democratic Party. Becker himself admits that unionization had a definite negative effect on the receipt of political contributions. ⁴⁸

Thus, in 1973, Becker and his political associates searched for a new way to fund the local Democratic Committee. Instead of soliciting contributions on a salary/assessment basis, Becker formed the Century Club. For the sum of \$100 payable as Club dues, the Century Club member was entitled to attend various Club functions throughout the year. Thus, there were no longer any contributions made to the Party, only Century Club membership dues. As Becker explained it:

44. Statement of Employee A to PennDOT, July 10, 1974.

45. Statement of Employee B to PennDOT, July 10, 1974.

46. Statement of Employee C to PennDOT, July 10, 1974.

47. Statement of Employee E to PennDOT, July 11, 1974.

48. Becker, N. T. 59.

[W]hat the Century Club does is enable you to have an input of funds into the Party for whatever you are going to use it for, without putting demands on anybody, you know, without asking for contributions . . .

. . . [W]ith that we have a program book which we sell advertising . . . so between the two, you can realize enough revenue to run a county system. ⁴⁹

While this Century Club may have billed itself as a social-political club, in fact, it was the County Democratic Committee using another name. In 1973, the Century Club was sharing the checkbook of the Committee. ⁵⁰

By describing itself as a club, the Century Club managed to avoid reporting under the Election Code the names of persons paying money to the County Democratic Committee. While the Election Code would require the Committee to list all contributors individually, all political revenue for the Committee went to the Century Club in the form of dues. "Then a single contribution was made from the Century Club to the . . . [County] Democratic Committee." ⁵¹ The County Committee would then file an election report showing receipts solely from the Century Club rather than from the individuals actually donating the money.

The Crime Commission has determined that in 1974, 75% of the members of Becker's Century Club held government jobs, with 65% holding State jobs. When confronted with these figures, Becker responded, "[W]e are not running an Elk's Club. We are not running a Moose club. We are running a political club." ⁵²

Many allegations have been received concerning financial benefits to PennDOT employees in return for their membership in the Century Club. Prior to unionization and subsequent formation of the Century Club, employees complained that they risked being fired, transferred, or passed over for promotion if they failed to make their percentage contributions to the Party. Following unionization, the allegations changed. The employees complained that members of the Century Club were receiving far more PennDOT overtime work than non-members. It was said that PennDOT was, in fact, subsidizing the Century Club by making sure that each Century Club member received at least \$100 in overtime pay to cover the cost of Century Club dues.

The Crime Commission compared a list of Century Club members with official overtime records for Montour County PennDOT employees. It was found that Century Club members averaged \$58.34 per year in overtime pay than the average for all Montour County PennDOT employees working in the same job categories. While this may indicate a slight financial advantage to Century Club members, it certainly does not constitute a substantial benefit and clearly does not constitute reimbursement for Century Club dues.

49. *Id.*, at 55.

50. In 1975, the Century Club and the Montour County Democratic Committee were divided because of a split in the Party. Becker was ousted as the Party Chairman. However, he still controlled patronage in the County due to support from the Democratic State Committee. Becker, thus, maintained his own Century Club as his financial power base in the County. The new Chairman, along with the Democratic Committee, organized a second Century Club.

51. Becker, N. T. 69.

52. *Id.*, at 89.

Thus, while Century Club membership did not necessarily bring with it riches or special treatment, and while the Union has been successful in attaining a degree of employee job security, many employees joined the Century Club, apparently continuing to labor under the fears of prior days when political contributions were the only employment security guarantees.

c. Allegheny County

i. Leasing of Equipment

Power and Discretion

PennDOT in Allegheny County uses leased equipment for substantial amounts of road maintenance work. This is particularly the case during snow removal seasons.

The PennDOT Superintendent has virtually uncontrolled authority to determine which owners of equipment will receive contracts from the state for road maintenance. Assistant Superintendents and Foremen have considerable authority in determining when equipment under contract will be called to work. Although an owner of equipment has a contract with the State, he is not guaranteed any minimum number of hours of work and is dependent on good relations with the Assistant Superintendent and the Foreman to receive work. In addition, the Assistant Superintendent and the Foreman have considerable discretion in the record keeping which determines the amount of money which lessors of equipment received from the State.

Allegations

Road maintenance contracts are renewed biannually. Contract renewal dates are May 15, and November 15, for six month periods. These dates roughly coincide with the primary and general election periods. It was alleged that officials in Allegheny County in the Department of Transportation used this fact to considerably benefit the Democratic Party in solicitations of campaign contributions. It was also suggested that since managerial personnel had political responsibilities for collecting contributions, they were in the position to extort money for their own personal benefit.

Political Solicitations Hierarchy

The responsibility of soliciting political contributions from PennDOT employees and lessors of equipment appeared to rest with the County PennDOT Superintendents. Sometime after the Democrats won control of the state administration, the Superintendents of Allegheny County were called to a meeting at which the topic under discussion was the need of the Democratic Party for money. The Superintendents were assigned the role of collectors of campaign funds for the Democratic Party. This meeting was organized and chaired by Samuel Begler, Personnel Secretary of the Commonwealth.⁵³

⁵³. Testimony of Rocco Burello before the Pennsylvania Crime Commission, October 24, 1975, N. T. 69, 73-76, [hereinafter referred to as Burello].

The former PennDOT Superintendent of Allegheny County, Rocco Burello, was appointed to his position in 1971, ⁵⁴ and attended this meeting. He said that it was at this meeting that he learned that as a Superintendent he would have Party fund raising responsibilities. In carrying out his function as fund raiser, Burello gave dinner tickets and pledge cards to the Assistant Superintendents in Allegheny County who were then to distribute them among the PennDOT Foremen. ⁵⁵ In turn, the Foremen would approach their respective employees. While some Assistant Superintendents would approach lessors, generally the Foremen were responsible for soliciting the lessors. In addition, Burello himself, having the authority to grant contracts to lessors on behalf of the Commonwealth, made it a point to see every lessor of equipment regarding the purchase of Democratic Party tickets. ⁵⁶

Political contributions from PennDOT employees and lessors would be funneled from the subordinates to Burello. Burello submitted the money to Harrisburg via Sam Begler. ⁵⁷

Political Contributions

The Commission found evidence that making an appropriate political contribution was a quid pro quo for obtaining a State leasing contract with PennDOT in Allegheny County.

In August, 1971, Lessor B approached Superintendent Burello and asked about the possibility of obtaining a State contract for the rental of road maintenance equipment. The lessor wanted a commitment from Burello prior to purchasing such costly equipment. After receiving Burello's assurance that such a contract would be forthcoming, Lessor B purchased a \$17,000 backhoe. However, there were numerous delays in the securing of the promised contract. The lessor made frequent inquiries but was continually told to wait. Finally, Burello called the lessor to the PennDOT office and advised, "We have got the thing all ready to go, and it's just a matter of a couple hundred dollars to get it through." Burello referred to this money as a "donation" and claimed that the Democratic

54. Burello received his appointment through the recommendation of Sam Begler. According to Burello, he approached Begler and asked him for a position with PennDOT. Begler recommended him for the job of Superintendent even though Burello's only experience with PennDOT was a two year long PennDOT job, 35 years prior to this appointment. Preceding the appointment, Burello had no interview with officials of the Department of Transportation. Begler's recommendation apparently was sufficient to secure the job for Burello. Burello, N. T. 25-31.

55. Testimony of Anthony Reola before the Pennsylvania Crime Commission, October 1, 1975, N. T. 8-10, [hereinafter referred to as Reola].

56. Burello, N. T. 116.

57. Beginning in 1972, Begler took an active role in supervising the collection of campaign contributions for the Democratic Party for its annual dinner. Begler appointed his personal secretary, Margaret McCann, to act as the distributor and collector of campaign funds and materials. His personal secretary in 1970, McCann, became the Supervisor of the Cigarette, Malt, Beverage Tax Department. She described herself as being the "middleman" between the State and the agency supervisors. She kept a record of all pledge cards handed out to the supervisors of each State agency. She would collect money during the week and turn it over to Begler every Sunday. McCann indicated that the number of pledge cards a supervisor would get would be related to the number of State employees working under that supervisor.

Party needed the money. ⁵⁸ Lessor B offered to immediately give Burello a check made out to "cash" for the \$200, but Burello demanded cash. ⁵⁹ Shortly after making this cash payment to Burello, Lessor B received his signed contract and began to work for the State.

In addition to initially getting a State contract, political contributions appear to have played a decisive role in renewing those contracts. The following testimony indicates the interrelationship of party politics and State contract renewals:

Q: What would be the process for renewing a contract?

A: You had to inquire and see if you could get your piece of equipment back on.

Q: With whom would (you) inquire and when?

A: I would first go to my Democratic Chairman and tell him that my agreement is coming up (for renewal). And he would say, "We will see if we can't get it renewed." And I would call the Superintendent and the same thing would go with him. ⁶⁰

This lessor made substantial political contributions in the form of Democratic ticket purchases throughout his lease years and always managed to have his contracts renewed. This lessor stated that the contributions were expected and that it was only right that as he did more business and received more income from the State that his contribution to the Party would correspondingly increase. He admitted that had he not been leasing equipment to the State, he would not have made the sizable political contributions that had been remitted. ⁶¹

Lessor B related his experiences with getting a contract renewed. Burello called Lessor B on the telephone and stated, "I have some tickets down here for you, and I want to talk to you about your contract renewal." ⁶² The lessor understood the implications of this phone call.

[When it was contract renewal time] they would throw a little heat on He (Burello) wanted a couple hundred dollars for the contract It was a \$200 donation to him and three \$100 tickets. This like—well, April 3, was the date that I gave him the money and bought the tickets, and my contract was up April 15. ⁶³

58. Testimony of Lessor B before the Pennsylvania Crime Commission, March 11, 1975, N.T. 25, [hereinafter referred to as Lessor B].

59. "[E]verything was always in cash, even tickets which I got a record of, and the number of tickets. I couldn't give them a check for the tickets. They wanted cash." *Id.*, at 45.

60. Testimony of Lessor C before the Pennsylvania Crime Commission, April 8, 1974, N.T. 32.

61. *Id.* at 68-69.

62. Burello stated to the Crime Commission that he never linked the purchase of tickets or political contributions with the renewal contracts. Lessor C, when asked whether he considered these contributions as a cost of doing business with the State, responded, "When you go to Church on Sunday you contribute to the good Lord." *Id.*, N. T. 45.

63. Lessor B, N.T. 73-75.

When asked if Burello ever indicated that it was necessary to make the payments in order to get the contract renewed, Lessor B replied, "Well, they always phrased things so nice, but you get the message that you are not going to get the contract unless you make the donation." ⁶⁴

Lessor B contributed over \$2,000 to the Democratic Party during his leasing tenure with the State. He was questioned about the voluntariness of these contributions:

Q: Did you consider any of this money to be voluntary contributions to the Democratic Party?

A: Well, I would say the tickets were. I wouldn't have bought that many, but, you know.

Q: You would have considered the tickets you bought to be voluntary contributions?

A: Not that many. Like those \$100 tickets. I would never have bought four of them. ⁶⁵

* * * * *

Q: [W]ere it not for your contract with the State, would you have made those contributions?

A: No way. ⁶⁶

* * * * *

Q: Did you consider these expenses (tickets and contributions) to be necessary in order to do business with the State?

A: Oh, yes. I had to make the contributions or I wouldn't have been working. ⁶⁷

Lessor A succeeded to the ownership of a leasing company in 1971, when approximately 80% of the company's business related to PennDOT contracts. Shortly after assuming ownership, Lessor A was called to Superintendent Burello's office. Burello informed the lessor that the Democratic Party wanted 10% of the gross amount which the lessor was receiving from the State contracts. Burello informed him of the receipt of a letter from Democratic headquarters which required Burello to solicit this 10% and that this contribution was to be retroactive to the beginning of 1971. Lessor A agreed to pay 10% up to the date of the conversation but felt that any additional amount would be excessive. This resulted in contributions of \$500 to \$600 in the form of two cash payments to the Superintendent shortly after their conversation. ⁶⁸ Later that same year, Lessor A purchased tickets for Democratic affairs in the amount of \$400 to \$500. ⁶⁹

64. *Id.*, at 75.

65. *Id.*, at 118.

66. *Id.*, at 121.

67. *Id.*, at 125.

68. Testimony of Lessor A before the Pennsylvania Crime Commission, February 25, 1975, N.T. 28-32, [hereinafter referred to as Lessor A].

69. In 1972, Lessor A contributed about \$500 in the form of ticket purchases but paid no percentage payments. In 1971, the company had four pieces of equipment leased to PennDOT. In 1972, 1973 and 1974, this was respectively reduced to three, two and one. Lessor A feels that the loss of these contracts is a result of his failure to pay the requested percentage payments.

Lessor A's testimony was consistent with that of other lessors in that his dealings with Mr. Burello were generally confined to the topic of contributions to the Democratic Party. Moreover, he expected a call from Burello at election time every year and knew that when Burello did call him to the PennDOT office, the subject matter would always be political contributions. Lessor A testified that on frequent occasions when he was called to Burello's office, nine or ten other lessors were also in the waiting room. Burello would see them individually. ⁷⁰

Personal Gain

Lessors have testified about approaches from PennDOT Assistant Superintendent Caprino (now deceased) regarding payments to be made directly to Caprino.

Lessor B testified that Caprino periodically demanded cash from him. Caprino's general procedure was to visit Lessor B at non-PennDOT job sites to make his demands and collect his money. ⁷¹ When Lessor B called Burello to complain about the shakedowns of the Assistant Superintendent, he received no relief. On a second occasion, Burello told him, "It's Caprino's territory. I don't want to know anything about it." ⁷² A short time later, one of Lessor B's operators advised him that a PennDOT Foreman had advised that a dollar payment per hour worked would be expected from Lessor B. In frustration, shortly after making substantial contributions for the renewal of his contracts, Lessor B terminated his lease association with the State, feeling that it was no longer possible to continue working under such demands.

Lessor A related a conversation he had with Assistant Superintendent Caprino. Caprino said that Lessor A would not have to do any work but would be guaranteed State payments if Lessor A would kick back \$1.00 an hour per piece of equipment. ⁷³ The proposed formula for payment of State funds was explained to Lessor A as follows: 15% of the amount which Lessor A received for these hours not worked would be paid off the top to the Assistant Superintendent. The rationale for this was that the money would have been contributed by Lessor A to

70. Lessor B stated that Burello's main concern was money for the Democratic Party:

Q: [H]e (Burello) did call you at various times leaving messages for you to call him?

A: Yes . . .

* * * * *

Q: What would he discuss with you when you returned his call?

A: It would always be about a donation or tickets—

Q: Did he ever discuss with you any other matters, any work related matters, or how you were performing your job?

A: No, no.

Q: You never had any discussion of that type with him. The only discussions he ever had with you were relating to money?

A: Yes.

Lessor B, N.T. 56-57.

71. When Lessor B protested that he had already paid a lot of money, Caprino replied that that money had gone to Burello and the Party and that Caprino did not get anything out of that money. *Id.*, at 63.

72. *Id.*, at 81-83.

73. Lessor A, N.T. 61-68.

the Democratic Party anyhow. The remaining 85% would be split equally between Lessor A and Assistant Superintendent Caprino.

Lessor A testified that he had spoken to two other lessors who had been offered the same proposition. ⁷⁴ Lessor A claims that he declined this offer. Since the PennDOT record procedure would easily have allowed falsifications and related payments, other PennDOT employees may also have engaged in similar schemes.

It should be noted that the PennDOT Foremen had been known to keep "black books" which in essence, were daily diaries of actual work performed by lessors and employees. When the Crime Commission subpoenaed these black books to check against PennDOT records, three Foremen responded as follows:

1) Foreman Harry Daher testified that his black books for the years 1971 and 1972, were stolen from him during a burglary.

2) Foreman Jack Piannick testified that his black books for the years 1971-1974, were "lost" in a truck accident. He said that after the accident he was able to drive the truck home but that the black books were inexplicably "lost".

3) Foreman Louis Joseph testified that his black books for 1971 and 1972, were lost in Hurricane Agnes. When asked to produce his black books for 1973 and 1974, he said that his wife had been house cleaning and threw them out in the trash. ⁷⁵

ii. Personnel

Patronage

The pattern of patronage in Allegheny County closely followed that described in Cambria and Montour Counties. The manner of securing employment with PennDOT was: "You have to get an application and go through the Democratic Party or Republican, whoever is in power." ⁷⁶ In describing his role as political Ward Chairman, Rocco Burello explained that the criterion for State employment was a person's worth to the political party. Burello said that if a man were a good political worker, "I would take care of him."

74.

Q: Were you ever paid any monies by the State for hours in which your equipment was not used for State work?

A: I never was, but I was offered it.

Q: And what were you offered?

A: Well, when Caprino came out he would say something about if I needed my backhoe for something else that I could take it, but to just call him, you know, and then we would split that day's wages. But I never took him up on it.

Lessor B, N.T. 107-108.

75. The Crime Commission was limited in this audit to the examination of lessors' books, PennDOT payroll records, and an incomplete set of Forms 2162. PennDOT did not have a complete set of these forms because they stated that they are not required to keep copies following their yearly audit.

76. Testimony of Employee A before the Pennsylvania Crime Commission, October 17, 1974, N.T. 22. Of the eight PennDOT employees testifying before the Crime Commission, all had received their positions through the political process.

Q: How would you take care of him?

A: Give him a job.

Q: Give him a job with the Department of Transportation?

A: If he could pull the votes and was a good worker, yes. No question about it.

Q: Would you be able to exert any influence to have him hired in any other position other than with the Department of Transportation?

A: Oh, yes. I had county, city. ⁷⁷

The tradition of wholesale firings ⁷⁸ and voter registration crossovers ⁷⁹ in Allegheny County at the change of the State administration was also evident in the testimony received.

Political Contributions

Given the method by which PennDOT employees were hired, their response to the solicitation of political contributions was understandable. Superiors always solicited their subordinates ⁸⁰ and the employees were considered excellent sources of funds for a political party. ⁸¹ While this may not necessarily violate macing or extortion laws, the manner in which it was done exerted a very real pressure on the donors. The superiors seem to have made a conscious effort not to run afoul of the letter of the law, and their fund raising efforts most often were quite successful. ⁸² When questioned about the voluntariness of the contributions, the employees accepted the solicitations as in accord with the expectations of their superiors: "I figured it was something we were doing in the past when I was under the Republicans, just one of those things required, that is all." ⁸³

Perhaps the most revealing testimony received by the Crime Commission involved a PennDOT Foreman's explanation of why he contributed to the political party in power:

Q: What reason should you (contribute to the Party)?

A: Well, because *those are the people that I am working for, the Party, you know.*

* * * * *

77. Burello, N.T. 50-51.

78. Reola, N.T. 19; Burello, N.T. 37-47.

79. Reola, N.T. 27.

80.

Q: Everytime you made a (political) contribution, as long as you have been employed by a governmental office, you have made it to your Supervisor at that office?

A: Yes. . . .

Testimony of Employee D before the Pennsylvania Crime Commission, November 6, 1974, N.T. 32.

81. Burello, N.T. 69.

82. One Foreman testified about the solicitation methods of his superior: "Well, he comes up and he says, 'We have these tickets here. Now you can take one if you want to. If you don't want to, you don't have to take one. Nothing will happen.' So I always take one."

83. Testimony of Employee B before the Pennsylvania Crime Commission, November 13, 1974, N.T. 85.

[N]ow, I am working for the Democratic party. I wouldn't feel right to contribute to the Republican Party, you know. Because after all, I want to keep my job and I want to work long enough to someday retire, you know. So it would be my belief that the Party I am working for is the one that should be helped. [Emphasis added.]⁸⁴

Thus, while the citizens of the Commonwealth paid the wages of PennDOT employees, at least some of those employees felt obligated to the political Party in power as if the Party, rather than the Commonwealth were their employer.

7. OBSERVATIONS AND RECOMMENDATIONS

A detailed report of the Crime Commission's findings have been offered to appropriate law enforcement agencies for prosecutorial consideration. But the Crime Commission is ultimately concerned with the *patterns* of conduct described in this report and the reasons why such conduct occurs despite the statutory proscriptions against such behavior.

The Crime Commission has determined that the question of whether a political solicitation in and of itself violates a particular statute, presents a much too restricted inquiry into the real problem. A department or agency head may have sent out mailings to State employees requesting political contributions and may aver that there is no relationship between the solicitation and the retention of a State job. The letter may have been phrased in terms so that, on its face, it did not constitute a demand for a contribution. However, the employee was in a different position. Even though the letter may not have *demand*ed a contribution, the employee may not have been able to risk not responding to the letter. His job may have been on the line. If he did not contribute, he had to worry about being laid-off.

This fear was the mainstay of the political fund raising process from State employees and lessors. The fear was very real and appeared to be well founded. A former State official testified that it was "routine" for State highway workers to pay a percentage of their salaries to the incumbent political Party. This former official compared the payments with union dues. He explained, "What is the difference if they pay a union for protection or if they pay a political party for protection." This official went on to say that the system by which "voluntary contributions" were collected from road workers and private contractors leasing equipment to PennDOT, was well established. Dating back 40 to 50 years, the collections system had become "a matter of routine business within the department." During his tenure as a PennDOT Superintendent, when private contractors asked him about making political payments, he told them it was the policy of the County party and the Highway Department to request them to contribute a percentage of their gross earnings from the State. In explaining the system, he said that as a highway Superintendent, he had no choice about ordering the collection of money. The county's political organization wanted the money and "it didn't matter what I thought of it . . . that's the way it was . . . it was common knowledge that every Party did it across the State." This former official himself owed his own

84. Testimony of Employee C before the Pennsylvania Crime Commission, October 17, 1974, N.T. 21-22.

post to a political sponsor and if he had ever refused to collect the money, "my sponsorship could have been withdrawn." If this had happened, he said he would have lost his job.⁸⁵

This fear factor is based on the continuance of the patronage and favor system. This system may be viewed in several ways. It may be viewed as a response to the desire of the Party in power to advance its own policies. It may be phrased in such terms as "other things being equal, a Party worker should be appointed to public office". But the more common expression of this policy usually omits from the doctrine "other things being equal . . ."

The system may be viewed as a method of financing party activity. The operation of a Party requires the services of many men and women throughout the year. Much of this work is performed by unpaid volunteers, but their efforts are not adequate. Thus, patronage serves to indirectly meet this need by channeling funds from the public treasury to Party support through the appointment of party workers to public jobs.⁸⁶

In addition, the system may be viewed as a tool to maintain discipline within the Party. The adroit allocation of rewards aids a Party leader in holding the organization together.

Thus, the ability to dispense favors has been described as being at the core of political power: without patronage and favors, there is no incentive for people to join and remain loyal to political organizations; and without strong Parties, representative democracy is threatened.⁸⁷

But the concept that political parties gain support from their ability to reward the faithful, ignores the broader point that merit systems have not destroyed political parties. And more to the point, the concept of "to the victors belong the spoils" ignores the fact that the money paid to public employees and lessors is the money collected from all citizens and not just those faithful to a particular party.

On the whole, the supply of public jobs to support party workers has declined in the face of the rise of the merit system and the professionalization of public service. But the spoils system has not been eradicated.⁸⁸ PennDOT continues to be the number one patronage spot in State government. And the utilization of discretion in the management of public expenditures still allows for a system whereby contracts for public works from PennDOT flow to contractors at inflated rates, with the contractor in turn using part of the profits to aid the Party which originally exercised the discretion.

The Crime Commission believes that patronage and the favors system were among the basic root causes of the PennDOT problem. People who owe their jobs and their leases to politicians will logically submit to the requests of those

85. Testimony of William Quinn, State Highway Superintendent for Monroe County under the Shafer administration, before the Gleason Committee.

86. Key, V.O., *Politics, Parties and Pressure Groups*, (5th ed.). Thomas Y. Crowell Company, New York, 1964.

87. Patronage Dismissals: Constitutional Limits and Political Justifications, 41 *U. Chi. L. Rev.* 297 (1974).

88. In 1955, the Governor controlled 53,000 jobs ranging from highway worker to cabinet member. As of 1977, unionization and Civil Service cut that number to 25,000, with some 73,000 State employees then covered by Civil Service.

politicians. What happened in the PennDOT case is that PennDOT developed the public image of being a repository for political cronies and bagmen.⁸⁹ The 1977 composition of the PennDOT supervisory staff indicates the reason for the image: the backgrounds of the PennDOT county Superintendents ranged from experts in engineering and transportation to shoe salesmen, school teachers, football coaches, dairy farmers, drillers and truck drivers. More significantly, at least seven of them were Democratic County Chairmen or Vice Chairmen and 15 others were either active or former Democratic County and local officeholders or Committeemen.

State Representative John P. Milliron (D-Blair) himself held a job at PennDOT which he obtained through political sponsorship. Milliron stated, "PennDOT has always been the dumper for political hacks. The question isn't who would make the best District Engineer, the question is who will make the best political engineer."⁹⁰

The unionization of PennDOT has had an effect on the collection system. Many employees have refused to make political payments and say that if it were not for the unions, they would have been fired for such refusal. However, the workers repeatedly indicate that their unions are as yet not strong enough to prevent harassment and assignments to particularly harsh jobs. And while the unions may protect the workers to some limited extent, there has been no corresponding protection for private contractors seeking to do business with the State.

In 1975, the then Secretary of Transportation, Jacob G. Kassab, admitted, "Anyone would be a hypocrite to say there is a way to close [illegal fund raising in PennDOT] off altogether. It is something that has existed under all administrations."⁹¹ The evidence presented in this report supports Mr. Kassab's statement. The problem to be confronted is not only the people who have been involved, but more importantly, the system itself: the system that operated on the premise that State jobs, contracts and leases are awarded to persons willing to make financial contributions to the political party controlling the government agency responsible for dispensing the contracts or jobs.

In an effort to reform the system, Kassab offered a detailed program for legislative consideration. The proposals included:

- 1) A ban on making, solicitation or acceptance of political contributions and sale of tickets to political affairs on PennDOT property;
- 2) A prohibition against political activity of any sort on PennDOT property and against the use of State facilities, equipment and supplies for political purposes;
- 3) A prohibition against employees and members of their families accepting gifts from subordinates or anyone who has an interest in decisions made by PennDOT;

89. The image belongs to no particular party or administration. Rather, it is only because Democrats now happen to be in power that they are mentioned in this report.

90. The political composition of the work force leads to the kind of environment that is ripe for questionable fund raising activities. There have been at least 34 instances involving the conviction, indictment, or plea bargaining of PennDOT officials charged with making, extortion, theft and kick-backs.

91. Jacob G. Kassab, appearing before the Senate Republican Caucus in October, 1975.

4) A requirement that payment checks for leased equipment are to be mailed directly to the lessor and are to be computed in the comptroller's office.

The Crime Commission concurs in these proposals and considers their passage by the Legislature to be essential to safeguard against improprieties in the Department of Transportation. But as previously noted, the root of the problem is patronage itself. Accordingly, the Crime Commission most strongly supports Kassab's proposal to extend Civil Service protection to highway maintenance officials and workers. As Kassab said in urging the Legislature to extend such coverage to PennDOT, "[This would] be a major aid to us in achieving the nonpolitical merit system the taxpayers have a right to expect of our State highway operation." Attempts to have such legislation passed have been defeated in the House of Representatives.

Proposals affecting the leasing of equipment to PennDOT have also been offered. Representative Harry A. Englehart, Jr., (D-Cambria) has sponsored legislation requiring competitive bidding on leased equipment. Representative Englehart noted that it is less expensive for the State to lease snow removal equipment than to buy additional equipment, because such equipment is only used for short periods. However, he noted that if a lessor can pay back 5% or 10% of his lease to a political party and still make a substantial profit, the prices for the lease are too high. By switching to competitive bidding, the State could save money and at the same time help to dispel any suspicion of wrongdoing and corruption in the leasing program. Both majority and minority members of the Gleason Committee had introduced a package of such bills, addressing themselves to contract abuses. These bills have languished in various committees of the House of Representatives. The Crime Commission supports the concept of competitive bidding and recommends reconsideration and passage of such legislation.

The Crime Commission is particularly concerned with the end product of the spoils system—the financing of political campaigns. The legislation that does exist is ill suited to achieve reporting and public disclosure on a level which serves to inform the public of the true costs of electing public officials and the equally crucial question of who is paying these costs. The previous discussion of the functioning of the Century Club concept serves as an example of a relatively simple idea frustrating the statutory reporting requirements for political fund raising. Indeed, the Crime Commission believes that to deal with the problem of campaign reporting, we must deal with the fact that for a myriad of reasons, parties and contributors desire not to report or to misreport the source of political financing.

There are several bills presently under consideration for the reform of election code campaign disclosure provisions. The Crime Commission generally supports such efforts. However, the Commission suggests an alternative reform to respond to the public's right to know who is financing a political campaign. The Commission proposes that the private financing of local and State elections yield to a new system of public financing, on the order of the federal system of check-off. Each Party would then be assured of an appropriate share of funding without having to rely on particular interest groups and without feeling the need to extract contributions from individuals by improper means. Government would then owe its fi-

nancial debt to each and every citizen and not just those who under the present system, owe their jobs and contribute to a particular political party.

The findings in this report present serious concerns for public confidence in government. The Crime Commission regards its proposals as warranting serious thought by those who believe in a government's moral and ethical responsibility to the citizenry.

EPILOGUE

At this time, we may report on the results of the criminal trials relating to the material presented in this report:

Cambria County—On November 1, 1977, Democratic County Chairman John Torquato, and PennDOT employees John George and Harold Stevens, were indicted by a federal grand jury in Pittsburgh, for their roles in the extortion of over \$80,000 from PennDOT lessors. On June 29, 1978, all three were convicted. On November 15, 1978, all three were sentenced. Torquato was sentenced to a prison term of five years and a fine of \$10,000. George was sentenced to a prison term of one year and a fine of \$2,000. Stevens received a \$1,000 fine and a suspended sentence.

Allegheny County—In September, 1977, PennDOT Superintendent Rocco Burello was indicted by a federal grand jury in Pittsburgh, for shaking down PennDOT lessors during the years 1971 through 1973. On May 16, 1978, Burello was convicted of extortion after pleading no contest.

In order to appreciate the pervasive nature of the corruption found in PennDOT, these convictions should be placed in the context of other criminal trials relating to counties not investigated by the Crime Commission:

Crawford County—On March 17, 1978, six PennDOT employees were charged by the District Attorney and the state Justice Department, with forcing PennDOT employees to buy tickets to Democratic Party fund raisers. One of the defendants has already been convicted by a jury on charges of macing. The others are awaiting trial.

Indiana County—In September, 1977, PennDOT official and County Democratic Chairman William Tate, and PennDOT Superintendent Louis Sacco, were convicted of extorting money from PennDOT contractors.

Monroe County—In 1975, PennDOT Superintendent William Heller, pleaded guilty to perjury regarding his role in the extortion of money from PennDOT contractors.

Philadelphia County—In the Spring of 1976, PennDOT Superintendent Joseph Brocco was convicted, and nine others pleaded guilty or were convicted in a scheme to file false overtime forms with PennDOT. The money gained from the scheme went to Brocco. Brocco was also convicted of stealing guard rails for sale to junk dealers.

Westmoreland County—In March, 1978, Egidio Cerilli, then Pennsylvania Turnpike Commissioner, was convicted by a federal jury in Pittsburgh, for the extortion of PennDOT lessors at the time Cerilli was a PennDOT superintendent. Two Assistants, Maylan Yakovich, and John Shurina, were also convicted for extortion. A third Assistant awaits separate trial in August of this year.

These criminal proceedings serve to establish that while the conviction of individuals helps to root out the perpetrators of criminal activity, the most important

issue is the systemic nature of corruption that existed in PennDOT during the years under examination. The most important function of this report is to raise the issue and to suggest ways to deal with the potential for corruption.

We are now witnessing a situation where PennDOT is unable to adequately maintain the roads in the Commonwealth, when major PennDOT building projects have been delayed or cancelled and when thousands of PennDOT employees are being furloughed. PennDOT officials have stated that they do not have sufficient resources to support these programs, and have requested that the Legislature enact a 3 1/2 cent increase in the gasoline tax to resolve their funding crisis.

While the Crime Commission does not question the fact that PennDOT is suffering for lack of resources, we must remember that during the period under investigation, the money that was being extorted and maced from lessors and employees indicated that contract prices and salary levels were sufficiently high to allow for kickbacks. If these contracts and salaries had not had a kickback-inflation-factor, the money saved by PennDOT would have served to fill many road potholes.

Accordingly, the Crime Commission urges the Legislature to consider the recommendations contained in this report, to ensure that any money granted to PennDOT will be used to serve the public interest rather than the political party in power.

B. VOTING IRREGULARITIES IN PHILADELPHIA*

1. INTRODUCTION

Based upon information received concerning alleged irregularities in voting procedures in Philadelphia, the Commission conducted an investigation into the voting activities which occurred during the April, 1976, primary and special elections in Philadelphia. The special election was held to fill a vacant seat in the General Assembly. The Commission's investigation revealed that flagrant violations of the Election Code had taken place in the 48th Ward, 9th Division, 183rd Legislative District.

It was found that out of the 582 votes cast in the special election, 159 were cast in the names of unregistered, fictitious persons. Included among these fictitious voters were such names as Gerald Ford, Lyndon Johnson, Amos N' Andy and Richard Nixon. Not one of the 159 fictitious voters was found to live at the address given on the voter's certificate and in most instances, the addresses listed on the certificates were either non-existent or vacant buildings.

In addition to these phantom voters, the Commission found that 64 votes were cast on the voting machines with no supporting voter certificates to identify the voters. The Commission also discovered certain questionable practices relating to the absentee balloting process. Based on these findings, it appears that 38% of the votes cast in this election were fraudulent.

As a result of the Commission's investigation, one individual was arrested by the District Attorney of Philadelphia and charged with 790 counts of vote fraud.

* This report was approved by the Commissioners and published in March, 1977.

He was subsequently convicted of 160 counts. Also, in March, 1977, the United States Attorney in Philadelphia launched an extended investigation into voting fraud in Philadelphia. As a result, several persons were indicted. These cases are still pending.

In May, 1976, the Commission conducted a similar investigation of voting irregularities in Delaware County. Based upon these two investigations, the Commission made recommendations that the Election Code be revised to more effectively cope with the numerous abuses that can occur under the Code. Immediately following this report is a compilation of various Crime Commission proposals for the reformation of the Election Code.

The citizens of Pennsylvania have the undeniable constitutional right to choose, in a fair and impartial manner, those individuals who will officially represent them. The Crime Commission has documented through this report, that under the present laws, this right can be thwarted by the actions of a few individuals. The legislative and administrative regulations presently controlling the election process do not adequately protect the citizenry of Pennsylvania from the abuses that can occur. The serious problems discovered in this district raise the question as to whether the same kind of abuses are occurring in other districts. This problem is so serious that those officials, local, state and federal, who are responsible for safeguarding the integrity of the election process, must take appropriate steps to eliminate all such doubts.

2. ORIGIN OF THE INVESTIGATION

In October, 1976, a letter was sent to Attorney General Robert P. Kane by Arlen Specter, former Philadelphia District Attorney and present Chairman of the Republican National Committee's Ballot Security Program. The letter requested that the Pennsylvania Crime Commission investigate allegations of voting irregularities in the 183rd Legislative District in South Philadelphia. Attached to the letter was an affidavit signed by a Republican Party worker detailing the alleged irregularities.

Attorney General Kane referred the matter to the Crime Commission for a preliminary inquiry. Commission agents interviewed Frank J. DiCiccio who indicated that in a Special Election concurrent with the Primary Elections in April, 1976, he ran unsuccessfully as the Republican candidate for the legislative seat in the 183rd District. DiCiccio was defeated by Democrat Matthew Cianciulli, Jr. DiCiccio's allegations of irregularities focused on the efforts of Republican supporters who had mailed out 12,525 letters to persons officially listed as registered voters in the district. This mailing, which was to test the legitimacy of the names and addresses of the registrants, resulted in 386 letters being returned by the post office to DiCiccio as "undeliverable."

Based on this information, the Crime Commission decided to more thoroughly investigate apparent voting improprieties in the City of Philadelphia. Pursuant to Resolution dated January 11, 1977, the Commission launched an investigation to determine the extent of irregularities in the registration of voters and the casting of votes, and the identities of individuals or groups engaged in illegal voting activities. Since the initial allegations concerned voting irregularities in the 183rd Legislative District, the Crime Commission has focused on that general geo-

graphic area to provide a sample of the voting problems occurring under the Pennsylvania Election Code.

The Crime Commission's investigation is continuing at the present time. However, the Commission has deemed it appropriate to issue an interim report of its findings to date in that under the Election Code, certain supporting documents held by the Board of Elections are lawfully subject to destruction eleven months after an election. Many allegations being studied relate to irregularities during the April, 1976 Primary and Special Election. Since the Crime Commission is not a prosecutive body and since certain findings herein may be of interest to appropriate prosecutive agencies, the Commission wishes to allow these agencies sufficient time in which to examine the original documents on file.

3. THE ELECTION CODE—A PERSPECTIVE ¹

a. Qualifications of Voters

The Constitution and laws of Pennsylvania prescribe that the following requirements be complied with by prospective voters:

1. They must be eighteen years of age.
2. They must have been citizens of the United States at least one month.
3. They must be residents of Pennsylvania.
4. They must have resided in the election district precinct or division where they offer to vote, at least thirty days immediately preceding the election. (A qualified voter who moves his residence from one district to another in Pennsylvania within thirty days of an election may vote in the district from which he moved at that election.)
5. They must have registered to vote. ²

As they relate to the present investigation, the Election Code rules for determining the residence of a person desiring to register to vote are as follows:

1. That place shall be considered the residence of a person where he has intention of remaining for an indefinite period of time.
2. A person shall not be considered to have gained a residence in any election district of this State into which he comes for temporary purposes only, without the intention of remaining for an indefinite period of time.
3. The place where the family of a married man or woman resides shall be considered and held to be his or her place of residence, except where the husband and wife have actually separated and live apart, in which case the place where he or she has resided for thirty days or more shall be considered and held to be his or her place of residence.

1. See, *All About Elections*, Pennsylvania Department of State.

2. There are certain registration exceptions that are unrelated to the present investigation.

b. Voting Procedure

Elections are conducted, supervised and controlled at three levels: locally, by the election district board (composed of a judge of elections and two inspectors, who are responsible for the conduct of elections in the polling place of their district); in the county, by the county board of election and the county registration commission (in Philadelphia, both functions are served by the city commissioners); and on the statewide level, by the Secretary of State.

Basically, to be eligible to vote, all electors must be registered. Persons claiming the right to be registered must execute a registration affidavit, giving his or her name, address, occupation, and other personal data, and swear that the information proffered is true and correct. Electors who desire to be members of a political party must so state, and then they are eligible to vote in the primary election of the party of their choice.

The information received is placed on two official registration cards. One is filed alphabetically by and within each election district. The cards so filed constitute the district register. The second registration card is for the permanent records of the registration commission.

The district registers are delivered to the election district boards before each primary and general election. On entering the polling place to vote, each elector must first sign a voter's certificate, inserting his or her address therein. The elector then hands the certificate to the election officer in charge of the district register. The officer compares the elector's signature and address on the voter's certificate with the information on the district registration card. If the comparison indicates that the signature is genuine, the elector, if otherwise qualified, is permitted to vote. ³ No person may be permitted to vote unless a registration card bearing his or her name appears in the district register. ⁴ When the elector is found qualified to vote, the election officer who examined the voter's certificate signs his or her name or initials to the voter's certificate and records this fact on the corresponding registration card in the district register. As each elector votes, the name in the order of voting is recorded in a numbered list of voters.

c. Absentee Ballots

An elector seeking to vote by absentee ballot must request an application form by appearing in person at the office of the Board of Elections to sign for the application, or by mailing a personally signed request for an application. In the event the application form is not executed at the office of the Board of Elections by 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 form 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, the application is marked "Approved." When so approved, a temporary registration

3. If the signature is deemed not to be authentic, the elector is considered challenged as to identity and required to make an affidavit and produce certain evidence required by law.

4. There are certain exceptions to this rule. None of the exceptions are related to the present investigation.

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 at the polls.

Upon receipt and approval of an application, the Board of Elections delivers or mails the absentee ballots to the residence of the approved elector or to any other address so indicated by the elector. 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 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 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.

4. FINDINGS

a. Ghost Voting

Following nearly every primary and general election in the Commonwealth, allegations surface that votes have been cast in the names of non-existent persons, deceased persons, persons absent on election day, and persons legitimately registered to vote but no longer residing in their respective voting divisions.⁵

In pursuing various allegations of voting irregularities in the 183rd Legislative District, the Commission became cognizant of an apparent large scale voting fraud. While examining voter certificates which had been executed in the 48th Ward, 9th Division during the April, 1976 Primary and Special Election, Commission agents noticed voter certificates bearing the names of well-known athletes, celebrities, and politicians, foreign and domestic, in numbers seemingly too great to be a mere coincidence. A sample of the questionable names and their party registrations which appeared on these voter certificates include the following:

5. The Investigative Section of the Philadelphia Voter Registration Office reported the results of their investigation into voting irregularities in the 15th Ward, 3rd Division, revealing apparent violations of this nature committed during the November, 1976 General Election. The violations included the casting of votes in the names of (1) three individuals who were proven to be deceased; (2) two individuals who stated that they were out of the country on election day; (3) five individuals whose whereabouts or existence could not be determined; (4) and two individuals who were found to no longer be residing in their respective voting division.

Amos n' Andy — R
Candy Barr — R
Clara Bow — D
Richard Burton — R
Grover Cleveland — D
Dade County — R
Stanley Dancer — D
Andre DuPont — D
Sam Ervin — R
Lyndon Johnson — R
Gerald Ford — R
Liz Taylor — D
Al Attles — R

Larry Kane — R
Nikita Krushchev — R
Lois Lane — R
Clark Kent — R
Gene Mauch — R
Richard Nixon — D
Dave Schultz — D
Bill Skowron — R
Milton Shapp — R
Arlen Specter — D
Claire Trevor — R
Andy Warhol — R
Rick Barry — R

Further examination of the voters certificates revealed a definite pattern in the appearance of 159 questionable signatures on voter certificates. All of the 159 names appeared to have been signed by the same hand and were found to occur consecutively in three distinct groups. The three groups of questionable voter certificates appeared on certificates with ballot numbers from 103 to 150; 188 to 200; and 301 to 399, inclusive. Furthermore, the shade of blue ink used to sign all voter certificates from 301 to 399 was identical. On each of these 159 voting certificates, the initials of either "HC" or "TM", appear. These initials are supposed to indicate that "HC" or "TM", as election officers, have found the respective voters qualified to vote. "TM" approved voter certificates numbered 301 to 350 and 188 to 200; and "HC" approved voter certificates numbered 351 to 399 and 103 to 150.

The Commission then set forth to ascertain the legitimacy or illegitimacy of the names of the voters by attempting to contact the residents at each address associated with the questionable voter certificates. Of the 43 listed addresses associated with the 159 questionable certificates, it was discovered that 17 of the addresses were non-existent or vacant buildings, and represented the listed residences of 22 of the questionable voters. Of the existing addresses, none of the remaining 137 voters was found to actually reside at the listed address. Thus, none of the 159 questionable voters actually lived at the address listed on the voter's certificates.

The Commission then checked the official Philadelphia Voter Registration Binder for the 48th Ward, 9th Division to determine if any of the questionable voters were, in fact, registered to vote in the 48th Ward, 9th Division. Of the 159 questionable voters, none were found to be registered to vote in the 48th Ward, 9th Division. Therefore, none of the 159 would be qualified to vote, even if they were found to be legitimate residents.

In order to verify that each of the 159 questionable voter certificates represented a vote cast and included in the division's total vote tally, the Commission went to the Philadelphia Board of Elections to examine the official Return Sheet for the 48th Ward, 9th Division, for the April, 1976 Primary Election. Upon examination of the Return Sheet, it was found that a total of 582 votes were cast in the Special Election for the 183rd Legislative Seat (which was conducted as

part of the April, 1976 Primary Election). ⁶ Since there were only 518 voter certificates executed at the 48th Ward, 9th Division, polling place, it appears that all the questionable voter certificates represented counted votes. However, the 64 vote disparity between the number of completed voter certificates (518) and the number of votes tallied on the official Return Sheet (582) raised further questions. To determine if the discrepancy was due to an error in the transfer of the voting machine totals to the official Return Sheets, the Commission computed the total number of votes cast on the two voting machines utilized at the 48th Ward, 9th Division, polling place. At the bottom of each Return Sheet, there are blanks in which the Judge of Elections must enter the opening machine protective number and closing machine protective number. The opening protective number is taken from the protective counter on the voting machine prior to the casting of any votes on the election day, and the closing protective number is taken from the same counter at the end of the election day, after all votes have been cast. The difference in the two numbers represents the total number of votes cast on that particular machine during the election day. The procedure was complicated by the fact that the Judge of Elections, Michael J. Calciano, Jr., had failed to enter the closing protective number for both voting machines used at the 48th Ward, 9th Division. The Commission contacted the Philadelphia Voting Machine Warehouse and determined at which voting divisions the relevant voting machines were used in the November, 1976 General Election. The Commission then examined the Return Sheets for those voting divisions, and extracted the opening protective numbers for these same voting machines, which approximated the closing protective numbers for the machines at the end of the April, 1976 Primary Election Day. The sum total of votes cast on the two machines used at the 48th Ward, 9th Division, during the April, 1976 Primary Election was computed to be 583, which is one more than the vote tally that appeared on the official Return Sheet. ⁷ Thus, the possibility of there being an error in the transfer of the machine totals to the Return Sheet has been eliminated. It may only be concluded that there were 64 votes cast on the voting machines that are not represented by any voter certificates.

As a cross check, Commission agents returned to the Philadelphia Voter Registration Office and examined the back side of each permanent voter registration affidavit in the 48th Ward, 9th Division, to determine if there was any record of any voter having a voter certificate and ballot number greater than 518. No voter was found to have such a number greater than 518.

There were 159 fraudulent voter certificates executed in the 48th Ward, 9th Division, and there were 64 votes cast on the voting machine and tallied on the official Return Sheet which were not represented by any voter certificates whatsoever. Accordingly, 38% of the votes cast in this election were fraudulent votes.

The Commission began interviewing the 48th Ward, 9th Division, Election Board members in an effort to identify individuals who may have perpetrated this voting fraud.

6. It is interesting to note the total number of votes cast in the Combined Republican and Democratic primary election was only 177, which is 405 votes less than the total votes recorded in the electoral race for the 183rd Legislative Seat.

7. The one vote discrepancy is likely attributable to a test vote conducted at the voting machine storage warehouse.

The Board members were questioned regarding their duties on election day; the formal training that they had received relative to their position on the Election Board; from whom they took their instructions; what individuals had access to voter certificates; their own handling of voter certificates; and any irregular activities that they may have witness at the 48th Ward, 9th Division voting poll during the April, 1976 Primary and Special Election.

The Commission spoke with Helen Centola, who identified herself as being the Minority Inspector for the 48th Ward, 9th Division Election Board. Centola stated that she had the responsibility of writing the voter's name into the lists of voters booklet after the voter's registration had been confirmed by the Majority Inspector, Thomas Madden, and the voter had signed a voter certificate. Centola further explained that she, Thomas Madden, and Edith Jennings, ⁸ all had participated in completing the pertinent information on the voter certificates prior to the arrival of the voters. The Commission requested to see Centola's list of voters booklet to which minority inspectors are entitled. Centola was unable to provide the booklet, and stated that, to the best of her knowledge, both lists of voters booklets were kept by the Judge of Elections, Michael Calciano, Jr. One of the two lists is supposed to be deposited in City Hall by the Judge of Elections. The list is missing from the official records.

Thomas Madden, the 48th Ward, 9th Division Election Board Majority Inspector, was interviewed at his home and provided testimony at a private hearing of the Commission. Madden explained that the Judge of Elections, Michael Calciano, Jr., relegated to him the responsibility of checking the voter registration binders for the 48th Ward, 9th Division, to verify the registration of individuals desiring to vote. Additionally, upon verification of the voter's legitimate registration, Madden would annotate the back side of the individual's registration affidavit, entering the election date and the voter's ballot number. Madden further indicated that he, Edith Jennings, and Helen Centola, all had participated in the completion of information requirements on the voter certificate. When questioned specifically regarding the identities of persons present inside the voting poll after its official closing and their respective activities, Madden stated that, in addition to the Election Board members, he recalled that two individuals who were not election officers ⁹ remained inside the poll while the machine totals were being transcribed to the official Return Sheet. He further recalled that one of the individuals assisted the Board members by reading the machine totals and calling out the results to the other Board members who were completing the multiple Return Sheets. Madden also recollected that when he departed the voting poll, following the completion of his official duties, Michael Calciano, Jr., and the two individuals remained inside the polling place.

Helen Centola, Edith Jennings, and Thomas Madden all indicated that they had received no formal training or instruction for their respective duties as Board members. The only directions that they were given came from the Judge of Elections on election day, and that instruction was generally limited to their specific assignment for that election day. Regarding the completion of the voter certifi-

8. The Election Board Clerk for the 48th Ward, 9th Division.

9. One of the individuals is a former 48th Ward, 9th Division Committeeman.

cates, including the "Approved By" portion, they all stated that it had been accepted procedure to complete and initial one or two booklets of blank voter certificates (50 to 100 certificates) prior to the opening of the polls or during any slack periods, in order to avert possible delays during heavier voting periods. All three individuals stated that there never were less than three of the five Election Board members present at the polling place, as they went to lunch and dinner on an alternating basis. None of the Board members were aware of anyone removing voter certificates from the voting poll during the course of the election day or tampering with voter certificates in any manner.

Michael J. Calciano, Jr. was interviewed by Commission agents and also provided sworn testimony at a private Commission hearing. Calciano explained that he had the responsibility of picking up all voting materials prior to the opening of the polls; opening the voting machine in the morning; assisting the machine inspector through the course of the election day; generally supervising the activities of the Election Board; ruling on any discrepancies relative to voter registrants; closing and sealing the machine at the end of the election day; reading and calling out the machine totals for recording on the Return Sheets; and returning all election materials to the Philadelphia Board of Elections. Calciano stated that the other Election Board members often complete all the necessary information on voter certificates, including the "Approved By" portion, prior to the arrival of the voter. Calciano further stated that as many as one or two booklets of voter certificates are completed in advance to avoid any delays when the voter traffic gets heavy. Calciano stated that no unauthorized individual had access to voter certificates; that no certificates were ever removed from the polls during the election day; that, to his knowledge, no one tampered with the voter certificates in any way; and that no apparent illegal or irregular activities took place during the election day.

In order to determine whether the apparently fraudulent votes cast in the April, 1976 Special Election constituted an isolated incident in the Division or whether it was part of a voting pattern, Commission agents examined voter certificates which had been executed at the 48th Ward, 9th Division, during the May 20, 1975 Primary Election. Sixteen of the 441 voter certificates were blank.

In order to ascertain that the 16 blank voter certificates represented votes cast and tallied, the Commission examined the official Return Sheet at the Board of Elections. The Return Sheet revealed that two voting machines had been used at the voting poll. The Return Sheet showed that the two machines had a combined total number of 441 votes. This total agreed with the 441 executed voter certificates for the same ward and division. This indicates that the 16 blank voter certificates represent votes cast and tallied on the official Return Sheet.

The Commission then reviewed the official division Return Sheet for the election held on November 4, 1975. Examination of the results revealed that a total of 717 votes were cast.¹⁰ The corresponding voter certificate book showed that only 515 voter certificates had been executed. Accordingly, there is a 202 vote disparity

10. Since Michael Calciano, Jr., the Judge of Elections, had failed to enter the opening and closing protective counter numbers on the official Return Sheet, it is impossible to determine the exact number of total votes cast. The number 717 represents the total number of votes cast in the mayoral race (the race which had received the largest total number of votes). Thus, 717 is the minimum number of total votes that could have been cast in the 48th Ward, 9th Division. No absentee votes were cast.

between the total number of votes recorded and the total number of voter certificates executed.

The review of these two 1975 elections indicates that the fraudulent practices discovered in the April, 1976 election in the 48th Ward, 9th Division, does not constitute an isolated incident but rather appears to be part of a pattern of voting irregularity.

b. Absentee Ballots

Evidence of violations of the provisions of the Election Code relating to absentee balloting in the 48th Ward, 11th Division, 183rd Legislative District, was brought to the attention of the Crime Commission. The initial complaint alleged that the ballots for all absentee voters in the 48th Ward, 11th Division, during the April, 1976 Primary and Special Election, had been delivered by the Board of Elections to the home address of a local Committeeman, pursuant to written requests for such delivery on each of the absentee ballot applications.

The Crime Commission examined each of the ballot applications for absentee voters residing in the 48th Ward, 11th Division. This examination confirmed that all 18 absentee ballot applications from the Division had requested that the ballot be sent to the Committeeman's home address. It was also discovered that each ballot application bore the signature of the Committeeman.

The Election Code permits an absentee ballot to be sent to any address, but only pursuant to a specific written request by the absentee voter. Fifteen of the 18 absentee voters in the Division were successfully contacted and questioned by the Commission regarding the circumstances surrounding the application, receipt, completion, and return of their absentee ballot. Many of the absentee voters contacted by the Commission were unable to recall the exact procedures followed in connection with their absentee ballots. However, from the information provided by those persons interviewed, the Commission has discerned a pattern of manipulation in the handling of absentee ballots.

Of the 15 absentee voters interviewed by the Commission, all stated that they had contacted the Committeeman, or had been contacted by him. Each requested his assistance in obtaining an absentee ballot.

Thirteen of the absentee voters stated that they never requested that their absentee ballots be sent to the Committeeman's home. Although the absentee voters were unable to recall exactly what forms that they had signed in order to secure an absentee ballot, they generally agreed that the Committeeman had requested their signatures on various forms at different times. Seven of the 15 absentee voters stated that they had never seen nor marked a ballot. ¹¹ They believed that they had voted by merely signing a form. Another individual executed a sworn statement stating that he permitted the Committeeman to mark his ballot for him, which the Committeeman did in the presence of this individual. Of the seven absentee voters who claimed to have marked their own ballots, one stated that he returned his completed ballot to the committeeman and did not place it in a sealed envelope. Two were unable to recall what they had done with their completed ballots.

11. Six of the seven absentee voters who stated that they had never seen nor marked an absentee ballot, executed voluntary sworn statements to that effect.

While examining the absentee ballot application for one of the individuals whom the Commission was unable to contact, it was noted that the application was signed in the name of a person other than the applicant whose name was printed at the top of the form. The Commission located and spoke with the individual who had signed the application. When shown the ballot application, the individual identified the signature as his own, but did not recognize the printing on the application. He also identified the person for whom the ballot had been requested as his former roommate. He recalled that the Committeeman had brought him some papers to sign, which he did, but that was all he could recall.

The Commission contacted several individuals who had voted by absentee ballot during the November, 1976 General Election, and found that violations had occurred in that election similar to the ones discovered in the April, 1976 Primary Election described above.

c. Residency

i. Investigation

As part of the Commission's overall investigation into voting irregularities in the 183rd Legislative District, the Commission responded to allegations that numerous individuals had registered to vote from addresses at which they did not reside. In addition to looking at these named individuals, the Commission randomly selected dwellings from which many persons were registered. The Commission focused on several dwellings where the size of the dwelling did not appear to logically permit so many persons to be actual residents.

The Commission set out to determine the true residency of the voter registrants which had listed these addresses on their voter registration affidavit. Nearly all the listed registrants were not residing at their registered address. Rather, they were generally found to be residing at addresses which they had listed on their registration form under the heading "former address." Upon being questioned by the Commission agents, many registrants answered with distinctly similar explanations of their questioned residencies. It would appear that these similar responses are part of a planned pattern of response, rather than a matter of coincidence in the life styles of the registrants. This pattern, when combined with other evidence garnered by the Commission, raises questions regarding the validity of these registrations. The Commission's findings relating to the residency of voter registrants is presented below. Again, the Commission's investigation is not intended to be all encompassing, but rather to present a sampling of voter registration irregularities in the 183rd Legislative District.

1427 South Sixth Street

Current street registration lists indicate that 20 people are registered to vote as residents of this row home.

The Commission contacted a present resident who has lived in the building virtually all of her life. She was only able to identify six of the 20 as having ever lived at 1427 South Sixth Street. She was unable to provide any information as to the identities or residences of the other 14 registrants.

The property in question is owned by Margaret Cianciulli, mother of Matthew Cianciulli, Jr. Cianciulli himself operates a grocery store on the first floor of the

building, resides in an apartment behind the store,¹² and manages the property for his mother. Accordingly, the Commission interviewed Cianciulli to ascertain the identities of the 14 unidentified registrants. Cianciulli stated that two of the 14 were his relatives who had "dual residency" in Pennsylvania and New Jersey and lived in the building on a part-time basis; that six of the 14 were unknown to him; and that the other six of the 14 were friends of a present resident and as such, reside in the building from time to time.

The Crime Commission accordingly spoke with that resident. Of the six registrants who Cianciulli stated had lived with the resident, only one could be identified as having ever lived in the building. The resident denied ever knowing the other five registrants.

The Commission contacted four of the questionable residents. One registrant was unknown to present residents but identified by Cianciulli as a friend of a present resident. The registrant admitted that he had voted from the address but had never lived there.

The second registrant insisted that he had been a legitimate resident, but when confronted with evidence to the contrary, he admitted never having lived at the address. He stated that he was in fact a resident of New Jersey. He explained that an employee of another questionable resident had instructed him to use the address in Philadelphia for voting purposes.

The third registrant insisted that his listed residence was legitimate despite the fact that neither the present residents nor Cianciulli have ever heard of him.

The fourth registrant, unknown to both present residents and Cianciulli, initially claimed legitimate residency, but later admitted that he had used the address for voting purposes only with the consent of the owner of the building.

Two persons who are listed as registered residents and who have voted from the address, are unknown to present residents, unknown to Cianciulli, and unable to be located at all by Crime Commission agents.

1429 South Sixth Street

Located at 1429 South Sixth Street is a row home containing four apartments. Voter Registration records show that 16 individuals are presently registered to vote from 1429 South Sixth Street and, in fact, have voted from that address in both the 1976 Primary and General Elections. The property was owned by Joseph and Angela Berti¹³ from 1969, until November 18, 1976.

The Commission interviewed a South Philadelphia real estate broker regarding his knowledge of the names of residents and their respective dates of residency at 1429 South Sixth Street. In a voluntary sworn statement, the realtor stated that he had represented Joseph and Angela Berti for the stated purpose of selling their property at 1429 South Sixth Street. In March, 1976, the Bertis vacated the property. This left the property totally unoccupied, since the tenants who had resided in the property had previously vacated the premises. In June, 1976, while showing the property to prospective buyers, the realtor observed that the property was to-

12. This apartment has been used by the Board of Elections as a polling place on election day since 1969.

13. Joseph Berti is the brother-in-law of Matthew Cianciulli, Jr., the manager and a resident of 1427 South Sixth Street.

tally unoccupied. Final settlement for the sale of the property was November 18, 1976, at which time, the property remained totally unoccupied.

In a further attempt to substantiate the vacancy of the property at 1429 South Sixth Street during the Primary and General Elections of 1976, the Commission contacted the Philadelphia Gas and Electric Company. The utility records reveal that each of the three floors in the building was without either electric or gas service from March, 1976 until November, 1976. This information supports the realtor's assertion that the property was vacant from March, 1976 until November, 1976.

The Commission contacted eleven questionable residents.

Three of these residents provided the Crime Commission with explanations of their residency and later changed their stories. In considering any one of the explanations, these persons registered from the address at dates when they admittedly were not residents of the property.

The employer of one of these registrants was himself a listed resident of the same property. The employer said he lived at the address while waiting to move into his new home.

The fifth registrant said that, due to marital difficulties, he lived at the address for several months. These months correspond to a time the building was vacant.

Two married couples listed as residents stated that they had legitimately lived at the address. In one case, the wife had moved there due to marital difficulties. She was eventually joined by her husband at the address. They claim they both lived there for the better part of a year, even though they owned their own home at another address. In the second case, the couple said they lived at the address while waiting to move into their new home.

The tenth registrant stated that he lived at the address while simultaneously maintaining an apartment at another address. Votes cast in his name were cast at a time the building was vacant.

The wife of the eleventh registrant said that for the past nine years her husband has lived at an address other than his stated registration address. The registrant himself insists that, due to marital problems, he did live at the registration address for several months. Records reveal that he registered from the address eight months prior to the time he claims to have lived there.

The Crime Commission has exhausted all possibilities in its efforts to find two listed registrants. They are unknown to any of the past or present tenants, and yet they cast votes in 1976 from the subject address.

1433 South Sixth Street

Voter registration records indicate that ten persons are registered to vote from this address. The Crime Commission interviewed several present residents who stated that only four of the ten registrants were, in fact, past or present residents. They were unable to provide any information as to the identities of the other registrants.

The Commission contacted the record owner of the property. ¹⁴ According to

14. The owner of the property, A. J. Fanelli, stated that he has owned the building for seven years and he is very familiar with the past and present tenants.

the owner, six of the ten voter registrants have never lived at 1433 South Sixth Street during the period of his ownership.

One questionable registrant stated that when he informed his work supervisor that he was not registered to vote, the supervisor sent him to see a local politician. At the politician's suggestion, he and his wife used the subject address for voting purposes even though they never lived there. This registrant refused to provide any additional information.¹⁵

A married couple registered from the property and stated they lived there for six months. Neither the present tenants nor the owner of the property have ever heard of this couple.

The Crime Commission has been unsuccessful in its attempts to interview or subpoena the fifth questionable registrant.

In a sworn statement, the sixth listed registrant admitted never having lived at his registration address. He said that an individual identified only as "Jack," offered to assist him in getting a job if he would register to vote from the subject address. Although a vote was cast in his name, this registrant insists that he has never voted at any time.

1527 South Broad Street

Voter registration records indicate that six persons are registered to vote from this address. Agents interviewed the owner of the property, Vincent Argentiero, who identified four of the six as present residents. The other two are not known to the owner. Further interviews with the present residents indicate that neither of the two registrants has lived at the subject address. All efforts to identify these two registrants have been fruitless.

529 Wilder Street

Registration records indicate that nine persons are registered to vote from this address. The property is owned by Matthew Cianciulli, Jr. Present residents of the property identified six of the nine persons as either past or present occupants. The three unidentified residents are not known to any persons related to the property. All efforts to contact these three persons have proved fruitless.

1310 Wharton Street

Voter registration records indicate that ten persons are registered as residents of this address.

The property is owned by Michael DiMaggio but is managed by a local realtor. The realtor stated that of the ten individuals registered from that address, only five are present or former residents. The Commission attempted to contact these five questionable registrants.

The former roommate of one of these registrants said that she and the registrant moved away at least six months prior to the time the registrant voted from the registration address.

15. A source explained that this registrant had recently been arrested and cited by the Pennsylvania Liquor Control Board for attempting to bring untaxed liquor into Pennsylvania. This source also alleged that the registrant hoped to obtain the aid of a politician with his PLCB problems. According to this source, the registrant does not want to jeopardize the possibility of the politician's assistance, and thus would not cooperate with the Crime Commission.

Votes in the name of the second registrant were cast in both the Primary and General Elections in 1976. All efforts to obtain information about his identity and present whereabouts have proved unsuccessful.

The next three questionable registrants were members of the same family. One of them had three current voter registration affidavits, each listing a different address. The registrant had cast votes from all three registration addresses. The father of this registrant was himself a questionable registrant. The father had instructed his son to register in a voting division in which the father felt the Committeeman would be willing to provide political favors. The father stated that the Committeeman instructed him to use 1310 Wharton Street as the family's registration address. The father admitted that both he and his wife followed the Committeeman's instructions.

The son recalled that on two occasions he was asked by the Committeeman to register from two different addresses. The son complied, but later changed his registration to his actual home residence on the father's advice that their own Committeeman could provide more assistance than could the first Committeeman.

Further efforts by the Commission to resolve the matter at a private hearing held at Crime Commission offices proved fruitless.¹⁶

ii. Summary

A summary of the responses received from the 32 questionable registrants interviewed by the Crime Commission is as follows:

| <i>Response of Registrant</i> | <i>Number of Responses</i> | |
|--|----------------------------|---|
| Admitted never residing at the registration address. | 9 | |
| Claimed to have resided at the registration address at a time the building was vacant. | 5 | (three due to alleged marital difficulties) |
| Claimed to have resided at the registration address (but are unknown to present residents and the owner of the building). | 4 | |
| Registered from the registration address prior to the time of claimed residency. | 2 | (both due to alleged marital difficulties) |
| Registered from the registration address prior to the time of claimed residency — and claimed to have resided there at a time the building was vacant. | 3 | (one due to alleged marital difficulties) |
| Voted from the registration address well after the time they vacated the premises. | 1 | |
| Non-existent "ghost voters." | 8 | |

16. This registrant was questioned about incidents completely unrelated to the investigation involving the registrant described on page 123 herein. The two registrants were subpoenaed to appear at Crime Commission hearings coincidentally on the same date. They were both represented by the same counsel. This attorney and the two registrants all arrived at Crime Commission offices in a chauffeur-driven vehicle owned by the City of Philadelphia.

5. CONCLUSIONS AND RECOMMENDATIONS

The Commission initiated this investigation after receiving specific complaints concerning the 183rd Legislative District. Because of manpower and time limitations, the Commission has not conducted investigations in any other districts. However, the serious problems discovered in this district raise the question as to whether the same kind of problems exist in other districts. The problems are so serious that those officials, local, state and federal, responsible for safeguarding the integrity of the election process must take the appropriate steps to eliminate all such doubts.

Despite the fact that the Commission's investigation is continuing, the Commission is presently in a position to make the following observations and recommendations:

a. It appears from the findings that the people who are charged with the duty of running the polls on election day are basically not aware of the Election Code requirements. During many personal interviews with election officers, Crime Commission agents would ask the individuals to describe their election day duties. Many officers pleaded ignorance, and in several cases the officers did not even know what their official titles were. When confronted with proof of voting irregularities, several officers admitted to having participated in the irregular activities but at the same time responded, "Why, was it wrong for me to do that? Did I do something wrong?"

While the Board of Elections does conduct instruction seminars for voting officials, attendance is on a voluntary basis. Accordingly, the Crime Commission recommends that the Election Code be amended to require all election officers to participate in a mandatory series of classes. Their attendance at these classes should be a prerequisite to their being sworn in as election officers. The classes should be designed so as to alert the officers to their statutory duties and should also describe various possible irregular voting schemes.

b. Under the Election Code, all documents, papers and records in the Office of the Board of Elections need only be preserved therein for a period of eleven months.¹⁷ In order to afford the appropriate prosecutive agencies a reasonable time to examine the original records pertaining to the April, 1976 Primary Election, an interim report of findings was issued by the Crime Commission despite the fact that the Commission has not completed its investigation.

In many instances, allegations of voting irregularities do not surface to public attention until well after an election. And once they do surface, the investigation of the allegations is a long, tedious and painstaking process. To expect that all of this plus criminal indictment could effectively take place within an eleven month period is unreasonable. Accordingly, the Crime Commission recommends that the Election Code be amended to require all documents, papers and records in the Office of the Board of Elections to be preserved therein for a period of at least two years.

c. The irregularities described herein relating to the casting of absentee ballots closely parallels the irregularities recently revealed in the Crime Commission's report on *Absentee Voting Irregularities in Delaware County*.¹⁸ In that re-

17. 25 P.S. 2649.

18. May, 1976.

port, the Crime Commission offered detailed recommendations to the legislature for reformation of the Absentee Voting provisions of the Election Code. Based on the finding herein, the Crime Commission again concludes that the area of absentee voting requires serious legislative consideration, and urges the legislature to consider the Crime Commission's recommendations for statutory change.

To date, the Crime Commission has only been able to utilize two agents over a three month period to conduct this investigation. The Commission will continue to investigate the series of allegations relating to voting fraud in the City of Philadelphia in conjunction with other appropriate agencies. The Board of Elections itself has independently conducted a canvass of registered voters and has begun the process of purging names from the registration rolls pursuant to its statutory authority.

At the conclusion of this investigation, it is hoped that the Crime Commission will be in a position to make further recommendations to the legislature in the pursuit of free and fair elections in the Commonwealth.

PROPOSAL FOR ELECTION CODE REFORM

The Pennsylvania Crime Commission, based on the investigation conducted and the reports issued in May, 1976 and March, 1977, offered the following changes in the election laws as reform measures to aid in the conduct of free and fair elections. *Application for and Mailing of an Absentee Ballot*—Provision should be made for the following:

(a) Any qualified elector may apply at any time before any primary or election for an official absentee ballot on any form supplied by the federal government, or on any official Commonwealth of Pennsylvania form addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of election of the county in which his voting residence is located. An application shall be made in only one of three ways and in no other manner, and then only on the official form:

- 1) by the elector in person at the office of the county board of election,
- 2) by the elector by mail,
- 3) by mail or by delivery to the county board of election only by the elector or by the husband, wife, son, daughter, brother, sister, father, or mother of the applicant.

(b) The application shall contain the following information: home residence at the time of entrance into actual military service or federal employment, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident of voting district, voting district if known, party choice in case of primary, name and, for a military elector, his stateside military address, FPO or APO number and serial number. Any elector other than a military elector shall in addition specify the nature of his employment, the address to which ballot is to be sent, relationship where necessary, and such other information as may be determined and prescribed by the Secretary of the Commonwealth. When such application is received by the Secretary of the Commonwealth, it shall be forwarded to the proper county board of election.

(c) The application of any qualified military elector, for an official ballot in any primary or election may not be made over the signature of any person other than the qualified elector or an adult member of his immediate family.

(d) The application of any qualified elector for an official absentee ballot in any primary or election shall be signed by the applicant.

(e) Any qualified bedridden or hospitalized veteran absent from the state or county of his residence and unable to attend his polling place because of such illness or physical disability who desires to vote by absentee ballot regardless of whether he is registered or enrolled, shall signify that desire to his county board of elections by any means. Thereupon, the county board of elections shall mail all such electors an official application form addressed to the county board of elections of the county in which his voting residence is located.

The application shall contain the following information: residence at the time of becoming bedridden or hospitalized, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident in voting district, voting district if known, party choice in case of primary, name and address of present residence or hospital at which hospitalized. When such application is received by the Secretary of the Commonwealth, it shall be forwarded to the proper county board of elections.

The application shall be signed by the applicant and may be filed at any time before any primary or election: provided, however, that in the event any elector entitled to an absentee ballot under this subsection be unable to sign his application because of illness or physical disability, he shall be excused from signing upon making a statement which shall be witnessed by one adult person in substantially the following form: I hereby state that I am unable to sign my application for an absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

| | |
|-------------------------------|------------------------|
| _____ | _____ (Mark) |
| (Date) | |
| _____ | _____ |
| (Complete Address of Witness) | (Signature of Witness) |

Any qualified registered elector, including a spouse or dependent, who expects to be or is absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election who desires to vote by absentee ballot and any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability who desires to vote by absentee ballot and any qualified registered bedridden or hospitalized veteran in the county of residence who desires to vote by absentee ballot, may apply to the county board of elections of the county in which his voting residence is located for an official absentee ballot on any form supplied by the federal government or on any official Commonwealth of Pennsylvania form. Such official application form shall be determined and prescribed by the Secretary of the Commonwealth of Pennsylvania.

1) The application of any qualified registered elector, including

spouse or dependent who expects to be or is absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election, shall be signed by the applicant and shall include the surname and Christian name or names of the applicant, his occupation, date of birth, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed and such other information as shall make clear to the county board of elections the applicant's right to an official absentee ballot.

2) The applicant of any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and the application of any qualified registered bedridden or hospitalized veteran in the county of residence shall be signed by the applicant and shall include surname and Christian name or names of the applicant, his occupation, date of birth, residence at the time of becoming bedridden or hospitalized, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed and such other information as shall make clear to the county board of elections the applicant's right to an official ballot. In addition, the application of such electors shall include a declaration stating the nature of their disability or illness: Provided, however, that in the event any elector entitled to an absentee ballot under this subsection be unable to sign his application because of illness or physical disability, he shall be excused from signing upon making a statement which shall be witnessed by one adult person in substantially the following form: I hereby state that I am unable to sign my application for an absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

| | |
|----------------------------------|---------------------------|
| _____ | _____ (Mark) |
| (Date) | |
| _____ | _____ |
| (Complete Address of Witness) | (Signature of Witness) |

All Commonwealth of Pennsylvania application forms shall contain the following declaration and penal notice: I hereby declare under the penalties of perjury that the statements made in the above declaration are true.

(Signature)

Penalty for Falsifying Declaration—If any person shall sign an application for absentee ballot or knowing any matter declared therein to be false, he shall be guilty of a misdemeanor and upon conviction, shall be sentenced to pay a fine not exceeding two thousand dollars (\$2,000), or be imprisoned for a term not less than three months or more than one

year, or both. In addition, sentence shall include loss of the right of suffrage absolutely for a term of four years.

(f) Any qualified registered elector, including any qualified bedridden or hospitalized veteran, who is unable because of illness or physical disability to attend his polling place on the day of any primary or election or operate a voting machine and state distinctly and audibly that he is unable to do so may, with the certification by his attending physician, that he is permanently disabled and physically unable to attend the polls or operate a voting machine and make the distinct and audible statement, be placed on a permanently disabled absentee ballot list file. An absentee ballot application shall be mailed to every such person for each primary or election so long as he does not lose his voting rights by failure to vote as otherwise required by this Act. Such person shall not be required to file a physician's certificate of disability with each application, but must file a physician's certificate of permanent disability every two years in order to maintain his eligibility to vote under the provisions of this subsection. Should any such person lose his disability he shall inform the county board of elections of the county of his residence.

(g) The county chairman of each political party or the head of each political body shall designate one representative from his respective political party or body for each public institution. The representatives so appointed shall, at the same time on a date fixed by the county board of election, visit every public institution situate in the county for the purpose of distributing applications for absentee ballots. The executed applications thus obtained, shall then be submitted by said representatives to the board which shall furnish absentee ballots. If the chairman or head of a political party or body fails to appoint a representative within fifteen days from written notice from the county board of election, the county board of election shall appoint a representative from the political party or body.

(h) The county board of election shall appoint teams of three members for each public institution that shall go to the public institutions and hold the election on the first Friday prior to election day. Each member of the board shall appoint one member on every team. After the votes are cast, the teams shall collect the ballots and return them to the county board of election where they shall be placed unopened in a secure, safe and sealed container in the custody of the board until the time for canvassing same.

(i) The county board of election shall number, in chronological order, the applications for an official absentee ballot, which number shall likewise appear on the official absentee ballot for the qualified elector. The numbers shall appear legibly and in a conspicuous place but before the ballots are distributed the number of the ballot shall be torn off by the county board of election. This number information shall be appropriately inserted and become a part of the registered absentee voters file and the military, veterans and emergency civilian absentee voters file.

1) An absentee ballot may be mailed or delivered to an address other than the official residence of the elector requesting the ballot if such elector so requests in writing on the official application form, but in no case shall an absentee ballot be mailed or delivered to any address within the elector's voting district other than the elector's own official residence.

Elector's Receipt of the Absentee Ballot Only by Mail—Present section 25 P.S. 3146.5, permits the board of elections to DELIVER or MAIL official absentee ballots. This section should be amended to delete the words "DELIVER OR". The board should be required to MAIL all ballots. In addition to the deletion of these words, a third subsection should provide:

(c) In the event the board is unable to mail an absentee ballot where the board determines that such mailing would cause the elector to miss the deadline for submission of the absentee ballot to the board, the board of elections may then hand deliver the absentee ballot to the elector: However, any such hand delivery must be made by a member of the board of elections or a member of its staff, and by no other person.

Delivery of Absentee Ballot Back to the Board of Election—Present section 25 P.S. 3146.6(a)—last sentence of the first paragraph should be followed by:

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 is available, then a registrar of voters or deputy registrar of voters in the municipality in which such elector resides.

Keeping People Other Than the Voter Away From Absentee Ballots—The following should be added as new section 25 P.S. 3146.10:

No person shall have in his or her possession any official absentee ballot or ballot envelope for use in 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, any person authorized to receive official absentee ballot forms on behalf of the municipality, any authorized election official, or any other person authorized by statute to possess such ballot or ballot envelope.

Retention of Documents—Present section 25 P.S. 2649 should be amended as follows:

. . . for a period of at least eleven (11) months should be amended to read *two (2) years*.

. . . for a period of at least four (4) months should be amended to read *eight (8) months*.

Training of Election Officers—Present responsibility for training rests with the individual county boards of election. This should be changed to place the responsibility on the Secretary of the Commonwealth, for uniform training of officials. Accordingly, present section 25 P.S. 2684, should be repealed. New section 25 P.S. 2624, should be added to the statute and should read as follows:

The Secretary of the Commonwealth shall require all election officers to attend election seminars regarding the duties and responsibilities of election officers, for the education and instruction of all judges, inspectors of election, clerks

and machine inspectors, who are to serve at the primary or election. The Secretary of the Commonwealth shall give to each judge, inspector, clerk and machine inspector, who has received such instruction and is found qualified to conduct such primary or election, a certificate to that effect. For the purpose of giving such instruction, the Secretary of the Commonwealth shall organize and conduct seminars at the times and places as shall be necessary. Each judge, inspector, clerk and machine inspector shall, upon notice, attend such seminar called for his instruction and receive such instruction as shall be necessary for the proper conduct of the primary or election, and, as compensation for the time spent in receiving such instruction, each judge, inspector, clerk and machine inspector who shall qualify for and serve at such primary or election, shall receive the sum of ten (\$10.00) dollars, to be paid to him at the time and in the same manner as compensation is paid to him for his services on election day.

No judge, inspector, clerk or machine inspector shall have the authority to serve at any primary or election unless he shall first have received such instruction, shall have been found qualified to perform his duties and shall have received a certificate to that effect. Any judge, inspector, clerk or machine inspector who serves in such capacity at any primary or election without having first received a certificate or instruction endorsed by the Secretary of the Commonwealth, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one hundred (\$100.00) dollars, or to undergo imprisonment of not less than three (3) months nor more than (1) year, or both, at the discretion of the court: Provided, however, that this shall not prevent the appointment of a judge or inspector or clerk or machine inspector to fill a vacancy arising on the day of election or on the preceding day, but in case of such appointment, said appointed officer must comply with the provisions of this Act before serving in such capacity at any subsequent primary or election.

III. WHITE COLLAR CRIME

A. THE PENN STATE GROUP: A STUDY IN WHITE COLLAR CRIME *

1. INTRODUCTION

In its report on *Racketeering In The Casualty Insurance Industry*, July 1977, the Pennsylvania Crime Commission devoted a section of the report to the financial decline of a Florida insurance entity, Financial Fire and Casualty Company (one of several insurance companies within the "Penn State Group," Lambs Bridge, South Fork, Pennsylvania.)¹ The cause for the decline of Financial Fire was two-fold: 1) an ill-advised agency agreement between Financial Fire and International Surety Underwriters, a company infiltrated by reputed racket figures; and 2) a decline in the value of assets held by Financial Fire involving numerous complex transactions. Suspecting certain fraudulent activities regarding these transactions, the Crime Commission undertook a preliminary inquiry into the Penn State Group in June of 1976. In the course of the preliminary inquiry, the Commission developed information that the insurance entities within the Penn State Group and certain other associated entities obtained and used funds and manipulated assets to the detriment of lending institutions and the general public in the Commonwealth. Based on these findings, the Commission resolved, on April 27, 1977, to investigate the activities of the Penn State Group and its associates.

Having concluded the investigations, it appears that numerous violations of both state and federal law may have occurred.

2. THE PENN STATE GROUP

a. The Companies

The following are entities that are either a part of, or in some significant manner associated with, the Penn State Group.

I. Insurance and Realty Counselors, Inc. (IRC)

A Pennsylvania corporation with its principal place of business at Lambs Bridge, South Fork, Pennsylvania. IRC is the holding company for all the other entities within the Penn State Group.

* This report was approved by the Commissioners and referred in July, 1978, to appropriate law enforcement and administrative agencies for review.

1. The Penn State Group is the commercial designation for a group of insurance companies under a Pennsylvania holding company called Insurance and Realty Counselors, Inc.

ii. Financial Fire and Casualty Company (Financial Fire)

A Florida corporation with its principal place of business in Fort Lauderdale, Florida. Financial Fire also had an office in the Penn State headquarters at Lambs Bridge, South Fork, Pennsylvania. Financial Fire was a Penn State Group entity prior to its liquidation in February, 1975, by the Florida Insurance Department. Financial Fire engaged in surplus lines operations and reinsurance practices.

iii. Grocers Mutual Insurance Company (Grocers)

A Pennsylvania corporation with its principal place of business at Lambs Bridge, South Fork, Pennsylvania. Grocers is a Penn State Group entity and engages in the following lines of insurance: fire, allied lines, inland marine, and commercial auto.

iv. Amherst Insurance Company (Amherst)

A Pennsylvania corporation with its principal place of business at Lambs Bridge, South Fork, Pennsylvania. Amherst is a Penn State Group entity and engaged in straight fire and allied lines insurance.

v. Penn State Mutual Insurance Company (Penn State Mutual)

A Pennsylvania corporation with its principal place of business at Lambs Bridge, South Fork, Pennsylvania. Penn State Mutual is a Penn State Group entity, engaged in fidelity and surety bonding risks.

vi. Patrons Mutual Insurance Company (Patrons)

A Pennsylvania corporation with its principal place of business at Lambs Bridge, South Fork, Pennsylvania. Patrons Mutual is a Penn State Group entity.

vii. Cambria Excess Company (Cambria)

A Pennsylvania corporation with its principal place of business at Lambs Bridge, South Fork, Pennsylvania. While not a Penn State Group entity per se, Cambria was closely associated with the entities of the Penn State Group.² Cambria's main functions were to serve as a collecting agent for premiums owed to Penn State Group insurance companies, to obtain reinsurance on policies written by the Penn State companies that exceeded the 10% capital surplus limit of that insurance company, and to accept reinsurance for outside insurance companies.

2. For example, Cambria is headquartered in the same building in South Fork, Pennsylvania, as are the other Penn State Group companies. Furthermore, Evan C. Stineman, Jr., a principal of the Penn State Group, was the owner of Cambria prior to an alleged sale of Cambria to Joseph P. LaRocca in 1973. Even after the alleged sale of Cambria to LaRocca, Frank Kring and William Botteicher, employees of Stineman, remained at Cambria as corporate officers and employees.

viii. Integrated Financial Systems, Limited (IFS, Ltd.)

A Pennsylvania corporation. IFS, Ltd., is not a Penn State Group entity. Nonetheless, as a result of the IFS, Ltd. management takeover of two Penn State Group companies, the activities and personnel of IFS, Ltd. became closely intertwined with those of the companies in the Penn State Group.

ix. Midway Properties Corporation (Midway)

A Colorado corporation with its principal place of business in Colorado Springs, Colorado. Midway is not a Penn State Group entity. However, the Crime Commission investigation revealed that Evan C. Stineman, Jr., a Penn State Group principal, was a 30% stockholder in Midway during the period under investigation.

b. The Principals

Following is a chart showing the business interrelationships among the principals of the Penn State Group companies and associated entities.

| | PENN STATE GROUP | | | | | | | RELATED COMPANIES | | |
|---|------------------------------|---------------------------|-----------------------|-----------------------|------------------------|-----------------------|-----------------------|---------------------------|---------------------------------|---------------------------------|
| | <i>IRC (Holding Co.)</i> | <i>Financial Fire</i> | <i>Grocers</i> | <i>Amherst</i> | <i>P.S. Mutual</i> | <i>Patrons</i> | <i>Angelica</i> | <i>Cambria Excess</i> | <i>Integrated Financial</i> | <i>Midway</i> |
| Harvey Stineman | President | Officer & Director | Officer | Officer & Director | — | Officer & Director | Officer & Director | — | — | — |
| Evan C. Stineman, Jr. a/k/a Chris Stineman | Secretary- Treasurer | Officer & Director | Officer & Director | Officer & Director | Officer & Director | Officer & Director | Officer & Director | Former Owner | — | 30% ^a Stockholder |
| William Botteicher | — | Officer | Officer | Director | — | Officer & Director | Director | Officer | — | — |
| Stanford F. Golin | — | — | Officer & Director | Officer & Director | Officer & Director | Officer | — | — | Officer or Director | — |
| John Brownlee | — | — | Officer & Director | — | Director | — | — | — | Officer or Director | — |
| Evan C. Stineman, Sr. | — | — | — | — | — | Officer & Director | Officer & Director | — | — | — |
| Frank Kring | — | — | — | — | — | — | — | Officer | — | — |
| Joseph P. LaRocca | — | — | — | — | — | — | — | Present Owner | — | — |
| Mervin Resnick | — | — | — | — | — | — | — | — | Officer or Director | — |
| John Grissinger | — | — | — | — | — | — | — | — | Officer or Director | — |

3. FINDINGS

a. IRC Loan at First Pennsylvania Bank

i. Facts

In March of 1973, the First Pennsylvania Bank in Philadelphia, granted IRC a loan for \$2.1 million. Evan C. Stineman, Jr., represented IRC in negotiating this loan with the bank's Senior Commercial Officer.³ Included in the collateral that Stineman pledged for the loan, were a surety bond for \$500,000 issued by Financial Fire and 76,227 shares of Financial Fire common stock, along with approximately 11,000 shares of stock from various other companies. During the negotiations for this loan, reference was made to an IRC asset of \$2.1 million in accounts receivable. During his relationship with First Pennsylvania, Stineman also presented to First Pennsylvania Bank, a balance sheet that listed as an IRC asset a \$2.1 million accounts receivable. This \$2.1 million asset was created via an agency contract agreement between IRC and IFS, Ltd., immediately prior to IRC's loan application for \$2.1 million from First Pennsylvania.

Following the granting of the loan to IRC, \$1 million was forwarded to the United States National Bank in Johnstown to pay off certain IRC debts, \$1 million was forwarded to an investment advisory account in First Pennsylvania Bank and the remaining \$100,000 was deposited in a First Pennsylvania checking account in the name of IRC. The \$1 million in the investment advisory account was used almost immediately to purchase securities. Although the securities were held at the bank and a bank officer assisted in managing the purchase and sale of the securities, Stineman exercised full control over such activity. Eventually, IRC failed to make its regular payments on the bank loan and the bank was forced to make a settlement with Stineman for payment of the loan. As a result of this settlement, the bank suffered a loss of \$137,000 on the principal.⁴

ii. Legal Issues

Deceptive Business Practices

When Evan C. Stineman, Jr., attempted to obtain a \$2.1 million loan from First Pennsylvania for IRC, reference was made to a \$2.1 million accounts receivable asset. During his relationship with the bank, he also submitted an IRC balance sheet indicating this IRC asset of \$2.1 million in accounts receivable. This receivable, created *immediately* prior to IRC's loan application, resulted from an agency contract agreement between IRC and IFS, Ltd.⁵

This agreement involved the sale by IRC to IFS, Ltd., of the management contracts of two Penn State Group entities (Grocers and Amherst) along with

3. According to the bank's Senior Commercial Officer, a bank employee, Jack Farrell, referred Stineman to the Commercial Loan Department.

4. When the bank attempted to execute on the \$500,000 Financial Fire surety bond that had been pledged as collateral, the bank found that Financial Fire had gone into liquidation and its assets were inadequate to satisfy the bond.

5. Early in 1973, IFS, Ltd. purchased from IRC, an "agency plant" consisting of approximately 300 licensed agents and brokers and the rights to the existing and new business produced by these agents and brokers in Grocers Mutual and Amherst Insurance Companies.

Stineman's personal guarantee that IFS, Ltd. would profit at least \$500,000 a year from the purchase of the contracts. In return, IFS, Ltd. delivered a promissory note to IRC in the amount of \$2.1 million and also transferred to Stineman personally, a large number of shares in IFS, Ltd. ⁶

While this agreement may, on its face, appear to be a satisfactory bargain for both parties, there are many circumstances that suggest that both parties may have conspired in the making of the agreement for the sole purpose of manufacturing a paper asset for IRC's balance sheet.

John Brownlee, President of IFS, Ltd., negotiated the agreement on behalf of IFS, Ltd. He testified that the \$2.1 million cost figure was derived from a formula based on the annual net premium earnings of Grocers and Amherst but that he did not recall what that formula was. ⁷ Generally, the formula used by the industry to determine the sale price of an insurance management contract is 1.5 times the annual net premium earnings of the company. In fact, Grocers and Amherst had never produced more than \$350,000 in net premiums in any year prior to the agreement. Even using Stineman's personal guarantee to IFS, Ltd. of \$500,000 annual net premium earnings, the value of the agreement, using the industry standard, would not exceed \$750,000. The \$2.1 million figure listed on IRC's balance sheet as a resultant asset from this agreement was, therefore, grossly inflated by almost three times the amount that the industry formula would produce. ⁸

Stineman and Brownlee both have extensive experience in the insurance business and may be assumed to be knowledgeable of the industry standard formula for the reasonable selling price of such management contracts. In negotiating such a substantial contract, Stineman and Brownlee should have known the annual gross premium earnings of Grocers and Amherst and accordingly, should have realized the unrealistic nature of the \$2.1 million accounts receivable.

Another factor which cast serious doubts upon the propriety of this transaction is the role of Stineman and Brownlee in the adoption of the proposal.

Stineman and Brownlee have been very close friends outside of their respective business environments since 1965. ⁹

All information regarding the viability of Grocers and Amherst received by the people at IFS, Ltd. who were to vote on the execution of the agreement, came from John Brownlee. ¹⁰ John Grissinger, a former IFS officer, characterized

6. Testimony of Mervin E. Resnick before the Pennsylvania Crime Commission, April 25, 1977, N.T. 37, [hereinafter referred to as Resnick].

7. Testimony of John Brownlee before the Pennsylvania Crime Commission, April 26, 1977, N.T. 33, [hereinafter referred to as Brownlee].

8. John Grissinger, former Vice President and Treasurer of IFS, Ltd., and the only officer of IFS to vote against the agency contract agreement, testified that the contract was not a good deal, and that according to standard rules in the insurance industry, the top price on such agreement should not have exceeded \$900,000. Testimony of John Grissinger before the Pennsylvania Crime Commission, April 25, 1977, N.T. 27-29, [hereinafter referred to as Grissinger].

9. Resnick, N.T. 37; Testimony of John D. Farrell before the Pennsylvania Crime Commission, March 19, 1977, N.T. 32, [hereinafter referred to as Farrell]; Brownlee, N.T. 58.

10. Resnick, N.T. 82; Grissinger, N.T. 30.

Brownlee's presentation of the purchase proposal to the IFS people as a job of "brainwashing".¹¹

Mervin Resnick, former Chairman of the Board of IFS, characterized Stineman as the person who directed Brownlee's representations regarding the agreement. Resnick stated:

My impression was that it was quite evident that he (Stineman) was calling the shots. It was just a feeling. There is nothing I could just point to, but there was a very close relationship there.¹²

It must also be noted, especially in view of the exorbitant amount paid for the contract and the \$500,000 annual net premium earnings guarantee by Stineman, that during his briefings to the IFS people, Brownlee never mentioned the fact that Grocers was in trouble, and was about to be suspended by the Pennsylvania Department of Insurance for acts of mismanagement, fraud, breach of fiduciary duty, and violations of public policy committed by Grocers' officers and directors. This had rendered Grocers in such condition that further business would have been hazardous to its policyholders, its creditors and the general public. Such fact only came to light after the agreement was consummated.¹³

After Grissinger insisted upon an IFS Board meeting so that he could go on record as being opposed to the agreement, Brownlee and the other IFS officers began to exert pressure on Grissinger to leave the IFS. Shortly after the agreement was signed, Grissinger was presented with a letter of dismissal from IFS.

Finally, when Grissinger offered resistance to this involuntary resignation, Brownlee responded by making indirect threats on Grissinger's physical well-being. Grissinger described his encounters with Brownlee on this matter as follows:

Q: Do you recall the specific words (used by Brownlee in making indirect threats)?

A: "It might not be healthy for you if you come home some night and . . ." I forget how it was. It was simply like opening a garage door and somebody would be waiting for me, or something like that.

* * *

Q: Was there any indication or implication as to who would send those men?

A: A slight reference to the mafia.

Q: By whom?

11. Grissinger, N.T. 30. A physician who was a large stockholder and a member of the Board of Directors of IFS, Ltd., told the Crime Commission that he relied on the expertise and advice of John Brownlee in deciding on how to vote on the agency contract agreement. The doctor further stated that on numerous occasions during the negotiations for the contract, Brownlee would make comments regarding the wealth of Evan C. Stineman, Jr., and the large volume of business and number of agents of Grocers and Amherst. When questioned whether, as a member of the Board of Directors of IFS, Ltd., he had ever been shown a financial statement or an annual report of Grocers or Amherst, the doctor stated that, to the best of his knowledge, he did not see any such reports.

12. Resnick, N.T. 63.

13. Grissinger, N.T. 29.

A: Brownlee.

Q: In relation to any other individual, any third party?

A: No. No names, just inferences that there were some powerful people involved.

Q: Brownlee implied that there were powerful people involved with him personally?

A: With Chris Stineman.¹⁴

Under federal statute, it is unlawful to knowingly make any false statement or report, or willfully overvalue any land, property, or security for the purpose of influencing, in any way, the *action* of state banks (such as First Pennsylvania) that are insured by the Federal Deposit Insurance Corporation, upon *any application or loan*, or any change or extension of the same.¹⁵ Under Pennsylvania law, it is unlawful to make false or misleading written statements for the purpose of obtaining property or credit.¹⁶ In view of the totality of the circumstances, it would appear that Stineman, by arranging for and placing the \$2.1 million asset on the balance sheet of IRC, knowingly provided First Pennsylvania Bank with a false and misleading financial statement in violation of both state and federal law.

Insurance Code Violations

Section 832 of the Pennsylvania Insurance Code,¹⁷ prohibits a surety company from doing business in the Commonwealth unless authorized to do so by the Insurance Commissioner. In negotiating the \$2.1 million loan with First Pennsylvania Bank, Evan Stineman pledged a \$500,000 surety bond issued by Financial Fire and Casualty Company.¹⁸ The Crime Commission has established that Financial Fire, a Florida corporation, was never authorized to do business in Pennsylvania.

Furthermore, §832 requires that any surety company doing business in the Commonwealth shall not expose itself to any loss or hazard on any one surety risk in an amount exceeding 10% of its capital and surplus unless it is protected in excess of this limit by reinsurance with a company authorized to do business in the Commonwealth. The Crime Commission has found that at the time Financial Fire wrote the \$500,000 bond on behalf of IRC, Financial Fire's capital surplus

14. Grissinger, N.T. 37-38.

15. 18 U.S.C.A. §1014 [emphasis added].

16. 18 C.P.S.A. §4107 (a) (7).

17. 40 P.S. §832, Act of May 17, 1921, P.L. 682; amended June 22, 1931, P.L. §1.

18. Stineman was an Officer and Director of Financial Fire as well as the Secretary-Treasurer of IRC.

was well below the \$5,000,000 that would be required by the Code.¹⁹ Accordingly, Financial Fire, by failing to register to do business in Pennsylvania and by presenting a bond exceeding the statutory limit, appears to have violated two provisions of §832 of the Insurance Code, both misdemeanors punishable by six months imprisonment and/or a fine of \$500.

Mail Fraud

During the year of 1973, the Florida Insurance Department conducted a routine audit of the financial stability of Financial Fire. In the course of this audit, Florida officials spent considerable time and effort examining the \$100,000 checking account at First Pennsylvania Bank in Philadelphia, which had been initiated from the proceeds of the \$2.1 million IRC loan. While this deposit was in the account of IRC, Financial Fire listed it as a Financial Fire asset held on deposit as of June 30, 1973. The Florida Department sent several confirmation statements by mail to First Pennsylvania requesting verification by the bank on Financial Fire's reported deposit. The bank responded on August 21, 1973, stating it had no record of such an account in the name of Financial Fire as of June 30, 1973. The Florida officials then met in Florida on September 10, 1973, with Evan C. Stineman, Jr., who represented Financial Fire. At this meeting, Stineman stated that the Financial Fire deposit in Pennsylvania did exist as of June 30, 1973, and that he would straighten the matter out with First Pennsylvania Bank and obtain a corrective letter.

During an interview with Crime Commission agents, First Pennsylvania's Senior Commercial Officer revealed that Evan C. Stineman, Jr., telephoned him on September 10 or 11, 1973, to request a corrective letter. The officer stated that he did not recall the details of that conversation except that it related to the \$100,000 account. On September 20, 1973, a letter dated September 11, 1973, was received by the Florida officials from the Senior Commercial Officer. This letter confirmed that Financial Fire did, in fact, have an account with First Pennsylvania as of June 30, 1973, in the amount of \$100,000.

On the basis of these two conflicting statements made by First Pennsylvania, the Florida Department conducted a detailed review of Financial Fire's books and records. Feeling that the alleged \$100,000 asset was unsupported by adequate documentation, the Florida Department mailed a third request to First Pennsylvania asking for further clarification of the situation. On October 4, 1973, the bank's Senior Commercial Officer mailed a letter to the Florida Department stating that the bank's second letter (September 11, 1973) was incorrect; that Financial Fire had no account with the bank as of June 30, 1973; but that an

19. According to the testimony of Henry Reints, bond manager for the entities within the Penn State Group, Financial Fire had only a \$300,000 capacity on any single risk, in that Financial Fire's capital surplus was \$3,000,000. Testimony of Henry Reints before the Pennsylvania Crime Commission, April 26, 1977, N.T. 17, [hereinafter referred to as Reints]. Henry Reint's signature appears on the \$500,000 surety bond as attorney in fact for Financial Fire. Also, the State of Florida Insurance Department, in May of 1974, issued an Examination Report on Financial Fire which documents the fact that under Pennsylvania law, the capital and surplus of Financial Fire was not sufficient to meet the 10% requirement on a \$300,000 bond. Florida Insurance Department, Report on Examination of Financial Fire and Casualty Company, pp. 44, 53, 121, May 31, 1974.

account in the name of Financial Fire was opened on September 14, 1973, in the amount of \$100,000.

The federal mail fraud statute ²⁰ prohibits the use of the United States mails for the furtherance of any scheme or artifice to defraud, or for obtaining money or property by false representations. This statute covers not only the actual mailing of such matter, but anyone who knowingly causes or directs that such matter be delivered.

If, indeed, Stineman directed the officer at First Pennsylvania to send false and misleading information to the Florida Insurance Department through the mails, pertaining to the financial stability of Financial Fire, it would appear that there has been a violation of federal law.

Commercial Bribery

Under Pennsylvania law, a person commits the crime of commercial bribery when, without the consent of his employer or principal, he solicits, accepts, or agrees to accept any benefit from another person upon agreement or understanding that such benefit will influence his conduct in relation to the affairs of his employer or principal. Furthermore, any person that confers, or offers, or agrees to confer any benefit to an employee, agent or fiduciary to influence such employee's conduct in relation to the affairs of his employer, is guilty of the same crime. ²¹

Mervin Resnick, John Grissinger and John Brownlee testified that Jack Farrell was John Brownlee's "contact" man at First Pennsylvania Bank. ²² Farrell testified that John Brownlee introduced Evan C. Stineman, Jr., to Farrell for the purpose of soliciting Stineman's account for First Pennsylvania. ²³

Serious questions are raised as to Farrell's involvement in the \$2.1 million loan to IRC. Whereas Farrell characterized himself as an innocent go-between, there exists the possibility that he may have received remunerations in exchange for using his influence at First Pennsylvania to swing the loan for IRC. Farrell has denied that he ever received any money or any other thing of value in exchange for assistance in obtaining loans for Stineman at First Pennsylvania Bank. ²⁴ However, the Crime Commission investigation reveals that Stineman tendered a check in the amount of \$2,500 payable to Farrell some time after the \$2.1 million loan was granted. Later, when confronted with this information, Farrell claimed that the \$2,500 check was not a payoff but rather an investment by Stineman into an investment counseling business that Farrell had planned to start in the Philadelphia area. This \$2,500 loan was recorded on the books of IRC (Wyoming) on October 15, 1974. However, on December 31, 1975, Farrell's indebtedness to IRC was eliminated by claiming an "erroneous posting". The fact that Farrell admitted the loan was made and the fact that this loan was later marked as an error on the books, place Farrell's explanation in a questionable light.

20. 18 U.S.C.A. §1341.

21. 18 C.P.S.A. §4108(a) and (c).

22. Brownlee, N.T. 20; Resnick, N.T. 31; Grissinger, N.T. 13.

23. Farrell, N.T. 10, 11.

It should be noted that in interviews with Crime Commission agents, several employees of First Pennsylvania Bank described the relationship between Farrell and Stineman as very close.

24. Farrell, N.T. 35.

Farrell further stated that Stineman had promised to remove his \$1 million investment advisory account from First Pennsylvania and place it with Farrell's new firm. Stineman reneged on this promise by informing Farrell that he could not remove the investment account from First Pennsylvania because the bank would call back the \$2.1 million loan to IRC.

Notwithstanding Farrell's explanation, it would appear to be highly improper for a bank employee to play a major role in arranging for a large bank loan for an entity and thereafter receive a substantial sum of money from the beneficiary of the loan. It would seem equally improper for a bank employee to arrange a loan for another person and then accept or even consider accepting the proceeds of that loan as an asset in that employee's private business.

In addition, the Crime Commission has established that Farrell received 50,000 shares of IFS, Ltd. stock two months prior to the IRC loan of \$2.1 million²⁵ and thereafter, received the use of a leased 1974 Ford Thunderbird from IFS, Ltd.²⁶ In light of these facts, there appears to be a strong possibility that the Pennsylvania Commercial Bribery statute has been violated.

b. IFS, Ltd. Loan at Dauphin Deposit Trust Company

i. Facts

In March of 1974, the Dauphin Deposit Trust Company of Harrisburg, granted IFS, Ltd., a 60 day loan in the amount of \$150,000. John Brownlee and Mervin Resnick represented IFS, Ltd. in negotiating this loan. As collateral for the loan, Mervin Resnick offered a \$150,000 Financial Fire surety bond.²⁷ The Executive Vice President who represented the bank in these negotiations, made an inquiry into Financial Fire and discovered that the company was unlicensed to conduct business in Pennsylvania. However, relying on a financial statement of Financial Fire that was more than a year old and believing that the bank could execute on the bond through the Florida courts, this Vice President accepted the bond and approved the loan. When IFS, Ltd. failed to make payment on the loan, the bank granted IFS, Ltd., a 60 day extension upon the request of Resnick. IFS, Ltd. continued to default on the loan and the bank made several more extensions before attempting to execute on the surety bond. The extensions were granted on the basis of assurances given by Resnick and Stanford Golin that IFS was going to sell one of its companies, Quaker State Life Insurance Company, for \$650,000, and that part of the proceeds of the sale would be immediately forwarded to Dauphin Deposit to satisfy the debt. IFS officials failed to inform the bank, however, that First Pennsylvania Bank held a large block of Quaker State stock as collateral on loans that IFS, Ltd. had at First

25. It is unclear as to whether Mr. Farrell paid for this stock, and if he did, how much was paid. See Brownlee, N.T. 23. IFS is closely intertwined with the activities of personnel of IRC.

26. According to an October, 1975 invoice, it appears that Farrell did not pay for the use of this automobile.

27. According to officials of the Florida Insurance Department, this surety bond was unreported, as no evidence of its existence was in the records of the company after they were seized by the liquidator. When Dauphin Deposit filed a claim on the bond after the loan defaulted, only then was the Florida Insurance Department put on notice of the bond's existence.

Pennsylvania.²⁸ Since IFS was also defaulting on its loan payments at First Pennsylvania, First Pennsylvania stood first in line to benefit from the sale of Quaker State. Shortly after learning that Quaker State stock was being held by First Pennsylvania, Dauphin Deposit was informed that Financial Fire was being forced into liquidation by the Florida Insurance Department. Having no other recourse, Dauphin Deposit wrote off the entire loan on November 10, 1975, suffering a loss of \$150,000 plus anticipated interest.

ii. Legal Issues

Insurance Code Violations

As previously noted, Financial Fire was not licensed to do business in Pennsylvania as required by §832 of Pennsylvania's Insurance Code. Therefore, by selling the \$150,000 bond in Pennsylvania, it appears that the company was in violation of the state law.

Mail Fraud

With each time extension that Dauphin Deposit granted IFS, Ltd. to pay off its loan, Dauphin Deposit requested and received an extension of the life of the \$150,000 Financial Fire surety bond that served as collateral on the loan. The requests for and grants of this extension were made via the United States mails.

During the time that Financial Fire granted the bond extension, Financial Fire was aware that its financial viability had been under critical examination by the Florida Insurance Department and that a finding had been made as follows:

There is a deficiency of capital and surplus as of June 30, 1973, in the sum of \$476,662.41, based on the financial statements supporting this examination, which deficiency does not meet the requirements of the Florida Insurance statutes. No corrective action or new funds have been made available to the company up to the point in time in which this examination was brought to its conclusion.²⁹

On the same date that this report was issued, the Florida Insurance Commissioner mailed Evan C. Stineman, Jr., a letter informing Stineman that the critical report was being filed as a public document. Accordingly, Stineman, an officer of Financial Fire, had knowledge of the company's deficiency and inability to support the bond at the time Financial Fire extended the life of the \$150,000 bond held by Dauphin Deposit.³⁰

28. In September of 1972, a loan was granted to IFS by First Pennsylvania Bank in the amount of \$350,000. The primary collateral for this loan was the stock of Quaker State Life Insurance Company, an IFS subsidiary.

29. Florida Insurance Department, Report on Examination of Financial Fire and Casualty Company, p. 126, May 31, 1974.

30. As per an agreement with the United States Postal Inspectors Office, certain investigative steps were not taken by the Pennsylvania Crime Commission in this matter so as not to interfere with any postal office investigation. Accordingly, no attempt was made to contact the individual who signed Financial Fire's extension grant. Thus, the Pennsylvania Crime Commission can only suspect at this time, that Stineman directed the extension letter to be mailed.

As previously discussed, the federal mail statute, 18 U.S.C.A. §1341, prohibits the use of the mails for the furtherance of any scheme or artifice to defraud, or for obtaining money by false representations. This statute encompasses omissions of material fact as well as actual misrepresentations. The failure of Stineman to inform the bank as to Financial Fire's condition when applying for the extension, would appear to be an omission of a material fact. These circumstances suggest that the federal Mail Fraud statute may have been violated.³¹

c. Midway Properties Loan at First Pennsylvania Bank

i. Facts

In August of 1974, the First Pennsylvania Bank granted a one year loan in the amount of \$350,000 to Midway Properties Corporation of Colorado. According to a First Pennsylvania interdepartmental memorandum dated September 18, 1975:

This loan was brought to us by Jack Farrell (former employee) of the Trust Department. They had been taking care of the security transactions for several insurance companies controlled by Chris Stineman of Insurance and Realty Counselors, Inc., South Fork, Pennsylvania. Stineman is a 30% stockholder in our borrower, Midway Properties, Inc.

Stineman offered a \$350,000 Financial Fire surety bond as collateral for the loan to Midway. Don Calder, President of Calder and Company, and a 20% stockholder in Midway, offered a personal guarantee as further collateral on the loan. Following a request for a renewal of the loan, the bank informed Calder and Stineman that First Pennsylvania expected repayment of the loan as originally agreed and that the bank was not in a position to grant the request. The bank anticipated executing on the Financial Fire bond if Midway defaulted. Some time in the middle of July, 1975, the bank received a call from the Florida Insurance Department. Officials of that Department explained that Financial Fire went into receivership February 21, 1975. Calder subsequently offered First Pennsylvania a blanket mortgage on the total 1,200 acre realty parcel owned by Midway, Midway's only asset. The bank found that it would have a second mortgage on 164 acres of the parcel and a third mortgage on 936 acres. Bank officials spent two days in Colorado examining the parcel and discovered that only 850 acres of the tract were developable. They concluded that the parcel was overfinanced and that there was no equity remaining in the land to support Calder's offer. After Midway defaulted on its loan, First Pennsylvania brought suit against Midway, Financial Fire and Don Calder in the United States District Court of Colorado. This suit was later withdrawn by First Pennsylvania after Calder and the bank

31. Under 18 U.S.C.A. §1014, false statements which are intended to influence the action of a state bank, insured by the F.D.I.C., upon a loan or an extension thereof, are specifically prohibited. There is a possibility that this statute was violated in that the loan extension was granted on assurances that the proceeds from the sale of Quaker State Company would be used to satisfy the loan, when it was well known that this stock was being held as collateral for another loan. This, together with the fact that the stability of Financial Fire was not revealed, prompted the bank to extend the loan to IFS.

reached an agreement on repayment of the loan. A Vice President of First Pennsylvania Bank stated to Crime Commission agents that the loan is still considered a risk loan due to the overfinanced nature of Midway's real estate. This Vice President remarked that in his negotiations with Calder, there was an extreme reluctance on Calder's part to discuss his relationship with Evan C. Stineman, Jr., leaving the official with the impression that Calder was afraid of Stineman.

ii. Legal Issues

Insurance Code Violations

Financial Fire may have violated §832 of the Insurance Code, by offering the bond of an unlicensed surety company as collateral for the Midway loan at First Pennsylvania, and by offering a bond whose amount exceeds 10% of the capital and surplus of Financial Fire.³²

Deceptive Business Practices

The \$350,000 Financial Fire surety bond executed by Evan C. Stineman, Jr., on behalf of Financial Fire, was dated and offered to the bank 2 1/2 months *after* the Florida Insurance Department Report of Examination, wherein the Department concluded that Financial Fire was suffering a serious deficiency of capital and surplus. As noted earlier, Stineman had knowledge of the Department's report. As a 30% owner of Midway (a fact kept hidden from First Pennsylvania officials during loan negotiations) Stineman, in offering the bond as collateral for Midway's loan, owed First Pennsylvania a duty to inform the bank of the findings of the Florida Insurance Department. This was not a case where a borrower independently sought a bond from a disinterested surety company to secure a loan. Here, Stineman had substantial interest in both the borrower (Midway) and the guarantor (Financial Fire) and his use of a Financial Fire bond to obtain a loan for Midway appears to be a form of "double-dealing" prohibited by federal law.³³

d. Cambria Excess Loan at National Bank of the Commonwealth

i. Facts

Joseph P. LaRocca, the alleged owner of Cambria Excess, Inc., testified under oath that Cambria received two checks totaling \$505,000 as payments for a deposit on two insurance policies for two large east coast supermarket chains. On June 5, 1974, Cambria was notified that these supermarkets were cancelling their insurance coverage. Instead of returning the unearned premiums, Cambria wrote a check to Amherst Insurance Company in the amount of \$485,000. This check

32. Henry Reints testified that the highest risk that Financial Fire could cover at any time was \$300,000. The bond offered as collateral for Midway was in the amount of \$350,000.

33. The failure to inform the bank of such material facts would fall within the purview of 18 U.S.C.A. §1014. This statute requires that all statements supplied to the lending institution which have the capacity to influence them, be accurate or at least not knowingly false.

was signed by Joseph P. LaRocca; but according to LaRocca, the entire transaction was done at the direction of Evan C. Stineman, Jr.³⁴ Amherst used this money to purchase 25,000 shares of U.S. National Bank of Johnstown stock and placed them in the Amherst investment advisory account at First Pennsylvania Bank in Philadelphia.³⁵ Amherst then transferred most of these shares to Cambria.

In October, 1974, the National Bank of the Commonwealth (NBC) of Indiana, Pennsylvania, granted Cambria Excess, Inc., a loan for \$300,000. According to the bank's Vice President, Evan C. Stineman, Jr., negotiated the loan on behalf of Cambria. As collateral for the loan, Stineman pledged 21,000 shares of U.S. National Bank of Johnstown stock and two certificates of deposit in the amount of \$400,000. Cambria immediately loaned the entire \$300,000 loan proceeds to IFS, Ltd., via two checks.³⁶ In return, Cambria received a note from IFS, Ltd., in the amount of \$300,000. In March of 1976, after numerous financial manipulations by Stineman that alarmed bank officials, NBC was prompted to call the loan. The loan was satisfied. On June 30, 1975, Cambria made a paper transfer back to Amherst of 21,000 shares of U.S. National Bank stock free and clear of any liabilities. However, these shares were actually being held by the National Bank of the Commonwealth as security on the \$300,000 Cambria loan.

ii. Legal Issues

Fraud on the Pennsylvania Insurance Department

In 1976, Amherst submitted its annual report to the Pennsylvania Insurance Department for the 1975 term, listing 21,000 shares of U.S. National Bank stock as an Amherst asset. Under Pennsylvania statute, it is unlawful for a person to knowingly make a false entry in, or false alteration of any record or thing belonging to, or received or kept by, the government, or to make, present or use any record, document or thing knowing it to be false and with the intent that it be taken as a genuine part of information or records belonging to or received or kept by the government.³⁷ Thus, since these shares were pledged to and held by NBC, it appears to have been false and misleading for Amherst to report to the Pennsylvania Insurance Department that these shares were held by Amherst as an asset.³⁸

Perjury before the Insurance Commissioner

On January 10, 1975, Evan C. Stineman, Jr., testified under oath before Pennsylvania Insurance Commissioner William J. Sheppard, that he sold Cambria Excess to Joseph P. LaRocca in October of 1973. Stineman testified as follows:

34. Testimony of Joseph P. LaRocca before the Pennsylvania Crime Commission, August 19, 1976, N.T. 82, [hereinafter referred to as LaRocca].

35. As discussed earlier, Stineman had complete control over all Penn State Group related investment advisory accounts.

36. IFS, Ltd., never repaid this loan to Cambria Excess.

37. 18 C.P.S.A. §4911, Tampering with Public Records or Information.

38. In February, 1978, Evan C. Stineman and Henry F. Reints, were arrested by the Pennsylvania State Police and charged with tampering with public records, theft by deception and conspiracy. In November, 1978, they stood trial and were acquitted.

Sheppard: . . . Cambria Excess, was that originally organized by you?

Witness: Yes.

* * *

Sheppard: Who now owns this corporation?

Witness: Joe LaRocca owns the corporation now.

Sheppard: Where is he from?

Witness: From Johnstown.

Sheppard: From the Johnstown area?

Witness: Yes.

Sheppard: Does he have an insurance background?

Witness: No, he does not.

Sheppard: He is an investor?

Witness: No. He actively operates the corporation.

Sheppard: It is still actively functioning?

Witness: Yes.

Demer: When did you sell it? Do you recall?

Witness: We sold this back in the latter part of the fall of '73, I believe.³⁹

Joseph LaRocca testified before the Pennsylvania Crime Commission that Cambria was wholly owned by Evan C. Stineman, Jr.⁴⁰ LaRocca further stated that Stineman made LaRocca President of Cambria, but that LaRocca never purchased any stock in Cambria nor did he ever see a stock certificate of Cambria. LaRocca emphatically stated that he neither paid Stineman any money to become President of Cambria nor did he ever attend a Board of Directors or stockholders meeting of Cambria.⁴¹

Serious questions are thus raised concerning the truthfulness of Stineman's testimony before Insurance Commissioner Sheppard. The Crime Commission is mindful of the fact that in order to establish a perjury conviction, corroborating evidence or circumstances are necessary.⁴² However, the Crime Commission has developed such corroborating information.

39. *In Re: Amherst Holding Company System Registration Statement Amendment*; hearing before Insurance Commissioner William J. Sheppard on Friday, January 10, 1975, at 1:30 p.m., N.T. 160, 161.

40. LaRocca, N.T. 10.

41. LaRocca, N.T. 21, 22.

42. 18 C.P.S.A. §4902(f).

First, one year after Stineman says he sold Cambria, Stineman appeared at NBC to request a loan on behalf of Cambria. The bank officer in charge of the loan told Crime Commission agents that he dealt with Stineman as though Stineman were the owner of Cambria.

Second, the Crime Commission possesses three Cambria cancelled checks signed by Stineman and dated after the time that Stineman allegedly sold the company to LaRocca.

Third, accountants' work papers for Cambria contain a statement that "E. J. S., Jr." took a \$100,000 note payable to Cambria from Midway Properties and claimed it was transferred to IRC as premiums paid on March 31, 1974. This further demonstrates Evan C. Stineman's control over Cambria after he allegedly sold it.

Fourth, Frank Kring, former accounts manager for Cambria, admitted that Stineman would advise Kring on Cambria matters after LaRocca's arrival as President. The matters on which he would "advise" Kring included preparation of reinsurance certificates, policies, inadequate rates of premiums and internal operations matters such as particular files for renewals and follow-ups on accounts with agents.⁴³

Lastly, the Pennsylvania Crime Commission was unable to document the sale of Cambria to LaRocca as per Cambria's records. When Crime Commission agents appeared at Cambria headquarters with a subpoena for the records, Kring advised the agents that he no longer had them, that LaRocca took everything with him when he left the company.⁴⁴ LaRocca testified that the only documents he took were cancelled checks of Cambria,⁴⁵ which he turned over to the Crime Commission.

4. CONCLUSIONS

The Crime Commission's investigation into the Penn State Group developed what it believes to be a classic example of what is popularly referred to as "white collar crime". Experts have estimated that the economic loss to the public as a result of white collar crime is more than \$40,000,000,000 a year.⁴⁶ This figure far exceeds the economic losses to citizens which result from all street crimes against property combined.

White-collar crime is stealing—but not so plain and not so simple. It is clever theft, like that committed by a pickpocket, but is far more clever—because it operates in a manner which throws a smokescreen

43. Testimony of Frank Kring, Jr. before the Pennsylvania Crime Commission, April 26, 1977, N.T. 25, 26, [hereinafter referred to as Kring].

44. Mr. Kring may have committed perjury himself in testifying that when he told Crime Commission agents that LaRocca took the records, such was only an assumption he made and not a statement of fact. See Kring, N.T. 72. The Pennsylvania Crime Commission agents involved would testify that Mr. Kring made such statement as a matter of fact and that the word "assumed" was never uttered by Kring.

45. LaRocca, N.T. 65.

46. San Diego and Seattle Fraud Divisions, *Prosecution of Economic Crime*, p. 2.

over the crime, either to hide the fact that there has been a crime at all, or to delay its discovery, or to insulate the receiver of the loot. And because the stealing is artful, proving criminal intent is usually made difficult by greater confusions than where a common thief is apprehended. The tools of crime are paper, pens, printing presses, advertising, glib talk, and even exploitation of government programs intended to protect the public from deception. ⁴⁷

Moreover, the consequences of white collar crime are often more oppressive to the victims than those which result from most property crimes.

In this investigation, the Crime Commission has seen how the apparently fraudulent activities of one large insurance operator and his loyal confederates may destroy the equity of a family, ruin a whole firm, or render corporate stock valueless. ⁴⁸

The ultimate goal of Evan C. Stineman was obviously the economic salvation of his insurance holding group—IRC—and certain subordinate entities at the cost of other entities. Exchanges and transfer of funds from one company to another were done at the dictates and needs of several companies.

Over the period of five years, the means used to obtain this goal consisted of numerous acts of possible fraud and deceptive business practices including the apparent false reporting of assets to the Pennsylvania Insurance Commission, the apparent fraudulent obtaining of bank loans, and the manipulation of individual and corporate finances. One can appreciate a casualty insurance company's difficulty in a period of recession when the dollar value of investments are declining while the amount of insurance claims are rising. Nonetheless, the violations of statutes written with the protection of the public interest in mind, should not be tolerated.

The losers or victims of Mr. Stineman's scheme are numerous. The \$137,000 loss by First Pennsylvania Bank may be considered a minor loss to such a large financial institution. However, the \$150,000 loss by Dauphin Deposit Trust Company, a smaller bank, is a much more severe blow. Ultimately, the general public suffers from such activity when you consider the fact that these banks may attempt to recoup their losses by raising interest rates on other loans. The stockholders of IFS, Ltd., were victimized by a calculated attempt to destroy the viability of the company by its operators. For example, an IFS investor advised the Crime Commission that he invested \$320,000 in IFS, Ltd. stock and that at the present time, the stock is worthless. He also related how badly he felt having induced two of his secretaries to invest in IFS, Ltd. stock. Both had lost substantial savings on the investment.

During the Crime Commission examination of Penn State Group financial records, it was noted that several transfers of funds were made to a bank in Lander, Wyoming, and a bank in Colorado Springs, Colorado. It was also noted that the depositor was IRC—Wyoming, a sister entity of IRC—Pennsylvania. It was also noted during the Crime Commission audit, that assets of IRC—Pennsyl-

47. *The Investigation of White-Collar Crime*, U.S. Department of Justice, L.E.A.A. (U.S. Government Printing Office, 1977).

48. Ramsey Clark, *Crime in America*, Pocket Books (New York: 1970), p. 23.

vania, may have been transferred to the Wyoming entity for the possible purpose of reducing income and avoiding Pennsylvania taxation. ⁴⁹ The Commission believes that several of the transactions in question require further examination.

5. RECOMMENDATIONS

1) It is recommended that the Pennsylvania Department of Revenue and/or the Internal Revenue Service examine the many financial transactions of the Penn State Group and its associates for evidence of possible tax evasion or tax fraud.

2) It is recommended that the Federal Securities and Exchange Commission examine the financial decline of IFS, Ltd., in light of the questionable activities of its operators.

3) The Crime Commission repeats its recommendation that the Pennsylvania Legislature carefully examine the statute of limitations for the various statutes directed against white collar crime. ⁵⁰ The two year statute of limitations for most white collar crimes is not nearly sufficient, since crimes of the magnitude reported herein, require thorough auditing of accounts and time consuming efforts to trace the sources of the fraud.

4) In June, 1976, the Pennsylvania General Assembly enacted new legislation at the request of the Insurance Commissioner that specifically outlines control over such holding companies as IRC. The Commission encourages the Insurance Commissioner to utilize this statute to its fullest extent. Only through effective and vigorous enforcement of the laws will the intent of the statute be fulfilled and the public interest protected.

5) It is recommended that the law enforcement agencies with jurisdiction over the questionable activities documented in the report, examine these findings to determine whether criminal prosecutions are appropriate.

49. Such transfers took place at the same time as the default on the \$2.1 million loan at First Pennsylvania Bank.

50. See Pennsylvania Crime Commission report on *Racketeering in the Casualty Insurance Industry*, p. 46.

**COOPERATION WITH
OTHER AGENCIES**

I. Communication Among Law Enforcement Agencies

As part of its stated purpose, the Pennsylvania Crime Commission has the duty to inquire into the problems that confront the administration of the criminal justice system. The Commission has observed that a major hindrance to any law enforcement agency is the lack of communication with other such agencies. Throughout the State, as well as the country, there are today a vast number of differing law enforcement agencies with varying duties, powers and goals. Their functions may be enhanced through better coordination and intercommunication. Based upon this concept, the Crime Commission actively cooperates with many law enforcement agencies in an attempt to coordinate investigative activities. The Commission believes that the establishment of an effective liaison program will contribute to the successful administration of the criminal justice system. Following is a list of the various agencies with which the Crime Commission has dealt over the past several years:

Federal Agencies

Strike Force on Organized Crime
United States Department of Justice
Philadelphia, Pennsylvania

Office of the Federal Bureau of Investigation
(The Commission has communicated with 10
branch offices of the F.B.I.)

All United States Attorney's Offices within
Pennsylvania

United States Customs Service
Philadelphia, Pennsylvania and
New York, New York

Internal Revenue Service, Intelligence Division
Philadelphia, Pennsylvania

United States Postal Inspection Service
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania and
Scranton, Pennsylvania

United States Immigration and Naturalization
Philadelphia, Pennsylvania

United States Treasury Department
Bureau of Alcohol, Tobacco and Firearms

United States Department of Justice
Drug Enforcement Agency
New York, New York

United States Senate
Permanent Committee on Investigations
Washington, D.C.

Out-of-State Law Enforcement Agencies With Statewide Jurisdiction

The Commission has, over the past several years developed a relationship with approximately 20 state agencies from various jurisdictions.

Out-Of-State Law Enforcement Agencies With Less Than Statewide Jurisdiction

The Commission has transmitted information to or received information from 11 out-of-state local agencies. Substantial work has been conducted with the police department of Ann Arundel County, Maryland and law enforcement agencies in Dade County, Florida.

Pennsylvania Agencies

The Commission has developed a working relationship with most of the administrative and law enforcement agencies within the Commonwealth. Most prominent of these contacts are:

Department of Justice, Office of Criminal Law
Department of Revenue
Insurance Commissioner
Liquor Control Board
State Police

District Attorneys' Offices

The Commission has established effective relationships with 15 District Attorneys' Offices throughout the State. Extensive cooperation has developed between the Commission and the District Attorneys in Philadelphia and Delaware County.

II. Transmission of Information Concerning Violations Of The Law

The Pennsylvania Crime Commission is not a prosecutive or accusatory body. Rather, the legislative mandate of the Commission is to investigate patterns of criminal activity and to make recommendations to control or correct such activity. During the course of its investigations, however, the Commission often uncovers information indicating particular and individual criminal violations apart from the patterns of behavior under examination. At such times, the Commission furnishes this information to an appropriate law enforcement agency for prosecutorial or administrative review. The following are the most significant situations in which the Commission, over the past two years, has transmitted such information to other law enforcement agencies and those agencies have acted, based upon the information supplied.

A. Murder In Berks County

During the course of a Pennsylvania Crime Commission investigation, Commission agents learned from a confidential informant that a murder had taken place in Berks County, Pennsylvania. Seeking further information on the murder, Crime Commission agents arranged a meeting, through this informant, with an individual who allegedly possessed first-hand knowledge of the incident. At this meeting, Commission agents learned that an individual who had cooperated with local police in the solving of an auto theft and burglary had been killed by the persons whom the police had charged with those violations. Commission agents also discovered that the victim's body had been dismembered and disposed of in an unknown location. In July, 1977, the Crime Commission transmitted this information to the Pennsylvania State Police. In October of 1977, the victim's headless body was discovered in a wooded area in Berks County. Based upon the information supplied by the Crime Commission, four individuals were arrested in January, 1978, and charged with murder, hampering a witness and conspiracy. Three of these individuals were subsequently convicted, while the charges against the fourth individual were dismissed.

B. Revocation Of Parole

During a surveillance in the Philadelphia area, Crime Commission agents observed that a major organized crime figure, who had been convicted of conspiring to sell a stolen treasury bond and who had subsequently been paroled, was meeting with other known criminals. Determining that this individual may have violated the conditions of his parole, the Crime Commission forwarded this information to the United States Attorney's Office. This information was subsequently used as the key element in initiating a federal investigation. As a result, this individual's parole was revoked and the remainder of his prison sentence was reinstated.

C. Illegal Aliens

It was discovered by Crime Commission agents that certain individuals under investigation were associating with aliens who had either entered this country illegally or had remained in the country after the expiration of their visas. The Crime Commission informed the United States Immigration and Naturalization Service of these facts. As a result of this transmittal, in January, 1978, agents from the Immigration and Naturalization Service arrested two individuals. An order of voluntary departure under safeguard was issued for one individual. This order was carried out on January 13, 1978. The second individual was ordered to depart from the United States without safeguard by April, 1978.

D. Consumer Fraud

In 1976, several dating service corporations which were under investigation by the Pennsylvania Crime Commission, entered into a consent petition filed by the Pennsylvania Bureau of Consumer Protection. In this petition, the corporations promised to refrain from making misrepresentations to consumers, to take reasonable steps toward adjusting consumer complaints, and to keep complaint records available for inspection. During the Crime Commission's investigation, it was discovered that the stipulations set forth in the consent decree had been disregarded by the corporations. This information was transmitted by the Crime Commission to the Bureau of Consumer Protection, leading to the filing of an official action against the corporations and the principal operator. As a result, a \$35,000 fine in civil penalties was levied by Philadelphia Court of Common Pleas, the corporations were ordered to forfeit their Pennsylvania corporate franchise, and were further suspended from conducting any similar business within the Commonwealth.

E. Marriage Fraud

In the course of an ongoing investigation in 1977, Crime Commission agents received information that an alien, who had only temporary residence status in the United States, had arranged to marry a United States citizen solely for the purpose of obtaining permanent residency status. Crime Commission agents learned that the arrangement involved a marriage ceremony and an immediate separation, with the United States citizen receiving a \$1,300 fee and a free divorce sometime after the separation. The Crime Commission related its findings to the Immigration and Naturalization Service for appropriate action. As a result, a rescission proceeding was initiated in order to revoke the permanent residency status which had been obtained by way of the fraudulent marriage. This proceeding is presently pending.

F. Ineligibility Of A Public Official To Hold Office

In 1977, the Crime Commission received a complaint that a constable in Delaware County, Pennsylvania, was ineligible to hold public office as a result of his prior felony conviction. The Crime Commission conducted a preliminary inquiry and discovered that the constable who had been elected in 1974, had been convicted in 1971 of burglary, larceny and conspiracy. Since the Constitution of

Pennsylvania prohibits certain convicted felons from holding public office, the Crime Commission transmitted its findings to the District Attorney of Delaware County for his legal review. In 1978, a petition was filed by the District Attorney seeking the removal from office of this constable. At the present time, this case is still pending.

G. Perjury Before The Pennsylvania Crime Commission

The Pennsylvania Crime Commission conducted an investigation into organized crime and official corruption in Berks County, Pennsylvania. During the course of this investigation, the Commission held closed hearings in Reading, Pennsylvania. At one such hearing, testimony was received from a former Berks County bail bondsman pertaining to his involvement in a case-fixing scheme. It had been alleged that this bondsman had solicited money from the relatives of persons who had been arrested in Berks County. This money was then allegedly used for payoffs to public officials in order to influence the outcome of the criminal cases. The bondsman testified before the Crime Commission that he had no involvement in this type of operation. The Crime Commission's investigation produced collateral information which was in direct conflict with the testimony given by the bondsman and which indicated that he had perjured himself at the hearing. The Crime Commission made this information available to the District Attorney of Berks County. As a result, the bondsman was charged with 38 counts of perjury. In June of 1977, a jury found the bondsman guilty on two of these charges. He has been sentenced to serve three to six years in prison on these charges.

H. Bail Bonding In Pennsylvania

On October 16, 1974, the Pennsylvania Crime Commission resolved to conduct an investigation into the nature and extent of abuses in the Pennsylvania bail system. In 1976, the Commission published a report entitled *Abuses and Criminality in the Bail Bond Business in Pennsylvania*, which outlined the questionable activities of various individual bondsmen, surety agents, and the Pennsylvania Association of Bailbond Underwriters. Subsequent to this report, the Commission conducted a follow-up investigation into bail bond abuses on the corporate and governmental levels.

Bail is that property, money or other security provided by an accused in exchange for his liberty pending his later appearance for further criminal proceedings. In the typical case, a defendant, after his arrest, is arraigned before the court, at which time the court may release the accused on his own recognizance (R.O.R.), on nominal bail, or set bail at such amount as will insure the defendant's attendance at later proceedings. ¹ Where bail is set, the defendant may post the full cash amount or realty of equal value, or he may pay a licensed bondsman or surety agent to post his bond. ² In the latter situation, the bondsman or surety

1. If a local rule of court or court order so provides, the court may accept a fixed percentage of the bail amount from the defendant, to be deposited with the Clerk of Court. See, *Pa.R.Crim.P.* 4006(c).

2. See, *Pa.R.Crim.P.* 4001-4006.

agent receives an established percentage of the bail amount and, in turn, becomes liable for the full amount of bail should the defendant abscond. Once bond is posted, the defendant is released from custody.

In Pennsylvania, professional bondsmen must be licensed by the Insurance Commission³ and surety companies must be authorized to do business in the Commonwealth.⁴ In addition, the bondsman must post sufficient unencumbered collateral to cover the bail amount and the surety company must deposit substantial funds with the state. The surety agent, in turn, posts his company's power of attorney as collateral for bonds posted. These requirements are imposed largely to insure the Commonwealth's ability to collect forfeitures where a defendant fails to appear at later proceedings.

The following overview deals with the Commission's findings pursuant to its investigation of abuses, on the governmental and corporate levels, in the Pennsylvania bail system.

1. Abuses On The Corporate Level

At the time of the Commission's investigation, most bail bond business in Pennsylvania was conducted by three large insurance companies, two bail entities operating in the state, and approximately forty agents. The Pennsylvania Crime Commission undertook an exhaustive financial analysis of the bail bonding activities of each company and its affiliates. Because of the enormity and technical nature of the financial data amassed and analyzed in this matter, the Commission cannot attempt to report here its findings in detail; however, the corporate activity uncovered clearly reflects a pattern of abuse and neglect. The Commission, through its financial audit and records examination, found that these companies, despite the technological capacity to strictly scrutinize their agents' actions, routinely tolerated and even encouraged agent abuses.

Typically, the large insurance company delegates the management of its bail bonding division to another affiliated business entity. The managing affiliate, in turn, appoints a general agent to carry on the company's bail bond business in a particular state. Individual agents are then hired by the general agent, subject to approval by the insurance company and/or manager.

The managing company purportedly supervises, monitors and controls the individual agents' activities through the use of periodic reports submitted to the general agent by the individual agent. Upon receipt of the reports, the manager feeds the information into computer banks. Thus, should any wrongdoing occur, the manager will have all of the relevant data intact.⁵

3. *Pa.R.Crim.P.* 4007(iv); Professional Bondsman's Act, 19 P.S. §90.2.

4. *Pa.R.Crim.P.* 4007(iii); Professional Bondsman's Act, 19 P.S. §90.8.

5. The individual agent's report typically reflects the particular power of attorney used in posting bond, the defendant's name for whom bond was posted, the date on which the bond was posted, the amount posted, and the fees received by the agent and remitted to the general agent. The powers of attorney used by the individual agent, as collateral for the bond, are preprinted with a serial number and state the effective time period and monetary limit on the power of attorney. Along with these periodic reports, the agent submits the stubs detached from the used powers of attorney, which stubs should correspond with the information contained in the report. When this information is received by the general agent and/or manager, it is possible to ascertain whether bonds were properly posted by the agent. For example, the periodic reports and power of attorney stubs will reflect whether the power of attorney was used within the set time period, bonding in excess of the monetary limit, and the propriety of the fee charged by the agent.

Despite this accessibility to and availability of information reflecting possible improprieties on the part of individual agents, the Crime Commission found many abuses and little, if any, evidence of disciplinary action taken against transgressors by the companies. Instead, the Commission found that the companies ignored and even condoned the abuses. The questionable practices found by the Commission in the companies' own files, included the use of expired powers of attorney, the use of powers of attorney for bond amounts in excess of the stated monetary limits, the posting of bonds by unlicensed individuals, charging defendants in excess of the amount allowed by law, and the demand for and receipt of collateral from defendants in addition to the amount charged. The abuses outlined above were not isolated instances; instead, they reflected a standard business practice condoned by the companies examined.⁶

These companies are still licensed in Pennsylvania to write surety bail bonds. All information regarding these questionable practices developed during the course of the investigation has been forwarded by the Crime Commission to appropriate authorities for review.

2. Abuses On The Government Level

In addition to the investigation of corporations involved in the Pennsylvania bail bonding industry, the Commission examined the role of state and local authorities in the bail bond system. Pursuant to this examination, the Commission interviewed various clerks of court, county solicitors, district attorneys, county sheriffs and other law enforcement personnel, members of the judiciary, and criminal defendants.

During the course of the examination, the absence of a coordinated governmental effort to properly administer bail became increasingly clear. The Commission found evidence of startling ignorance of the bail laws at all levels of authority. Most officials interviewed were not aware of the legal rate to be charged by bondsmen in the posting of bail. No guidelines regarding bail were issued and few were sought. In most of the counties examined, no specific duties regarding the administration of bail had been allocated to particular officers.

The Commission found an alarming lack of communication and cooperation between the interdependent county offices, often resulting in a paralysis of the bail system. This situation sometimes led to personal gain for some officials and to the accumulation of huge sums of bail forfeitures due to the counties which long stood uncollected. The following is a case in point, illustrating how a system based on apathy may lead to an individual's profit and loss to the public:

James Scarcella served as a District Justice (Magistrate) in Hazleton, Pennsylvania from 1968 until July 8, 1977. During the course of its bailbond investigation, the Crime Commission received many allegations concerning improper conduct on the part of Magistrate Scarcella. Individuals complained that Scarcella failed to return their cash bail after case disposition, released defendants prior to

6. The tolerance of these improprieties may be beneficial to the insurance companies. For example, if a defendant absconds and bail is forfeited, the company may assert as a defense that an unlicensed individual could not act as its agent. Similarly, the company could disclaim its liability for the forfeiture on the grounds that the power of attorney, accepted by the Court, reflected that the power had expired or that it secured bail only in the amount of the stated limit.

the arrival of a bail bondsman, failed to send cash bail to the Clerk of Courts, did not promptly pay monthly remittances to the City of Hazleton, and recorded individuals as being released on their own recognizance when, in fact, they had paid Scarcella cash bail. The Crime Commission pursued these allegations and found many questionable activities on the part of the magistrate with regard to his bail bonding practices and general office procedures. ⁷

When an accused posts cash bail to secure his release and faithfully appears at later proceedings, he is entitled to the return of his bail monies. ⁸ A common complaint of persons interviewed concerned their difficulty in securing the return of cash bail posted before Scarcella. Many persons stated that it took up to six months after disposition of the case before Scarcella returned their money. One individual stated that he was forced to visit Scarcella three times in order to receive his \$2,500 cash bail; even then, the \$2,500 was returned in the form of three separate cash payments over a two week period. Another individual told Commission agents that she posted a \$1,000 cash bail bond before Scarcella on November 17, 1974. According to the Luzerne County Court records, this case was disposed of on February 14, 1975. She did not receive the return of her cash bail from Scarcella until May 29, 1975 and, even then, Scarcella requested that the check not be cashed for two weeks. ⁹

Contrary to these common allegations, Scarcella stated that he

put it [cash bail] in their folder until the time of the preliminary hearing, and then at the time of the preliminary hearing, [he would] either refund it or forward it to the courthouse. ¹⁰

Rule 4015 of the Pennsylvania Rules of Criminal Procedure provides that,

(a) The issuing authority or the clerk of the court who takes a deposit of bail other than a surety bond, shall furnish to the depositor an itemized receipt of such bail, and note on the transcript or docket the amount deposited, and by whom deposited. When the issuing authority takes such deposit of bail he shall deliver it with the transcript of the clerk of the court, who shall place such deposit in a bank or other depository approved by the court and keep proper records thereof. Upon full and final disposition of the case, the issuing authority or the clerk of the court shall return the deposit promptly after (20) days, less any fees or commission authorized by law.

7. In compiling audit results, it was virtually impossible to separate the financial consequences regarding bail bonding only.

As a magistrate, only a small portion of Scarcella's time was spent setting bail. His other activities and their financial consequences to the city, county, and state government, are discussed in the appendix to this report.

8. Prior to the return of the full cash amount, the Clerk of Court may deduct administration costs. *Pa.R.Crim.P.* 4015.

9. Commission agents noted that this bond was recorded as "R.O.R." in the court records.

10. Testimony of James Scarcella, before the Pennsylvania Crime Commission N.T., 51, *supra*. N.T. 51, [hereinafter referred to as Scarcella].

(b) When a sum of money equal to a percentage of the full amount of the bail has been deposited, the issuing authority or clerk of court shall return the same to the depositor within twenty (20) days after full and final disposition of the case, less a reasonable charge relating to the costs of administering the percentage cash bail program.

Scarcella failed to refund these bail monies within the requisite twenty days after final disposition.

The Crime Commission found instead that Scarcella commonly recorded a defendant as being released on his own recognizance (R.O.R.) when, in fact, substantial cash bail had been posted.¹¹ Commission agents examined the court records for bonds posted by eleven individuals who stated that they posted cash bail before Scarcella. In all eleven cases, the bail bond posted before Scarcella indicated an "R.O.R." or that a property bond had been posted; none indicated that a cash bond had been posted. Thus, no bail monies were sent to the Clerk of Courts. Witnesses testifying before the Pennsylvania Crime Commission stated that Scarcella routinely instructed his employees to record cash bail as "R.O.R."¹²

Another irregularity uncovered by the Commission was Scarcella's commingling of personal and magisterial funds. During an interview with Commission agents Scarcella admitted that he deposited a defendant's cash bail in his personal checking account; at times, he would even keep the cash bail on his person. He stated that when the case was finally disposed of, he would deposit a personal check into his magisterial account and write a check payable to the defendant from his business account.¹³ Subsequently Scarcella contradicted himself at a Commission hearing, while acknowledging that he was required to keep his personal accounts separate from business accounts:

Q: Are these monies you collect in your magisterial duties required to be kept separate and distinct from other funds?

A: Yes.

Q: Has this been your practice?

A: Yes.¹⁴

The consequences of this impropriety have been costly to the City of Hazleton, and the County of Luzerne.¹⁵

Testimony received by the State Insurance Department further illustrates acts of misconduct on the part of Magistrate Scarcella.¹⁶ During a hearing concerning the renewal of a bondsman's license, two individuals testified that on November 29, 1973 they posted bail before Magistrate Scarcella in the amount of \$20,000

11. Testimony of Anna Marie Serafine before the Pennsylvania Crime Commission, N.T. 30-34, [hereinafter referred to as Serafine]. Testimony of Lynn Wenner before the Pennsylvania Crime Commission, N.T. 30-34, [hereinafter referred to as Wenner].

12. *Ibid.*

13. Since Scarcella did not denominate all deposits made into the magisterial account, the Commission's audit could not substantiate this claimed practice.

14. Scarcella, N.T. 44.

15. See, appendix.

16. Insurance Department Hearing on Renewal of Application of John Hakim, March 20, 1975.

and \$5,000, respectively. According to these defendants, the bond was posted by the bondsman for a total fee of \$1,875. ¹⁷ Based on the bond amounts, this fee represented an overcharge by the bondsman. The bondsman, however, testified that the original bonds were \$20,000 and \$15,000 and were later reduced by Scarcella to \$10,000 and \$5,000. ¹⁸ The bondsman produced a letter to the same effect which had been signed by Scarcella. If the original bonds had, in fact, totalled \$35,000, the bondsman's fee would not be an overcharge. One of the defendants who engaged the services of the bondsman denied that the bonds had been lowered by Scarcella.

During an interview with Crime Commission agents, Scarcella stated that he did lower both bonds at the preliminary hearing. He provided agents with copies of the bailbonds in the amount of \$20,000 and \$15,000. These bonds were not signed by the defendants. Scarcella also provided agents with what he said were two bailbonds, in the amount of \$5,000 each, posted by the defendants at their preliminary hearing. The defendants' signatures appeared on these bail bonds. Although these bonds were allegedly posted on January 4, 1974, they are dated November 29, 1973. At the interview, Scarcella stated that he believed it to be proper procedure to backdate the bonds.

These contradictory sets of bonds suggest one of two theories: either the defendants did not know the amounts of their bonds, or Scarcella and the bondsman combined forces to cover up an obvious overcharge by the bondsman.

Due to the allegations received, the Commission subpoenaed Scarcella's magisterial records on September 24, 1976. Upon receiving the records, it became apparent that numerous documents were missing. Scarcella then denied the Crime Commission further access to the records, whereupon Luzerne County President Judge Brominski ordered Scarcella to produce the records. Scarcella then released more documents to the Commission. Again, numerous complaints, monthly remittance reports, and index cards were conspicuously absent. A contempt hearing was scheduled before Judge Brominski on November 12, 1976. One week prior to the hearing, Scarcella released more records to the Commission. However, after Scarcella released even more records on November 16, 1976, the Commission agents ascertained that at least 100 complaint files, and many index cards and receipts had still not been produced. The contempt hearing was held on December 28, 29, and 30, 1976 and legal arguments were heard on January 14, 1977. Judge Brominski, on the latter date, promised to render a decision within two weeks. When no decision had yet been rendered by the court by June 1977, Magistrate Scarcella resigned and the Crime Commission withdrew its contempt action. Magistrate Scarcella's resignation became effective on July 8, 1977.

The question as to the whereabouts of the subpoenaed documents was resolved by Commission interviews and hearings. According to sworn testimony received by the Commission, Scarcella had systematically removed and/or destroyed the records in response to the Commission's subpoena. ¹⁹ He had also instructed his employees "to get rid of" the records and had requested them to

17. *Id.*, at 34-37; 39-41.

18. *Id.*, at 47-78.

19. Serafine, N.T. 20-22, 24-28, 32, 43-45, 51-54, 57-59, 61; Wenner, N.T. 23-24, 34-38, 55-63, 69-70.

falsely testify at Commission hearings that all documents had been released by his office.²⁰

This examination of James Scarcella's actions, in his capacity as a magistrate, represents a case study of potential abuses in the governmental administration of bail. Stricter guidelines and the rigid enforcement of those guidelines can alleviate, if not eliminate, these abuses.

During the Crime Commission's attempt to enforce its subpoena against Magistrate Scarcella, the Commission received assistance from the District Attorney's Office in Luzerne County. Since the time of that enforcement proceeding, the Commission has advised the United States Postal Inspector's Office, the United States Attorney's Office and the Pennsylvania Judicial Inquiry and Review Board about the activities of James Scarcella. To date, there has been no governmental response to these findings.

3. Conclusion

The corporate acceptance and encouragement of bail bond abuses and governmental laxity in administering bail has combined to result in the accumulation of uncollected bail forfeitures. Lax enforcement and supervision of licensing requirements and bail laws by bail bond businesses and the government have paved the road to profit by those in a position to manipulate the system. In the end, it is the overcharged defendant and the public coffer which stand to lose.

In recent years, some counties have taken the initiative to institute more closely regulated bail procedures. In order to effectively supervise the bail system, the counties must educate their administrators, allocate particular responsibilities to specific offices, and foster open cooperation and communication between the participating governmental units. Once this has been accomplished, the counties will be in a position to effectively enforce the bail laws. The public can only benefit from this effort.

APPENDIX—AUDIT RESULTS

There were three governmental units entitled to receive money from Magistrate Scarcella in the course of his services: the Commonwealth of Pennsylvania, the County of Luzerne, and the City of Hazleton. Of these three units, only the Commonwealth conducted a financial audit. This state audit does not reflect those monies due to the county or municipal government. The Pennsylvania Crime Commission's financial analysis did not uncover any funds taken unlawfully from the Commonwealth by Scarcella. It did, however, find evidence that Scarcella withheld money from both the County of Luzerne and the City of Hazleton. Only after being contacted by the Commission did the Luzerne County Controller's Office begin conducting spot checks of the magisterial records.

In our audit of Magistrate Scarcella's records, a number of irregular and improper procedures were discovered which did not directly relate to bail bonding. Due to their importance in illustrating the pervasiveness of magisterial improprieties, however, the Commission has included the results in this report. The results are included also because, in some cases, the financial consequences of Scar-

20. Wenner, N.T. 35, 60, 68-70.

cella's bail bond procedures could not be isolated from other magisterial concerns. The following discussion relates these improprieties.

1. Monthly Remittance Reports

At the close of each month, magistrates are required to provide the state, county, and municipal governments with a remittance report, detailing monies received from traffic fines, summary criminal offenses, and filing costs. By the tenth day of the following month, the appropriate amounts of money are to be remitted to the respective government bodies.

The Crime Commission examined the cancelled checks from Scarcella's magisterial checking account for the period January 1974 to July 1976. Scarcella was late in paying 88 out of 93 monthly remittances. In several cases, he was over 120 days late in remitting the monies due. As of May 1977, Scarcella owed the City of Hazleton approximately \$5,000. When a portion of this amount was finally remitted to the City, two of Scarcella's checks were returned for "insufficient funds."

Based on interviews with individuals who had paid fines and filing costs to Scarcella, Commission agents found that Scarcella failed to report approximately \$3,500 in receipts. Out of 34 monthly reports, 27 were incorrect for the period January 1974 through October 1976.

For example, in March of 1976 four persons were arrested by the Hazleton Police Department; three were charged with criminal trespass and the fourth was charged with aiding the consumption of a crime. At the hearing, Scarcella reduced the charges to summary offenses and fined the four persons a total of \$494. This fine was paid and a receipt was given by Scarcella to a defendant in that amount. An examination of Scarcella's receipt book showed that the receipt had been removed. The monthly remittance reports for March and April 1976 did not reflect a remittance to the government.

2. The Magisterial Checking Account

During the months of September 1974, December 1974, July 1975 and August 1975, Scarcella deposited less money into his magisterial account than he reported on his remittance report. Thus, if he had written the appropriate remittance checks to the city, county, and state for these months, the checks would have been returned for insufficient funds. As previously noted, several of Scarcella's remittance checks were returned for insufficient funds.

The Commission's examination of the magisterial checking account also revealed four checks payable to Scarcella. Three checks payable to other individuals were subsequently endorsed by Scarcella and cashed at his bank.

3. Withheld Civil Restitution Monies

Magistrate Scarcella handled hundreds of civil cases annually, thereby collecting thousands of dollars in awards for successful parties. Commission agents learned that many individuals spent months attempting to recoup these awards from Scarcella. Some individuals interviewed stated that Scarcella failed to notify them of the final case disposition; instead, the successful plaintiffs learned from defendants that the defendants had previously made restitution to Scarcella.

By way of example, one individual filed three civil complaints before Scarcella against three parties in August 1974, claiming over \$1,000 in total damages. In February, 1975, one of the defendants notified this plaintiff that restitution had been made to Scarcella shortly after the complaint was filed. The plaintiff then contacted the other two defendants and learned that they too had paid the damages to Scarcella during September 1974. When the plaintiff confronted Scarcella with this information, Scarcella admitted receipt of the money; however, Scarcella did not presently have the money. After a number of visits by the plaintiff, Scarcella released \$200 in April 1975 and \$200 in July 1975 to the plaintiff. In March 1976, the plaintiff was forced to secure a bank loan for the balance of the money owed by Scarcella; Scarcella agreed to make the monthly bank payments. Scarcella soon fell behind in these payments and as of January 1977, he still owed the plaintiff several hundred dollars.

Commission agents documented another case where Scarcella failed to remit a plaintiff's award altogether. In this case, it was documented that Scarcella personally cashed the award check.

PART III

OTHER CRIME COMMISSION ACTIVITIES

I Report Of Testimony By The Pennsylvania Crime Commission Before The House Subcommittee On Crime And Corrections Regarding Organized Crime Infiltration In The Pocono Mountains Area

In March of 1978, the Pennsylvania Crime Commission was requested to testify before the House Subcommittee on Crime and Corrections with regard to the active infiltration by organized crime figures into legitimate businesses in the Pocono region of Pennsylvania. The Commissioners resolved that because of the grave nature of the subject matter, the Crime Commission should appear and cooperate with the Subcommittee's efforts. However, due to the fact that the Crime Commission was at that time, and is presently continuing to pursue this investigation, the testimony was presented as a general description of the nature of the problem, without documenting the Commission's findings.

As a preface to the Crime Commission's testimony, it was made clear that the testimony given by the Commission should in no way imply that organized crime had completely taken over the Poconos and it should be understood that the majority of people in businesses in the Poconos are hard working and honest citizens.

The Crime Commission explained that the two major industries in the Pocono Mountains are tourism and land development. The Commission explored the kinds of observed activities that indicate the possible infiltration of organized crime figures into these industries.

In the course of its testimony, the Commission highlighted certain problems relating to the tourist industry by focusing on bars and resorts.

In describing the infiltration process, the Commission noted that the Pocono region is an attractive site for such activities because it is an untouched area, often rumored to be the next casino gambling enclave on the Eastern Coast. In addition, the law enforcement authorities in this area have neither the staffs nor the resources to effectively offer resistance to the organized crime machines.

The Crime Commission also testified as to organized crime's infiltration into the land development business. The Commission has discovered that individuals with organized crime affiliations were acquiring tracts of land in the Poconos and implementing various land fraud schemes. The Commission described the various methods used by these individuals to gain control of land developments. The

Commission focused on the high pressure sales tactics used to lure unsuspecting consumers into purchasing parcels of land. These practices often include false representations that the land would be developed into a thriving vacation community. Too often, however, the promised development never took place and the purchaser was left with nothing more than an empty piece of land, while the developer disappeared with the purchaser's funds.

A detailed investigation into these matters is presently being conducted. When completed, the Commission will issue a full report of its findings and will suggest possible remedies to curtail such activity and better protect the citizens of Pennsylvania.

II National Organization Of Investigatory Commissions

In February 1978, the New Jersey State Commission of Investigation hosted a conference in Princeton, New Jersey, for the purpose of bringing together various criminal investigatory agencies from across the nation. In addition to the Pennsylvania Crime Commission, in attendance were representatives from similar commissions in New York, New Mexico and Illinois. At that meeting, the participants agreed to form the National Organization of Investigatory Commissions (NOIC) for the purpose of working together to solve the common problems that arise in combatting organized crime. The five charter members of the new organization drafted a Constitution setting forth the purposes of the organization and establishing criteria for membership. In general, the goals of the organization are:

1. To exchange information and ideas concerning the administration and operation of the member organizations and to assist the member organizations in matters of professional concern.
2. To establish standards for the procedures attending investigations, hearings, reports and other operational matters of the member organizations.
3. To encourage the establishment, continuation, and improvement of independent professional investigatory commissions and like organizations.

In November 1978, the Pennsylvania Crime Commission hosted the second meeting of NOIC. At that time, a representative from West Virginia was in attendance. It is hoped that the development of the NOIC concept will enhance the effectiveness of crime commissions throughout the country and will provide a forum for the exchange of ideas and strategies in the investigation of organized crime.

PART IV

THE NEW PENNSYLVANIA CRIME COMMISSION AND A COMPREHENSIVE CRIME CONTROL PACKAGE

In its 1970 *Report on Organized Crime*, the Pennsylvania Crime Commission reached the conclusion that organized crime thrives throughout the Commonwealth and is a problem of tremendous and unrecognized magnitude. In revealing the detailed picture of organized criminal activities in Pennsylvania, it was realized that there was a great need in Pennsylvania not only for new substantive laws, but also for the legal tools to expose these activities and to enforce the law. Among the recommendations that were included in the Commission's report were measures to improve law enforcement and the administration of criminal justice in Pennsylvania, as well as recommendations for the enactment of laws to permit electronic surveillance and to improve the witness immunity statute.

During the eight years that followed, the Crime Commission persisted in articulating its position and urging the passage of this legislation. Each completed investigation served as a further documentation that organized crime and corruption existed in the Commonwealth, and that these activities could not be effectively dealt with under existing laws.

In 1978, the proposals with the Commission had so long strived for became a reality. On October 4, 1978, the Governor of Pennsylvania signed into law a comprehensive legislative package which is intended to combat large scale criminal conspiracies in Pennsylvania.

Following is an analysis of that legislation.

I. THE PENNSYLVANIA CRIME COMMISSION

Contained in the newly enacted legislation is a statute which provides for the reorganization of the Pennsylvania Crime Commission, redefining the Commission's authority and powers.

A. Authority

When the Crime Commission was originally created in 1968, it was assigned the broad responsibilities of inquiring into the causes of crime and delinquency and to investigate the adequacy of law enforcement and the administration of justice. The Commission had the power to investigate all crime generally, with particular emphasis on the relationship between any combination of powers involved in the commission of crimes on one hand, and any government or political unit, or any association, organization, trade business constituting a part or, doing business within the Commonwealth. Special emphasis was also placed upon the gathering of evidence of the existence of organized or syndicated crime in the Commonwealth and to investigate all fields of organized or syndicated crime and to carry out continued research and planning to improve the quality of criminal justice.

The authority of the Crime Commission has been more clearly defined under the newly enacted legislation. The Commission now has the authority to inquire

into organized crime and public corruption. The new legislation recognizes those areas in which the Commission has developed a particular expertise, and authorizes the Commission to investigate these specialized areas of criminal activity.

B. Organization

The Crime Commission was originally composed of five Commissioners, four of whom were appointed by the Governor, with the fifth Commissioner being the Attorney General who served as Chairman. Under the new Commission statute there are also five Commissioners. However, the Commissioners are appointed as follows:

- One by the Governor
- One by the President Pro Tem of the Senate
- One by the Speaker of the House
- One by the Minority Leader of the Senate
- One by the Minority Leader of the House

The new statute directs that no Commissioner may hold any elective public office and not more than three Commissioners may be members of the same political party.

C. Duties

Under both the old and new statutes, the Crime Commission has the duty to issue a report of every completed investigation. These reports may contain commission recommendations for appropriate legislative or administrative action. The new statute adds the responsibility of presenting these reports at a public hearing before the legislative committees which have jurisdiction over the subject matter contained in the reports. In addition, in April of each year, the Commission must appear before a joint public hearing of the House and Senate Judiciary Committees to present an annual report on the status of organized crime in the Commonwealth.

D. Powers

Under both statutes, the Pennsylvania Crime Commission has the power to issue subpoenas requiring testimony under oath or production of documentary evidence. However, under the original Commission statute, the subpoena was no more than a request. The Commission had to seek the aid of the courts to order a witness to comply with the subpoena. If a witness still refused to comply, then the Commission would ask the court to cite the witness for contempt of court. Under the new law, the Commission's subpoena is an order rather than a request. Failure to comply with a subpoena will result in the Commission requesting a court to cite the witness for contempt.

The ability of the Commission to have a witness granted immunity from prosecution exists under both the old and the new Crime Commission statutes. However, several changes have been made in the procedure and effect of granting such immunity. Under the original law, the Commission was required to have the Attorney General of Pennsylvania seek the immunity grant on behalf of the Com-

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mission. Under the newly enacted legislation, the Commission is empowered to proceed directly before the court in order to obtain the witness immunity. Prior to this application, the Commission must first consult with the Attorney General and the district attorney of any affected district, in order to determine if the grant of immunity would hinder an ongoing investigation of those authorities.

Under prior law, individuals who received immunity and then refused to testify could be held in contempt of court and imprisoned for six months. Under the new statute, such individuals may be committed to a county jail indefinitely until they purge themselves of contempt by testifying.

Legislation that was enacted along with the new Pennsylvania Crime Commission statute has revised the type of immunity that is now available. This change will be reviewed in a following section of this analysis.

E. Miscellaneous Provisions

The new statute specifically provides that any disclosure of information made by the Commission during a Commission hearing, an official proceeding, or in a Commission report is absolutely privileged. This privilege will serve as an absolute defense in all legal actions which may be initiated against the Commission.

Each Crime Commissioner now must file a public sworn statement of financial interest which is to include financial interests of spouses and children under 18 years of age. The Commissioners are also empowered to establish rules for financial disclosure requirements for Commission employees.

Finally, the new bill contains a Sunset provision, whereby the Crime Commission will expire on July 1, 1983, unless the Legislature reinstates the agency.

II. WITNESS IMMUNITY

As previously stated, the Crime Commission, in its 1970 *Report on Organized Crime*, recommended the revision of the then existing witness immunity statute.

Generally, when a witness is called upon to testify, that witness, based upon the Fifth Amendment privilege against self incrimination, may refuse to testify if such testimony would furnish information which might be used against him in criminal proceedings. However, when a witness is granted immunity from prosecution, the legal excuse for the refusal to testify is removed.

Basically, there are two forms of immunity which have been implemented throughout the United States, transactional immunity and use immunity. The difference between these two forms of immunity lies in the scope of the legal protection which is afforded the witness. Transactional immunity protects the subject against being prosecuted for any transaction or thing concerning which he is required to testify under the grant of immunity. Under use immunity the ordered testimony and any information which is derived from the testimony cannot be used against a witness in any criminal case. Thus, the immunized witness may still be prosecuted, but the information developed as a result of his testimony as well as the testimony itself may not be used in such prosecution. In Pennsylvania, the immunity which has been available has been the transactional form.

In our 1970 *Report on Organized Crime*, the Commission noted that the Pennsylvania immunity statute far exceeded constitutional requirements. Accordingly, the Commission recommended the adoption of a new immunity statute which would offer only the use restriction type of immunity. On October 4, 1978, this type of immunity was enacted into law.

The Pennsylvania Crime Commission has been granted the power in the new Crime Commission statute to employ this new form of immunity. Because the scope of immunity protection has been narrowed to the use restriction type, the Crime Commission will be able to employ this tool more effectively and more readily in an attempt to accomplish its mandated duties.

III. ELECTRONIC SURVEILLANCE

The Pennsylvania Crime Commission has observed throughout the years that electronic surveillance is an important technique for infiltrating and collecting evidence against organized criminal conspiracies. As a result, the Crime Commission recommended that an electronic surveillance statute could and should be enacted in Pennsylvania which would balance the needs of law enforcement with the public's right of privacy. In its 1970 *Report on Organized Crime*, the Commission made specific proposals for the enactment of a comprehensive electronic surveillance statute that would be patterned after the federal electronic eavesdropping statute, 18 U.S.C.A. §2510 et seq.

The crime control legislation package enacted on October 4, 1978, included an extensive statute authorizing various law enforcement agencies to employ electronic surveillance techniques in limited circumstances. This statute sets down strict guidelines for judicially supervised electronic interception of communications. The Pennsylvania Crime Commission was included in this statute as one of the law enforcement agencies in the Commonwealth permitted to employ electronic surveillance as a means of gathering information.

This new electronic surveillance statute is patterned after the federal law and as such, provides for many procedural requirements that are geared toward balancing the individual's right to privacy with the government's right to detect, curtail and prevent criminal activities.

The Pennsylvania Wiretapping and Electronic Surveillance Control Act permits nonconsensual electronic interceptions only when conducted under a court order based on an application which has been authorized by an appropriate official.

Detailed procedures must be followed and certain criteria must be satisfied before a judge can grant a court order for an interception. The authorized application by a law enforcement officer to the court must include considerable information: A complete statement of facts relied upon by the applicant, including details on the particular crime involved; a description of the facilities from which the communication will be intercepted; a description of the types of communications sought to be intercepted; the identity of the person committing the offense and making the sought communications; how other investigative techniques have been tried and failed, are not likely to succeed, or are too dangerous; the period of time desired for the interception; and any prior applications for court authorization of interception for the same persons and places.

On the basis of this data, the judge decides whether or not to issue an "ex parte" court order. The judge must find that there is probable cause for belief: 1) that an individual has committed, is committing, or is about to commit one of the crimes specified in the statute; 2) that an interception will produce communications concerning that offense; and 3) that the facilities, as described, either are about to be used in the commission of the crime, or are leased to, listed in the

name of, or commonly used by the identified person. He must also find that the normal investigative tactics have failed, or will probably fail, or are too dangerous.

The requirements of probable cause, more extensive than they are for a general search warrant under the Fourth Amendment, are designed to limit the use of interception as an investigative technique. Failure to meet or respect the procedures means either that the court will not issue an order or that any information so gathered can never be used in court.

Should the court authorize an interception, the order must identify the person, the facilities and the law enforcement agency involved; describe the type of communication sought and the crime to which it is related; and specify the period of and the time for termination for the interception. Reports on the progress of the interception can be required by the judge.

No later than 90 days after the end of an interception, an inventory must be served upon persons named in the order. The inventory includes notice of the order and its date of entry, the period of interception and whether any communications were intercepted. Additionally, the contents from any interception cannot be used in a judicial proceeding unless each party is given a copy of the order and application at least ten days in advance. Other sections of the law cover the grounds for suppressing intercepted information, the right of governmental appeal upon suppression of intercepted evidence or upon denial of any application for an interception, the submission of reports by the courts and prosecutors on interception orders and activity and the results derived therefrom, and the recovery of civil damages for violations of the intercept law. The new law also requires the legal and technical training of those law enforcement agents who are authorized to employ electronic surveillance tools.

The new statute also provides for the procedure to be followed in cases where one party consents to the electronic interception.

The implementation of electronic surveillance as an investigative tool should prove to be an effective technique in the attempt to control organized crime and official corruption in Pennsylvania.

IV. DISCLOSURE OF CONFIDENTIAL INFORMATION

During the course of many investigations, the Crime Commission found itself in need of certain information that was in the possession of other state agencies or departments. Often, however, this information could not be obtained by the Commission because such information was declared confidential by the agencies or departments, either statutorily or as a matter of policy. As a result, the Crime Commission's investigation to which the confidential information pertained often was severely hampered.

Recognizing the difficulties presented by this obstacle, the Pennsylvania Legislature has taken steps to remedy this situation. As part of the crime control package that was signed into law on October 4, 1978, the lawmakers of Pennsylvania included a statute providing for the disclosure of otherwise confidential information for investigative purposes.

Under this statute, the Executive Director of the Crime Commission, among others, may petition any judge of the Commonwealth Court for an order providing access to such confidential information.

Certain information, however, still may not be obtained by any investigating agencies. This information includes personal income tax information and the investigative or intelligence files of the State Police, the Attorney General or the Pennsylvania Crime Commission. Such material will still remain confidential.

The ability to review this information provides the Crime Commission with new and more detailed investigative sources. In the investigation of organized criminal activity and official corruption, no source of potential information should be overlooked. The avenues of information which will now be available to the Crime Commission will prove invaluable in the effort to expose criminal activity.

V. CONCLUSION

The pervasiveness of organized crime and official corruption in the Commonwealth of Pennsylvania cannot be ignored. Much too often the actual severity of the problem has been denied by both public officials and citizens alike. It is only during the recent wave of convictions of public servants and the exposure of the infiltration of organized crime into many facets of the community that there has been an awakening of the public conscience. It is this awakening of the public and the lawmakers that the Crime Commission has strived for from its inception.

The measures contained in the newly enacted crime control package are a product of this awakening and will furnish law enforcement agencies with the tools that are needed for the successful pursuit of their mandates. For the Crime Commission, the Legislature's commitment to deal with the problems of organized crime and official corruption means that the Commission will now be able to conduct more meaningful investigations. Then, as the Commission exposes more data, appropriate legislative and administrative proposals will be recommended to address the issues of criminal behavior in the Commonwealth.

Thus, these newly acquired powers will serve as the foundation in building a better and more responsive system of law enforcement, criminal justice and state government in Pennsylvania.

END