

OF LABOR DEPARTMENT'S INVESTIGATION
TEAMSTERS CENTRAL STATES PENSION FUND

MFI

HEARINGS

BEFORE THE

PERMANENT

COMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

AUGUST 25 AND 26 AND SEPTEMBER 29 AND 30, 1980

Printed for the use of the Committee on Governmental Affairs



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OVERSIGHT OF LABOR DEPARTMENT'S INVESTIGATION OF TEAMSTERS CENTRAL STATES PENSION FUND

MONDAY, AUGUST 25, 1980

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9:05 a.m., pursuant to notice, in room 3302, Dirksen Senate Office Building, under authority of S. Res. 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Marty Steinberg, chief counsel; LaVern Duffy, general counsel; W. P. Goodwin, staff director; Jack Key and Raymond Maria, investigators; Myra Crase, chief clerk; Mary Robertson, assistant chief clerk; Joseph G. Block, chief counsel to the minority; and Charles Berk, general counsel to the minority.

[Members of the subcommittee present at time of convening: Senators Nunn and Percy.]

OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. The subcommittee will come to order.

This morning the Permanent Subcommittee on Investigations opens oversight hearings on a 5-year-long investigation by the Department of Labor of the Teamsters Union's Central States, Southeast and Southwest Areas Pension Fund.

There have been allegations for a number of years regarding mismanagement and possible criminal activities—including possible links to organized crime figures—on the part of the Central States fund, its trustees and officials.

The subcommittee's interest in these matters is grounded in the jurisdiction conferred upon the Committee on Governmental Affairs and any of its duly authorized subcommittees by Senate Rule 25 and by Senate Resolution 361, agreed to March 5, 1980.

Section 3 of Senate Resolution 361 authorizes this subcommittee to investigate "criminal or other improper practices or activities * * * in the field of labor-management relations." We also are authorized to investigate syndicated or organized crime which may operate in interstate commerce.

The subcommittee's objectives in carrying out these responsibilities are: (1) To determine whether changes in Federal law are required to better protect employees and employers from criminal or improper practices and from organized crime, and (2) to oversee the operations of the Labor Department and other agencies of the Government with responsibilities in this area.

The Teamsters Central States Pension Fund, which was the target of the Labor Department investigation, has been of special interest to the subcommittee for a number of years.

The fund's trustees and administrators have been the subjects of allegations of serious mismanagement or misconduct almost since the fund was created in 1955.

Serious questions were raised concerning the soundness and wisdom of the fund's investments in real estate ventures, contrary to sound pension fund investment practices, and in gaming enterprises in Nevada.

There were charges of conflicts of interest on the part of individual fund trustees involving borrowers seeking loans from the fund. It also was alleged that millions of dollars of fund assets were invested in enterprises controlled by organized crime, and that large loans were freely given to associates of known organized crime figures.

In the wake of these allegations, the Department of Labor organized a special task force and launched an investigation of the fund in the fall of 1975.

At the same time, the subcommittee was considering an investigation of its own. However, Department officials briefed us in December 1975 and promised to conduct a thorough investigation in conjunction with the Department of Justice and the Internal Revenue Service. This was to be a broad-based, carefully planned, and well-coordinated inquiry into the affairs of the Central States Pension Fund.

Consequently, the subcommittee decided to forgo its own investigation in order not to interfere or compete or duplicate this executive branch effort. We concentrated our own efforts on the Central States health and welfare fund and proceeded to uncover a massive insurance fraud scheme in which the health and welfare fund lost some \$7 million.

We maintained an active interest in the Central States Pension Fund, however, and in July 1977 we conducted oversight hearings on the progress of the Labor Department's investigation of that fund.

As reported by Secretary Marshall, there had been much progress up to that time. The highlight had occurred in March 1977 when the fund's trustees agreed to a number of Government demands aimed at reforming the fund's operations, including the removal of the trustees from direct control over the fund's investments. Independent investment managers were hired and all of the incumbent trustees agreed to resign.

Secretary Marshall assured us that the investigation was moving forward and was shifting to a third-party stage in which evidence was being sought from people outside the fund; that is, from borrowers and persons associated with those borrowers.

Secretary Marshall promised to keep the subcommittee fully informed as to the progress of the investigation. Unfortunately, that

never came to pass, and in June 1978, Senator Percy and I requested the GAO to conduct a thorough review of the Labor Department's conduct of the investigation.

As Comptroller General Staats will testify shortly, the GAO has found a number of shortcomings and deficiencies in the investigation.

When I saw a preliminary draft of the GAO findings, several weeks ago, I instructed the subcommittee's staff to conduct some further inquiries in order to augment and elaborate on the GAO's work.

As a result of our own inquiry, we will attempt this week to delve beyond the GAO findings and to hear, for example, from the men who were in actual day-to-day charge of the Labor Department's investigation.

We also will hear from our staff investigators regarding the role of former fund trustees—who resigned at the insistence of the Government—in choosing their own replacements. We also will look at what we have been able to find out about possible links between organized crime and certain Teamsters Union officials.

I would emphasize that the subcommittee has not attempted to investigate the Central States pension funds, as such. These hearings are oversight in nature and are aimed at overseeing the lengthy Labor Department investigation of the fund.

The Central States pension fund is a huge financial operation which has an enormous obligation to the Teamsters members and their families who support the fund. The fund had some \$2.2 billion in assets at the end of 1979. Employer contributions total about \$500 million a year, and pension payments total about \$300 million annually.

The fund has about one-half million active participants and retirees receiving benefits. The future retirement benefits of those present and former Teamsters depends on how well and honestly the fund is managed.

The Labor Department, along with the IRS, has the job under the Employee Retirement Income Security Act of protecting these assets and benefits. Our task is to see if that responsibility is being carried out; and if not, why not.

Senator Percy?

OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. Mr. Chairman, my opening comments will supplement what you have just said. As Mr. Staats knows, many times hearings are held where there is very little followup. In this case, we have a clear-cut responsibility. The followup has been an absolutely independent audit by the General Accounting Office—GAO—to determine exactly what the Labor Department accomplished as against what it promised to accomplish.

Mr. Chairman, the Employee Retirement Income Security Act became effective on January 1, 1975, ERISA, as the act is commonly called, was passed by the Congress to protect the pension rights of millions of persons. It established strict standards of conduct, responsibilities, and obligations for fiduciaries of employees benefit plans and also provided for powerful remedies and sanctions to insure that the letter of the law would be upheld.

The first major case under ERISA, and the subject of these hearings—the Department of Labor's investigation of the Teamsters Central States Southeast and Southwest Areas Pension Fund—has been of longstanding interest to this subcommittee.

On July 18 and 19, 1977 this subcommittee held hearings concerning the fund's operation and the progress of the Government's then almost 18-month investigation of the fund. During the course of those hearings, Secretary of Labor Marshall testified that a joint Labor and Justice Department investigation of the Central States fund had begun in the fall of 1975. He also noted that the Internal Revenue Service had begun a separate investigation of the fund and that his Department—and this I would like to emphasize, that his Department had made arrangements to coordinate its efforts with those of IRS. Secretary Marshall further declared that the Labor Department's investigative activity was shifting from a review of fund records and documents to a search for evidence in the possession of others such as individuals associated with the fund—in other words, third-party investigations.

Finally, he noted "ERISA's fiduciary responsibility provisions and powerful, but flexible, civil enforcement mechanisms give the Department of Labor the authority and strength to bring about a truly significant change in the fund's asset management practices."

A fundamental question that must be answered during these hearings is whether—to paraphrase the words of Secretary Marshall—truly significant improvements in the fund's operation have been made. This subcommittee has an obligation to the almost 500,000 Teamsters who depend upon the fund to find out whether the rosy picture of reform painted at the subcommittee hearings 3 years ago has stood the test of time. The Labor Department has a vital obligation to those same people to insure that the future security of their pension plan is never again threatened by charges of corruption, cronyism, and shoddy business practices.

When Senator Nunn and I requested the GAO in June 1978 to review the Labor Department's investigation of the fund, we were growing increasingly concerned that the rosy picture was rapidly wilting. We were concerned that Labor and Justice cooperation in the investigation had become all but nonexistent.

We were concerned by testimony we had received in April 1978 from Attorney General Civiletti that he first learned of the Labor Department's civil law suit against the former fund trustees only hours before it was filed. We were concerned that the Labor Department had not vigorously pursued critical avenues of potential civil and criminal violations by persons who had had access to or responsibility over the fund's management.

The Labor Department's investigation has already cost the taxpayer more than \$5 million. We cannot afford the time, the money, and the personnel to reinvestigate these same issues every few years. Rather, we must make sure that every step is taken to make the first investigation thorough and complete and to make sure that the apparent successes which have been achieved are not just temporary mirrorlike illusions of permanent reform.

I expect that during these hearings the members of this subcommittee will be able to find out from GAO, from former Labor investigators, and from officials of IRS and the Labor Department whether the fund is now on a course that insures its solvency and protects the retirement income of its participants. But these answers are only acceptable if they have the stamp of lasting reform and this is and will continue to be the job of the Labor Department.

Mr. Chairman, I would like to commend your fine staff, particularly Marty Steinberg, chief counsel, LaVern Duffy, Bill Goodwin, and Ray Maria for their excellent preparation of these hearings.

I also would like to commend the minority staff, particularly Jerry Block, chief minority counsel, Chuck Berk, and Adele Linkenhoker.

I especially commend the Comptroller General, Elmer Staats, and his highly professional staff for their in-depth review of the Labor Department investigations that serves as the foundation for these hearings.

Chairman NUNN. Than you very much, Senator Percy. I also join you in thanking the minority staff and majority staff for their very diligent efforts which will, I think, be evident as we proceed.

Mr. Staats, I would like to swear in all the people who expect to testify. It might be simpler to have everyone stand up. We swear all our witnesses before this subcommittee.

Stand and raise your right hand.

Do each of you swear the testimony you give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STAATS. I do.

Mr. DENSMORE. I do.

Mr. KOWALSKI. I do.

Mr. SHANER. I do.

Mr. WYRSCH. I do.

Chairman NUNN. Let the record reflect each answered affirmatively.

Mr. Staats, I want to thank each of you who are here before us today, and also the people that you have worked with in the General Accounting Office for a long, and I am sure very tedious and very difficult, but very necessary investigation by GAO of the Labor Department overall pursual of this matter.

If you would, at this time, introduce the people with you and then we will be pleased to receive your statement.

TESTIMONY OF COMPTROLLER GENERAL ELMER B. STAATS, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY DONALD SHANER; RAYMOND WYRSCH, COUNSEL; EDWARD DENSMORE, DEPUTY DIRECTOR OF THE HUMAN RESOURCES DIVISION; AND RAYMOND KOWALSKI

Mr. STAATS. To my immediate left, Mr. Chairman, is Mr. Ed Densmore, Deputy Director of the Human Resources Division, who has had responsibility for this work. To his left is Mr. Ray Kowalski, who has been the specific leader in this particular effort. Mr. Donald Shaner, from our Philadelphia office, over here to my far right. Mr.

Raymond Wyrsh, senior attorney to our General Counsel's Office to my immediate right.

Mr. Chairman, I would like to just say a word before I start my statement as to more specifically the coverage of our review.

We were asked to look at three things specifically: Whether the Labor Department effectively planned, managed, and carried out the investigation.

Second: Whether it committed adequate resources and staff to the investigation.

Third: Whether the Labor Department adequately coordinated and cooperated with the Justice Department and the IRS.

But in the course of this review, we also looked at Labor and IRS's negotiations with the trustees to reform the fund's operation and requalify the fund as tax exempt after the IRS revoked its tax-exempt status, and also to determine how effective Labor and IRS monitored the trustees' requirements with the Government's conditions for requalification.

We did not go into the IRS's own investigation because we were denied access to their records because of the confidentiality provisions in the statute.

IRS considers it is out of bounds to the GAO.

Chairman NUNN. Is that our old friend the Tax Reform Act?

Mr. STAATS. I am afraid it is.

Also, we did not get into the records of the fund itself.

Chairman NUNN. In other words, Congress really does not have, through your office, the power to determine whether Internal Revenue Service is doing its job.

Mr. STAATS. As you know, we have made some recommendations with respect to possible changes in that statute. We believe the act went further than was intended by the Congress in denying access to information needed for purposes of criminal investigations particularly.

Chairman NUNN. That is not the subject of these hearings, but we are continuing to work on that with your cooperation.

Mr. STAATS. This hearing is a particularly important one, as we see it, because it is the first major investigation under ERISA and, therefore, it may be a good case study with respect to how that statute really operates aside from any other aspect of this investigation.

On December 31, 1979, the fund had about \$2.2 billion in assets and a membership of about 500,000 active participants and retirees receiving benefits. Employer contributions total about \$586 million annually and pension payments total about \$325 million annually.

For many years, the fund's trustees have been a subject of controversy and allegations of misusing and abusing the fund's assets. Allegations included charges that individuals linked to organized crime had connections with the fund and that questionable loans had been made by the trustees to people linked to organized crime. Consequently, in mid-1975 the Department of Labor initiated an investigation to determine whether the fund was being administered in a manner consistent with the fiduciary and other requirements of ERISA. At that time, the Internal Revenue Service had an investigation of the fund in process which it had started in 1968.

Labor's and IRS' investigations found evidence that the former trustees and officials of the fund failed to prudently carry out their fiduciary responsibilities and had not operated the fund for the exclusive benefit of plan participants and beneficiaries—as required by ERISA. On June 25, 1976, IRS revoked the fund's tax-exempt status.

Before restoring the fund's tax-exempt status, Labor and IRS in April 1977 imposed several demands on the trustees to reform the fund's operations. The trustees agreed to the demands and made several significant changes. The most significant were the trustees' appointment of independent investment managers to manage the fund's assets and investments, and adoption of amendments to have the fund conform to ERISA and the Internal Revenue Code.

Also, Labor's investigation resulted in the Secretary of Labor filing a civil suit in February 1978 against 17 former trustees and 2 former officials to recover losses that resulted from alleged mismanagement, imprudent actions, and breaches of fiduciary duties.

Our review of the Government's investigation disclosed shortcomings and deficiencies in Labor's investigative efforts, the coordination among Labor, IRS, and Justice, Labor's and IRS's dealings and agreements with the trustees in reforming the fund, and Labor's and IRS monitoring of the current trustees operations and compliance with the conditions for requalification. As a consequence, the conditions imposed by the Government may not result in lasting reforms to the fund without the continued diligent effort of Labor and IRS.

Labor's objective of having a Government-wide coordinated investigation did not succeed because IRS refused to participate in a joint investigation. IRS go-it-alone attitude and unwillingness to join the investigation did not adversely affect Labor's investigation until IRS decided on June 25, 1976, without prior notice to the fund or Labor Department to revoke the fund's tax-exempt status.

IRS action disrupted Labor's investigation and according to Labor officials created a chaotic situation. IRS action also adversely affected the fund's cooperation with Government investigators. Labor officials said they had to spend more time trying to resolve the situation with the fund and IRS than on the investigation.

Labor's investigation disclosed many significant problems in the former trustees' management of the fund's operations. However, Labor narrowly focused on the fund's real estate mortgage and collateral loans because of the significant dollar amounts involved and Labor's primary goal of protecting and preserving the fund's assets.

Labor's approach resulted in an incomplete investigation. Labor ignored other areas of alleged abuse and mismanagement of the fund's operations by the former trustees and left unresolved questions of potential civil and criminal violations and alleged mismanagement raised by its own investigators.

Labor's investigation was also incomplete in that its investigators did not complete planned third-party investigations on many of the loans included in its investigation even though they found significant fiduciary violations and imprudent practices. This omission may have precluded Labor from obtaining valuable information needed for its investigation as well as information on potential criminal violations.

Also, Labor accepted the fund's offer of voluntary cooperation

rather using its administrative subpoena powers under ERISA. Under this approach the records were not authenticated or obtained under oath, and the fund did not provide Labor all of the records it requested.

Until Labor abolished the special investigations staff in May 1980, SIS was responsible for the investigation of the fund. Although the Congress gave Labor the 45 staff positions it stated was needed by SIS to make the investigation in an adequate and timely manner, Labor later reduced the SIS staff allocation to 34. Further, SIS never filled all of these positions.

Had SIS filled the 45 authorized permanent positions, we believe it would have been able to review some of the unresolved areas and complete more third-party investigations.

Chairman NUNN. Mr. Staats, what you are saying is there were significant omissions in the overall scope of the Labor Department investigation and in addition to that, they never filled the positions that were authorized by Congress?

Mr. STAATS. That is correct.

Labor also failed to provide adequate training for the SIS investigative staff during the onsite investigation at the fund.

Notwithstanding memorandums of agreement to coordinate their efforts at the fund, Labor and Justice had continuing coordination problems which restricted the flow of investigative information from Labor to Justice. In 5 years of investigative activity, Labor made 11 formal referrals of loan information to Justice which had potential for criminal investigation. Labor and Justice officials stated that much other loan transaction information was discussed informally during meetings.

Justice officials advised us, however, that overall Labor's information was not useful in its criminal investigation efforts. As of August 1980, according to a Justice Criminal Division official, Justice had not had any criminal indictments from the 11 cases formally referred by Labor; he also stated that Justice had investigated 15 other fund loans.

However, of these, only one resulted in a conviction. Three others resulted in indictments—two of which resulted in an acquittal or dismissal and the other went to trial in August 1980.

Labor and IRS, after IRS agreed to fully coordinate in August 1976, had extensive discussions and considered various options—from a court-enforced consent decree to requiring a neutral board of trustees—in reforming the fund and having IRS restore its tax-exempt status.

The fund's tax-exempt status was restored in April 1977. The requalification was based on the trustees' oral agreement to operate the fund in accordance with ERISA and comply with eight conditions prescribed by Labor and IRS.

Early in the investigation, Labor proposed reforming the fund's operations through a legal undertaking, such as having the fund operated pursuant to a court-enforced consent decree. However, Labor officials dropped this approach after the trustees agreed to restructure the board of trustees from 16 to 10 members, and 12 of 16 trustees resigned. The 4 remaining trustees later resigned, and 10 new trustees were appointed.

Labor and IRS did not play an active role in the selection of the new trustees even though they had developed qualifications the new trus-

tees should meet, and they know that some of the former trustees—who allegedly mismanaged the fund—were members of the union organizations that apparently selected some of the new trustees.

The current trustees, under their agreement with Labor and IRS, appointed in June 1977 independent investment managers—the Equitable Life Assurance Society of the United States and the Victor Palmieri Co.—to handle most of the fund's assets.

At the end of calendar year 1979, the fund's investment portfolio had been shifted from principally real estate mortgage and collateral loans to principally stocks and other securities, assets grew from \$1.6 billion to \$2.2 billion, the annual rate of return on assets increased from 4.5 percent in 1976 to 8.23 percent in 1979, and investment income was \$151.3 million, or more than double the \$73 million reported earnings for 11 months in 1976, when the former trustees controlled the investments and assets.

Despite Equitable's and Palmieri's performance, the trustees attempted to reassert control over the fund's assets by (1) trying to compromise the managers' independence, (2) hiring their own staff of real estate analysts, and (3) trying to terminate the services of Palmieri because the firm refused to renegotiate the fixed management fees.

The trustees' contracts with the managers are for only 5 years. Thus, after 5 years the trustees can, if they wish, dismiss Equitable and/or Palmieri and hire new managers, or take control of the assets, without Labor's or IRS' approval or consent.

The fund's trustees still control all of the moneys the fund receives, decide how much should be retained in the benefits and administration account—B. & A.—and decide how much money should be given to the independent managers for investments.

Furthermore, the trustees still control a significant amount of moneys in the B. & A. account, which is supposed to be used only to pay employee benefits and administrative expenses.

Chairman NUNN. On this point, even though the independent financial managers have jurisdiction over the investment account, what you are saying is that under the agreement with the Labor Department, the trustees of the fund decide how much money goes to the investment account.

Mr. STAATS. That is correct.

Chairman NUNN. So in effect the trustees make the decision about how much of the overall funding is going to be managed by the investment counselors?

Mr. STAATS. That is correct.

Chairman NUNN. Can you tell us what the B. & A. account is, again? I see you have it in your report. Very briefly explain how that account differs from the investments account because this is going to be one of the key items here.

Mr. STAATS. Mr. Kowalski?

Mr. KOWALSKI. The B. & A. account is used by the trustees to pay administrative expenses, employee benefits, and keep an appropriate reserve. Nobody has ever defined what an appropriate reserve is to be. The remainder is supposed to be turned over to Equitable for investment purposes.

Chairman NUNN. The B. & A. account is the basic account. That is the account that all of the money flows through and what spins off from that is used for the investment account and the trustees still make that decision.

Mr. STAATS. That is right, Senator.

Chairman NUNN. Theoretically, is there anything in the agreement that would keep them from retaining all the money in the benefits and administrative account?

Mr. STAATS. I believe so. If they decide they need all of the money for appropriate reserve, they can keep it. Or if they turn the money over to Equitable and later decide we need more funds for the reserve, Equitable is bound by the contract to return it to the trustee.

Chairman NUNN. In theory, and this has not happened, and I don't want to imply that it has happened, but in theory the trustees could retain 100 percent of all the money and the investment counselors could be left with zero funds to manage.

Mr. STAATS. That is right, in theory, although legally the investment counselors could perhaps claim such action constitute a breach of contract.

Chairman NUNN. Thank you.

Mr. STAATS. To illustrate, at the end of calendar year 1979 the trustees, through retention of employer contributions, increased the reserve in the B. & A. account to \$142 million, or more than double the \$65 million considered reasonable by the Secretary of Labor. These moneys were not subject to the independent investment managers' control.

Congressional committees, including the Senate Permanent Subcommittee on Investigations, have expressed concern about the moneys still controlled by the trustees.

The Secretary of Labor and other Labor officials testified that Labor would continually monitor and review the trustees' handling of the account. We found, however, that Labor, as well as IRS, has not adequately monitored the trustees' control over the B. & A. account.

Contrary to their agreement with Labor and IRS, and their contract with Equitable and Palmieri, the trustees have apparently attempted to use the moneys in this account to make a \$91 million loan investment to settle a court suit. The suit was brought by a prospective borrower against the former trustees for canceling a loan commitment.

Labor, which had intervened in the suit to protect the fund's interest, was not aware of the proposed settlement until the day the fund proposed it. At the court's request, both Equitable and Labor reviewed the proposed settlement and both objected to it. As a result, the court did not approve the loan.

The fund, in August 1979, advised IRS that the fund would no longer submit progress reports because it considered that all eight conditions in the April 1977 requalification agreement had been substantially satisfied. IRS disagreed and advised the fund that it had not fully complied with four of the eight conditions, including what the appropriate amount of reserve in the B. & A. account should be.

IRS has responsibility for enforcing ERISA's minimum funding standards for private pension plans. However, IRS's April 1977 re-

qualification letter stated that its determination on the fund's tax-exempt status is not an indication that IRS is in any way passing on the actuarial soundness of the plan or on the reasonableness of the actuarial computations.

Since 1975, the trustees have had four actuarial valuations of the fund's financial soundness—three used data as of January 31, 1975, and one used data as of December 31, 1978. The last actuary's report issued in March 1980, stated that the current funding should satisfy ERISA's requirements. However, the actuary also said that the funding policy allowed very little margin for error, and if actual experience differed, funding problems would occur after the ERISA standards become effective for the fund in 1981.

In our opinion, IRS should closely monitor the financial status of the fund to assure that it, in fact, meets the funding standards in 1981, and in future years.

An internal Labor report pointed out shortcomings in Labor's investigation and concern over the performance of the current trustees. The report prepared for the Deputy Assistant Secretary, Labor-Management Services Administration, in November 1979 pointed out that the scope of Labor's original investigation was reduced substantially because of the then critical need to gather evidence on asset management.

The report said Labor has reached the point where it is critical to develop an understanding through investigation of how all aspects of the fund are being administered. The report said Labor had virtually no information available on the current financial operation of the fund, particularly the B. & A. account.

Officials in Labor's Solicitor's office also indicated in February 1980 that a review of the new trustees' performance had demonstrated significant disregard for the interests of the participants and beneficiaries, and a determination to frustrate Labor in its ERISA enforcement efforts.

The officials cited the trustees' repeated attempts to block Labor's discovery of evidence to be used against the former trustees by Labor in the civil suit, trustees' attempt to curtail the independence of the investment managers, and influence of former trustees as evidenced by their open involvement in day-to-day fund operations.

In fact, as a result of the current trustees' failure to comply with the conditions for requalifications, IRS renewed its investigations of the fund on April 28, 1980. At the same time, Labor resumed its onsite investigation.

The fact that Labor and IRS resumed a second onsite investigation, in our view, indicates that problems remain to be resolved and raises questions as to whether the agreements for the reforms to the fund's operation will be long lasting. We believe that the need to renew the investigation was the consequence of the shortcomings and deficiencies in Labor's and IRS's investigative efforts, dealings, and agreements with the trustees in reforming the fund's management and operations, and monitoring of the current trustees' activities.

Accordingly, we question whether the reforms and changes that Labor and IRS required the trustees to make in the fund's operations were the best the Government could have achieved and the most advantageous for the fund and its participants and beneficiaries.

Labor's and IRS' findings and strong evidence of mismanagement by the former trustees and IRS' action and removing the fund's tax-exempt status, in our view, gave the Government a strong bargaining position in its dealings with fund officials. However, in the final negotiations with the trustees, Labor and IRS failed to gain lasting reforms and improvements to the fund's operations and remove the influence and control exercised by the former trustees.

We are happy to respond to questions, Mr. Chairman.

Chairman NUNN. Thank you, Mr. Staats. I know that each of the people with you has been involved in this to a great extent and we would ask you to use your discretion about either answering the question or deferring it to one of your associates as we proceed.

Mr. STAATS. We have a much longer statement from which my statement was summarized. I would ask that the longer statement which runs over 60 pages be filed for the record, if you wish.

Chairman NUNN. That statement will be put in the record at the end of your testimony, without objection.

The heart of this overall effort according to the original statements by the Labor Department was to coordinate between the Internal Revenue Service, Labor Department, and Justice Department. You have already detailed in your longer statement, the fact that the Internal Revenue Service brought their action without coordinating with Labor Department. Labor Department didn't even know they were about to bring it. You also referred to the Justice Department in your statement and some real problems that developed between the Labor and Justice Departments.

I have a copy of a memo dated January 31, 1978, that is from John C. Keeney, Deputy Assistant Attorney General, Criminal Division, to Ben Civiletti, Assistant Attorney General, Criminal Division. Do you have a copy of that memo? It is entitled "Status Report on Labor Department Criminal Division Investigative Relationship," dated January 31, 1978?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Mr. Kowalski, I was going to ask you a few questions about this and I will, but I think it tells such a story in itself that it would be helpful if you gave us the background of this memo, how you came about getting the memo and then perhaps reading it into the record. Could you tell us where you got the memo?

Mr. KOWALSKI. We received the memo, a copy of the memo, from the Department of Justice officials, specifically the liaison with the Department of Labor on the investigation. I don't believe Labor was aware of the memo. In fact, they were very surprised when they saw the comments in our statement about Justice's concern.

But as we point out in our detailed statement the Deputy Assistant Attorney General is very concerned about the deteriorating coordination between Labor and Justice. He stated that several distinct problems had arisen which present grave difficulties and which appeared not to be resolvable at the operational level. At that time they had a working group arrangement rather than the overall departmental policy committee because it had been abandoned several years earlier.

These problems include the inability of Justice's liaison to obtain information indicating potential crimes or criminal misconduct under ERISA from Labor.

Chairman NUNN. This is part of the memo you are reading?

Mr. KOWALSKI. Yes.

Chairman NUNN. It is a three-page memo. Without really having read it in detail, I think it ought to be read into the record if you could read that into the record.

Mr. KOWALSKI. You would like the entire memo read into the record?

Chairman NUNN. Yes.

Mr. KOWALSKI. It is from Deputy Assistant Attorney General, Criminal Division, John Keeney, to Assistant Attorney General, Criminal Division, Benjamin Civiletti, Status Report on Labor Department-Criminal Division, Investigative Relationships. It begins:

Recent developments in our relationships with the investigative arm of the Labor Department and with the Solicitor of Labor's office prompt me to apprise you of what I believe is a deteriorating and potentially serious situation. As you know, our working relationships with the Labor Department arise from the Secretary's investigative responsibilities under the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et seq. (LMRDA), the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq. (ERISA), two memoranda of understanding with respect to investigations of acts made criminal by these statutes and a third memorandum signed in December of 1975 with respect to a joint Justice Department-Labor Department investigation of the Teamsters' Central States Pension and Health and Welfare Plans. Until the past year, our working relationships under these memoranda have been very satisfactory. However, during this period, three distinct problems have arisen which present grave difficulties and which presently appear not to be resolvable at the operational level.

These problems are:

One, the assignment of investigative manpower to Organized Crime Strike Forces.

Two, the inability of our Government Regulations and Labor Section to obtain information indicating potential crimes or criminal misconduct under ERISA from the Labor Department.

Three, a total shutdown of communications between our representatives on the Teamster Investigative Task Force and Labor's representatives.

For the past several years, the Labor Department's budget has contained provisions for the assignment of from 65 to 75 Compliance Officers—Labor's designation for investigators—to our Strike Forces. For over a year, we have been complaining to Labor that it has not been providing us with anything like this kind of support. Over the last six months, Congressional Oversight Committees have been looking into this problem and during November and December some very sharp differences between the two Departments were aired during public hearings. We have very recently learned that Labor has budgeted only 15 investigators to us for the next fiscal year and that further Congressional hearings will be held on the investigative jurisdiction and manpower problems. I believe steps should be taken to iron out this problem before we are forced to air it at Congressional hearings.

Our two other problems arise under the provisions of ERISA, which contains broad investigative and civil litigative provisions. The Act grants the Secretary of Labor authority to investigate civil and criminal violations and to file civil suits subject to the direction of the Attorney General.

It also obliges the Secretary to furnish the Attorney General "any evidence which may be found to warrant consideration" for criminal prosecution. Our problems arise from what we consider Labor's failure to refer information to us which indicates potential civil as well as criminal misconduct, our inability to agree upon a course of conduct that will enable the two Department's to pursue their separate remedies jointly.

Under the auspices of operational guidelines set forth in the memorandum of understanding respecting the Teamsters investigation, a working group headed by Tim Baker and the Solicitor of Labor has been trying to resolve these problems as well as those related directly to the Teamsters project. At

meetings of this working group during November and early December, it was agreed, we thought, that Labor would take appropriate steps to insure that we received prompt notification of its civil investigative findings. This has not occurred.

With respect to the joint Teamsters investigation, the Criminal Division is designated as Justice's representative. Through the early stages of the investigation and continuing until August or September of 1977, the joint concept worked well. Labor's investigative staff was in daily contact with our people; matters were referred to us for criminal investigation; and we were kept apprised in advance of any major civil remedy to be demanded by Labor.

However, over the course of the fall and winter, the personnel and structure of Labor's efforts changed. Labor no longer has the investigative manpower or leadership that was originally available. We are not apprised of the current size or makeup of this staff or of what it is doing.

In fact, working members of the staff have been instructed not to discuss the investigation with us. Additionally, we were advised only yesterday by Labor that over a month ago the Pension Fund Trustees had resolved to deny the task force investigators access to its records. This represents a complete turnaround by the Fund, as we have had complete access to its records since the investigations began, and certainly should have been brought to our attention at once.

In December, we were advised that the Secretary had ordered a 45-day review of the entire investigation and that he would determine at that time what course the investigation would take. During the 45-day period we were not able to ascertain what was being reviewed or proposed. We have been advised that the Secretary has decided upon a course of conduct but we have not been apprised of its nature. Rather, we were told the Secretary would discuss it with the Attorney General and after a decision had been reached at that level, we would be informed of the results. We are at a loss as to how any decision reached in this matter can be called a joint decision and we, of course, cannot apprise the Attorney General of recent developments so that he may have the benefit of our thoughts on any decision to be reached.

Chairman NUNN. Is that the end of the memorandum?

Mr. KOWALSKI. That is the end of the memorandum.

Chairman NUNN. I would like this memorandum to be labeled exhibit No. 1.

[The document referred to was marked "Exhibit No. 1" for reference, and may be found in the files of this subcommittee.]

Chairman NUNN. Do you have any indication that there were high-level meetings between Attorney General Civiletti and Secretary Marshall as a result of this memorandum?

Mr. KOWALSKI. Yes, sir. We were told there were meetings between the Attorney General and Secretary Marshall but we have never been able to document what took place at the meetings. In fact, we made some inquiries at the Secretary's office. We were told there were meetings, but there are no memorandums on the meetings.

Chairman NUNN. What did GAO conclude about the coordination or lack thereof between the Labor and Justice Departments?

Mr. KOWALSKI. As the memo says, the coordination seems to have worked pretty well in the first part of the investigation, but then about the latter part of 1977 it started deteriorating. It seems that this occurred when there was a shift in emphasis at Labor from an investigative to a litigative course of action. As a result, there were problems on access to Labor's information, coordination on the timing of the civil suit and on providing Labor all of the information, providing Justice all of the information in Labor's files.

Chairman NUNN. Did this deterioration occur approximately in the timeframe after the Solicitor's Office and the Labor Department took over more responsibility for the investigation?

Mr. KOWALSKI. I believe so. Yes. The Solicitor's Office was always involved in the investigation from the beginning, but it wasn't until probably the latter part of 1976 or early 1977, that the Solicitor's Office really took over the investigation. When Mr. Kelly, who as a special consultant to the Secretary, took over the investigation—that was in January 1977. At that time it seemed the Solicitor's Office came to the forefront and assumed responsibility for the investigation.

Chairman NUNN. Was the Department of Labor suit that was filed in February 1978 coordinated with the Justice Department?

Mr. KOWALSKI. Labor claims that it was discussed at the meeting between the Attorney General and the Secretary. Labor says that about 1 week before the suit, Justice's Civil Division was notified of the suit. However, Labor's coordination on the Teamsters was with the Justice's Criminal Division and Justice's Criminal Division was never told of the suit until 1 day before the suit. In fact, during the working group meetings Justice's Criminal Division liaison told us he tried to find out about the suit, but he was unable to. He became aware of the suit 1 day before it was filed.

Chairman NUNN. Given the nature of the suit, the subsequent developments and also the overall attitude of the Labor Department concerning civil versus criminal responsibility, wouldn't you say that this was a fundamental omission?

Mr. KOWALSKI. Yes, sir. I will agree.

Chairman NUNN. Wouldn't you say the civil suit had a very definite bearing on the lack of criminal matter flowing from the Labor Department's investigation thereafter?

Mr. KOWALSKI. It had a bearing because at the time Labor was filing the civil suit the Justice Department had a criminal indictment against a former Teamster official in Chicago and one of the witnesses for Justice was a former official of the fund who was named in the civil suit. As a result the former official became very reluctant to testify for Justice in the case and it wasn't until, as we were told, about an hour before the trial started that he finally agreed to testify.

Chairman NUNN. Was that Mr. Shannon?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. On page 26 of your statement you refer to the: "failure of Labor to give Justice Department summaries prepared by Labor's attorneys because Labor considered these documents internal drafts."

Did this restrict or preclude the Justice Department from pursuing valid criminal aspects of the investigation?

Mr. KOWALSKI. I think that is what you would conclude from the documents we received from Justice officials. They felt that, in some cases, Labor was withholding some of the information and it probably impeded their criminal investigation.

Chairman NUNN. In order for Justice Department officials to pursue the criminal aspects of this case, didn't they rely on the Labor Department for prompt referrals from Labor?

Mr. KOWALSKI. Yes, sir. Under the memorandum of understanding, Labor was the focal point of the investigation, had access to the fund's records and Justice looked to Labor for information on potential criminal violations.

Chairman NUNN. How many referrals of potential criminal violations were referred to Justice by Labor during this investigation?

Mr. KOWALSKI. That was a very hard figure to pin down and to get accurate information on. It wasn't until August 18 that we finally got the information from Justice. At that time they told us, as we say in the report, there were 11 formal referrals from Labor to Justice. The Justice Department also told us there were an additional 15 referrals—let me read exactly what they say.

In addition to the 11 loans on which the Department of Labor initiated referral, the following matters which directly or indirectly involved loans from the Teamsters' Central States Pension Fund were investigated by Justice Department during 1978 and 1980.

There were 15 additional cases.

Chairman NUNN. We will get into more detail on this later. When the Internal Revenue Service revoked the fund's tax-exempt status on June 25, 1976, was this coordinated with either the Labor or Justice Department?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Did the Labor Department have any notice that the Internal Revenue Service was going to revoke that tax-exempt status or did Justice have any notice?

Mr. KOWALSKI. No, sir.

Chairman NUNN. None at all?

Mr. KOWALSKI. None at all. In fact, 5 days before the IRS letter, Mr. Lippe talked to Mr. Mariani from the IRS, and Mr. Mariani told him there was no way they were going to revoke the fund's tax-exempt status until sometime in the fall.

Chairman NUNN. Not only did they have no notice but IRS told the man in charge at the Labor Department 5 days before that that was not going to be done?

Mr. KOWALSKI. Yes.

Chairman NUNN. You supposedly have a joint governmental effort as portrayed to the subcommittee in 1975, and you have the Internal Revenue Service taking a major action in revoking the tax-exempt status of the fund in the middle of an investigation by Labor and Justice without notifying either, in fact, telling them 5 days before that that would not be done. Is that correct?

Mr. KOWALSKI. That is correct. I should mention that I talked to the IRS people last week and they told me they don't recall ever making those statements.

Chairman NUNN. They denied 5 days, but they don't say they gave any notice?

Mr. KOWALSKI. That is right.

Senator PERCY. Did you notice any coordination between Labor and IRS similar to the assurances given to this subcommittee by Secretary Marshall? He gave us that assurance in testimony here in 1977, July 18 and 19.

Was any protest made by the Secretary of Labor when this unilateral action was taken?

Mr. KOWALSKI. We aren't aware of any protest by the Secretary.

Senator PERCY. It temporarily destroyed their effort, didn't it?

Mr. KOWALSKI. That is right. In fact, the administrator, former administrator—pension and welfare benefits program—who headed the

investigation at the time, said he was sitting in a dentist's chair when he heard over the radio of the IRS' action. He said it hit him like a bombshell.

Senator PERCY. Have you determined whether or not IRS has any justifiable reason for taking a unilateral, uncoordinated action when it was well aware of the other separate investigations probing into exactly the same areas? Is there any reason why IRS should be so sensitive to not wanting a coordinated investigative effort when an investigation is being made of a tax-exempt fund?

Mr. KOWALSKI. Unfortunately, IRS wouldn't talk to us. So, I can't tell you what IRS' intentions were.

Senator PERCY. So, they even refused to talk to you?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. Is there any justifiable reason why IRS should not cooperate with the Comptroller General or with the Secretary of Labor on an investigation being made of a tax-exempt fund?

Mr. STAATS. I think I would have to say, Senator Percy, that we don't believe there is any justification for their not cooperating with us and giving us the information we sought in response to the subcommittee's requests some time ago.

As I see it, they are hiding behind a legal technicality to avoid giving us this information. I can't give any other instruction to them.

Senator PERCY. Did IRS even have the legal technicality to resist coordination in this case? What are they hanging their hat on? I have fiercely fought for their right to protect, as they are required under statute, the privacy of individual taxpayers from needless probing. But in this case, where Congress receded in favor of the executive branch, assuming they had the resources, that they had the pledge of coordination from Cabinet officials, that they would work together, we are now faced with what may very well be a dereliction of duty in the selection of personnel, bad judgment, poor direction, lack of coordination, failure to pursue leads. It just goes on ad infinitum, and then a refusal of one branch, the IRS to even cooperate with you, and no evidence that the Secretary of Labor ever complained about this.

Mr. STAATS. If I may, I would like to just read a few sentences from our longer version of our statement. It says, we did not review IRS's records or interview IRS officials involved in the investigation. In light of the restrictions imposed by section 6103 (1) (2) of the Internal Revenue Code on the disclosure of any information concerning its investigation of the single taxpayer, an IRS headquarters official advised us that they considered the fund as an individual taxpayer. Therefore, IRS considered that it was prohibited from giving us any information on its investigation of the fund, if such an investigation by IRS was made.

That was where we had to stop.

Senator PERCY. Mr. Chairman, could you yield for one more question?

Chairman NUNN. Sure. Go ahead.

Senator PERCY. There is a basic underlying questions that I want to repeat for every witness who will testify today: Are we dealing with just incompetence or are we dealing with a very fundamental conflict of interest? Is it really possible for the Department of Labor

to be invested with this responsibility by Congress under law to uphold ERISA, to file a massive civil suit and to vigorously pursue any evidence of criminal violations, to bring that evidence to the Department of Justice so that it will be pursued? Isn't there a basic conflict of interest here and isn't it almost impossible, taking the political facts of life into account, for the Department of Labor to investigate impartially, objectively, authoritatively, labor unions or labor union trust funds?

Mr. STAATS. I can see an organizational conflict here, Senator Percy. I don't want to ascribe motives in this particular case because I don't believe that we have any hard evidence that there were motives involved here. But many of us at the time ERISA was enacted had some worry about this very point. Not only with respect to the placement of the responsibility in the Labor Department, but also in the division of responsibility between the Labor Department and the IRS.

This has come up a number of times since, and while it may not be completely on the point of your immediate hearings I personally would conclude that you cannot really avoid taking a look again at whether or not the arrangements have been set up in ERISA that are the appropriate arrangements of a program of this importance and magnitude. You have the Pension Benefit Guaranty Corporation in the picture also, but particularly I think the question is that we would have related to the Labor Department's responsibility here and also the effort to supplement the monitorship of the program between the two agencies, Labor and IRS.

Senator PERCY. I said in my opening statement that our job is not only to pursue what had happened but also to see that we fulfill the law and that the Department of Labor fulfills its mandated function. I am really beginning to wonder whether it is like asking the Department of Agriculture which has historically fought for the interests of the farmers, to investigate major farm organizations or asking the Department of Commerce that fights for the business community to do the kind of a job that we expect the Justice Department to do with regard to price fixing. That is their constituency.

And I am beginning to wonder now whether the Congress didn't misplace this responsibility and whether we weren't somewhat misled by promises of vigorous prosecution and investigation. You just can't tell me there is that much incompetency in Government.

But, I think, from what we are going to hear from some witnesses that have left the Labor Department, they were not incompetent. They were just totally frustrated by the directions they received to keep their hands off, to lay off, to go soft on a particular activity where they should have been prosecuting tough and hard and moving ahead.

Chairman NUNN. Senator Percy, if that is your preliminary conclusion, I would venture a guess that it is going to be greatly strengthened before these hearings are over. I think that one of the ultimate underlying questions of this whole matter is, do we have an institutional problem to the extent that the Labor Department simply is not capable of investigating the Teamsters fund?

Mr. STAATS. As you proceed with your hearings, Mr. Chairman, this question should not be lost as to whether or not a fiduciary interest

of this type, involving both management and labor, one that is highly important in the public confidence in the way it is carried out, whether the organizational arrangement today is really the best arrangement that can be developed?

Chairman NUNN. I know it is a bit idealistic, but you would hope the Labor Department would see their ultimate constituency as the working men and women of America who need to be protected, rather than those who are mismanaging their funds, but certainly from the evidence that we have so far it is going to be doubtful that they do have that capability.

Senator PERCY. I have to take a call, Mr. Chairman, but could I at some point this morning come back and allow our other witnesses from GAO who have worked intimately on this investigation for a couple of years to comment on whether there is an inconsistency in asking the Department of Labor to really carry on the investigation of one of the most powerful labor organizations in the country?

Chairman NUNN. Mr. Staats, as you point out on page 3 of your statement, for many years the fund's trustees have been the subject of controversy and allegations of misusing the fund's assets. Allegations included charges that individuals linked to organized crime had connections with the fund and that questionable loans had been made by the trustees to people linked to organized crime. You then point out on page 4 that this subcommittee considered starting its own investigation of the fund's management and operations. However, in December of 1975, the Department of Labor assured the subcommittee that its investigation would be broadly based, carefully planned, and would be carried out in coordination with the Justice Department and the IRS. Because of that assurance, the subcommittee decided to defer its own investigation of the fund to avoid duplicating the work of the Labor Department's Special Task Force.

Now the subcommittee is told, after 5 years of investigation by the Labor Department, at a cost to the American taxpayer of approximately \$5.4 million which does not include the costs of the Solicitor's Office, IRS, and the Department of Justice, that this investigation was deficient. It was not complete. This investigation was not effectively planned, coordinated, managed, and carried out.

Is that a fair characterization, Mr. Staats?

Mr. STAATS. I would say that is a fair characterization. Yes.

Chairman NUNN. Up to December 1976, who was responsible for directing the Department of Labor's efforts in the Teamsters' Fund investigation?

Mr. DENSMORE. That was primarily Mr. Hutchinson and Mr. Lippe.

Chairman NUNN. After December 1976 who was responsible for directing the Department of Labor's efforts in the Teamsters' Fund investigation?

Mr. DENSMORE. At that point in time it was primarily Mr. Kelly and Mr. Sacker, until probably mid-1977 when the Solicitor's Office then pretty much was responsible.

Chairman NUNN. Let's see, if you have got Mr. Hutchinson, is that right, and who else?

Mr. DENSMORE. Mr. Lippe.

Chairman NUNN. Mr. James Hutchinson.

Mr. KOWALSKI. Larry Lippe.

Chairman NUNN. What is his first name?

Mr. KOWALSKI. Lawrence.

Chairman NUNN. Lawrence Lippe.

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. What was the time frame for that responsibility?

Mr. KOWALSKI. Mr. Lippe was there until October 1977.

Chairman NUNN. From when until when? I think Mr. Densmore just gave that.

Mr. KOWALSKI. Mr. Lippe started in December 1975 and continued until October 1977.

Chairman NUNN. December 1975 to December 1977.

Mr. KOWALSKI. October 1977.

Chairman NUNN. How about Mr. Hutchinson?

Mr. KOWALSKI. Mr. Hutchinson was there from June 1975 and October of 1976.

Chairman NUNN. What happened to Mr. Hutchinson. Do you know where he is now?

Mr. KOWALSKI. When we interviewed him he was an attorney in a local law firm.

Chairman NUNN. Here, in Washington?

Mr. KOWALSKI. Yes, sir, in Washington.

Chairman NUNN. What happened to Mr. Lippe, where is he now?

Mr. KOWALSKI. I believe he is working with the Justice—the Department of Justice.

Chairman NUNN. Who were the people who took over after that?

Mr. KOWALSKI. In 1976 or January 1977, Mr. Kelly was appointed special consultant by Mr. Marshall and he effectively assumed charge of the investigation.

Chairman NUNN. What is Mr. Kelly's first name?

Mr. KOWALSKI. Eamon, E-a-m-o-n.

Chairman NUNN. What was his time frame?

Mr. KOWALSKI. He was there from February 1977 until June of 1977.

Chairman NUNN. Until June of 1977?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Where is Mr. Kelly now?

Mr. KOWALSKI. Last I heard he was in New Orleans working for a private firm. He was on loan from the Ford Foundation at the time he worked for the Department of Labor, but then he subsequently left the Ford Foundation and he is in New Orleans. I don't know who he is working for.

Chairman NUNN. Who was the next one you name?

Mr. KOWALSKI. Mr. Sacher.

Chairman NUNN. What is his first name?

Mr. KOWALSKI. Steven Sacher.

Chairman NUNN. What was the time frame?

Mr. KOWALSKI. He was February 1975 to August 1977.

Chairman NUNN. February 1975 to August 1977?

Mr. KOWALSKI. Yes.

Chairman NUNN. What was his position then?

Mr. KOWALSKI. He was Associate Solicitor, Division of Plan Benefits Security.

Chairman NUNN. What happened to Mr. Sacher?

Mr. KOWALSKI. When we interviewed him, he was working for Senator Williams' committee.

Chairman NUNN. What committee is that?

Mr. KOWALSKI. I think it is the Senate Committee on Labor and Human Resources.

Chairman NUNN. What position does he occupy there?

Mr. KOWALSKI. I believe he is a counsel.

Chairman NUNN. General counsel?

Mr. KOWALSKI. I am not exactly sure.

Chairman NUNN. He works for a Senate committee now?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Who took over after that?

Mr. KOWALSKI. He was there until, as we say, August and then—

Chairman NUNN. August of 1977?

Mr. KOWALSKI. Yes; I believe Bob Gallagher, who was in the Solicitor's Office, assumed more of a role and then Monica Gallagher.

Chairman NUNN. Monica Gallagher?

Mr. KOWALSKI. Monica Gallagher replaced Mr. Sacher as Associate Solicitor.

Chairman NUNN. Monica Gallagher and Bob Gallagher were in charge of the investigation from when to when?

Mr. KOWALSKI. Bob Gallagher came aboard in about September 1977. Monica Gallagher in November 1977.

Chairman NUNN. Who is in charge now?

Mr. KOWALSKI. They still control the investigation. Monica Gallagher is in effect controlling the investigation.

Chairman NUNN. So Monica Gallagher is in control of the investigation?

Mr. KOWALSKI. That is right.

Chairman NUNN. What is Bob Gallagher?

Mr. KOWALSKI. The attorney working on the civil case.

Chairman NUNN. He is still intimately involved, but Monica Gallagher—

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Both still working at the Labor Department?

Mr. KOWALSKI. Right.

Chairman NUNN. GAO reported that at a certain point in time the Teamsters investigation was taken from the SIS team and directed by the Solicitor's Office; is that right?

Mr. KOWALSKI. That's right, sir.

Chairman NUNN. If the SIS team was hired to investigate and litigate all matters relating to the fund, why did the Solicitor's Office get involved or become the dominant force in this investigation?

Mr. KOWALSKI. It was about the time Mr. Kelly came aboard and Mr. Marshall came aboard. He reviewed, or had all of the evidence reviewed at that time, and he decided based on the evidence that they had enough to take the Teamsters to court. And at that point, they decided to shift from an administrative investigative strategy to a litigated kind of strategy. That is when the Solicitor's Office took over.

Chairman NUNN. What was the time frame for that?

Mr. KOWALSKI. It would be somewhere in between January and March 1977. There is no specific time frame.

Chairman NUNN. Wasn't SIS set up also to litigate?

Mr. KOWALSKI. It was to investigate and litigate. That created a little problem with the Solicitor's Office officials, who felt they should have handled any litigation. Eventually they took over the litigation.

Chairman NUNN. So the purpose of SIS was both to litigate and investigate and the Solicitor's Office came in and said we are the ones that ought to be litigating and when the litigating began they really sort of took over.

Senator PERCY. Who had the authority to establish SIS? Wasn't it the Secretary of Labor?

Mr. KOWALSKI. Yes, sir, at one time it was reporting directly to the Secretary's office.

Senator PERCY. How was SIS shoehorned out? If SIS reported directly to the Secretary and the Solicitor's Office reported directly to the Secretary, how could one of two coequal peers dominate the other and shove it out? Was it personalities: was the Secretary lacking in backup for the SIS that he set up himself?

Mr. KOWALSKI. It came about with the change in the Secretary and it came about, I believe through Mr. Kelly—

Senator PERCY. In other words, SIS was originally set up under the Ford administration; is that right?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. That is right. So that when Secretary Marshall came in as Secretary of Labor, the relationship existed but it was at the will of the Secretary?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. In other words SIS was not mandated in any way by statute, was it; it was created by departmental authority?

Mr. KOWALSKI. Right.

Senator PERCY. If the power could be given, it could be taken away. There was never an official change, was there?

Mr. KOWALSKI. Official change?

Senator PERCY. By the Secretary of Labor who officially issued a directive saying, "Now all litigation shall be done by the Solicitor's Office." Does it still exist right today that SIS in theory can both investigate and litigate in this regard?

Mr. KOWALSKI. SIS does not exist today.

Senator PERCY. It is out now?

Mr. KOWALSKI. It is out.

Senator PERCY. Was that done by the directive of the Secretary?

Mr. KOWALSKI. Under Secretary.

Senator PERCY. By the Under Secretary?

Mr. KOWALSKI. Yes.

Senator PERCY. Ultimately the Secretary. But SIS for a while had concurrent authority and responsibility with the Solicitor's Office but eventually the Solicitor's Office moved in and took over, and eventually SIS was disbanded.

Mr. KOWALSKI. Right.

Senator PERCY. Thank you very much.

Chairman NUNN. Did the actions of the Solicitor's Office adversely affect the Department of Labor's investigation and potential results from the investigation of the Teamsters fund?

Mr. KOWALSKI. I would say in a sense, yes, because the Secretary and Mr. Kelly favored the Solicitor's approach which was proceed with litigation and forestall any more investigation, although SIS believed the investigation was not complete and they should proceed with the investigation. In other words, make third-party investigation, et cetera. So in that sense, you might say it did.

Chairman NUNN. Does the Department of Labor know now and understand how the fund operates financially? Can you conclude one way or the other on that?

Mr. KOWALSKI. They probably don't know how the fund operates. They admitted that themselves in their own internal report.

Chairman NUNN. That they don't know how the fund operates?

Mr. KOWALSKI. They have been investigating the fund for the last 2 or 3 months. Maybe they acquired some knowledge.

Chairman NUNN. Two or three months ago, you conclude by their own statements that they did not know how the fund operates?

Mr. KOWALSKI. That is true.

Chairman NUNN. How would you characterize that kind of knowledge or lack thereof after 5 years of investigation?

Mr. KOWALSKI. If I was running the investigation, I would be very alarmed. It would be like, after working on the review for 2 years, we didn't know anything about the fund.

Chairman NUNN. And the Labor Department themselves say they did not understand how it operated financially?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Who said that and under what circumstances?

Mr. KOWALSKI. It was in the report by the Deputy Assistant Secretary for LMSA, who had a review made of the investigation. In the report prepared on the review the statement was made, "there is virtually no information on how the fund operates financially."

Chairman NUNN. What was the date of that?

Mr. KOWALSKI. November 1979.

Chairman NUNN. Who was the Assistant Secretary?

Mr. KOWALSKI. Rocco DeMarco.

Chairman NUNN. DeMarco?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. And you have a copy of that?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Read the relevant part into the record. I understand there are matters that affect pending litigation in that memorandum. We will mark that memorandum exhibit 2, but we will make it a closed exhibit with the exception of the portion that is directly relevant to this line of questioning.

[The document referred to was marked "Exhibit No. 2," for reference, and is retained in the confidential files of the subcommittee.]

Chairman NUNN. First identify the memorandum caption and date. Then, if you could, pinpoint that particular part of it.

Mr. KOWALSKI. Memorandum from Howard Marsh. His title is DAR/PWPB to R. C. DeMarco, Deputy Assistant Secretary. It is dated November 19, 1979.

And on page 2 it says, "Under the financial operation of the fund, there is virtually no information available on the current financial operation of the fund."

Chairman NUNN. Read that again.

Mr. KOWALSKI. "There is virtually no information available on the current financial operation of the fund." It continues, "Available information indicates it has had as many as 45 different checking accounts at the American National Bank at the same time." And there are statements like that throughout the report, Senator.

Chairman NUNN. We will make that report a part of the record.

I believe at the top of page 3 there is a summary statement that pretty well capsules what you are saying—the last sentence on the top of page 3, first paragraph, dealing with the methods. Could you read that into the record?

Mr. KOWALSKI. This is on page 3. The methods by which a determination is made as to how much money should be transferred to the asset managers, how expenses are approved, what authority is delegated to the executive director and, in general, how the fund operates financially are all unknown at the present time.

Chairman NUNN. That is 4 years after the Labor Department investigation started.

Mr. KOWALSKI. That is right, sir.

Chairman NUNN. How do you characterize that, do you find it astounding, incredible or how would you put it in your words?

Mr. KOWALSKI. Astounding sounds pretty accurate, especially after they have been telling us that, yes, they have been monitoring the fund. How can you monitor the fund if you don't know how it operates?

Chairman NUNN. It is just impossible to pursue a thorough investigation civilly or criminally if you don't understand it.

Mr. KOWALSKI. Yes, sir.

Senator PERCY. Mr. Chairman, I think we ought to inquire at this point, putting aside what George Elliott said, "Leave us not inquire the motivations of man." I think we have got to in this case. Is this incompetence? How is it possible that 5 years after the investigation was begun that the Labor Department literally did not understand how the fund operated financially? How can you investigate, how can you litigate, how can you recommend civil or criminal actions if you don't at least go to third-party investigations? Is it incompetence in this case, in your judgment?

Mr. KOWALSKI. I can't really say incompetence because we reviewed the qualifications of the SIS people. Generally they were experienced people—

Senator PERCY. They were experienced people; they had a clear charter?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. They understand the charter?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. And yet they didn't understand the fund and how it operated financially. Why?

Mr. KOWALSKI. Well, somebody had made a decision that we weren't going to pursue any more investigative efforts. We were going to go into a litigated posture. If you use all your resources to develop your litigation, then you don't have any left over to find out the current operations. I think that is what happened. They just were not equipped to—they didn't devote any of the staff to reviewing the current operation, although they kept saying they were monitoring the fund. I couldn't understand how. They say they were monitoring the fund by examining annual records. We couldn't get much from the annual and Equitable's reports. You can't get much from them.

Senator PERCY. Mr. Kowalski, you have worked on this for 2 years. Do you understand how the fund operates financially?

Mr. KOWALSKI. Not really, because we didn't have access to the fund, but I pretty well know how it operates and what they are doing.

Senator PERCY. If you had access to all the information in that period of time, could you have found out?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. No question about it?

Mr. KOWALSKI. No question.

Senator PERCY. Thank you, Mr. Chairman.

Chairman NUNN. Mr. Kowalski, give me the date of that report again and the origin of that report? I know that is in the report but I want to make sure. Who wrote the report and to whom was it written?

Mr. KOWALSKI. It was dated November 19, 1979, and it was from Howard L. Marsh. I believe he is a member of the Pension and Welfare Benefit Program Office. There is a DARA, I don't exactly know what that means. And he addressed it to R. C. DeMarco, Deputy Assistant Secretary for LMSA.

Chairman NUNN. Did DeMarco pass it on up the line?

Mr. KOWALSKI. Yes sir, he passed it on to the Solicitor's Office. I believe it was on December 1—I don't have the exact date, but I believe it was around December 1.

Chairman NUNN. 1979?

Mr. KOWALSKI. Right, it went to Monica Gallagher, Associate Solicitor.

Chairman NUNN. Mr. Kowalski, I am going to ask the clerk to please hand you a copy of another report dated May 11, 1979. It is captioned "Memorandum for R. C. DeMarco, Deputy Assistant Secretary for Labor/Management Relations from Richard A. Crino and John Kotch, Subject, Special Investigations Staff Review" and see if you have, during the course of your investigation had access to that report. This is approximately 5 months before the one you have alluded to. It is a separate report, as I understand it.

Mr. KOWALSKI. No, sir, I heard some rumors that there was a report. In fact, I recall asking Mr. DeMarco whether a reported existed and I believe he told me there wasn't a report.

Senator PERCY. He told you there was no such report?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. You had heard that there was such a report?

Mr. KOWALSKI. I heard there was a report because these two people interviewed us at the start of their investigation and we gave them a summary of what we were doing. Then we never heard from them.

Senator PERCY. Who specifically did you ask if there was such a report and who specifically told you there was no such report, a copy of which you now hold in your hand?

Mr. KOWALSKI. I am basing this on my memory. I don't have any written record. I am pretty sure I asked Rocky, Mr. DeMarco, for the report.

Chairman NUNN. We are going to get into this in considerable detail either late this afternoon or early tomorrow morning. I am not going to pursue it too far at this point. You have never seen this document?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Has staff shown this document to you in the last few hours or days?

Mr. KOWALSKI. Yes, sir, they made me aware of it.

Chairman NUNN. When was the first time you saw it?

Mr. KOWALSKI. This morning.

Chairman NUNN. Today?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. In the course of your whole investigation of the Labor Department, you have never seen this report?

Mr. KOWALSKI. No, sir.

Chairman NUNN. According to your recollection, you remember asking for it because you heard about it and you vaguely remember Mr. DeMarco saying it didn't exist?

Mr. KOWALSKI. That's true.

Chairman NUNN. Do you recall whether he said it no longer existed or didn't exist or if you don't recall either one, just make it clear?

Mr. KOWALSKI. I think the answer was, well, there isn't any report, something like that.

Chairman NUNN. In other words, it would be vague on that report?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. Could we clarify, Mr. Chairman, that the date of this report is May 11, 1979? Mr. Kowalski, approximately when did you ask if there was such a report and about when were you told there was no such report.

Mr. KOWALSKI. I just can't recall.

Senator PERCY. Was it after May 11, 1979?

Mr. KOWALSKI. I believe it was after.

Senator PERCY. So it was after the date of the report?

Mr. KOWALSKI. I am pretty sure about that.

Senator PERCY. Is it possible for you to check your notes, and I ask the record be kept open if we can identify about when it was.

Mr. KOWALSKI. I would prefer to review my notes and records and clarify.

Senator PERCY. If we can insert in the record at that point when you asked for the information.

[The information to be furnished by Mr. Kowalski follows:]

Around the first part of March 1980, we began a review of the files in the Solicitor's Office to update material for our draft report. During this updating, I

became aware of the so-called "Crino-Kotch report," I believe I heard that someone had tried to obtain a copy of the report under the Freedom of Information Act.

I also tried to obtain a copy. To the best of my recollection, I called our liaison in the Inspector General's Office sometime in March or April 1980 and was told to check with the Deputy Assistant Secretary of LMSA, Mr. Rocco DeMarco. I called Mr. DeMarco and was advised, in effect, that no report existed. Since I presumed Mr. DeMarco would know if a report existed, I did not pursue the matter any further.

Chairman NUNN. Have you had a chance to read that report?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Does it appear to cover the same subject matter of the subsequent report which we already made part of the record?

Mr. KOWALSKI. From the first page it would appear—

Chairman NUNN. We will go into that matter in considerable detail tomorrow, and after we have a witness appropriately identify the report and its contents, we will then make it a part of the record. We will make a judgment as to how much of this will be released at this time depending on our own analysis of the impact on possible civil or criminal suits.

Does anyone at this time, Mr. Staats, know if the Pension Fund is actuarially sound and will be capable of adequate funding? In other words, did you get into that in your investigation, actuarial soundness of the Pension Fund?

Mr. STAATS. From our work on this, the answer would be no, we do not have any authoritative basis for saying whether the fund is actuarially sound or not.

Chairman NUNN. Did you find any kind of evidence that the Labor Department could or would authoritatively comment on the actuarial soundness of the fund?

Mr. KOWALSKI. We understand Department of Labor has no responsibility. IRS, in its requalification letter to the fund, said specifically it was not commenting on the actuarial soundness of the fund. I believe IRS laid out its position on the fund's soundness for the House Oversight Subcommittee in October 1978.

If you wish, I will read it for the record.

Chairman NUNN. All right.

Mr. KOWALSKI. Question: "Did the increase in employer contributions made effective April 1, 1977, resolve the actuarial problems of the fund?" Answer:

The Service has no authority to determine whether a plan is actuarially sound. The statutory authority of the Service relating to whether a plan satisfies the minimum funding standards enacted by ERISA, does not give the Service jurisdiction to determine whether the plan is solvent or insolvent. The minimum funding standards provide only that the Service will make determinations as to whether the annual funding of the plan satisfies one of several specified statutory standards. These standards permit the funding of planned liabilities over 30 years, 40 in the case of a multiemployer plan, and thus cannot assure that a plan is solvent at any one particular point in time. At the present, the Central States Fund is not subject to the minimum funding standards of ERISA, and consequently the Service lacks authority to make determinations in this area. When the minimum funding standards become applicable to the Central States Fund, we will then be able to review the accuracy of the actuarial assumptions of the fund in the aggregate as part of our consideration whether the plan satisfies minimum funding.

Based on this, IRS doesn't know whether the fund is sound.

Chairman NUNN. If IRS doesn't know if the fund is actuarially

sound and IRS doesn't have jurisdiction over it, who does know at this point in time whether the fund is actuarially sound and whether the—

Mr. KOWALSKI. I am afraid you have to—

Chairman NUNN. Did you run into anyone in the U.S. Government who feels—

Mr. KOWALSKI. Other than that, no, IRS will not talk to us. This is the only position.

Chairman NUNN. IRS says it is not their statutory duty.

Mr. KOWALSKI. That is what it says.

Chairman NUNN. And Department of Labor says it is not their statutory duty.

Mr. KOWALSKI. That IRS has the responsibility.

Chairman NUNN. After 5 years of investigation, those people who looked into this fund for security and protection cannot have any definitive statement by anybody in the U.S. Government as to whether they are adequately protected?

Mr. KOWALSKI. That is a fair statement.

Mr. STAATS. This goes back to the question we talked about a few minutes ago, whether or not the organizational charter here is the best charter that is to be developed.

Chairman NUNN. Do you agree with the interpretation of the Department of Labor and Internal Revenue Service that the statute itself does not confer that duty and obligation? I ask your attorney that. Do you agree with that interpretation?

Mr. WYRSCH. I am sorry?

Chairman NUNN. Do you agree with the interpretation of both Internal Revenue Service and Department of Labor that ERISA does not confer jurisdiction on either of them to make the determination as to the actuarial soundness of the fund?

Mr. WYRSCH. We have not looked at that question, Senator. We would be happy to supply that.

[The information supplied follows:]

Answer. The statutory provisions most relevant to the question are sections 302 and 1013 of ERISA, which establish minimum funding standards for covered pension plans. Although compliance with those requirements in most cases will move a plan toward actuarial soundness, such compliance cannot guarantee the plan's actuarial soundness—that is, the long-term solvency of the fund. The Labor Department and IRS thus appear to be correct in their position that they lack jurisdiction under ERISA to determine the actuarial soundness of a plan, since their role is limited to determining that the statutory minimum funding standards are met.

The standards are intended to ensure that no funding deficiency exists during a given plan year. Compliance with the funding requirements is determined by use of a formula reflecting certain credits and charges to the fund for the year in question; a deficiency occurs if total charges to the fund for the plan year exceed total credits. The minimum funding standard was the means chosen to ensure that pension funds would maintain sufficient assets to be able to pay benefits to their employees as they retire. See H.R. Rep. No. 93-1280 and S. Rept. No. 93-1090 282-283 (1974). The distinction between compliance with the statutory standards and actuarial soundness was discussed at length in testimony before this Subcommittee by Ira Cohen, Director, Actuarial Division, IRS. The thrust of his testimony was that a hypothetical plan could currently satisfy the minimum funding requirements while actually lacking sufficient assets to pay benefits as they come due in the future.

The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-334, will change various aspects of ERISA as applied to multiemployer plans, with a view toward providing greater protection against plan insolvency and benefit

loss. In considering various amendments to current minimum funding standards, the House Report comments extensively on the inadequacies of existing funding requirements in ensuring that plans will have sufficient assets to meet their long-term obligations. See H.R. Rep. No. 96-869, Part I (1980). Addressing the problems of multiemployer plans, the Report states:

"The current funding standards are not adequate to ensure that financially healthy multiemployer plans stay healthy or that plans that are likely to be in financial trouble will build up sufficient reserves to secure future benefit obligations. The present minimum funding standards of ERISA allow multiemployer plans too much time to fund benefit improvements and do not provide sufficient incentive to employers and unions to take a realistic view of potential costs. They fail to achieve their objective of ensuring that plans will accumulate sufficient assets to meet their benefit commitments." *Id.* at 58-59. See also H.R. Rep. No. 96-869, Part II 69 (1980).

In sum, while long-term plan solvency is an ultimate goal of ERISA, compliance with the current minimum funding standards alone does not indicate whether that goal will be met.

Chairman NUNN. Would you supply an answer on that? It seems to me that is a fundamental point, would you not agree, Mr. Staats?

Mr. STAATS. I agree.

Chairman NUNN. If nobody has the jurisdiction to do that—

Mr. STAATS. Then you have a problem.

Chairman NUNN. I think that would certainly be an understatement.

On page 15, Mr. Staats, you mention in addition to the alleged abuses involving fund loans, other patterns of apparent abuses were found. The Labor Department, however, made no significant analysis, nor did it complete its review of or pursue these areas. As a result, the Labor Department left unresolved questions of potential criminal violations and mismanagement raised by its own investigation.

Is that a fair statement of your conclusion.

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. What were the apparent abuses, if you could give them to us, that the Labor Department investigation did not pursue?

Mr. KOWALSKI. Labor's own initial analysis disclosed other problems in addition to those of imprudent practices. These other problems or patterns of abuse included: Failure to properly manage real estate and non-real estate-related investments, appropriateness of the fund's liquidity position, failure to properly manage fees the fund charged borrowers for loans, questions on the propriety of payments made to former trustees for allowances and expense claims, some of which involve potential criminal violations, questions on reasonableness of payments to firms providing services to the fund, and allegations of improprieties regarding payments of pension benefits and determinations of eligibility.

[At this point, Senator Percy withdrew from the hearing room.]

Chairman NUNN. Has the Labor Department's so-called new investigation undertaken to pursue these matters further?

Mr. KOWALSKI. Yes, sir; but we question whether they are going to pursue all the matters because their cutoff is January 1977. Some of these, especially the payments to firms and payments to trustees, are prior to that. So it seems to us that if they are cutting it off at January 1977, they are not going to hit some of these areas—

Chairman NUNN. So the new investigation cuts off any investigation prior to January 1977?

Mr. KOWALSKI. That is right, Senator.

Chairman NUNN. Is there reason for that?

Mr. KOWALSKI. Since Labor also won't talk to us about their current investigation, we can't answer that. Labor is really reluctant to talk to us about anything on the ongoing investigation.

Chairman NUNN. Isn't the statute of limitations going to run out on a great number of these potential violations?

Mr. KOWALSKI. I will defer to our legal counsel.

Mr. WYRSCH. Senator, I would hesitate to answer that definitively at this time because the statute of limitations questions relate more or less to the civil litigation and potential criminal actions by the Department of Justice. However, I believe that to the extent that the ongoing civil lawsuit does not encompass the potential violations, and that the current investigation by the Department of Labor does not cover prior violations, that the statute of limitations will run on those potential violations.

Chairman NUNN. Did you run across any evidence that is part of the civil investigation that the Department of Labor gave any kind of implied promise to the former trustees that they would not be pursued criminally?

Mr. KOWALSKI. The famous Phantom Agreement. We pursued that in all avenues, but we couldn't find any evidence of that, Senator.

Chairman NUNN. Could not?

Mr. KOWALSKI. Could not. That took us a couple of weeks. We just couldn't.

Chairman NUNN. Were there rumors to that effect?

Mr. KOWALSKI. Yes, sir; there were plenty of rumors.

Chairman NUNN. It was called the Phantom Agreement?

Mr. KOWALSKI. That is right.

Chairman NUNN. Were there people in the Labor Department who thought that might have existed?

Mr. KOWALSKI. Might have. We couldn't find any solid evidence that it actually took place.

Chairman NUNN. Did you find enough evidence to refute that or just not find any evidence to confirm it?

Mr. KOWALSKI. Either confirm or deny.

Chairman NUNN. I understand the Labor Department never did have more than 28 investigators working on the Teamsters Pension Fund case; is that right?

Mr. KOWALSKI. That is true.

Chairman NUNN. Congress had authorized 45 positions; is that right?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. What were the reasons they gave for not fully—

Mr. KOWALSKI. There were various reasons. They claimed (1) the competitive system under the civil service restricted their hiring qualified people, and (2) they didn't have time to interview qualified people because they were too busy with the investigation.

However, a placement officer in LMSA told us they really procrastinated in selecting people.

Chairman NUNN. It has been alleged for a long time that organized crime figures were recipients of mortgages and loans from the pension fund. On pages 16 and 17, you say that the fund's investments totaled \$1.4 billion. Of this amount, \$902 million was real estate mortgages and collateral loans consisting of 500 loans made to 300 borrowers. Labor targeted 82 of these loans valued at \$502 million for review. Its

analysis showed that about half of the 82 loans valued at \$375 million were made to 6 entities or persons.

The Department of Labor claims that it concentrated on a few loans because of the larger amounts of money involved.

How would you characterize this? Were certain areas ignored? How would you characterize their investigation of this?

Mr. KOWALSKI. By concentrating on real estate mortgage loans, they ignored the other potential areas that the investigators through their initial analysis developed—such as rental income, commitment fees, and trustees' expenses.

Chairman NUNN. Did they investigate the benefits and administration account, the Labor Department?

Mr. KOWALSKI. At that time the B. & A. account was not in existence. That wasn't set up until October 1977.

Chairman NUNN. Until they got the fiduciaries?

Mr. KOWALSKI. That is right, sir. So they couldn't have investigated it.

Chairman NUNN. Is it true there are \$30 million in the B. & A. account unaccounted for?

Mr. KOWALSKI. We have no evidence of that.

Chairman NUNN. Following the review of the fund's records on the 82 targeted loans, what was the next plan to investigate the loans?

Mr. KOWALSKI. That was getting into the third-party investigations.

Chairman NUNN. Would you define for us the words third-party investigation? What does that term mean?

Mr. KOWALSKI. I will let our counsel give us that.

Mr. WYRSCH. Senator, a third-party investigation within the context of this testimony would mean examining the investigation from the review of the records of the fund to interviewing the parties to these transactions, trying to answer questions such as what became of the loans, how were funds used, what was the opinion of other potential lenders, whether the potential lenders disapproved loan applications of the individuals involved, and so forth.

Chairman NUNN. If you are going to really pursue an investigation thoroughly, don't you have to go into third-party transactions?

Mr. WYRSCH. Yes; the examination of these transactions is a very important part of a comprehensive investigation.

Chairman NUNN. Do you agree, Mr. Kowalski?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Were there plans made by the Department of Labor or anyone in the Department of Labor to go into third-party investigations?

Mr. KOWALSKI. Yes, sir, by Mr. Lippe.

Chairman NUNN. Were those plans actually pursued as planned?

Mr. KOWALSKI. Not as planned. As we point out in the report, he had planned on making third-party investigations of between 75 to 100 parties in early 1977.

At it turned out, maybe 14 of those third parties were investigated. The rest were postponed or were not made until after the civil suit was filed. Of course, then it is a different situation.

Chairman NUNN. On page 19 of your statement, you say the Labor Department officials, including the Secretary, in a hearing in July 1977 before this subcommittee said that Labor's investigation was shifting

from a review of fund records to a search for evidence in the possession of third parties.

Did you find that Marshall's testimony and his intentions were accurate at that time and, if so, were they carried out?

Mr. KOWALSKI. As we say on page 19, they were really not carried out as Mr. Lippe had planned. To that extent, I would say the Secretary's statement was not—

Chairman NUNN. It was not carried out—

Mr. KOWALSKI. Was not carried out. I would characterize it that way. Whether it was accurate or not—

Chairman NUNN. That was based on subsequent events.

Mr. KOWALSKI. Right.

Chairman NUNN. And subsequent events were not fulfilled?

Mr. KOWALSKI. At the time he made the statement, I believe there was some question as to whether they were going ahead with the third-party investigations in July 1977.

Chairman NUNN. There was some question even then?

Mr. KOWALSKI. Yes; at that time.

Chairman NUNN. He did make the statement pretty categorically that they were.

Mr. KOWALSKI. He did, yes, sir.

Chairman NUNN. Did Labor issue a subpoena for fund records that were missing of the 82 targeted loans?

Mr. KOWALSKI. We have indirect evidence that they did. A subpoena was issued for the nine loan files that were never provided to Labor by the fund.

Chairman NUNN. Do you have indications they did issue subpoenas?

Mr. KOWALSKI. They indicated to Mr. Sullivan when he interviewed Labor officials. We never did get direct evidence that it was made. So it is indirect evidence that they did issue a subpoena for the missing records.

Chairman NUNN. They certainly would have a record of that.

Mr. KOWALSKI. We could follow up and supply it for the record.

Chairman NUNN. I wish you would on that subject. We will also pursue that with Labor Department witnesses.

[Material supplied by GAO follows:]

As requested by Chairman Nunn, we asked Labor officials whether Labor had issued subpoenas to the Fund or its officials requesting Fund records or documents for the loans, included in the 82 targeted loans, that Labor did not obtain or the Fund refused to provide during the investigation. The Attorneys in the Solicitor's office, handling Labor's civil suit against the former Fund trustees and officials,¹ told us that Labor, on May 16, 1978, issued a deposition subpoena for certain Fund documents. (A copy is attached.)

The subpoena requested the Fund to provide any and all records and documents relating to 99 specific loans, investment and property transactions. The 99 items included seven loan transactions for which Labor had never previously reviewed the loan files. The seven loan files were (1) Abonic, Inc.; (2) Club 300, Inc.; (3) Investors Group, Inc.; (4) Kirkwood General Hospital; (5) River Downs Investment Co.; (6) Sixth Avenue Associates; and (7) Guaranty Bank and Trust Co. On November 15, 1978, the court ordered the Fund to provide Labor copies of the Fund's various loan files including these seven specific loan files included in Labor's deposition subpoena (a copy of order is attached). On December 5, 1978, pursuant to the court order, the Fund provided Labor the documents and records on the seven loan files never previously requested or reviewed by Labor.

A Solicitor's attorney also told us that the Labor Department ultimately pared down the 99 loan files sought in its subpoena to 44 loan files. The Court on December 28, 1978 ordered the Fund to produce these records. (A copy of the order

¹ *Marshall v. Fitzsimmons et al.*, C.A. 78-342 USDC, N.D. Ill.

is attached.) The attorney said that microfilming of these records was delayed for a variety of reasons, but is expected to begin in early November 1980.

ATTACHMENT

Pursuant to Rule 30(b)(6), F.R.C.P., the plaintiff requests the Fund to designate one or more managing Agents or employees or other persons who consent to testify on its behalf. The plaintiff seeks to examine the deponent concerning all matters relating to the administration of the Fund from 1970 to the present, including but not limited to the procurement of and payment for services to the Fund, the management and investment of Fund assets, and the maintenance and custody of all documents and records relating to the Fund.

The deponent is requested to produce, at the time and place of the deposition the following materials:

1. Any and all instruments and other documents which set forth, describe or define the structure and operation of the Fund,¹ whether or not such documents are currently in force or effect, for all periods of time from the inception or creation of the Fund to the date of this deposition, including but not limited to:
 - a. Trust agreements or indentures, with all amendments;
 - b. Pamphlets, booklets, circulars, descriptions or other matter setting forth or summarizing the terms of the Fund;
 - c. Contracts or agreements with employers setting forth or relating to the terms of the Fund, whether or not currently in force or effect.

- d. Manuals, checklists, procedures and other documents which describe, define or relate to practices and procedures followed or to be followed by the Fund in the management and investment of Fund assets.

- e. Manuals, checklists, procedures and other documents which describe, define or relate to the practices and procedures followed or to be followed by the Fund in the maintenance and custody of records and documents relating to the Fund.

2. Any and all minutes, resolutions, transcripts, notes and other documents, whether in draft or final form, reflecting or recording the meetings, votes, decisions or other actions of the trustees of the Fund from the inception or creation of the Fund through the date of this deposition.

3. Any and all records and documents which relate to or make reference to the financial condition and results of operations of the Fund for the Fund fiscal years ending 1972 through the date of this deposition including but not limited to:
 - a. All financial statements, audited or unaudited, including the accompanying footnotes and auditor's reports;
 - b. All journals (or other books of original entry) and ledgers including cash receipts journals, cash disbursement journals, general journals and general ledgers;
 - c. Chart of accounts with a description of the use of each account;
 - d. Documents showing who performed the bookkeeping functions and prepared the financial statements;
 - e. List of all bank accounts including the name of the bank, account number and address;
 - f. Actuarial reports and analyses.

4. Any and all drafts and work papers prepared in connection with all reports, returns and other documents filed by or on behalf of the Fund with the United States Department of Labor and Internal Revenue Service for Fund fiscal years ending 1972 through the date of this deposition.

5. Any and all personnel records and other documents which relate to or make reference to individuals and firms which relate to or make reference to individuals and firms employed by the Fund whether in full or part-time employment or by contract or retainer, from January 1, 1972 to the date of this deposition, including but not limited to payroll records, employee expense claims (with supporting claim forms and/or vouchers), time sheets or other records of time worked, employment contracts, descriptions of job duties and tasks, and all contracts, agreements or other documents relating to or making reference to services rendered by individuals or firms to the Fund.

¹ Unless specifically stated otherwise, the term "documents" means all written, type-written, printed or recorded matter, however produced or reproduced, of every kind and description, in the actual or constructive possession, custody, care or control of the Fund including, but not limited to, notes, memoranda, letters, agreements, contracts, accounting or financial records or worksheets, transcripts or notes of conversations or meetings, minutes of meetings, statements, directives, all drafts of such documents even if not used, and all copies of such documents containing additional matter. Where two or more documents or groups of documents to be produced are contained in a segregable system of documents, the documents shall be produced in the order in which they are contained in such system.

United States District Court

FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

CIVIL ACTION FILE NO. 78-C-342

Marshall

vs.

Fitzsimmons, et al.

TO The Central States Southeast and Southwest Areas Pension Fund 8550 West Bryn Mawr Avenue Chicago, Illinois

YOU ARE COMMANDED to appear at Room 1486, Dirksen Federal Office Building, 219 South Dearborn Street in the city of Chicago on the 26th day June, 1978, at 10:00 o'clock A.M. to testify on behalf of plaintiff

at the taking of a deposition in the above entitled action pending in the United States District Court for the Northern District of Illinois, E.D. and bring with you

See Attachment

Handwritten note: served 5/16/78

Dated _____, 19__

Attorney for Address

Clerk. By Deputy Clerk.

Any subpoenaed organization not a party to this suit is hereby admonished pursuant to Rule 30 (b) (6), Federal Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and shall set forth, for each person designated, the matters on which he will testify or produce documents or things. The persons so designated shall testify as to matters known or reasonably available to the organization.

1. Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose. If testimony by an organization representative or designee is requested, describe with reasonable particularity the matters on which examination is requested.

RETURN ON SERVICE

Received this subpoena at _____ on _____ at _____ on _____ served it on the within named _____ at _____ by delivering a copy to h _____ and tendering to h _____ the fee for one day's attendance and the mileage allowed by law.

Dated: _____, 19__ Service Fees: Travel \$ _____, Services _____, Total \$ _____

Subscribed and sworn to before me, a _____ this _____ day of _____ 19__

2. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agent thereof.

6. Any and all documents which relate to or make reference to payments by the Fund to or on behalf of the trustees of the Fund in the form of compensation, reimbursement or advances for expenses, or any other consideration or remuneration in any form, for the period from January 1, 1975 to the date of this deposition.

7. Any and all indices, lists and other documents which list or describe any system of records, files or other documents maintained by the Fund.

8. Any and all visitors logs and other documents which contain names or other information relating to persons who have visited the offices of the Fund for the period January 1, 1972 through the date of this deposition.

9. Any and all records and other documents which relate to the administration and management of Fund assets invested in mortgage loans, collateral loans, and other loans for the period January 1, 1972 to the date of this deposition, including but not limited to: descriptions of assets, descriptions of mortgages, loan history cards, loan tickler cards, delinquency reports, collection reports, subsidiary loan ledgers and records of the votes of the trustees with respect to all loan and real estate transactions.

10. Any and all reports, studies, analyses and other documents prepared by the Fund or by others on behalf of or for the Fund and relating to the Fund's investments in mortgage loans, collateral loans, other loans, debt securities, equity securities, and real estate, whether relating to a group of investments or all investments or relating to the Fund's prospective investment alternatives or strategies, for the period January 1, 1972 through the date of this deposition.

11. Any and all applications and other documents relating to requests by any person or entity for loans of assets of the Fund received by the Fund during the period January 1, 1972 through the date of this deposition.

12. Any and all records and documents relating to any loans made by the Fund to any of the persons or entities, or to their predecessors or successors in interest with respect to a loan made by the Fund, listed below:

- Alsa Land Development Co.
Chula Vista Group Properties
Cove Associates
Mainik, Alvin I. & Deborah C.
Rancho Properties
Sky Lake Development Company
Argent Corporation
I.J.K. Nevada, Inc.
M. & R. Investment Company, Inc.
Shelter Island Hotel Corporation
Neisco Industries, Inc.
Ruco Corp.
Elsinore Corporation
Hyatt Tahoe, Inc.
Aladdin Hotel Corporation (including the Venture Inn loan)
Ambassador Apartments
Aptos Seascape Corporation
C. & S. Golf & Country Club Corp.
Council Plaza
Hotel Associates, Inc., and Miller, Robert B. and Stanton R. (d/b/a the Drake Hotel)
Fountainebleau Orleans
Gottlieb Enterprises
Hunter, Oscar (Howard Johnson's Motor Lodge)
Indico Corporation
La Costa Land Company
McCormick City Limited Partnership and Amalgamated Trust and Savings Brnk Trust 2350
Mid-City Development
Moorefield Enterprises Limited Partnership
Motor Inn Associates
Mount Vernon Memorial Park
National Development Corporation
Pocono Downs, Inc.
Todd Investment, Inc. (including: Eastmont Mall, Beverly Ridge, Hudson Properties)
Fremont Hotel
Saratoga Development Corp.
Abonic, Inc.
Boca Tecca Corp.
Club 300, Inc.
Ellison Realty, Inc.
Konover, Harold (a/k/a 5445 Collins Avenue)
Investors Group, Inc.
Kirkwood General Hospital
River Downs Investment Co.
Realty Holdings, Inc.
Regency Industrial Park, Inc.
The Reis Corp (including UFIC Loans)
Telesis Corporation
Washlands, Inc.
Sixth Avenue Associates (a/k/a Schwartz, David)
Guaranty Bank & Trust Co.—Imperial Inn Trust 9939
United Meridan Corporation
The Proudfoot Group
Estate of James Gottlieb
Green, Hyman
Valley Die Cast Corporation
Royal St. Louis Motel (Goldfarb, Irwin & Sybil)
Central National Bank Trust 21355 (Modern Inns, Inc. d/b/a Motor World West Hotel)
La Mirada Drive Inn Theatre (Sterling Recreational Company, Parkway Bowl)

13. Any and all records and documents relating to any investment of Fund assets in debt or equity securities of a corporation, or any predecessor or successor corporations, listed below or relating to the Fund's management of such an investment:

| | |
|----------------------------|-------------------------|
| Aptos Seascape Corporation | 47th & Central Corp. |
| Penasquitos Corporation | Osler Building Corp. |
| Telesis Corporation | Neisco Properties, Inc. |
| Fund Land Corp. | |

14. Any and all records and documents relating to the acquisition, management, sale or proposed sale by the Fund of the properties listed below:

| | |
|--|---------------------------------|
| Ambassador Apartments | Lux Ranch (La Costa) |
| Alexandria, Virginia Property (Everglades) | McCormick Air Rights |
| Baychester | Mid-City Development |
| Beverly Ridge, Community Redevelopment | Mobil Oil Sites |
| Bressi Property (La Costa) | Rancho Capistrano (Penasquitos) |
| Brevard County | River Oaks Development |
| Circus—Circus | Royale Investment |
| Circus—Circus (Slots of Fun) | Wiegand Property (La Costa) |
| Council Plaza | Wonder World Properties |
| Diegido Property | Aristocrat Motor Hotel |
| Dreske Property | Canterbury Shopping Center |
| Fort Washington Estates | Desert Inn |
| Gottlieb Enterprises | Everglades Hotel |
| Joint Real Estate Venture | Horizon Investments |
| La Jollia Valley, California (Penasquitos) | Hunter, Oscar B. |
| Las Vegas Ice Palace Productions | Montmartre Hotel |
| | Savannah Inn & Country Club |
| | Windward Passage Hotel |

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

U.S. DISTRICT COURT, NO. 78 C 343

RAY MARSHALL, SECRETARY OF LABOR PLAINTIFF

v.

FRANK FITZSIMMONS, ET AL., DEFENDANTS

ORDER

This cause coming on for a status hearing on October 25, 1978 before the Honorable Carl B. Sussman on CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND'S ("Central States") motion to quash or modify plaintiff's deposition subpoena issued on May 17, 1978, and the Court having been fully advised in the premises,

It is hereby ordered that:

1. With respect to the loan transactions set forth in paragraph 6 of the Complaint, filed by plaintiff on February 1, 1978 in the above captioned cause, CENTRAL STATES shall provide plaintiff with photostatic copies of loan files updating those loan files which relate to said specific allegations of impropriety by no later than November 22, 1978.

2. Central States shall also provide plaintiff with photostatic copies of those seven (7) (Abonic, Inc.; Club 300, Inc.; Investors Group, Inc.; Kirkwood General Hospital; River Downs Investment Co.; Sixth Avenue Associates; and Guaranty Bank and Trust Co.) loan files included in the subpoena which have never been previously reviewed by plaintiff by no later than November 22, 1978.

3. Central States shall at the time of production of documents, by the deposition testimony of a competent witness designated pursuant to Rule 30(b)(6), Fed.R.Civ.P., attest to the completeness and authenticity of the documents provided under this Order.

4. Plaintiff shall provide defendants with microfilm copies of those documents produced by Central States before December 22, 1978.

5. After the aforesaid document production has been completed, the parties and Central States shall meet and engage in another conference pursuant to Local Rule 12(b) before December 27, 1978.

6. The parties and Central States shall appear before this Court on December 27, 1978 at 8:30 A.M. for oral argument concerning Central States motion to quash.

CARL B. SUSSMAN,
U.S. Magistrate.

Dated: November 15, 1978.

Name of Presiding Magistrate, Honorable Carl B. Sussman
Cause No. 78 C 342 Date December 28, 1978

Title of Cause RAY MARSHALL, Secretary of Labor, v. FRANK FITZSIMMONS
(Consolidated with/ 76 C 3803 DUTCHAK v. INT'L BROTHERHOOD OF TEAMSTERS.)

Brief Statement of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent

Reserve space below for notations by minute clerk

Enter draft order pursuant to minute order dated December 27, 1978, with respect to quashing or modifying plaintiff's deposition subpoena, etc....

Appendix A

Sussman

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

NO. 78 C 342

RAY MARSHALL, SECRETARY OF LABOR, PLAINTIFF

v.

FRANK FITZSIMMONS, ROY WILLIAMS, ROBERT HOLMES, DONALD PETERS, JOSEPH W. MORGAN, FRANK H. RANNEY, WALTER W. TEAGUE, JACKIE PRESSER, ALBERT D. MATHESON, THOMAS J. DUFFEY, JOHN SPICKERMAN, HERMAN A. LUEKING, JACK A. SHEETZ, WILLIAM J. KENNEDY, BERNARD S. GOLDFARB, ANDREW G. MASSA, WILLIAM PRESSER AND ALVIN BARON, DEFENDANTS

ORDER

This cause coming on for a further status hearing on December 27, 1978 with respect to the pending motion by Central States, Southeast and Southwest Areas Pension Fund ("the Pension Fund") for an order quashing or modifying plaintiff deposition subpoena ("the deposition subpoena") and for a protective order, and the related Joinder in Motion by all defendants except ALVIN BARON, and the Court being fully advised in the premises;

It is hereby ordered that:

1. Paragraphs 12, 13 and 14 of the attachment to the deposition subpoena are amended by striking the assets of the Pension Fund identified therein, and by replacing them with the assets identified on pages 2 and 3 of a letter dated December 12, 1978 from Robert P. Gallagher to William J. Nellis, of which letter an accurate copy is attached hereto, marked "Exhibit A" and incorporated herein. The Pension Fund shall produce the records and documents contemplated by paragraphs 12, 13 and 14 of the deposition subpoena with respect only to those assets that are identified on pages 2 and 3 of attached "Exhibit A".

2. With respect to pending motions to consolidate 4 cases pending before him (Nos. 76 C 3803, 77 C 305, 78 C 342 and 78 C 1873), United States District Judge Alfred Y. Kirkland has ordered all briefs to be filed on or before January 22, 1979, and has ordered a status hearing on January 23, 1979, at 9:30 a.m. to protect the Pension Fund (which is a party in each of Nos. 76 C 3803, 77 C 305 and 78 C 1873) from unnecessary duplication of its resources and efforts in compliance with discovery requests on those 4 cases, production by the Pension Fund pursuant to paragraph 1 of this Order need not commence until 10 days after the ruling by Judge Kirkland upon said motions to consolidate.

3. Production of records and documents contemplated by paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Attachment to the deposition subpoena, and the are deferred until further hearing and Order following completion of production by the Pension Fund pursuant to paragraph 1 of this Order.

4. Production by the Pension Fund pursuant to paragraph of this Order shall be subject to the following conditions:

(a) The sequence of production of records and documents of the Pension Fund shall be determined by representatives of the Pension Fund; and

(b) The date, time, place and method of production of records and documents of the Pension Fund shall be determined by agreement between counsel for plaintiff, defendants and the Pension Fund, in a manner that will effectively reduce the risk that the Pension Fund will need to produce any of said records again during discovery or trial of the above-entitled action; and

(c) Plaintiff shall cause reimbursement to the Pension Fund of all material expense and labor expense incurred by the Pension Fund in compliance with this Order or with the prior Order entered herein November 15, 1978, upon submission of an appropriate invoice by the Pension Fund, except that the question whether there shall be reimbursement to the Pension Fund of its expenses incidental to depositions pursuant to the deposition subpoena (including the initial deposition of Mary Jacobs on December 5, 1978) is deferred until further hearing and Order following conclusion of all depositions pursuant to the deposition subpoena; and

(d) If Judge Kirkland does consolidate No. 78 C. 342 with No. 76 C 3803 or No. 78 C 1873, or both, it shall be the responsibility of plaintiff, as a condition precedent to any production pursuant to paragraph 1 of this Order, to effect

discovery coordination with counsel for plaintiffs in No. 76 C 3803 or No. 78 C 1873, or both, in a manner that will effectively reduce the risk that the Pension Fund will need to produce any of said records again during discovery or trial of any said actions; and

(e) All records and documents of the Pension Fund produced pursuant to paragraph 1 of this Order shall be returned to the Pension Fund within a reasonable time and in the identical condition and sequence as at the time of production. Defendants shall have the right to have a representative present at all times during which said records and documents are in the possession of the plaintiff.

(f) As an incident to its production of records and documents pursuant to paragraph 1 of this Order, the Pension Fund shall attest to the completeness and authenticity of said records and documents through deposition testimony of a competent witness, at such time and place as is established by agreement between counsel for plaintiff, defendant and the Pension Fund.

5. Plaintiff shall furnish a microfilm copy or other copy of all records and documents produced pursuant to paragraph 1 of this Order to all other parties to the above-described action, within a reasonable time after said production.

6. After production and return of records and documents pursuant to this Order, the parties (including those in No. 76 C 3803 or No. 78 C 1873, or both, if consolidated with 78 C 342) shall conduct another conference within Local Rule 12(d), to resolve or at least to define any further issues.

7. This matter is set for further status hearing on February 23, 1979, at 9:00 a.m.

Enter:

Dated: December 28, 1978.

Carl B. Sussman,
U.S. Magistrate.

OFFICE OF THE SOLICITOR,
PLANS BENEFITS SECURITY DIVISION,
December 12, 1978.

Re. Rule 12(d) conference in Marshall v. Fitzsimmons

Mr. WILLIAM J. NELLIS,
Coghlan, Joyce & Nellis,
Chicago, Ill.

DEAR MR. NELLIS: In preparation for our Rule 12(d) conference in *Marshall v. Fitzsimmons*, to be held at 10:30 a.m. on December 14, 1978 in the law offices of Coghlan, Joyce & Nellis, we have reviewed the list of loan files set forth in our subpoena. The subpoena was served on the Fund on May 16, 1978 and is the subject of the Fund's and defendants' motion to quash. Based upon our review, we have determined to seek production of 43 of the approximately 99 loan files included in the subpoena, as relevant and necessary for our conduct of this litigation. As to the remaining loan files in the subpoena, we will not seek production of documents at the present time. However, we reserve the right to seek discovery of documents pertaining to these loans in the future.

We have also reviewed the documents and testimony provided by the Pension Fund on December 5, 1978, pursuant to the Court's order. Certain deficiencies are apparent from the record in the authentication and completeness of the records produced, including the Fund's production of third or fourth generation copies, the Fund's failure to indicate stapled and attached documents, the possibility of gaps in documents around the period of updating, and problems in the Fund's numbering process. Unless all parties can agree to the use of satisfactory procedures to cure these deficiencies, we will seek production of original loan files in the future.

The loan files set forth in the subpoena for which we seek complete and authentic records include:

- (1) Alsa Land Development Co.
- (2) Chula Vista Group Properties
- (3) Malnik, Alvin I. & Deborah C.
- (4) Rancho Properties
- (5) Sky Lake Development Company
- (6) Argent Corporation
- (7) I.J.K. Nevada Inc.

- (8) M. & R. Investment Company, Inc.
- (9) Shelter Island Hotel Corporation
- (10) Elsinore Corporation
- (11) Hyatt Tahoe, Inc.
- (12) Aladdin Hotel Corporation (including the Venture Inn loan)
- (13) Aptos Seascapes Corporation
- (14) C & S Golf & Country Club Corp.
- (15) Council Plaza
- (16) Hotel Associates, Inc. and Miller, Robert B. and Stanton R. (d/b/a The Drake Hotel)
- (17) Hunter, Oscar (Howard Johnson's Motor Lodge)
- (18) Indico Corporation
- (19) La Costa Land Company
- (20) Moorefield Enterprises Limited Partnership
- (21) Motor Inn Associates
- (22) Mount Vernon Memorial Park
- (23) National Development Corporation
- (24) Todd Investment, Inc. (Hudson Properties /GSA Complex)
- (25) Saratoga Development Corp.
- (26) Boca Teeca Corp.
- (27) Ellison Realty, Inc.
- (28) Konover, Harold (a/k/a 5445 Collins Avenue)
- (29) Realty Holdings, Inc.
- (30) Telesis Corporation
- (31) Washlands, Inc.
- (32) United Meridan Corporation
- (33) The Proudfoot Group
- (34) Valley Die Cast Corporation
- (35) Royal St. Louis Motel (Goldfarb, Irwin & Sybil)
- (36) Central National Bank Trust 21355 (Modern Inns, Inc. d/b/a Motor World West Hotel)
- (37) Penasquitos Corporation
- (38) Baychester
- (39) Bresi Property (La Costa)
- (40) La Jolla Valley California (Penasquitos)
- (41) Lux Ranch (La Costa)
- (42) Rancho Capistrano (Penasquitos)
- (43) Wiegand Property (La Costa)
- (44) Lorrin Industries (not in Subpoena)

There is one final matter that I wish to raise. In his Affidavit of August 28, 1978, Mr. Norman E. Perkins indicated (\$10) that the Department of Labor either had not reviewed or had not copied certain loan files. Upon further examination, we have found that the Department of Labor did copy loan files with respect to the following loans: Ellison Realty, Inc.; 47th & Central Corp.; Osler Building Corp.; and Royal St. Louis Motel. We regret this error.

We trust that the information in this letter will be useful to you in preparing for the Rule 12(d) conference.

Sincerely,

ROBERT P. GALLAGHER,
Attorney, Office of the Solicitor,
Plan Benefits Security Division.

Chairman NUNN. You stated almost 50 percent of the money loaned out went to six persons or entities. Familiar names such as Malnik, Glick, Shenker, and Dorfman kept popping up in the context of questionable financial transactions with the fund. Is that correct?

Mr. KOWALSKI. That is true.

Chairman NUNN. Are any of these individuals, Malnik, Glick, Shenker, and Dorfman named in a civil suit.

Mr. KOWALSKI. The suit only names former fund officials. However, the suit lists loans to Malnik and Glick as examples of imprudent transactions.

Chairman NUNN. But they are not named as defendants?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Is there a possibility of losing potential civil and criminal liability, not necessarily just those, but those and potentially culpable third parties because of the lack of appropriate action and diligence by the Labor Department?

Mr. KOWALSKI. I defer to our counsel on that one.

Mr. WYRSCH. As I indicated before, our review did not encompass specific courses of action and we would hesitate to render a definitive statement on whether the statute of limitations would run as to specific individuals. However, it is fair to say, that to the extent the current investigation or litigation does not include certain individuals, there is a real possibility of forgoing potential civil and criminal liability.

Chairman NUNN. Did the Labor Department rely primarily on volunteer cooperation from the Teamster's fund as opposed to administrative subpoena?

Mr. KOWALSKI. Yes.

Chairman NUNN. They do have the power under the ERISA statute to require information by administrative subpoena, do they not?

Mr. KOWALSKI. That is correct.

Chairman NUNN. Did they give you a reason why they did not use the subpoenas?

Mr. KOWALSKI. Mr. Hutchinson, I guess, made the decision to go voluntary. He felt that this would make Labor readily accessible to the fund's records and be able to readily interview its people, and it would help Labor conduct the review more efficiently and expeditiously. That is Labor's opinion. However, the use of voluntary subpoena created problems since the records were not authenticated.

Chairman NUNN. You mean the lack of subpoena?

Mr. KOWALSKI. Right, the lack of subpoena. Also the fund did not turn over all records to Labor.

Chairman NUNN. You found out the fund did not turn over all records?

Mr. KOWALSKI. That is right. There were occasions when the fund gave a file to Labor, the file was not complete. Plus, it wouldn't supply records on some of the loans. There were 17.

Chairman NUNN. Was this fact known to the Labor Department officials that they did not get all the records they wanted?

Mr. KOWALSKI. I believe so. There were occasions, I can't recall where in our evidence. In fact I think IRS also told them that when IRS officials were reviewing the loans they would appear not to get the complete file.

Chairman NUNN. Once they found out they were not getting the complete file in the investigation then why did they not embark on the subpoena route? Did they give you a reason for that?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Does that make sense to you from the professional point of view, that you asked for cooperation, and you don't get it, then you fail to use the powers under the law to subpoena crucial records or possible crucial records?

Mr. KOWALSKI. It doesn't make sense to me.

Chairman NUNN. They had no explanation for that?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Turning to the Internal Revenue Service revocation of the tax-exempt status, June 25, 1976, you say on page 11 this created devastating effect on the fund's financial operations, the pension fund operations.

Would you explain the effect of this revocation?

Mr. KOWALSKI. According to the fund's former executive director, it had the devastating effect in that some of the 16,000 employers withheld their contributions, others threatened to place money in escrow accounts and others who were delinquent would not pay the fund. Also, it had the effect on investments because, according to the director, several of the banks who were handling several hundred million dollars of investments raised questions about their own rights to engage in legal investment activities. He said this resulted in a drop in investment income, but he didn't indicate what the figure was.

Chairman NUNN. Who is he?

Mr. KOWALSKI. Mr. Shannon.

Chairman NUNN. At that time what was his position?

Mr. KOWALSKI. Executive director of the fund.

Chairman NUNN. You said that this caused a chaotic situation in the Labor Department investigation. Can you explain to us how the IRS action, the revocation, effects the Labor Department's investigation?

Mr. KOWALSKI. As we were told, the investigation just came to a complete stop and the fund stopped being cooperative. Also IRS and Labor had to spend more time trying to resolve the issue with IRS and the the fund on the investigation. There was a period of several weeks where nothing was happening in order to resolve the situation between IRS and the fund.

Chairman NUNN. Right in the middle of the Labor Department investigation IRS filed this very tough, strong action?

Mr. KOWALSKI. That is right.

Chairman NUNN. Did you get into it far enough to conclude whether the IRS really had to go through this and whether they were prepared to take this action and knew where they were going in pursuit of it?

Mr. KOWALSKI. We have not talked to IRS and we have not reviewed their records. But commonsense would tell you that, evidently, they didn't realize the impact of the situation.

Chairman NUNN. Do you get evidence now that IRS and Labor are cooperating at this time?

Mr. KOWALSKI. The record indicates that they are cooperating. IRS in its letters to the fund said it is coordinating with Labor. Labor in its letters to the fund said we are coordinating with IRS. Labor and IRS say they are coordinating. But if you look at the other part of the record, they both subpoenaed the same records; and they both are reviewing the same activities.

Chairman NUNN. Right now?

Mr. KOWALSKI. Right now. So, I don't know what kind of a coordination there is.

Chairman NUNN. There is duplication of effort even right now?

Mr. KOWALSKI. There is. It appears they are doing the same thing they were doing 3 years ago.

Chairman NUNN. Has Labor started subpoenaing records now?

Mr. KOWALSKI. Yes.

Chairman NUNN. They have adopted a new tactic at this point?

Mr. KOWALSKI. That is right. Labor said it heard IRS was going to use a summons and Labor felt that they should use its subpoena powers, too.

Chairman NUNN. When did IRS and Labor finally begin to coordinate their activities?

Mr. KOWALSKI. About August 1977, Jim Hutchinson—no, I am sorry, it was August 1976. Hutchinson met with IRS officials in Washington on August first or second. Immediately after they had several meetings. Thus, the coordination started in August 1976.

Chairman NUNN. What was the result of this revocation of tax-exempt status? How long did that continue and what was the result that flowed out of that?

Mr. KOWALSKI. It continued from June 25, 1976, until April 28, 1977. Out of that came the eight conditions that the fund agreed to in order to have its tax-exempt status requalified.

Chairman NUNN. Those are the eight conditions we heard a lot about?

Mr. KOWALSKI. That is right. The eight conditions are spelled out in our report.

Chairman NUNN. That is part of the record. We won't go into those at this point although I want to pursue that later.

How were these conditions set forth? Did they have a written agreement with the fund, the trustees? Did IRS have a written agreement?

Mr. KOWALSKI. No, sir. It was just the letter from IRS to the fund. As far as we can tell, the fund came back and orally agreed to comply. I came across some evidence that IRS considers a press release issued on March 14, 1977, as a written agreement. After the trustees initially agreed to the Government's demands, both IRS and labor issued a press release announcing the agreement. According to IRS's testimony before the House Oversight Subcommittee, IRS considered that a written agreement.

Chairman NUNN. They considered the press release a written agreement?

Mr. KOWALSKI. That is right.

Chairman NUNN. There is nothing from the fund in writing acquiescing or agreeing at any time to these eight conditions?

Mr. KOWALSKI. We couldn't find any evidence.

Chairman NUNN. You found no evidence that the fund or the trustees agreed in writing—

Mr. KOWALSKI. They did submit a monthly report, just a monthly report, but we couldn't find any evidence, written evidence, that the fund had actually said, yes, we will agree.

Chairman NUNN. Then was the court case continuing at this point in time or the court case hadn't been filed?

Mr. KOWALSKI. No.

Chairman NUNN. The Labor Department case had not been filed?

Mr. KOWALSKI. No.

Chairman NUNN. Was there any kind of court action pending when this agreement was entered into?

Mr. KOWALSKI. Secretary Marshall indicated that during the negotiations the fund initially refused some of the demands by the Government and the Secretary stated that he felt that the fund did not accede to the Government's demands that they would go to court. But that was the extent of it.

Chairman NUNN. Did the Labor Department acquiesce in this settlement with IRS? Was there coordination once the IRS revoked the tax-exempt status and before they issued the press release and entered into the oral agreement, or the alleged oral agreement, with the trustees? Did Labor participate at that stage in setting those eight conditions?

Mr. KOWALSKI. Yes. They had continuous discussions from August 1976 until January 1977.

Chairman NUNN. So, there was evidence of full coordination once the tax-exempt status was lifted?

Mr. KOWALSKI. Yes. It was mutual. IRS came forward with the independent agreement and Labor had the neutral trustee idea.

Chairman NUNN. Did the Labor Department issue a press release?

Mr. KOWALSKI. Yes. March 14, 1977.

Chairman NUNN. Did IRS issue a press release?

Mr. KOWALSKI. It was a joint press release.

Chairman NUNN. A joint press release on March 14?

Mr. KOWALSKI. 1977.

Chairman NUNN. Did Justice Department get in on the press release?

Mr. KOWALSKI. No, sir.

Chairman NUNN. We would like to get those press releases for the record.

Mr. KOWALSKI. We can supply them.

[The information furnished follows:]

As requested by Chairman Nunn, we have attached a copy of the Department of Labor's press release dated March 14, 1977. The news release stated in part, that "The U.S. Department of Labor and the Internal Revenue Service announced today that certain issues respecting asset management and benefit administration procedures of the Central States, Southeast and Southwest Areas Pension Fund under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code have been resolved in a manner that meets the Government's objectives."

We do not have a copy of the Internal Revenue Service's news release of the same date. However, in hearings before Senate Permanent Subcommittee on Investigations on July 18 and 19, 1977,¹ Mr. Alvin D. Lurie, Assistant Commissioner for Employee Plans and Exempt Organizations, stated that IRS and Labor had issued identical press releases on March 14, 1977 announcing the terms of an understanding that had been arrived at with the Central States Fund whereby it agreed to take certain corrective steps. Also, at these same hearings, the Secretary of Labor stated that on March 14, 1977, the Labor Department and IRS

¹ Hearings on Teamsters' Central States Pension Fund before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, 95th Congress, 1st Session, July 1977 (pages 13 and 106).

issued identical news releases announcing the terms of an agreement with the Fund.

U.S. DEPARTMENT OF LABOR,
OFFICE OF INFORMATION,
Washington, D.C., March 14, 1977.

The U.S. Department of Labor and the Internal Revenue Service announced today that certain issues respecting asset management and benefit administration procedures of the Central States, Southeast and Southwest Areas Pension Fund under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code have been resolved in a manner that meets the Government's objections.

Specifically, the trustees of the fund have resolved to delegate to one or more independent investment managers (as defined in section 3(38) of ERISA) the control of all investment assets of the fund. The trustees will proceed expeditiously to commence discussions with independent, professional investment managers, including a mortgage banking firm and a bank of recognized national stature, for the purpose of securing their engagement as co-fiduciary ERISA investment managers. In addition to their responsibility for complete control of the fund's portfolio, the co-fiduciary investment managers will provide to the trustees, at the earliest possible date, recommendations concerning short- and long-term investment objectives for the fund.

The fund trustees have further resolved that if discussions with investment manager candidates have not reached agreement in principle as to the hiring of particular candidates satisfactory to the Labor Department and the trustees by April 10, 1977, an Interim Committee will be immediately established to assist the trustees in hiring independent investment managers and in developing the fund's investment objectives.

The Interim Committee will consist of two attorneys, one chosen by the fund and the other by the Department of Labor, and an investment specialist, a mortgage loan specialist and a Taft-Hartley plan expert, chosen jointly by the fund and the Department of Labor.

Further, the fund has agreed to cause an independent review to be made of all loans and related financial transactions entered into by the fund from February 1, 1965 to date with a view to determining what remedial action, if any, must be taken by the fund. The fund shall not be committed, however, to initiating such review until the outstanding issues regarding fund tax years beginning February 1, 1965 through December 31, 1975 are resolved.

The fund has also agreed to adopt all amendments necessary to conform to the Internal Revenue Code and to publish annually in at least one newspaper of general circulation in each State, a statement of the fund's financial condition. To the extent it has not already done so, the fund has agreed to implement fully and expeditiously the benefit history data base presently under development and to rectify any situation in which benefit administration was not in accordance with applicable law and the terms of the Pension Plan, as amended. Also the fund has agreed, to the extent it has not already done so, to establish an internal audit staff, reporting directly to the trustees, to monitor fund operations.

The IRS said that, based upon the foregoing agreements by the fund, the Service shall issue a determination letter requalifying the fund, effective for the plan years beginning on and after January 1, 1976, upon engagement of the professional investment managers or the establishment of the Interim Committee, and adoption of the plan amendments referred to above.

Those present trustees who were trustees prior to October 26, 1976 have advised that they will resign upon requalification by the IRS and engagement of professional investment managers or the establishment of the Interim Committee. The Government contemplates that this will occur not later than April 30, 1977.

The Department of Labor further announced that upon the engagement of professional investment managers or establishment of the Interim Committee, the Department will terminate that portion of its investigation that relates to procedures of the fund respecting asset management. The Department stands ready to offer any and all technical assistance that is authorized under ERISA and other applicable laws to assist the fund in accomplishing the objectives stated above.

Under the arrangements described above, fund matters pertaining to benefit administration, including questions of eligibility and claims review, will re-

main in the control of the trustees, as appointees of the collective bargaining parties who established the fund.

Chairman NUNN. Did the fund make any comment publicly at the time, trustee, simultaneously or shortly after the release of those press releases?

Mr. KOWALSKI. We don't have any evidence.

Chairman NUNN. Did the fund issue a press release themselves?

Mr. KOWALSKI. I don't know, sir.

Chairman NUNN. Have you ever run across a settlement of a major tax-exempt revocation being handled by press releases?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Does the IRS give you any evidence that—

Mr. KOWALSKI. We hadn't talked to IRS.

Chairman NUNN. Have you gone into the question of how these revocations of tax-exempt statutes are resolved in the matter headed by IRS? In other words, is it customary to have any kind of a written agreement?

Mr. KOWALSKI. This is the first case I have worked on.

Chairman NUNN. You don't have a background of that one way or the other?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Did anyone consider the possibility of having a consent decree?

Mr. KOWALSKI. Yes.

Chairman NUNN. Tell us about that.

Mr. KOWALSKI. That was advocated by the Department of Labor officials in 1976. They were having discussions, informal discussions, with the trustees around September and October 1976, and at that point, they discussed with the fund the consent decree. The fund in the negotiations came back with a counter offer indicating that, in lieu of a legal undertaking, such as a consent decree, the board would be restructured and 12 of the trustees would resign. The evidence in Labor's files indicate that a decision was made by, I believe, the solicitor—who at that time was Mr. Kilberg—and by Mr. Chadwick who was the Administrator, Pension and Welfare Benefit Programs—PWBP, to accept the fund's counteroffer and drop the consent decree.

Chairman NUNN. What is his full name? Who made that decision?

Mr. KOWALSKI. William Kilberg.

Chairman NUNN. How do you spell his last name? Give us the dates, his full name.

Mr. KOWALSKI. William J. Kilberg, April 1973 to January 1977.

Chairman NUNN. Was he the one that made that decision?

Mr. KOWALSKI. Yes, according to the documents in Labor's files, he authorized Mr. Lippe to accept the offer. He and Mr. Chadwick, who was Administrator, PWBP, at that time.

Chairman NUNN. Are either of these gentlemen with the Department of Labor?

Mr. KOWALSKI. No, sir.

Chairman NUNN. What are they doing now?

Mr. KOWALSKI. I don't have any idea.

Chairman NUNN. One of the conclusions you make in your investigation refers to the oral agreement. You say on page 62 of your state-

ment that "Labor's and IRS's findings and strong evidence of mismanagement and abuse by the former trustees and IRS's action of removing the fund's tax-exempt status in our view, gave the Government a strong bargaining position in its dealings with fund officials. However, Labor and IRS failed to use their advantage in the final negotiations with the trustees to gain lasting reforms and improvements to the fund's operations and remove the influence and control exercised by the former trustees." I believe you stated that you question whether the reforms and changes that Labor and IRS require the trustees to make in the fund's operations were the best Government could have achieved and the most advantageous for the fund and its plan participants.

Is that a fair characterization?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Do you believe the Labor Department and Internal Revenue Service should have compelled the fund to adopt a legally binding agreement to assure the trustee's compliance to the conditions agreed upon before the IRS requalification order was issued?

Mr. STAATS. Yes, sir. We believe the agencies should have entered into a formal written agreement with the trustees, perhaps a consent accord.

Chairman NUNN. They did not?

Mr. STAATS. They did not.

Chairman NUNN. Did the Labor Department play any role in selecting the six new trustees that were appointed in late 1976?

Mr. KOWALSKI. No, sir.

Chairman NUNN. The Labor Department played no role in that. Did IRS play any role in that?

Mr. KOWALSKI. No, sir.

Chairman NUNN. Did the Labor Department or the IRS play any role in the appointment in April 1977?

Mr. KOWALSKI. No, sir, except that they did develop some criteria and qualifications that should be used in selecting trustees, and they went as far as indicating the type of qualifications for independent, neutral trustees. I believe that they had people in mind such as Archibald Cox, the former Solicitor General. That was their idea of somebody that they thought should be—

Chairman NUNN. Was that in writing?

Mr. KOWALSKI. It is an internal memo.

Chairman NUNN. Did they have veto power over the trustees on either of the six in 1976 or the four—

Mr. KOWALSKI. No. They did not exercise their veto power.

Chairman NUNN. Was there anything binding about that suggestion about the criteria or was that just a memo? Who was the memo from?

Mr. KOWALSKI. It was an internal memo from Labor to IRS specifying the type of criteria.

Chairman NUNN. Did the IRS give that to anyone in the fund?

Mr. KOWALSKI. No. As far as the negotiations with the fund, the only thing, and this is based on what Labor has and what we got from the fund, is that they laid a couple of demands on the table. One was

for neutral trustees and one was for those trustees who should resign. That was the extent of the written demands.

Chairman NUNN. Did the Justice Department play any kind of role in the final press releases that emerged as more or less the tacit agreement?

Mr. KOWALSKI. Not that we are aware of.

Chairman NUNN. Justice was not involved in that?

Mr. KOWALSKI. I think they were consulted during the negotiations. There is evidence that during the work group meetings they did discuss the consent decree. Also, Labor did request an opinion from the Attorney General on whether to propose neutral trustees, where a majority were not members of the union, was in accordance with the Taft-Hartley law.

Chairman NUNN. During this period from the time the IRS filed the revocation of the tax-exempt status to the period of time in March, I believe, of 1977?

Mr. KOWALSKI. 1977, yes, sir.

Chairman NUNN. When there was this agreement by press release did the office called SIS play a role in these negotiations?

Mr. KOWALSKI. No. They were part of the discussions with IRS and Labor but when it came to the final negotiations with the fund, Mr. Kelly and Mr. Sacher handled them.

Chairman NUNN. Does this mean SIS didn't have any input?

Mr. KOWALSKI. No.

Chairman NUNN. They had input?

Mr. KOWALSKI. They had input.

Chairman NUNN. Does the General Accounting Office have any view as to whether the Department of Labor should have had any role in selecting the trustees? Do you have a view on that one way or the other?

Mr. KOWALSKI. Yes. Why go through the trouble of developing criteria, getting the Attorney General to tell you that it is legal to have a neutral board of trustees not associated with the union, and then drop the matter. It seems to me that they were in such a strong bargaining position, that they could have insisted on neutral trustees with a veto power, as they did for the independent managers. Yet, they failed to do this for the trustees. To me it was more important to have independent, neutral trustees, although the independent management is important. But, of course, this is hindsight.

If Labor and IRS had gotten the trustees out, and had a neutral board of trustees appointed, they probably wouldn't be having the problems they have today.

Mr. STAATS. I guess you get into the question here of whether a more accurate role really means, whether it means naming them or having a potential part in the discussions leading up to the selection. I think you have a matter of degree here that has to be considered.

Chairman NUNN. Did either IRS or the Labor Department indicate that they were going to have a veto power over these trustees?

Mr. KOWALSKI. Yes. In the criteria they said the Government should have a veto power.

Chairman NUNN. They said that?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Who did they say it to?

Mr. KOWALSKI. It was an internal document.

Chairman NUNN. They never said it to the fund itself in any kind of formal letter or document or even in the press release, did they, or didn't they?

Mr. KOWALSKI. I don't have the evidence of that. But they could have said it during negotiations. But we were at negotiations.

Chairman NUNN. So, what you are saying is whatever was said in the internal memo, whatever may have been said orally, the Labor Department nor the Internal Revenue Service either exercised any veto power over the trustees?

Mr. KOWALSKI. That is true.

Chairman NUNN. So, the trustees were not agreed to explicitly by Labor and IRS and they were simply acquiesced in. Is that correct?

Mr. KOWALSKI. Correct. That is correct.

Chairman NUNN. The new trustees.

On page 38 you say the record of the new trustees conduct supports the inference that the former trustees still exact significant influence over the fund's operations; is that correct?

Mr. KOWALSKI. Yes, sir; that is correct.

Chairman NUNN. What evidence do you have to support this?

Mr. KOWALSKI. This is based on the internal Labor report by the Solicitor's Office.

Chairman NUNN. Which report is that?

Mr. KOWALSKI. In February 1980, they issued an internal report on the status of the investigation and our comments are taken from that report.

Chairman NUNN. Is that part of your statement or part of your record?

Mr. KOWALSKI. We used excerpts from the report.

Chairman NUNN. Could you read those appropriate excerpts?

Mr. KOWALSKI. We have them on page 38. More recently however, Labor officials have become concerned about the influence of former trustees as well as the behavior of the current trustees. Labor officials indicated in February 1980 that a review of the new trustees' performance demonstrated significant disregard for the interest of the participants and beneficiaries and a determination to frustrate the efforts of Labor in its ERISA enforcement effort. The officials also indicated that the record of the new trustees' conduct also suggests the inference that the former trustees still exert significant influence over the fund's operations.

The officials cited, one, the trustees' lack of cooperation with the Government on the civil suit by their repeated attempts to block Labor's discovery of evidence to be used against former trustees, two, trustees' attempt to curtail the independence of the investment managers, and three, influence of the former trustees as evidenced by their involvement in day-to-day fund operations.

Chairman NUNN. Could you give us the caption of that report? We will mark it "Exhibit No. 3" and place it, for the time being, sealed in the record because of civil suit contention.

Mr. KOWALSKI. From the Solicitor, to the Secretary, it is dated February 1, 1980, "Summary of the Performance of Current Trustees."

[The document referred to was marked "Exhibit No. 3" for reference and will be retained in the confidential files of the subcommittee.]

Chairman NUNN. Who wrote it?

Mr. KOWALSKI. The Solicitor's Office.

Chairman NUNN. No individual, just the Solicitor's Office?

Mr. KOWALSKI. It probably was written by the attorney working on the case.

Chairman NUNN. On pages 39 and 40, reference is made to the June 30, 1977, agreement where the trustees entered into a series of contracts with the Equitable Life Assurance Society of the United States and the Victor Palmieri Co.

Under the contracts, Equitable became the overall or managing "fiduciary" of the fund as well as manager for fund real estate assets east of the Mississippi; and Palmieri became manager for fund real estate assets west of the Mississippi. Neither the Equitable nor the Palmieri appointment could be terminated, changed, modified, altered, or amended in any respect before October 2, 1982, except for cause and only on written consent of the Secretary of Labor. After October 2, 1982, the fund can terminate the contracts without Labor's consent.

Is that basically correct?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Have the trustees repeatedly and openly sought to undermine the independence of the asset managers and reassert control over the fund's assets and investments?

Mr. KOWALSKI. Yes, sir, as we point out on pages 42 and 44 of our statement. They have, over the last 2 years, had a series of resolutions and taken other actions, trying to compromise the independence of Equitable.

Chairman NUNN. Could you give an example of that, particularly the March 1978 resolution passed by the trustees?

Mr. KOWALSKI. The trustees passed a series of resolutions which stated, among other things, that one, the trustee could remove Equitable and Palmieri for cause before the 5-year contract had expired, without the Secretary's consent and two, Palmieri and Equitable had to give the trustees at least 30 days' notice before disposal of assets over \$10,000. This would, in effect, hamstring Equitable and Palmieri's operations since, they would have had to get the fund's approval for every transaction over \$10,000.

Chairman NUNN. Did Labor Department step in and make any kind of comments?

Mr. KOWALSKI. Yes. They wrote to the trustees and to Equitable and told them that the resolutions were not legally enforceable.

Chairman NUNN. Has the Labor Department taken that kind of action on another case, on other occasions?

Mr. KOWALSKI. Yes. Labor in response to other actions and resolutions by the trustees, stated that they are not legally enforceable.

Chairman NUNN. Did the Labor Department serving that kind of notice appear to have any effect? Did the trustees try to pursue the matter further?

Mr. KOWALSKI. Yes; they did in 1979. As we point out in our statement, they tried to get Palmieri to reduce its management fee because

the fees were fixed for a 5-year period and because the assets declined by \$100 million, the fund felt that Palmieri should reduce the fees. Palmieri refused and Labor agreed that Palmieri did not have to reduce the fees.

Chairman NUNN. So the Labor Department has backed up both Equitable and Palmieri?

Mr. KOWALSKI. Yes.

Chairman NUNN. Would you say they have been effective in that respect so far?

Mr. KOWALSKI. So far.

Chairman NUNN. Is there a possibility that when the contracts are up, I believe in 1982, that they will revert, the trustees will revert to the old form?

Mr. KOWALSKI. That would be pure speculation.

Chairman NUNN. But in 1982 the Labor Department loses its leverage under the agreement?

Mr. KOWALSKI. Unless they turn up something under the current investigation.

Chairman NUNN. On pages 44 and 45, you say that although Equitable has been appointed to handle the fund's assets and investments, the fund's trustees still control all the moneys the fund receives. Moreover, after transferring moneys to Equitable for investment the trustees still control a substantial amount of moneys in the benefits and administration of the account.

During calendar year 1979 the trustees transferred \$186 million to Equitable. On the last day of December 1979, the trustees controlled \$142 million in this account; is that correct?

Mr. KOWALSKI. That is true; yes, sir.

Chairman NUNN. Has the Labor Department monitored the B. & A. account to assure that the trustees are prudently using these funds?

Mr. KOWALSKI. In our opinion, it has not adequately monitored the account.

Chairman NUNN. Does the B. & A. account contain approximately two-thirds of all money coming into the fund?

Mr. KOWALSKI. No, sir, four-fifths. In 1979 employer contributions were \$585 million, which the trustees controlled. The other income, investment income, was only about \$151 million. So it is about four-fifths.

Chairman NUNN. So the only part that they wouldn't control would be at one stage or the other, the only part of the overall fund that does not flow through the B. & A. account would be the income from investment?

Mr. KOWALSKI. However, under the agreement or contract the fund's trustees can request Equitable to give them all that money.

Chairman NUNN. Theoretically they control it all?

Mr. KOWALSKI. Theoretically they control it all.

Chairman NUNN. Have they, in fact, asked for any of that money back?

Mr. KOWALSKI. Not to our knowledge.

Chairman NUNN. So the B. & A. account has not requested transfer back from the investors?

Mr. KOWALSKI. No.

Chairman NUNN. On page 46 of your statement, you say the acting director of SIS agreed there was little monitoring of the B. & A. account. You said a subpoena was not issued because there were no allegations regarding mishandling of this money. Is that correct?

Mr. KOWALSKI. That is true.

Chairman NUNN. Who was the acting director referred to here?

Mr. KOWALSKI. Norman Perkins.

Chairman NUNN. How long was he director of SIS?

Mr. KOWALSKI. He assumed the role when Mr. Lippe left in October 1977 and he held it until May 1980, when SIS was abolished.

Chairman NUNN. So he was the acting director until SIS was abolished?

Mr. KOWALSKI. Yes.

Chairman NUNN. What does Mr. Perkins do now; do you know?

Mr. KOWALSKI. Don, do you know?

Mr. SHANER. He is sort of a special assistant to the litigation staff that now handles the suit.

Chairman NUNN. In the Solicitor's Office?

Mr. SHANER. I think he is in the Solicitor's Office as such. He handles the accounting matters related to it.

Chairman NUNN. There was never a full-time Director, a full-time Acting Director, but there wasn't an appointed Director during this time?

Mr. KOWALSKI. No. He was Acting Director all along, after he took over from Mr. Lippe.

Chairman NUNN. Was there a reason there wasn't a permanent Director given responsibility? Did you find any reason for that?

Mr. KOWALSKI. We didn't pursue that matter. But I believe that this is the way Labor operates. They usually appoint a person as an Acting Director and then make him full time.

Chairman NUNN. So Mr. Perkins said that he didn't get into the B. & A. account and didn't issue any subpoenas on that because there were no allegations regarding mishandling of money?

Mr. KOWALSKI. That is right.

Chairman NUNN. In your statement you say a pattern of abuses was detected in the initial analysis of the fund which was back in 1976. Included in the abuses listed on pages 15 and 16 of your statement was the B. & A. account; is that correct?

Mr. KOWALSKI. No, sir.

Chairman NUNN. It wasn't the B. & A. account?

Mr. KOWALSKI. No, administrative expenses, trustee allowances, and payments to service providers.

Chairman NUNN. Did you find any allegations of the abuse of the B. & A. account?

Mr. KOWALSKI. We did find an attempt by the trustees to use the account to, in effect, make a \$91 million loan to settle a suit a borrower had brought against the fund for failing to live up to a loan commitment.

Chairman NUNN. Who was the plaintiff in that suit?

Mr. KOWALSKI. It was the M. & R. Investment Co.

Chairman NUNN. Who is the principal behind that?

Mr. KOWALSKI. Don?

Mr. SHANER. That was the Shenker loan.

Chairman NUNN. So M. & R. Investment Co. was suing the fund; is that correct?

Mr. KOWALSKI. That is right.

Chairman NUNN. Tell us about that transaction in your own words, the origin of it, what happened?

Mr. KOWALSKI. The fund agreed to loan M. & R. in January 1975, \$40 million to renovate a hotel in Las Vegas and construct a 1,000-room addition. However, a couple of months later the trustees rescinded the loan commitment because they found out that apparently it was a prohibited transaction under ERISA. It seemed that the prospective borrower's firm is related to a contributing employer, and that is not allowable under ERISA. So Shenker in turn sued the fund, seeking approval of the loan, plus \$100 million in damages.

Chairman NUNN. Where was that money supposed to go? What was it going to be used for?

Mr. KOWALSKI. To construct a hotel or renovate a hotel in Las Vegas.

Chairman NUNN. Which one?

Mr. KOWALSKI. Don, do you remember the hotel? Was it the Dunes Hotel?

Mr. SHANER. It was the Dunes Hotel.

Mr. KOWALSKI. In September of 1979, the trustees proposed a settlement to the court that the suit be settled by the trustees loaning Shenker an additional \$91 million. According to the trustees, this was not an investment, but sort of an administrative expense to solve a litigated matter. Labor knew nothing about this until the day of the proposal. But the court was skeptical about the proposed loan and had Labor and Equitable review the transaction. They concluded it would not be an appropriate transaction. So the court refused to approve it.

Chairman NUNN. The court actually refused it?

Mr. KOWALSKI. Yes.

Chairman NUNN. That was done at the insistence and request of the Labor Department?

Mr. KOWALSKI. Yes, sir—well, yes. The Labor Department was intermediary in the suit. From the transcript it is not clear. I think the court was more concerned, although Labor didn't want the loan to be made. But it seemed like it was the court's finding that the loan should be reviewed to determine whether it was proper or not.

Chairman NUNN. Under the so-called agreement under IRS and Labor and the fund, did the fund trustees retain the right to make loans under the B. & A. account?

Mr. KOWALSKI. No, sir. All investments would be made by Equitable.

Chairman NUNN. Is that why you refer to this as a transparent attempt by the trustees to circumvent the agreement?

Mr. KOWALSKI. That is Labor's language.

Chairman NUNN. That is the Labor Department's language?

Mr. KOWALSKI. According to the Solicitor's office.

Chairman NUNN. Have there been any other instances where they tried to actually make loans out of the B. & A. account?

Mr. KOWALSKI. Not as far as I—Don, can you recall any?

Mr. SHANER. No.

Mr. KOWALSKI. No. That was the only one.

Chairman NUNN. The Labor officials, including the Secretary of Labor in testifying before this subcommittee in July 1977 acknowledged the need for adequate monitoring of the B. & A. account and assured the subcommittee that Labor would continually monitor and review the trustees' handling of the funds they control.

Are you familiar with that testimony?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Can you tell us in your opinion whether that commitment has been carried out?

Mr. KOWALSKI. I can only reiterate what was said in one statement. Contrary to the Secretary of Labor's and other officials testimony, we found that Labor did not adequately monitor the B. & A. account.

Chairman NUNN. That is up to date?

Mr. KOWALSKI. That is up to date, up to the point of the new investigation. We have no knowledge on what they are doing in this investigation.

Chairman NUNN. On page 48 you say that in March 1980, at a House Ways and Means Committee hearing, Secretary of Labor Marshall was asked if his department knew the size of the B. & A. account and whether there was a problem with the size. The Secretary said that he did not have any information that would lead the Labor Department to believe the account was unreasonably large. He said information received from IRS showed that the B. & A. account had approximately \$65 million as of June 1979. He said that this figure did not appear to be unreasonable in view of the size of the payments the fund makes; nor, he said, did it violate ERISA. He concluded that: "It is up to the asset managers to determine whether the amount is in violation of the asset management agreement."

Are you familiar with that testimony?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. It is our understanding, I think you concluded this, that Equitable's contract with the trustees specifically states that Equitable has no responsibility for the B. & A. account.

Mr. KOWALSKI. Yes, sir. His own internal report concluded the same thing.

Chairman NUNN. The Labor Department's own internal report concluded the same thing?

Mr. KOWALSKI. Yes.

Chairman NUNN. So the Secretary's statement there is erroneous, is it not?

Mr. KOWALSKI. It would seem to be.

Chairman NUNN. Was this in his prepared statement, or was this in the question and answer? Do you know?

Mr. KOWALSKI. I think it was in the question and answer.

Chairman NUNN. The 1979 report by the Deputy Assistant Secretary (LMSA) acknowledges that Equitable has no control over or responsibility for the B. & A. account and that the trustees can request any amount desired from Equitable for the account and Equitable must honor the request. Is that correct?

Mr. KOWALSKI. That is true.

Chairman NUNN. In addition, the B. & A. account balance had grown to \$142 million as of December 31, 1979, which was prior to

the testimony the Secretary referred to or more than double the \$65 million considered recently by the Secretary; is that correct?

Mr. KOWALSKI. That is correct.

Chairman NUNN. But this is not a matter of disagreement within the Labor Department now. Actually their memorandum shows and confirms these judgments?

Mr. KOWALSKI. That is correct.

Chairman NUNN. Even though the Secretary testified to the contrary?

Mr. KOWALSKI. That is correct.

Chairman NUNN. You say that the new Department of Labor investigation of the Teamster Pension Fund will not cover abuses by trustees and service providers incurred before January 1977; is that correct?

Mr. KOWALSKI. That is true.

Chairman NUNN. As a result of that the investigation will not review the abuses by the 12 former trustees who resigned in 1976, will they?

Mr. KOWALSKI. No, sir. They resigned in October 1976.

Chairman NUNN. Is anybody in the Government, according to your analysis, looking at the abuses that occurred prior to the resignation of these 12 trustees? Do you know anybody in the Department of Labor that is looking at these abuses?

Mr. KOWALSKI. Of the 12 former trustees?

Chairman NUNN. Of the 12 former trustees.

Mr. KOWALSKI. Not to our knowledge.

Chairman NUNN. Do you know anybody in the Internal Revenue Service who is?

Mr. KOWALSKI. IRS won't talk to us. So we can't tell whether they are or are not.

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on Oversight of Labor Department Investigation of Teamsters Central States Pension Fund on Monday, August 25, 1980, Tuesday, August 26, 1980, and Wednesday, August 27, 1980.

SAM NUNN,

Chairman.

CHARLES H. PERCY,

Ranking Minority Member.

Chairman NUNN. You didn't talk to Justice about this?

Mr. KOWALSKI. No, sir.

Chairman NUNN. You wouldn't really know whether Justice itself might be—

Mr. KOWALSKI. Well, the only evidence we have on Justice's views on the former trustees' allowances is that some of the Labor people claim that the finding was discussed at work group meetings. But

nobody can pinpoint when or provide a document showing that it was actually discussed and what Justice did, or whether it considered it or not.

People just say, "Yes, we discussed it," but there is no evidence.

Chairman NUNN. Did you run across in the course of your investigation or the Labor Department's investigation, did you run across allegations or any evidence that would lead reasonable people to conclude that matters should be investigated prior to 1976, the resignation of the trustee—

Mr. KOWALSKI. Yes, based on their own evidence developed during the initial analysis.

I would think matters like that should have been pursued in my opinion.

Chairman NUNN. Based on Labor Department's analysis.

Mr. KOWALSKI. Yes.

Chairman NUNN. Was that in a particular report?

Mr. KOWALSKI. Yes, as we point out, by the then Chief Auditor's report.

Chairman NUNN. Is that the August 1976 report?

Mr. KOWALSKI. Yes, or September 1976.

Chairman NUNN. September 1976. Is there any specific language you can refer to there pointing out any allegations of abuse, misconduct, possible criminal violations by the former trustees or any of them?

Mr. KOWALSKI. Don, do you recall that?

Mr. SHANER. That is Norman Perkins' memo.

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. That is a very long document, isn't it?

Mr. KOWALSKI. Yes, it is, about four or five pages long. We could supply that for the record.

Chairman NUNN. We would have to probably seal that for the time being because of civil suits.

Would you say it is fair to say that document has numerous questions raised and allegations concerning possible civil and/or criminal violations by former trustees?

Mr. KOWALSKI. It does not really address the criminal aspects, but there are other documents that seem to indicate that there are possible criminal aspects.

Chairman NUNN. So in the course of your investigation, in this document and other documents, you have run across allegations?

Mr. KOWALSKI. Allegations.

Chairman NUNN. Not hard evidence, but allegations of possible civil or criminal violations of the former trustees who resigned?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. And no one in the Labor Department is pursuing this at this time, or at any other time—

Mr. KOWALSKI. Well, they are now in the current investigation.

Chairman NUNN. They are beginning to.

Mr. KOWALSKI. Beginning to, yes, sir.

Chairman NUNN. When was that decision made to go back? Are they investigating the former trustees under the new investigation?

I thought it was just from January 1977 on.

Mr. KOWALSKI. I see what you mean. It would be the current trustees. But they would be covering some of the four holdovers who resigned in March or April of 1977. So if you go back to January 1977, you would be covering—

Chairman NUNN. About a 3-month period.

Mr. KOWALSKI. Right, but you wouldn't be covering the 12 that resigned in October 1976.

Chairman NUNN. Were there 12 that resigned in 1976?

Mr. KOWALSKI. Right.

Chairman NUNN. Is there any reason given by the Labor Department why they are not investigating any possible civil or criminal violations of the trustees who resigned before January 1977?

Mr. KOWALSKI. They wouldn't talk to us about the current investigation.

Chairman NUNN. But the current investigation doesn't even cover that.

Mr. KOWALSKI. They still wouldn't talk to us about anything.

Chairman NUNN. Would this current investigation, if it does not cover events prior to January 1979, cover possible violations by third parties, the names of whom I read into the record previously?

Mr. KOWALSKI. Again, since they did not talk to us, we cannot say for sure they wouldn't.

Chairman NUNN. But it is your impression they are not investigating anything behind January 1977?

Mr. KOWALSKI. That is right.

Chairman NUNN. Is that written down somewhere?

Mr. KOWALSKI. I believe it is in the subpoena which requested records from January 1977. Didn't Benages tell us that, Don?

Mr. SHANER. It is in the subpoena.

Mr. KOWALSKI. Benages, who is in charge of the investigation in Chicago, told us it would be back to January 1977.

Chairman NUNN. What is his full name?

Mr. KOWALSKI. James Benages.

Chairman NUNN. He is in charge of what?

Mr. KOWALSKI. The current investigation.

Chairman NUNN. He operates out of Chicago?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Did he tell you why, or did you pursue this as to why they cut it off as of January 1977?

Mr. KOWALSKI. We were going to pursue that, but when we talked to Mr. Benages, he suddenly said we have to talk to Mr. Klevan, who is Deputy Administrator for PWBP. He said he couldn't talk to us.

Chairman NUNN. Is this under the Solicitor's Office?

Mr. KOWALSKI. No; LMSA. He is in effect heading up the investigation. He said if I wanted to talk to him about the investigation, I should bring my own lawyer, he would bring his lawyer and then he would discuss what he could tell me. However, I didn't pursue it any further.

Chairman NUNN. You really have got no—

Mr. KOWALSKI. Other than just a basic framework of what they are going to do.

Chairman NUNN. In your opinion is it wise or prudent for there to be a cutoff date of January 1977?

Mr. KOWALSKI. No; we would suggest that they go back prior to 1977 and review all of the alleged abuses they found.

Chairman NUNN. It is getting a bit late at this stage. Shouldn't that have been done from the very beginning?

Mr. KOWALSKI. They admitted in their own litigated documents that they are significant areas they didn't get into. One time they said they are significant areas, but now they do not want to look into them. They changed their minds.

Chairman NUNN. Mr. Staats, do you think ERISA should be amended? Is there any way you can provide in law that you have smooth cooperation between Labor and Justice and IRS? Is there anything that the statute itself omits or perhaps biases by reason of the wording of the statute that would lead to this kind of jumbled up, uncoordinated kind of activity by three Departments of the Government.

Mr. STAATS. I already have commented on the question about whether the organizational framework is the best to be sure they are going to carry out the statute.

It appears from the report that we have prepared that there may be some lack of certainty on the part of some of the agencies as to precisely what they can and cannot do. I think that ought to be looked at.

I am not sure that mandating in statute the coordination, per se, is going to solve the problem unless there is willingness on the part of the responsible agencies to do it. You don't need a statute to do what makes good sense in terms of coordination. So I am not sure mandating an interagency committee, for example, would solve the problem that we have identified, but I do think there needs to be a careful look taken with respect to whether or not the statute is entirely clear as to what each agency can and cannot do, as a minimum.

Chairman NUNN. Do you have any specific recommendations at this time?

Mr. STAATS. We will be glad to think about this and give you a statement on it.

[The material supplied follows:]

We are presently finalizing and updating our final report to the Subcommittee on the results of our review and plan to issue the report in early calendar year 1981. We will include in the report our specific recommendations, to the investigating agencies and to the Congress, to correct the problems and shortcomings in the Government's investigation of the Fund, and suggestions for improving future investigations of this type under ERISA.

Chairman NUNN. Do you gather from this investigation that the Labor Department has a clear policy and philosophy under the law as to what their role is, or should be, relative to criminal investigation?

Mr. WYRSCH. I believe it is fair to say that in our opinion, the statute is clear that the Department of Labor is to play a significant role in conducting investigations in this area, both civil and criminal in nature.

However, I should say for the record, the Department of Labor disagrees with us on this point.

Chairman NUNN. Disagrees with you?

Mr. WYRSCH. Yes. The Labor Department is of the opinion that civil investigations is the performance of its primary responsibility.

Evidence of this position is clearly indicated in filing the civil law suit in 1978. Since that time, labor efforts have been directed mostly to civil causes of action as opposed to those which may be criminal in nature.

Chairman NUNN. You say they disagree with your opinion on that. I am not sure. Do you say you think the Labor Department should play a key role in initiating a criminal investigation?

Mr. WYRSCH. Yes. Labor should play an important role in detecting conduct or transactions that may have criminal implication. Perhaps Mr. Kowalski would explain in a little bit more detail. We issued a report approximately a year and a half ago where we expressed our view as to what the Department of Labor's role should be in this area.

Chairman NUNN. Mr. Kowalski, could you tell us what your opinion is about what their role should be, as opposed to what it is in terms of criminal investigation?

Mr. KOWALSKI. That report was issued in September 1978. In fact, it was done at the request of this subcommittee. In the report we pointed out there was a need for Labor to provide more emphasis and enforcement on criminal activities. Most of its efforts—between 60 and 65 percent of its enforcement efforts—were on the civil side and very little on the criminal side. So we felt they ought to emphasize the criminal violations more so than they have.

Chairman NUNN. Mr. Staats, this gets back to a question Senator Percy, I know, is going to want to pursue and it will be my last question to you.

Based on this investigation by GAO and your previous knowledge of this overall matter, and previous investigations by GAO, have you made any conclusion yourself about whether the Labor Department should be removed from investigating ERISA violations and that jurisdiction placed in some other governmental entity?

Have you any opinion on that, one way or the other?

[At this point Senator Percy entered the hearing room.]

Mr. STAATS. I don't believe we have a recent position on that, as an office, no, sir. I will be happy to have any of my colleagues comment.

Chairman NUNN. Do any of you have a personal opinion? We understand there is no official GAO opinion. Do you have a personal opinion, having gone into this?

Mr. Kowalski?

Senator PERCY. Could I put the question, Mr. Chairman, a little more bluntly? You have had several years to clearly review how this investigation was carried on. You have testified about the seeming unwillingness of the Labor Department to go all out to pursue every investigative avenue in cleaning up the Teamster Pension Fund. Is it possible that there could have been political considerations that were taken into account in the strategy of the Labor Department and how they carried out the investigation? Because there is a coincidence in some of the changes that were made with the change in administration, and changes in policy were very sharp in some respects. In fact, SIS was dissolved.

Mr. STAATS. I don't know, Senator Percy, whether we would have any evidence that political considerations as such play a part here, but I referred earlier with respect to what I considered to be an

organizational conflict of interest here in placing this kind of responsibility in the Labor Department which must have the confidence of the workers and must have the confidence of the employers. It is a perception, particularly when things go wrong, as they obviously have gone wrong here, that people read motives into a situation which may or may not be fully justified, but if the perception is there, then I would say the matter is a serious one.

Chairman NUNN. Could I ask Mr. Kowalski just on that narrow question of whether he has a personal opinion and then I will be glad to defer. Do you have a personal opinion, Mr. Kowalski, as to whether some other entity of the Government should be given jurisdiction to investigate civil and criminal violations under ERISA? In other words, is this a problem that is curable within the Department or should we begin to look for other entities to carry out this responsibility?

Mr. KOWALSKI. Our team thought about that and we concluded, this is just the team, myself, Mr. Shaner, Mr. Manfredi, yes, there should be some kind of the one-government approach. That is one agency would have responsibility for this type of investigation, but then you run into so many problems of the conflict between civil and criminal laws that we thought it would not be workable.

Chairman NUNN. So are you saying you would stick with the present setup?

Mr. KOWALSKI. Yes, or—

Chairman NUNN. Try to correct the problems within the present structure.

Mr. KOWALSKI. Yes. There are too many problems. Mr. Wyrsh can comment on the legal problems, too.

Chairman NUNN. Mr. Wyrsh?

Mr. WYRSCH. The performance of so-called parallel investigations by respective Government agencies have been a troublesome area. In the recent years there have been significant developments. With the enactment of the Inspector General legislation, there is more or less a team approach by the civil agencies and the Justice Department, in conducting joint investigations. In fact, there is a significant decision now pending before the Supreme Court, the so-called *Dresser, Inc.*, decision. If the decision of the court of appeals is upheld, Federal agencies may have more latitude in conducting investigations both of civil and criminal nature. So many of these prior legal complications may be resolved.

Chairman NUNN. Senator Percy, I have depleted my questions. Why don't you pursue any you want to at this stage.

Senator PERCY. I just have very few, Mr. Chairman.

The decision to limit third-party investigations does seem to coincide with the change of administrations following the 1976 election. Can you give some indication of why this change in direction was taken? Do any of you know the background and underlying reason why there was a decision not to pursue and to limit third-party investigations? We seem to have a pledge from the Secretary that there would be vigorous effort to determine from the fund itself and the trustee, and the only way you can do that is conduct a third-party investigation.

Mr. KOWALSKI. Don, could you explain some of the details?

Mr. SHANER. I believe Mr. Kelly, when we talked to him, had said that Labor had amassed many records they had copied from the fund and wanted to analyze them; that during the gathering of the information, it was Mr. Lippe's idea to go on with the third parties, and so forth. But with a change in administration I think somebody wanted to see some dramatic action or something accomplished. So they decided to analyze all this documentation and put it in shape for litigation. So the third parties were postponed until later.

Chairman NUNN. When was that decision taken?

Mr. KOWALSKI. Well, that would have been about maybe March 1977—March or April 1977.

Chairman NUNN. We are going to get into considerable detail in that area with the next panel of witnesses. Go ahead and pursue it as far as you would like. I think that part is going to be a subject of testimony.

Senator PERCY. We will question those witnesses who were involved, but we would be interested if any of you have any concerns as to what motivated this change.

Do any of you want to add anything further on that point?

Mr. KOWALSKI. Again, I think at the time Secretary Marshall came aboard there was a definite decision made that the primary goal should be the preservation of the assets. They felt they had a strong enough case to go to court. But they were willing to enter into an agreement with the trustees without resorting to litigation, even though they had a strong enough case.

I think that was the motivating factor behind it. Once they entered into the litigative phase, the investigative phase died out because they could not run a parallel administrative investigation and get ready for litigation.

Senator PERCY. Finally, we were told in July 1977 by Secretary Marshall that there would be a coordinated effort, that all the responsible agencies of Government would work together in this investigation and yet we had testimony received in April 1978 from Attorney General Civiletti that he first learned of the Labor Department's civil suit against the former fund trustees only hours before it was filed.

Do you find this one of the real fatal flaws in the whole process?

Mr. KOWALSKI. Yes, sir.

Senator PERCY. I want to thank you very much indeed for your immense help once again. I join Senator Nunn in commending you on the effort. It is very, very valuable to this subcommittee.

Mr. STAATS. We will be glad to give a little more thought to the organizational question, Mr. Chairman, if you like, and present our further thinking on that.

Chairman NUNN. I would like to have that. I think that is the ultimate question here, whether or not the Labor Department is institutionally capable of protecting the workers of this country under their pension plans. That is what it is all about. That is the ultimate question.

I think Senator Percy and I would agree on that, whether they can really institutionally do it. We have allegations here of incompetence, to say the least, that it makes you wonder whether you can have this kind of monumental incompetence without at some stage someone

making deliberate decisions. But that presumes you have to be a very intelligent, calculating, and shrewd person to be able to perpetrate this kind of incompetence as a matter of intention. So it does raise serious questions.

[Response by GAO follows:]

As we stated previously, we are presently updating and finalizing our report to the subcommittee on the results of our review, and plan to issue the report in early calendar year 1981. We will include in the report specific recommendations to correct the problems in the Government's investigation of the fund, and suggestions for improving future investigations under ERISA. As part of these suggestions and recommendations, we plan to include our views on any appropriate organizational changes that are needed.

Senator PERCY. Mr. Chairman, I do have one last question. Should there be civil and criminal penalties under ERISA for Federal officials who withhold information of possible criminal violations from concerned Federal agencies?

Mr. STAATS. I am not sure. I will be glad to hear from counsel.

Mr. WYRSCH. I really haven't given a great deal of thought on that particular question. We will be happy to supply a statement for the record.

[The statement supplied follows:]

Answer. As indicated by our testimony, we believe that Labor Department officials should place more emphasis on the detection of potential criminal law violations during the course of any investigation. We also believe that Labor Department officials should more actively carry out their statutory responsibilities under 29 U.S.C. 1136 to refer any evidence to the Justice Department for appropriate action as may be found during an ERISA investigation to warrant consideration for criminal prosecution. However, we did not find any deliberate efforts on the part of Labor Department officials to conceal potential criminal information from the Justice Department. Consequently, we cannot document a need at this time for the establishment of civil and/or criminal penalties for the withholding of such information by Federal officials. We note, however, that a Labor official who improperly fails to carry out the above statutory responsibility may be subject to appropriate disciplinary action. Also, a Labor official who knowingly and willfully conceals the commission of a felony by another person may be guilty of the criminal offense of misprison under 18 U.S.C. 4.

Senator PERCY. If you would do that for the record, because we not only want to investigate this particular situation thoroughly but prevent in the future frustrations that you have experienced possibly by stiffening the penalties for those who withhold information.

Chairman NUNN. Mr. Staats, I want to thank you and all the members of this team and all the people who are not here today who helped you with this competent and thorough job. It is of immense benefit to the subcommittee. We thank each of you.

[The complete statement of Mr. Staats follows:]

STATEMENT OF ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES

Mr. Chairman and members of the subcommittee, we are pleased to appear here today to discuss the results of our review of the Government's investigation of the International Brotherhood of Teamsters' Central States, Southeast and Southwest Areas Pension Fund (the Fund). This is the first major Federal Government investigation under the Employee Retirement Income Security Act of 1974 (ERISA).

ERISA was the first comprehensive Federal legislation regulating private pension plans. The Congress enacted ERISA to help stop the misuse and abuse

of private plans, which was resulting in employees, even with many years of service, losing pension benefits.

The act established a comprehensive framework of minimum standards, including standards of conduct, responsibilities, and obligations for the administrators, trustees, and fiduciaries of private pension plans. Such standards are intended to protect benefits of an estimated 40 million participants in about 500,000 private pension plans. The assets of these plans have been estimated at about \$290 billion.

The Department of Labor and the Internal Revenue Service (IRS) share the responsibilities for enforcing ERISA. Labor is primarily responsible for enforcing ERISA's reporting, disclosure, and fiduciary provisions. IRS enforces the act's participation, vesting, and funding provisions.

In addition to establishing standards of conduct, ERISA gives the Federal agencies the tools to regulate, investigate, and review the plans' operations and management. To illustrate, under section 504 of ERISA, Labor, for the first time, has the authority to make comprehensive reviews and investigations of private pension plans by requiring plan administrators to submit books and records or by inspecting books and records at the plans' place of business. Labor also has the power to subpoena records and books and to take testimony under oath or by affidavit from trustees, plan employees, or interested parties.

In addition, Labor has authority to initiate litigation in Federal district court to seek (1) broad-ranging civil remedies against fiduciaries to require them to make good any loss suffered by the plan because of a breach of fiduciary duty or to restore any profits gained through violation of fiduciary obligations or (2) removal of a trustee or other fiduciary.

ERISA also provides criminal enforcement authority for willful violations of reporting and disclosure provisions. ERISA requires that, during an investigation, if Labor detects criminal violations, such as embezzlement or kickbacks, this information is to be referred to the Department of Justice for consideration for investigation or prosecution under title 18 of the United States Code.

At December 31, 1979, the Fund had about \$2.2 billion in assets and a membership of about 500,000 active participants and retirees receiving benefits. Employer contributions total about \$586 million annually, and pension payments total about \$323 million annually.

The Fund, which was established in February 1955, is the 41st largest private and public pension fund (assets) and the second largest multi-employer trust organized under the Labor Management Relations Act (Taft-Hartley Act). This act provides that the trust fund be administered by a board of trustees equally represented by the employers and employees. Since October 1976, half of the Fund's trustees have been selected by the Teamsters' Central and Southern Conferences and the other half by the seven trucking associations contributing to the Fund. (See apps. I, II, and III for lists of the Fund trustees from October 29, 1976, to April 15, 1980.)

LABOR'S INVESTIGATION OF THE FUND

For many years, the Fund's trustees have been a subject of controversy and allegations of misusing the Fund's assets. Allegations included charges that individuals linked to organized crime had connections with the Fund and that questionable loans had been made by the trustees to people linked to organized crime. Consequently, in mid-1975, the Department of Labor initiated an investigation of the Fund. Labor set up a Special Investigations Staff (SIS) for the investigation. The objective of Labor's investigation was to determine whether the Fund was being administered in a manner consistent with the fiduciary standards of ERISA and for the exclusive interests of the participants and beneficiaries.

At the time Labor initiated its investigation, the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, was considering starting its own investigation of the Fund's management and operations. However, before the Subcommittee undertook its investigation, Labor officials in December 1975 presented a detailed briefing to the Subcommittee members and staff on the scope, concept, and basis of its investigation.

The Chairman of the Subcommittee, in describing Labor's briefing and the Subcommittee's understanding of the parameters and scope of Labor's investigation, commented:

In short, as it was described to the Subcommittee, the Central States Fund task force envisaged a broad based, carefully planned, and well-coordinated executive branch inquiry into the affairs of the Central States Fund, using the combined resources and expertise of the Labor and Justice Departments and the IRS.

The Chairman also stated that, during the briefing, a good deal of attention was devoted to considering whether the Subcommittee should also investigate the Fund. He said it was recognized, however, that a simultaneous congressional investigation of the Fund might impede the work of the task force, result in a competition for witnesses and documents, and be counterproductive. Therefore, the Subcommittee Chairman stated:

To obviate such a situation and in view of the executive branch's major commitment to the task, * * * the subcommittee decided to defer any investigation of the fund to avoid duplicating and possibly complicating the work of the task force.

Labor officials continued with their investigation, but agreed to keep the Subcommittee apprised of the investigation. However, as the investigation proceeded the Subcommittee was not satisfied with the information Labor provided or the progress of the investigation. The Subcommittee, therefore, requested the General Accounting Office (GAO) on June 13, 1978, to undertake a comprehensive review of the adequacy and effectiveness of Labor's investigation.

SCOPE OF GAO REVIEW

As agreed with the Subcommittee, our review focused on whether Labor (1) effectively planned, managed, and carried out the investigation, (2) committed adequate resources and staff to the investigation, and (3) adequately coordinated and cooperated with the Department of Justice and IRS. We also reviewed Labor's and IRS' negotiations with the trustees to reform the Fund's operations and requalify the Fund as tax-exempt after IRS revoked its tax-exempt status. We also determined how effectively Labor and IRS monitored the trustees' compliance with the Government's conditions for requalification.

We made the review at (1) Labor's national office in Washington, D.C., and its field site in Chicago, Illinois, located near the Fund headquarters and (2) Justice's national office in Washington, D.C., and U.S. attorney's office in Chicago, Illinois.

Our review of Labor's coordination with IRS was based on a review of Labor's records, transcript of hearings held by various congressional subcommittees on the investigation, interviews with current and former Labor and Justice officials, and material supplied by the Senate Permanent Subcommittee on Investigations. We did not review IRS records or interview IRS officials involved in the investigation in light of the restrictions imposed by section 6103(1)(2) of the Internal Revenue Code on the disclosure of any information concerning its investigation of a single taxpayer. An IRS headquarters official advised us that the Service considers the Fund an individual taxpayer. Therefore, IRS considered that it was prohibited from giving us any information on its investigation of the Fund—"if such an investigation by IRS was made."

We did not review the records of the Fund at its office in Chicago or interview the trustees or Fund officials. ERISA does not give GAO access to the records of private pension trusts. Also, consistent with our office policy of not addressing issues in litigation, we did not review the merits of Labor's civil law suit filed on February 1, 1978, against former Fund trustees and officials.¹ In addition, we did not review Labor's ongoing investigation of the Teamster Central States, Southeast and Southwest Areas Health and Welfare Fund.

HIGHLIGHTS OF GAO REVIEW

Labor's investigation of the Fund is almost 5 years old and has cost about \$5.4 million. The Department of Justice's and IRS' investigations are older, but the cost figures are not available.

According to Labor's and IRS' investigations,² the former trustees and officials of the Fund had failed to prudently carry out their fiduciary responsibilities and had not operated the Fund for the exclusive benefit of the plan participants and

¹ *Marshall v. Fitzsimmons et al.*, C.A. 78-342 USDC, N.D. Ill.

² A chronology of key events in the Government's investigation is presented in app. IV.

beneficiaries—as required by ERISA. IRS, as a result of its investigation, on June 25, 1976, revoked the Fund's tax-exempt status.

Before restoring the Fund's tax-exempt status, the Government³ imposed several demands on the trustees to reform and improve the Fund's operations. The trustees agreed to the demands, and several significant changes were made, including:

The trustees adopted amendments to have the Fund conform to ERISA and the Internal Revenue Code.

The trustees appointed independent investment managers to manage the Fund's assets and investments.

Labor's investigation resulted in the Secretary of Labor filing a civil suit in February 1978 against 17 former trustees and two former officials to recover losses, for the Fund, that resulted from these officials' alleged mismanagement, imprudent actions, and breaches of their fiduciary duties.

Despite the apparent benefits from the Government's investigative efforts, we believe that the investigation and subsequent dealings by Labor and IRS with the Fund's trustees had significant shortcomings and left numerous problems unresolved. Our review disclosed shortcomings and deficiencies in (1) Labor's investigative efforts, (2) the coordination among Labor, IRS and Justice, (3) Labor's and IRS' dealings and agreements with the trustees in reforming the Fund, and (4) Labor's and IRS' monitoring of the current trustees' operations and compliance with the conditions for requalification. Thus, we question whether the benefits and improvements imposed by the Government will result in lasting reforms to the Fund, without the continued diligent effort of Labor and IRS. In fact, as a result of the current trustees' failure to comply with the conditions for requalification, IRS renewed its investigation of the Fund on April 28, 1980. At the same time, Labor resumed its onsite investigation.

Following is a discussion of our findings and conclusions on weaknesses and shortcomings in the Government's investigation of the Fund and subsequent actions.

LABOR'S ATTEMPT TO HAVE COORDINATED GOVERNMENT INVESTIGATION UNSUCCESSFUL

Labor's investigation started in the summer of 1975. It was headed by the former Administrator, Pension and Welfare Benefit Programs (PWBP), Department of Labor. To be successful, the former administrator considered that the investigation would require unique levels of coordination between Labor, IRS, and Justice.

In addition, ERISA requires that Labor coordinate its investigative efforts with Justice and IRS. Labor, therefore, attempted to develop a coordinated Government approach by inviting Justice and IRS to join in the investigation. Justice agreed, and on December 1, 1975, Labor and Justice entered into a memorandum of understanding.

At the time Labor began its investigation, IRS had an investigation in process at the Fund's headquarters in Chicago. IRS had been investigating the Fund since about 1968.

On August 22, 1975, the former administrator wrote to the Commissioner of IRS advising him of Labor's investigation and inviting IRS to participate in a joint investigation. IRS declined to participate and advised Labor that it wished to continue its separate investigation of the Fund. IRS declined to join Labor's investigation despite the fact that IRS was looking into basically the same areas as Labor, such as prudence of loans and whether other fiduciary standards of ERISA were followed.

Fund officials expressed concern about the overlapping and duplicate investigations by Labor and IRS. Before Labor's onsite investigation began at the Fund's headquarters, the Fund's counsel initiated a meeting in an attempt to get the Federal agencies to coordinate the investigation. IRS officials at the meeting, however, were opposed to Labor's entrance into the general area of their investigation, and they told Fund officials that Labor would not be a part of IRS' audit. IRS, however, did agree to provide Labor with tax information needed on the Fund's transactions under investigation.

³ A list of principal officials involved in the Government's investigation is shown in app. V.

Labor's joint task-force concept was designed to ensure that the broad civil remedies made available for the first time to the Government by ERISA were effectively used. The former administrator, PWB, who handled Labor's early discussions with IRS, advised us that his intention at the earlier meetings with IRS and Justice was to attempt to establish a one-government-team approach on the investigation. Thus, the investigation would be viewed as an overall Government effort and not the individual efforts of the various Government agencies. In the former administrator's opinion, this combined Government approach never got off the ground because of IRS's refusal to participate in the investigation.

IRS' REVOCATION OF THE FUND'S TAX-EXEMPT STATUS ADVERSELY AFFECTED LABOR'S INVESTIGATION

IRS' "go-it-alone" attitude and unwillingness to join the investigation did not burden or adversely affect Labor's investigation until June 25, 1976, when IRS decided and without prior notice to the Fund or Labor, to revoke the Fund's tax-exempt status. In a letter to the trustees, IRS' Chicago district director stated that the qualification was revoked because the Fund was not operating for the exclusive benefit of plan beneficiaries and the investment policies and practices of the Fund were imprudent. The revocation was effective immediately and retroactive to February 1965.

IRS' revocation surprised not only Labor and Justice, but also fund officials. According to the Fund's former executive director, IRS' action had an immediate and devastating effect on the Fund's financial operations because some of the 16,000 employers withheld their contributions and others threatened to place the money in escrow accounts.

He also said that the six banks who were then handling several hundred millions of dollars of the Fund's assets raised serious questions about their own rights to engage in legal investment activities. This, he said, resulted in a drop in return on the Fund's investments.

IRS recognized that its revocation had the potential for a substantial adverse effect on the Fund's estimated 500,000 participants and beneficiaries. IRS officials stated that, if the provisions of the revocation had been fully implemented, each of the employees and/or beneficiaries would have been taxed retroactively, on their individual tax returns, for some of the benefits received.

Neither Labor nor Justice had advance knowledge or warning of IRS' intention to revoke the Fund's tax qualification. In fact, in January 1976 IRS told Labor "there is no way the Fund will be disqualified." And, again on June 20, 1976, 5 days before IRS' letter revoking the Fund's tax-exempt status, Chicago district director told the former director of Labor's SIS that a decision on revocation of the Fund's tax status would not be made until the fall of 1976.

According to Labor officials, IRS' action created a "chaotic situation." For example, the officials stated that onsite work at the Teamsters' headquarters stopped because Fund officials believed that "the Federal Government's Act was not in order" and the Fund was not dealing with the Government as a whole but as an assortment of departments. As a result, Fund officials became less cooperative. Labor officials said that they then had to spend more time trying to resolve the situation with the Fund and IRS than on the investigation.

Recognizing the severe consequences of its revocation, IRS, beginning on July 2, 1976, granted the Fund a series of reliefs from the retroactive effect of the revocation. IRS, however, continued to meet with Fund officials and tentatively agreed to a series of actions the trustees had taken or planned to take, in managing the Fund's assets and benefit payments.

Labor officials strongly objected to IRS' approach because they believed that IRS' acceptance of preliminary or partial reforms could bind the entire Government and jeopardize the joint Labor/Justice investigation and Labor's negotiations with Fund officials. The former Administrator, PWPB, in a letter dated August 17, 1976, to IRS, stated that IRS' proposed action to accept the Fund's commitment to take certain actions may seriously impede the ultimate success of the joint Labor/Justice investigation. He also stated that IRS' action could compromise Labor's ability to obtain more pervasive equitable relief against the Fund and its fiduciaries available to Labor under ERISA. In August 1976, IRS officials agreed to coordinate their efforts with Labor.

LABOR'S INVESTIGATION NARROWLY FOCUSED ON REAL ESTATE LOANS AND IGNORED OTHER AREAS OF ALLEGED ABUSES

Labor's investigation disclosed many significant problems in the former trustees' management of the Fund's operations. However, Labor narrowly focused on the Fund's real estate mortgage and collateral loans because of the significant dollar amounts involved and Labor's primary goal of protecting and preserving the Fund's assets. Labor's approach ignored other areas of alleged abuse and mismanagement of the Fund's operations by the former trustees and left unresolved questions of potential civil and criminal violations and alleged mismanagement raised by its own investigators.

Labor's investigation was also incomplete. Labor targeted for investigation 82 of the Fund's 500 loans. Labor's investigators apparently found significant fiduciary violations and imprudent practices by the former trustees on many of the 82 loans. Labor terminated its investigation of the asset management procedures at the Fund even though its investigators had not obtained the records or completed investigations on all of the 82 targeted loans.

Labor used voluntary approach rather than subpoena powers

Labor began its investigation in January 1976, at the Fund's headquarters in Chicago. Rather than using the administrative subpoena powers under ERISA, Labor officials accepted the trustees' offer to voluntarily cooperate by making the Fund's records and books available for review and its personnel available for interviews. Labor agreed to this approach, because, according to the former administrator, PWB, the investigation could be conducted more efficiently and expeditiously and it gave Labor immediate access to the Fund's records.

Under this approach, however, the records were not authenticated or obtained under oath and, as indicated below, despite the offer of voluntary cooperation, the Fund did not give Labor all of the records it requested. In addition, a subpoena was later needed to authenticate and update the information.

Labor's investigation disclosed many problem areas

Labor's initial analysis of the Fund's books and records disclosed many problem areas and patterns of apparent abuse by the trustees. These included numerous indications of apparent loan and investment practices that constituted fiduciary breaches under ERISA, such as loans made to companies on the verge of bankruptcy, additional loans made to borrowers who had histories of delinquency, loans to borrowers to pay interest on outstanding loans that the Fund recorded as interest income, and lack of controls over rental income.

Labor's initial analysis also disclosed other problem areas or patterns of apparent abuse, including:

- Failure to properly manage real estate, and non-real estate-related investments.
- Appropriateness of the Fund's liquidity position.
- Questions on the reasonableness of administrative expenses.
- Failure to properly manage fees the Fund charged borrowers for loans.
- Questions on the propriety of payments made to the former trustees for allowances and expense claims—some of which could involve potential criminal violations.
- Questions on the reasonableness of payments to firms providing services to the Fund.
- Allegations of improprieties regarding payments of pension benefits and terminations of eligibility.

SIS's chief auditor indicated in a report that, based on the patterns of alleged abuse disclosed by the preliminary analysis, full-scale audits were justified in most of the above areas. Labor officials, however, focused their investigative efforts on the Fund's asset management, specifically on the portfolio of real estate mortgage and collateral loans. Labor made no significant analysis, nor did it complete its review of or pursue, other potential areas of abuse.

Labor said it focused on the Fund's real estate loans because of the significant dollar value of these assets, and because its primary objective was to protect and preserve the Fund's assets. This single purpose, in Labor's opinion, may have been justified and the results somewhat successful. However, this approach ignored other alleged areas of abuse and mismanagement of the Fund's operations by the trustees. As a result, Labor left unresolved questions of potential civil and criminal violations and mismanagement raised by its own investigators.

Labor found many imprudent practices

At the beginning of Labor's investigation, the Fund's investments totaled about \$1.4 billion. Of this amount, \$902 million was real estate mortgages and collateral loans, consisting of 500 loans made to 300 borrowers. Labor targeted 82 of the loans, valued at \$518 million, for review. Its analysis showed that \$425 million of these 82 loans were made to 7 entities or persons.

Labor's review identified many imprudent practices in the former trustees' management of the 82 targeted loans, as well as apparent violations of ERISA's fiduciary requirements. Labor found that, on a number of the loans, the former trustees had failed to follow virtually any of the basic procedures that would be followed by a prudent lender.

For example, according to Labor the former trustees failed to obtain adequate financial or other pertinent information when granting loans or restructuring or modifying them. They also failed to obtain adequate collateral. Once loans were granted, the former trustees failed to monitor them and take appropriate action to assert or exercise rights—legal, contractual, or equitable—available to the Fund under the terms of the loans.

During its investigation, Labor determined that 12 of the 82 targeted loans or groups of loans would support immediate litigation. Labor's civil complaint filed in February 1978 stated that the former trustees during their tenure as plan fiduciaries engaged in a pattern of violations of ERISA fiduciary obligations as exemplified by the 12 loans.

Labor did not complete investigation of targeted loans

Labor did not complete its investigation on the 82 targeted loans.

In late 1976—after Labor had been onsite at the Fund for almost a year and obtained records showing many imprudent practices and apparent fiduciary violations on many of the 82 loans—the former director of the investigation formulated for extensive investigation of third parties connected with the targeted loans; i.e. parties who were not principals to loan transactions. The former director planned to make investigations of about 75 to 100 third parties in early 1977. Those to be investigated included the borrowers' affiliates and/or associates, and lenders that previously had refused to make loans to these borrowers.

The investigations planned would have involved issuing investigative subpoenas to obtain documents and investigative depositions of Fund trustees and key third parties related to the targeted loans. The former director said the objective of the third-party investigations was to "close the circle" of the overall investigation of loan transactions. That is, to find out as much as possible about a loan transaction before any litigative action and to determine whether the former trustees tried to find out if borrowers used loans for the purpose intended.

In addition, the planned third-party investigations were emphasized by the Secretary of Labor and other officials in hearings in July 1977 before the Senate Permanent Subcommittee on Investigations. The Secretary and other officials stated that Labor's investigation was shifting from a review of Fund records to a search for evidence in the possession of third parties, including obtaining depositions from third parties.

However, some of the third-party investigations planned by the former SIS director for early 1977 were not made because, at that time, Labor shifted to a civil litigative strategy—i.e., analyzing documents and assembling evidence on hand to determine the potential for a civil suit.

We accumulated the following information on subpoenas issued as of mid-1979 from the records and files of SIS and the Solicitor's office.

The former SIS director prepared a list of about 80 third parties to be deposed and interviewed and subpoenaed to produce records in connection with 19 of the targeted loans.

The SIS and Solicitor's records showed that only 14 of these third parties were actually deposed and subpoenaed—many in September and October 1977. In addition, a few on the former director's list had voluntarily agreed to be interviewed in 1979, after Labor filed its civil suit.

The records also showed that Labor issued a total of 80 subpoenas—including the 14 above—for testimony or records. More than half were issued in the last half of 1977, and most related to only two loans—a \$3.15 million loan to the Alsa Land Development Corporation, and a \$18 million loan to the Morefield Enterprises Limited Partnership.

Some of the 19 loans with respect to which the former director of SIS intended to make third-party investigations eventually became part of Labor's civil suit in February 1978. The acting director of SIS told us that Labor has not requested any subpoenas in connection with the loans since the suit was filed. Labor's records show, however, that about 119 third parties had voluntarily agreed to interviews by Labor officials and that most of these third-party interviews relate to five loans on the former director's April 1977 list.

We believe Labor lost an opportunity during its investigation when it failed to complete the third-party investigations as planned by the former director. This may have precluded Labor from obtaining valuable information for its own investigation as well as potential criminal violations.

Labor did not obtain all Fund records needed

After Labor shifted to a litigative strategy, it terminated that portion of its investigation onsite focusing on the Fund's management of real estate assets and reviews of Fund records and documents. This termination was publicly announced by the Secretary of Labor in March 1977. Labor's investigators left the Fund's headquarters in May 1977. At that time, however, Labor had not obtained all of the documents from the Fund on 17 of the 82 targeted loans. Also, the trustees refused to provide documents on 6 of the 17 loans.

After Labor's investigators left the site, Labor officials requested various documents on the Fund's loan transactions and other activities. For example, in the fall of 1977, Labor requested records on 39 different loans. However, the trustees refused to provide Labor with any more documents or records. They cited as their reason public statements by the Secretary of Labor and other Labor official that the investigation of records had been terminated and that Labor supposedly was shifting to a search for evidence from third parties. In March 1978, the trustees formally notified Labor that they were terminating their voluntary cooperation.

As a result, Labor had to gain access to documents during the discovery phase of its civil suit,⁴ which it filed in February 1978 against former trustees and Fund officials to recover losses because of alleged fiduciary violations, concerning asset management, on some of the 82 targeted loans.

PROBLEMS IN HIRING AND TRAINING LABOR'S INVESTIGATIVE STAFF

In January 1976, Labor established SIS to plan, develop, and conduct highly complex and sensitive investigations of the operations of selected pension plans suspected of violating ERISA. Until SIS was abolished in May 1980, it was responsible for the investigation of the Fund. Labor advised the Office of Management and Budget and the Congress that, for SIS to investigate the Fund's pension and health and welfare funds in an adequate and timely manner, a staff of 45 professional and investigative support positions were required. In August 1976, SIS was authorized the 45 positions requested.

Labor, however, reduced SIS allocations for 1979 from 45 to 36 positions and to 34 for 1980. Moreover, SIS had problems in hiring professional staff, and many positions were unfilled throughout the investigation. In fact, SIS never filled all 45 authorized positions; its maximum permanent staff was 28.

SIS officials, who were the selecting officials, said that the positions were unfilled because (1) qualified people were difficult to find, (2) SIS set too high a standard, and (3) problems inherent in the Civil Service Competitive hiring system prevented SIS from hiring people outside the system who wanted to join the team. Also, the former SIS director was too busy to interview applicants. However, a Labor-Management Services Administration (LMSA) personnel and placement official said that the delays in recruiting and filling the vacancies occurred because the SIS selection officials procrastinated and were unable to make decisions in selecting candidates.

Although the SIS staff for the most part appeared experienced, Labor provided little formal training during the onsite investigation. For example, upon examining the personnel records of 16 selected SIS staff members, we found that none had been provided formal classroom training pertinent to the enforcement of ERISA's provisions. More importantly, none had been given training to obtain knowledge of, or how to detect and identify, fiduciary violations of ERISA even though this was the main thrust of Labor's investigation.

⁴ See note 1, p. 7.

On May 5, 1980, Labor abolished SIS and transferred most of the personnel to the Solicitor's office to support the litigative effort for Labor's civil suit against the former trustees and fund officials. These former SIS personnel, except for two individuals, will not be performing any new investigative work at the Fund. The remainder were transferred to other LMSA offices. Labor in April 1980 established a special unit, at its Chicago office, to perform future investigative work at the Fund.

Labor officials told us that SIS could not investigate the patterns of alleged abuse and mismanagement its investigators found—other than real estate mortgage and collateral loans—because of staffing shortages. Had SIS filled the 45 authorized permanent positions, we believe that it would have been able to review some of the unresolved areas and complete more third-party investigations.

Labor estimated SIS's costs, for the investigation from 1976 to May 1980, at about \$5.4 million. This does not include costs incurred by the Solicitor's office. Since 1978, the Solicitor's office has had four attorneys, plus support staff, working full time and various attorneys working on a part-time basis. In early 1980, it added seven attorneys.

COORDINATION PROBLEMS BETWEEN LABOR AND JUSTICE

Labor and Justice, in December 1975, entered into an agreement to coordinate their joint investigation of the Fund. Justice was to center its efforts on possible criminal violations of Federal laws, including ERISA. Under the agreement, Labor was to refer to Justice all information relating to potential criminal violations for use in Justice's criminal investigative activities.

We found, however, that problems in coordination and cooperation arose periodically between Labor and Justice despite the interagency agreement.

Coordination problems

During the first year of the investigation (1976), the coordination arrangements were informal and apparently worked well. In 1977, Labor's management of the investigation changed from an investigative to a litigative posture. This resulted in changes in Labor's philosophies in handling the investigation, which were not always fully attuned to Justice's needs.

For example, Labor postponed most of its planned investigative work, involving third parties until after the civil suit was filed. According to the official from Justice's Criminal Division, who was the liaison with Labor, this may have dried up a source of information on potential criminal activity.

The deteriorating coordination was expressed in a January 31, 1978 memorandum from the Deputy Assistant Attorney General, Criminal Division, to the Assistant Attorney General, Criminal Division. The memorandum stated that several distinct problems had arisen which presented grave difficulties and which appeared not to be resolvable at the operational level. These problems included:

The inability of Justice's liaison to obtain information indicating potential crimes or criminal misconduct under ERISA from Labor.

A total shutdown of communications between Justice representatives on the Teamster Investigative Task Force and Labor's representatives.

As a result, significant problems surfaced. One problem dealt with the contention by Justice's Criminal Division that Labor, in late 1977 and early 1978, did not provide sufficient advance notice to it, and the appropriate U.S. Attorney's office, of Labor's intent to file the civil suit against the former Fund trustees and officials. Justice officials stated that the lack of advance notice caused problems because their main witness in a criminal case against a former Fund official was named as a defendant in Labor's civil suit. The witness then became less cooperative and did not agree to testify until about an hour before the trial began.

Another problem dealt with the flow of information from Labor to Justice. Labor denied Justice officials copies of summaries prepared by Labor's attorneys because Labor considered these documents internal drafts. This problem was particularly significant because Labor was the focal point for the joint investigative effort through the large resources it committed and its onsite access to Fund records. Justice relied on Labor's investigative efforts to help detect potential criminal violations. Officials in Justice's Criminal Division stated that Labor's actions ran counter to the spirit of full cooperation originally envisioned in the agreement with Labor.

Policy and working group committees

Although an interdepartmental policy committee of high-ranking Labor and Justice officials was established in December 1975 to oversee the investigation and resolve disputes, the committee seldom met once the investigation began. The committee was nonexistent when the above problems surfaced.

It was replaced in mid-1977 by an informal interagency work group composed of intermediate level officials who were to coordinate each department's ERISA responsibilities as well as the investigation of the Fund. The work group was formally established by a December 1978 interagency agreement and was to meet biweekly.

Despite the work group, coordination problems still arose. For example, the Justice criminal division liaison official with Labor attempted at work group meetings to obtain Labor's plans about filing a lawsuit at least 3 months before the suit was filed. He was not told until the day before the suit was actually filed, and then he was advised by officials from Justice's Civil Division.

Some of these coordination problems may have been avoided if the interdepartmental policy committee had played a more active role and carried out its oversight function.

Referrals of potential criminal violations

Labor's and Justice's combined efforts failed to produce a significant number of information referrals that Justice could pursue through its criminal investigations. Labor in 5 years of investigative activity, provided Justice's Criminal Division 11 formal loan information referrals that had potential for criminal investigation.

Labor made five referrals in 1977, five in 1978, and one in 1979. On August 18, 1980, Justice's Assistant Attorney General, Criminal Division, told us in a memo, that none of the 11 referrals had resulted in any criminal indictments and only one referral was still under investigation. He said, however, six of the referrals were being pursued as part of other investigations.

The Assistant Attorney General said Justice investigated other matters which, directly or indirectly involve 15 other Fund loans. Of these 15 cases, he said that only one resulted in a conviction. For three others, criminal indictments were secured, but two resulted in an acquittal or dismissal and the other went to trial in August 1980. For the remaining 11, 7 were still under investigation and the investigations were closed without any indictments for 4.

In addition to the above referrals, a Labor official said that at work group or other meetings Labor had informally discussed or provided Justice staff with other information.

Justice officials, told us that, overall, most of the information received from Labor had not been useful for their criminal investigative efforts, including organized crime strike force program activities.

The Secretary of Labor in March 1980 testified⁶ that the work group setup was being used to satisfactorily discuss enforcement activities of mutual interest. The Secretary said Labor hoped that initial problems in coordination had been resolved and they will continue to have good coordination with Justice.

The Deputy Assistant Attorney General, Criminal Division, also testified at the March hearings that there may have been some friction between the two departments in the past; however, they are now cooperating smoothly, and the work group meetings have successfully minimized and averted potential conflicts.

However, as indicated by our review, Labor and Justice have experienced continuing coordination problems despite several agreements and despite the working group committee.

THE FUND'S TAX-EXEMPT STATUS RESTORED

Labor and IRS, after IRS agreed to fully coordinate in August 1976, had extensive discussions and considered many options—from a court-enforced "consent decree"⁷ to requiring a neutral board of trustees—in reforming the Fund

⁶ Hearings on Central States Teamsters Fund before the Subcommittee on Oversight, House Committee on Ways and Means, 96th Congress, 2d session (Mar. 24, 1980).
⁷ A consent decree is an order of preliminary or permanent injunction entered by a court of competent jurisdiction on the basis of the Government's complaint, by consent of the defendant to the entry of a decree embodying certain relief (usually without admitting or denying the allegations of the complaint), and an agreed form of judgment.

and having IRS restore its tax-exempt status. The Fund's tax-exempt status was restored in April 1977. The requalification was based on the trustees' oral agreement to operate the Fund in accordance with ERISA and to comply with eight specific conditions prescribed by Labor and IRS.

From August 1976 to February 1977, IRS and Labor officials continued to meet and coordinate on the conditions for IRS to restore the Fund's tax-exempt status. As a result of these meetings, both IRS and Labor proposed minimum standards to correct practices and govern the Fund's future operations. For example, IRS proposed that the trustees be required to transfer all of the Fund's assets and receipts, except those needed for current benefit payments, administrative expenses, existing loan commitments, and operations, to an independent outside professional investment manager. Labor, on the other hand, proposed that a "neutral" board of trustees, composed of a majority of individuals not affiliated with the Fund, be established to govern the Fund.

Labor officials and Fund representatives in September 1976 had informal negotiations on changing the Fund's operations, limiting the scope of the trustees' management, and removing some trustees. Labor officials discussed the possibility of obtaining a consent decree which would have been judicially enforceable in a Federal district court. The proposed consent decree would have prescribed, during the period of Labor's investigation, the manner in which the trustees would manage the existing assets and make investments. Labor dropped the consent decree requirement when the Fund, in October 1976 agreed to restructure its board of trustees from 16 to 10, and 11 of the 16 trustees agreed to resign (one had previously resigned) and 6 new trustees were appointed.

A new Secretary of Labor was appointed in late January 1977. After reviewing Labor's investigation and assessing the evidence, the Secretary stated that Labor had a strong case that could stand up in court. The Secretary stated, however, that the chance of protracted and bitter litigation was significant. The Secretary decided that Labor's primary goal was to preserve the Fund's assets. He also decided that Labor should explore, with the Fund's representatives, the possibility of achieving the relief believed necessary without litigation.

On February 16, 1977, Labor and IRS presented to Fund representatives the Government's demands to restore the Fund's tax-exempt status. Labor and IRS' demands included the requirements that the (1) four trustees who served before October 26, 1976, should resign and (2) board be restructured so that the new board consisted of a majority of neutral professionals and a minority of representatives of the union and contributing employers.

Labor and IRS officials also told Fund officials that they were prepared to go to court to (1) remove the four holdover trustees and require new trustees to remove themselves from the day-to-day management of the Fund's assets and (2) make certain changes in the pension plan and procedures, outside the asset management area, to bring the plan into compliance with ERISA's minimum standards and to meet certain IRS qualification requirements.

In a February 23, 1977, meeting, Fund representatives presented a counteroffer under which, among other things, the board would remain but deal only with noninvestment matters and delegate investment authority over Fund assets to a committee of independent, neutral professionals. The Fund also agreed to amend its plan to comply with ERISA outside the asset management area.

Although Labor and IRS were not completely satisfied with the Fund's progress, IRS on February 26, 1977, extended the relief of the Fund's tax exemption to the end of April 1977.

IRS and Labor had additional negotiations with the trustees, and on April 26, 1977, the final Government conditions were explained in a letter IRS issued restoring the Fund's tax-exempt status. The letter said that the continued qualification of the Fund would depend on its effective operation, in accordance with ERISA, and compliance with the following eight conditions.

1. The trustees amend the trust agreement to have the Fund conform to ERISA and the Internal Revenue Code.

2. The Fund have in operation, not later than December 31, 1977, a data base management system that would be sufficient to determine "credited service" in accordance with the pension plan's requirements for all participants from 1955 to April 26, 1977, inclusive.

3. The Fund review all benefit applications that were originally rejected but subsequently approved to insure that the effective date and amount of benefit

payments were in accordance with the plan provisions in effect at the appropriate governing dates.

4. The Fund complete by May 1, 1978, an examination of all Fund loans and related financial transactions from February 1, 1965, to April 30, 1977, to determine whether the Fund has any enforceable causes of actions or other recourse as a result of the transactions.

5. The trustees amend the trust to provide a statement of investment policies and, annually, the trustees provide written investment objectives to the investment manager retained by the Fund.

6. The trustees amend the trust to establish a qualified Internal Audit Staff to monitor Fund affairs.

7. The trustees amend the trust to publish annually, in at least one newspaper of general circulation in each State, the annual financial statements, certified by the Fund's Certified Public Accountant.

8. The trustees place all Fund assets and receipts, including moneys derived from liquidation of existing investments (except funds reasonably retained by the Fund for payment of plan benefits and administrative expenses), under direct, continuing control of independent professional investment managers as defined by section 3(38) of ERISA.

The IRS letter also required the Fund to allow IRS, but not Labor, access to Fund records, reports, etc. Also, the letter said IRS was not passing on the actuarial soundness of the plan or the reasonableness of the actuarial computations. The IRS letter also required the trustees to submit monthly reports on the progress made in complying with the eight conditions.

Labor, after the Fund agreed to meet the Government's conditions, stated it would terminate that portion of its investigation focusing on the Fund's asset management procedures and review of the Fund's records and documents. Labor did terminate the onsite phase of the investigation in May 1977 and shifted primarily to a civil litigative strategy.

LABOR PLAYED NO ACTIVE ROLE IN SELECTING FUND'S NEW TRUSTEES

On October 29, 1976, the trustees amended the trust agreement, with the consent of the employer trucking associations, to reduce the board from 16 to 10 members—5 union and 5 employer appointed. Also, all but 4—2 union and 2 employer—of the 16 trustees resigned. On April 27, 1977, the four trustees resigned and new trustees were appointed.

Neither Labor nor IRS played an active role in the selection of the new Fund trustees, although they had developed qualifications and criteria that the new trustees were to meet.

Labor played no active role in selecting six new trustees appointed in October 1977

Six new trustees—three union and three employer—were appointed to bring the board up to full strength. The three union trustees were selected by the Teamsters union conferences and the three employer trustees by the trucking associations.

Labor officials did not review the six new trustees' qualifications, experience, or associations with the old trustees. In fact, Labor did not know what methods were used or who selected the union or the employer trustees.

Labor officials, including those who negotiated with Fund officials, apparently considered suggesting a method for selecting the new trustees. They also considered suggesting that the Fund appoint "independent" or professional trustees who were not affiliated with the plan sponsors. However, the officials concluded that Labor could tell the Fund which of the trustees were not acceptable, but it could not be placed in the position of selecting the new trustees by approving or rejecting nominees. Also, some Labor officials had reservations about the public perception of Labor excluding union members from serving as trustees of collectively bargained plans.

Labor and IRS played no active role in selecting four trustees appointed in April 1977

Labor and IRS met several times to develop a coordinated format for dealing with the Fund and criteria to be used in selecting new trustees to replace the four holdovers. Labor and IRS agreed on criteria that included the following: (1) the board would be restructured so that a majority of the trustees would be persons—either individuals or entities, such as banks or insurance companies—not affiliated with the union or any employer contributing to the Fund,

(2) the neutral trustees would be highly qualified professionals from a variety of disciplines with recognized ability and independence, and (3) the Government would be involved in the selection and would exercise veto power over any proposed candidate.

Labor had also coordinated with Justice on the use of a majority of neutral trustees—chosen by the union and employers. In fact, the Secretary of Labor on January 18, 1977, requested an opinion from the Attorney General on whether the proposed neutral board of trustees would comply with the Taft-Hartley Act. Justice advised Labor on January 27, 1977, that such a proposed board of trustees would comply with the requirements of the Taft-Hartley Act.

In the initial negotiations with the Fund, Labor and IRS demanded that the remaining four original trustees resign and a board composed of a majority of "neutrals" and minority of union and employer representatives be appointed. The Fund refused.

Later, during the final negotiations, Labor and IRS gave the trustees a choice to (1) restructure the board to obtain a majority of neutral trustees or (2) retain the present board structure, with the remaining four original trustees to resign and turn over control of asset management to a professional, independent investment manager. The trustees choose the second option, and on April 29, 1977, the four holdover trustees resigned and four new trustees were appointed.

IRS and Labor played no active role in selecting the four new trustees, nor did they insist on (1) deciding on the qualifications and characteristics of the new trustees or (2) Government approval of the persons selected. The trustees were selected by the Teamsters' Central and Southern Conferences and the trucking associations.

According to the Special Consultant to the Secretary of Labor, who headed Labor's negotiations with the Fund, Labor's first goal was to get the assets out of the hands of the former trustees, irrespective of who the new trustees were, so that they would have no control over or impact on investment or asset management decisions. One official said that Labor did not want to subject itself to possible criticism for having approved trustees who could later be found to be not upright.

Concern that former trustees controlled selection of new trustees

Concern was expressed in congressional hearings in June 1978⁸ that the former trustees who resigned influenced the selection of the four new trustees.

The Assistant Secretary for Labor-Management Relations acknowledged in response to a question from the Subcommittee that some of the former union trustees, who were forced to resign from the Fund, held offices in the Central and Southern Conference of the Teamsters organizations. These organizations appointed the new trustees, and the former trustees apparently participated in the selection of their successors. Labor apparently was not concerned by this fact because the Assistant Secretary stated that the selection did not violate ERISA's provisions.

More recently, however, Labor officials have become concerned about the influence of the former trustees, as well as the behavior of the current trustees. Labor officials had indicated in February 1980 that a review of the new trustees' performance demonstrated significant disregard for the interest of the participants and beneficiaries and a determination to frustrate the efforts of Labor in its ERISA enforcement activities. The officials also indicated that the record of the new trustee's conduct also supports the inference that the former trustees still exert significant influence over the Fund's operations.

The officials cited the (1) trustees' lack of cooperation with the Government on the civil suit by their repeated attempts to block Labor's discovery of evidence to be used against the former trustees, (2) trustees' attempt to curtail the independence of the investment managers, and (3) influence of former trustees as evidenced by their open involvement in day-to-day Fund operations.

TRUSTEES TRIED TO REASSERT CONTROL OVER FUND'S ASSETS

As a condition of requalification, the trustees agreed to appoint an independent investment manager to handle the Fund's assets and investments. Labor, in

⁸ See hearings on Central States Teamsters Funds, Subcommittee on Oversight, House Committee on Ways and Means, 95th Congress, 2d session, p. 77 (June 1978).

coordination with IRS, established certain qualifications for the investment manager and told Fund officials it would veto any firm chosen by the trustees that did not meet its qualifications.

During its negotiations with the Fund in March 1977, Labor told the trustees' representatives that the investment manager had to meet Labor's general criteria— independence, professionalism, and national stature. Labor also told the trustees that (1) they would have to be prudent in their choice of the manager, (2) they would not be relieved of their duties to monitor the investment manager's performance, (3) the manager selected would have to be competent and be able to withstand the public scrutiny that would inevitably begin when the choices were made public, and (4) the contractual structure had to be workable and meet ERISA's requirements.

On June 30, 1977, the trustees entered into a series of contracts with the Equitable Life Assurance Society of the United States and the Victor Palmieri Company. Under the contracts, Equitable became the overall or managing "fiduciary" of the Fund as well as manager for the Fund real estate assets east of the Mississippi, and the Palmieri became manager for Fund real estate assets west of the Mississippi. Neither the Equitable nor the Palmieri appointment could be terminated, changed, modified, altered, or amended in any respect before October 2, 1982, except for cause and only on written consent of the Secretary of Labor. After October 2, 1982, the Fund can terminate the contracts without Labor's consent.

Labor was satisfied with the arrangement and did not exercise its veto. In fact, the Secretary of Labor stated in a letter dated September 23, 1977, to the Chairman of the Senate Committee on Human Resources that he believed the contracts provide a sound basis for the future management of the Fund's assets. He said that they contain great promise of ending years of suspicion, allegations, and wrongdoing that surrounded the asset management of the Fund and persons associated with it.

Equitable shifts Fund's investments from real estate loans

One of the principal criticisms of the Fund's investment portfolio was the concentration of investments in real estate related loans. However, since Equitable has taken over, the Fund's assets have been largely redirected to investments in stocks and other securities. On October 3, 1977, when Equitable assumed control of the Fund's \$1.59 billion in assets, almost 60.7 percent (\$966 million) of the assets was real estate, mortgage, and collateral loans. The other 39.3 percent (\$626.2 million) was primarily invested in stocks and bonds.

However, on December 31, 1979, almost 2 years after Equitable assumed control, the Fund's total assets had grown by about \$622 million to \$2.2 billion. The real estate and mortgage investments had decreased to \$670.4 million, or about 30 percent of the total assets. Equitable reported that somewhat more than half of the increase in assets resulted in employer contributions. (See app. VI for table showing the investments before and after Equitable assumed control.)

Also, since Equitable assumed control of the Fund's income its investment have steadily increased. One of Equitable's investment objectives is that, overall, the Fund's minimum annual rate of return should be at least 6.5 percent over a 4-year period. Equitable has reported that from an investment standpoint, the increase in investment assets through December 31, 1979, has been at an annualized rate of return equal to 8.23 percent, as compared to 4.5 percent in 1976.

For calendar year 1979, the Fund's total investment income was about \$151.3 million, or more than double the \$73 million earned as reported by the Fund for 11 months in 1976, when the former trustees controlled the investments and assets.

Trustees attempt to compromise independence of investment managers

Despite the investment managers' performance and the agreement with Labor and IRS, the current Fund trustees have repeatedly and openly sought to undermine the independence of Equitable and Palmieri, and reassert control over the Fund's assets and investments.

The trustees' attempts to compromise the independence of Equitable and Palmieri came less than 6 months after the firms assumed control of the Fund's assets in October 1977. In March 1978 the trustees passed a series of resolutions which stated, among other things, that the trustees (1) could remove Equitable and Palmieri for cause, before the 5-year contract period had expired, without the Secretary's consent and (2) had to be given at least 30 days' notice before disposal of assets over \$10,000.

In an April 18, 1978, memorandum to the Secretary of Labor, the Assistant Secretary for Labor-Management Relations expressed concern about the trustees' resolutions and indicated the possibility that they were laying the groundwork to remove Equitable and Palmieri as their investment managers. The Assistant Secretary said Labor would take appropriate action if the dismissal occurred. Labor notified the trustees and investment managers that the resolutions were not enforceable.

Other actions taken by the current trustees to undermine the investment managers' function included having the Fund hire its own internal staff of real estate analysts. This staff, according to the Labor officials, duplicated much of the investment managers' work. Also, according to Palmieri, the trustees recently instructed the staff to perform independent inspections of all assets under Palmieri's management.

Further, the Fund's staff is managing a considerable amount of assets that apparently were acquired after Equitable became investment manager or were not turned over to Equitable. The Fund's annual reports showed that \$72.7 million as of December 31, 1977, and \$100.5 million as of December 31, 1978, in securities was managed by its staff.

The trustees also attempted to have Palmieri reduce its management fees—which were fixed for the 5-year contract period—in light of the overall decline of assets managed by Palmieri. Because of loan amortization and asset sales, the assets managed by Palmieri had declined from \$550 million in October 1977, to \$430 million as of August 1979. Palmieri, however, refused.

In August 1979, the trustees passed resolutions demanding that (1) Palmieri enter immediate negotiations to reduce its fee, and (2) Equitable and the Fund's custodian bank stop payment of contracted fees until Palmieri agreed to renegotiate. Labor notified the trustees and Equitable that the resolutions were not enforceable. Also, according to Labor officials the fees were paid to Palmieri.

Finally, the Fund's trustees on November 23, 1979, submitted a request to Labor for an advisory opinion on whether Palmieri's fees should be renegotiated and whether the Fund could terminate, without Labor's consent, Palmieri's contract, because it refused to renegotiate the fees.

On May 7, 1980, Labor issued an opinion stating that (1) Palmieri's management fees were not unreasonable and should continue to be paid, (2) because Palmieri's fees were not deemed unreasonable, the trustees did not have cause for terminating Palmieri, and (3) the requirement of written consent of the Secretary to terminate Palmieri's appointment as investment manager was still valid and enforceable.

According to the Fund's counsel, the request for the advisory opinion reflected a genuine effort by the trustees to resolve serious ERISA issues without resorting to other available remedies. The counsel also stated that it should be understood that the request would not diminish the right and opportunity of the trustees to resort, in the future, to one or more of other remedies, after the "advisory" opinion was analyzed. The Fund's letter did not provide information on what other remedies it would take.

LABOR AND IRS NOT ADEQUATELY MONITORING CURRENT TRUSTEES ACTIVITIES

Although Equitable has been appointed to handle the Fund's assets and investments, the Fund's trustees still control all the moneys the Fund receives. Moreover, after transferring moneys to Equitable for investment, the trustees still control a substantial amount of moneys in the Benefits and Administration (B & A) account.

Our review disclosed that Labor has not adequately monitored the B & A account to assure that the trustees are prudently using these funds.

IRS has responsibility for assuring that the Fund complies with the eight conditions of the April 1977 requalification letter. The trustees, after complying with only four of the conditions to IRS' satisfaction, notified IRS on August 24, 1979, that they would no longer submit progress reports and considered that the eight conditions were substantially satisfied.

Under its contract with Equitable, the trustees determine the Fund's needs for (1) pension benefits, (2) administrative expenses, and (3) an "appropriate reserve" in the B & A account. The trustees, after determining these amounts, turn over the excess ("new funds") to Equitable for investment. Although the amounts transferred to Equitable for investment purposes have been substantial, the trustees retained a significant amount of the Fund's income in the B & A account.

To illustrate, during calendar year 1979 the trustees transferred \$186 million to Equitable. On the last day of December 1979, the trustees controlled \$142 million in this account. (A schedule of the B & A account for calendar year 1979 is in app. VII.)

Equitable's contracts with the Fund state that Equitable does not have any duty or responsibility with respect to the B & A account. Thus, the trustees have sole responsibility for the account.

The fact that the trustees would still control substantial income through this account, and the need for adequately monitoring it, was recognized early by the Senate Permanent Subcommittee on Investigations. Labor officials, including the Secretary of Labor, in testimony in July 1977 acknowledged the need for adequate monitoring and assured the Subcommittee members that Labor would continually monitor and review the trustees' handling of the funds they control.

Labor not adequately monitoring B & A account

However, contrary to the Secretary of Labor's and other officials' testimony, Labor did not adequately monitor the B & A account.

Labor's SIS was responsible for monitoring the account, but it performed little monitoring. In fact, Labor left the Teamsters site in May 1977, several months before the B & A account was set up, and Labor's monitoring consisted of reviewing monthly and annual reports at Labor's headquarters, plus information from other agencies, such as IRS.

The acting director of SIS in 1979 agreed that there was little monitoring. He said there was little time for Labor to do any monitoring before the civil lawsuit was filed in February 1978. After the suit was filed, the Fund stopped all cooperation with Labor. He said that Labor would have had to issue a subpoena to obtain records from the Fund. Labor, however did not issue a subpoena. He also said there were no allegations regarding mishandling of this money, or any evidence of mishandling in the annual reports.

Further evidence on the lack of adequate monitoring of the Fund's B & A account by Labor was noted in a November 1979 report prepared for the Deputy Assistant Secretary of LMSA on Labor's investigation of the Fund. Regarding the financial operation of the Fund, the report stated:

There is virtually no information available on the current financial operation of the fund.

The methods by which a determination is made as to how much money should be transferred to the assets managers, how expenses are approved, what authority is delegated to the executive director, and in general, how the Fund operates financially are all unknown at the present time.

We have very little knowledge of the details of how much money is actually received by the Fund, how much money is transferred to the asset managers, or how money being held by the Fund is managed.

The report stated Labor should investigate to determine the actual moneys maintained by the Fund, the moneys transferred to asset managers, and the reasons why the Fund needs to maintain an estimated \$100 million in escrow in the B & A account since it can request and receive any moneys from the asset managers needed for the account. The report also said Labor needs to review how well the Fund is managing the assets it controls.

The continuing congressional concern over the lack of effective monitoring and the size of the B & A account was expressed in congressional hearings held in March 1980.⁹ The Secretary of Labor was asked if Labor knew the size of the account and whether there was a problem with the size. The Secretary said that he did not have any information that would lead Labor to believe the account was unreasonably large. He said information received from IRS showed that the B & A account had approximately \$65 million as of June 1979. He said that this figure did not appear (1) to be unreasonable in view of the size of the payments the Fund makes or (2) to violate ERISA. He concluded that:

It is up to the asset managers to determine whether the amount is in violation of the asset management agreements.

However, Equitable's contract with the trustees specifically states that Equitable has no responsibility for the B & A account. Moreover, the November 1979 report by the Deputy Assistant Secretary/LMSA acknowledges that Equitable has no control over or responsibility for the B & A account, and that the trustees

⁹ See note 1, p. 28.

can request any amount desired from Equitable for the account, and Equitable is bound to honor the request.

In addition, as noted previously, the B & A account balance had grown to \$142 million as of December 31, 1979, or more than double the \$65 million considered reasonable by the Secretary.

A further indication of the lack of adequate monitoring is shown in comments made in April 1980 by the Fund's assistant executive director in response to the following question by a congressional committee.¹⁰

Has IRS, the Department of Labor or the investment managers questioned the size of the Benefits and Administration Account, and whether such size was in fact reasonable, within the past year?

The assistant executive director stated that two inquiries were made, one by Equitable in January 1980 asking why the balance had grown by \$28 million during 1978, and another by IRS in March 1980 requesting information regarding the amounts retained in the B & A account. He said that the Fund responded to both inquiries within several weeks.

The assistant executive director concluded that "other than the inquiries above, the Fund is not aware of any other inquiries regarding the B & A account."

Fund attempts to use B & A account to make questionable loan

According to information gathered by Labor, as well as statements made by the Fund's assistant executive director, the moneys in the B & A account were invested in certificates of deposit (normally 6-month maturity) and commercial paper that allowed the Fund to earn the current market rate.

However, Fund trustees, in one case, apparently intended to use the moneys in the B & A account to make a \$91 million loan, as part of an out-of-court settlement of a suit against them for failing to fulfill a loan commitment. In this case, the trustees in January 1975 had approved a commitment to loan a prospective borrower \$40 million to renovate a hotel in Las Vegas, Nevada, and to construct a 1,000-room addition. The borrower had previously received loans from the Fund. However, in June 1976 the trustees rescinded the commitment because the loan would have been a "prohibited transaction" under ERISA. This arose because the prospective borrower's firm is related to a contributing employer and, as such, is disqualified from receiving a loan under the act.

The prospective borrower, in June 1976, sued¹¹ the trustees, seeking approval of the loan and \$100 million in damages. The case continued for several years, and in September 1979, the trustees attempted to have the court approve a settlement by making an additional \$85 million loan plus \$6 million to restructure the old loan. The Fund's counsel, in presenting the proposed settlement to the court, stated:

I might state for the record that the position of the Fund is that we are not, in addressing this lawsuit, in the business of asset managing. We are not seeking to make real estate loans or acquire real estate. We are attempting to extricate the Fund from the litigation as I have previously stated in the status report and we consider this to be an administrative matter.

Labor, which had intervened in the suit to protect the Fund's interest, was not aware of the settlement until the Fund proposed it. At the court's request both Labor and Equitable reviewed the proposed settlement and both objected to it, stating that the loan would not be an appropriate transaction. As a result, the court did not approve the proposed transaction.

Also, in January 1980, the court ruled for the Fund holding that the proposed initial \$40 million loan was unlawful under ERISA's prohibited transactions. The court also denied the prospective borrower's claims for damages.

According to Labor officials, in the transparent attempt to circumvent the authority of the investment managers, the trustees planned to increase the balance of the Fund's B & A sufficiently to fund the \$91 million loan.

Fund failed to meet all eight conditions of requalifications

Under its agreement with IRS, the Fund was required to submit monthly reports on the progress made in meeting the eight conditions under which IRS requalified the Fund's tax-exempt status. The Fund submitted the required monthly reports until August 1979, when it advised IRS that it would no longer

¹⁰ See note 1, p. 28.

¹¹ *M & R Investment Company, Inc. v. Fitzsimmons et al.*, No. LV-76-114 in U.S. District Court, Las Vegas, Nev.

send them and that the Fund considered each of the conditions to be substantially satisfied.

IRS disagreed, however, and advised the Fund that some of the conditions were not fully satisfied. According to IRS, the Fund had not taken action to fully satisfy four conditions.

Condition 2.—To have an adequate data base in operation to determine creditable service and benefits for all participants. IRS stated that only 50 percent of the retiring employees' benefit applications are processed using the improved data base. IRS said the Fund needs to improve its procedures for verifying past service and locating plan participants.

Condition 4.—To review all loans and related transactions from February 1, 1965, to April 30, 1977. IRS said delays in the loan review program occurred; no progress was made until October 1977. At that time 35 loans were in various stages of review, and 6 had been referred to outside legal counsel for consideration. Subsequently, the Fund suspended further efforts in complying with this condition.

Condition 7.—To publish financial information on the Fund in newspapers. The Fund issued a news release containing the required financial statements in 1978. IRS said, however, in August 1979, the trustees passed a resolution to terminate the newspaper publication of its financial information.

Condition 8.—To decide on the appropriate reserve amount in the B & A account. In June 1979, the Fund decided that the reserve amount in the B & A account should be \$65 million. IRS stated it does not have current information to determine the amount retained or to determine whether it exceeds the amount reasonably needed to pay plan benefits and administration expenses. In IRS' opinion, the appropriate amount of the reserve was still in dispute at March 1980.

THE FUND'S FINANCIAL SOUNDNESS

ERISA requires that employee pension plans satisfy minimum funding standards each year and that each plan submit an actuarial report in which the actuary states his opinion that the contents of the report in the aggregate are reasonable and represent the best estimates of anticipated experience under the plan. IRS is to use the actuarial reports to determine the plan's financial soundness.

IRS is responsible for enforcing ERISA's minimum funding standards. However, IRS' April 1977 requalification letter stated that its determination on the Fund's tax-exempt status is not an indication that IRS is in anyway passing on the actuarial soundness of the plan or on the reasonableness of the actuarial computations.

Since 1975, the trustees have had four actuarial valuations of the Fund's financial soundness—three used data as of January 31, 1975, and one was as of December 31, 1978.

The first actuary, who had been the Fund's actuary since 1955, concluded that the Fund was financially sound. In 1975, the Fund hired a second actuary, who stated the Fund was not financially sound. He also stated that the Fund would require contributions significantly higher than those estimated by the first actuary. A third actuary was hired to break the tie, and he agreed with the second actuary. According to the former executive director of the Fund, the actuary concluded, in his report, that the Fund's unfunded liabilities were reaching staggering proportions.

The last actuary's report dated March 3, 1980, which was based on 1978 data, stated that the current funding should satisfy ERISA's requirements. However, the actuary also said that the funding policy allowed very little margin for error and that, if actual experience differed, funding problems would occur after the ERISA standards become effective for the Fund in 1981.

In our opinion, IRS should closely monitor the financial status of the Fund to assure that it, in fact, meets the standards in 1981 and in future years.

LABOR AND IRS NEED TO INVESTIGATE UNRESOLVED PROBLEM AREAS OF ALLEGED MISMANAGEMENT

During its original onsite work at Fund headquarters—from January 1976 to May 1977—Labor decided to concentrate its investigation on the practices Fund fiduciaries use to make real estate mortgage and collateral loans. However, Labor's investigators also identified patterns of apparent abuse and raised questions of potential criminal violations in the Fund's other operations.

SIS' chief auditor in 1976 indicated that full-scale audits were justified in the areas of (1) rental income, (2) commitment and service fees, (3) funded interest, (4) real estate owned and operated, (5) trustee and allowance expenses, and (6) service providers.

To illustrate, the Fund charged borrowers a fee for loans. The fee was usually a percentage of the loan commitment. SIS' investigation showed that the Fund established neither a receivable account for these fees when it issued loan commitments nor the necessary accounting controls to assure collection of these fees. Also, the Fund had no uniformity on when or how the fees were to be paid. SIS uncovered instances where the fees had been reduced, waived, or refunded.

SIS investigators also raised questions of potential criminal violations in two areas. One dealt with the impropriety of payments made to Fund trustees for allowance and expense claims, and the second dealt with payments to firms or others providing services to the Fund. These improprieties could possibly constitute a violation of section 664, title 18, U.S. Code, which prohibits theft or embezzlement of assets of pension plans covered under ERISA.

SIS investigators also disclosed other problem areas, including the appropriateness of the Fund's liquidity position and allegations of improprieties regarding how the Fund determines eligibility for pension benefits and how it makes benefit payments.

SIS, however, did not finish its work on these areas. According to a Labor official, staff was limited and the available staff was directed to review the Fund's real estate loans. As a result of this decision, the investigation was not completed and questions of alleged mismanagement and potential criminal violations went unresolved.

Labor report recognizes incompleteness of the investigation

Not until late 1979, almost 4 years after Labor's initial onsite investigation began and 2½ years after it ended, did Labor decide to investigate new areas of abuse.

The impetus came from the report prepared in November 1979 for the Deputy Assistant Secretary, LMSA. The report pointed out that the scope of the original investigation was reduced substantially because of the then-critical need to gather evidence on asset management, and because of this, together with the filing of lawsuits, a number of issues had never been investigated. It said Labor has reached the point where it is critical to develop an understanding through investigation of how all aspects of the Fund are being administered under the current trustees.

The report recommended that Labor review the areas of the Fund's operations that were not completed in the original investigation. Four specific areas were recommended for investigation. The first covered the appropriateness of the B & A account and administrative expenses for trustee allowances, employee salaries, legal fees, valuation services, consulting services, and other expenses. The other three areas were (1) employer contributions, (2) asset management—by the independent managers and the Fund—and (3) the purchase of a new aircraft for \$3 million, which according to the report is a potential fiduciary violation.

The report stated that, if all the issues are investigated, a minimum of 7 to 10 investigators would be needed for 1 to 2 years. The PWBP official who made the review stated that it is critical that serious consideration be given to how the investigation is to be made. He said:

I do not feel the investigations can be effectively conducted from the National Office. The location of the Fund and the lack of quality investigators in the National Office would cause many of the problems experienced in the past three years to continue.

He recommended that LMSA's Chicago Area Office handle the investigation.

Also, officials in Labor's Solicitor's Office in February 1980 indicated that the performance of the new trustees had demonstrated significant disregard for the interests of the participants and beneficiaries. They also commented on the need for Labor to investigate areas of the Fund's operations, including some of those cited in the Deputy Assistant Secretary's report.

Labor and IRS resume investigations of the Fund

As a result of the current trustees' actions and the above reports, Labor investigators on April 28, 1980, returned to the Fund's headquarters to start a second onsite investigation. As recommended in the Deputy Assistant Secretary's report, the LMSA Chicago office is performing the investigation.

The scope of the new investigation includes areas not initially completed as well as other areas of the Fund's operations that were never investigated. Two areas are payments to (1) trustees for travel allowances and expenses, and (2) firms or others providing the Fund services. These are "old" areas identified in the summer of 1976. According to Labor's current plans, however, the investigation will not cover payments to trustees and service providers incurred before January 1977. As a result, the investigators will not review the payments made to the 12 former trustees that resigned in 1976. Labor, therefore, may lose an opportunity to develop information of potential violations, which occurred before 1977, on payments to the former trustees or the service providers.

IRS also started an onsite investigation of the Fund's operations at the same time Labor began its investigation. In an April 7, 1980, letter to the Fund, IRS stated that:

* * * The seriousness of the Fund's past problems, coupled with the Fund's recent refusal to allow on-site review and to provide monthly reports showing compliance with the conditions of the April 26, 1977, letter requalifying the Fund's tax-exempt status compel the Service to review the Fund's current activities.

IRS' investigation did not begin until almost 8 months after the Fund—in August 1979— notified the Service it would no longer send in monthly reports, and that the Fund considered each of the conditions to be substantially satisfied.

IRS' letter also stated that its investigation would cover Fund administrative expenses, including the B & A account, investment activities—both the Fund and independently managed assets—and payment of pension benefits. Some of these are similar to areas to be investigated by Labor.

Labor and IRS advised the Fund that their investigations were being coordinated. Labor officials also advised us it was coordinating with IRS. However, both agencies issued a subpoena or a summons for the same records and are apparently reviewing some of the same activities and operations.

In view of the past problems between IRS and Labor, we believe that close coordination is needed to (1) prevent overlap and duplication between the two agencies' investigations and (2) assure that any further reforms or improvements needed in the Fund's operations are presented as unified Government requirements.

LABOR SUES FORMER TRUSTEES AND OFFICIALS TO RECOVER LOSSES RESULTING FROM THEIR ALLEGED MISMANAGEMENT AND FIDUCIARY BREACHES

As a result of its original investigative effort, Labor on February 1, 1978, filed a civil suit in the U.S. District Court for the Northern District of Illinois, Eastern Division, against 17 former Fund trustees and 2 officials¹² to recover losses resulting from their alleged mismanagement and breaches of their fiduciary duties.

The Secretary of Labor filed the civil suit against the former trustees and officials under the authority of section 502(a)(2) of ERISA, which authorizes him to bring a civil action seeking appropriate relief from any fiduciary who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by title I of ERISA. Labor's suit alleges that the defendant trustees by their mismanagement of Fund assets and breach of their fiduciary duties have caused great financial harm to the plan and its participants and beneficiaries.

Labor intended to recover losses the Fund incurred or expected to incur. Labor did not estimate the Fund's past or future losses because of the nature of the real estate market, the lack of specific information on the current status of some investments, and the fact that many investments would not mature until some time in the future. Labor stated that losses incurred will be identified during the litigation and that Labor will not make a firm estimate of the losses until the suit is scheduled for trial.

Labor's suit listed 15 loan transactions as examples of the alleged fiduciary violations. The 15 transactions consisted of 12 real estate mortgage and collateral loans and 3 other financial transactions to individuals. Labor has no definite estimate of losses to be recovered by the suit.

¹² The suit listed these 17 former trustees: Frank Fitzsimmons, Roy Williams, Robert Holmes, Donald Peters, Joseph W. Morgan, Frank H. Ranney, Walter W. Teague, Jackie Presser, Albert D. Matheson, Thomas J. Duffey, John Spickerman, Herman A. Lueking, Jack A. Sheetz, William J. Kennedy, Bernard S. Goldfarb, Andrew G. Massa and William Presser. The two former officials are Alvin Baron and Daniel Shannon; however, Mr. Shannon was later dropped from the complaint.

The suit is still in the discovery phase and is not expected to be adjudicated in the near future. The case proceedings were temporarily delayed because the presiding judge resigned in April 1979. As of that date, three motions had not been decided: (1) to add the Fund as a party to the action, (2) to review a discovery order, and (3) to consolidate this action with several other related actions. On June 25, 1979, a new presiding judge was appointed; as of May 1980, he was still considering the motions.

CONCLUSION

The fact that Labor and IRS resumed a second investigation at the Fund's headquarters, in our view, indicates that problems remain to be resolved and raises questions as to whether the agreements for the reforms to the Fund's operations will be lasting.

We question whether the reforms and changes that Labor and IRS required the trustees to make in the Fund's operations were the best the Government could have achieved and the most advantageous for the Fund and its plan participants. Labor's and IRS' findings and strong evidence of mismanagement and abuse by the former trustees and IRS' action of removing the Fund's tax-exempt status in our view, gave the Government strong bargaining position in its dealings with Fund officials. However, Labor and IRS failed to use their advantage in the final negotiations with the trustees to gain lasting reforms and improvements to the Fund's operations and remove the influence and control exercised by the former trustees.

We believe that both Labor and IRS need to take heed of the coordination problems and shortcomings in negotiations with the Fund in the original investigations and in future dealings with the trustees. In our opinion, Labor and IRS need to more closely cooperate to prevent (1) coordination problems, (2) duplication and overlap between their investigations, and (3) giving the Fund an excuse not to cooperate because the Government's house is not in order. In addition, Labor should assure that the current investigation includes all areas not reviewed in its initial investigation.

We believe also that Labor and IRS need to take action, above and beyond the conditions required by the April 26, 1977, agreement, to remove the trustees' control over and the influence on all the moneys the Fund receives. Labor and IRS should, based on its current evidence and further evidence to be developed under its new investigation, consider proposing a reorganization of the way the Fund handles and controls the employers' contributions and other income to remove the trustees' control over any of these funds.

Also, in view of the comments by the actuaries regarding the Fund's financial soundness, we believe that IRS should determine whether the Fund is being funded in accordance with ERISA's requirement and, if not, take action to assure that the Fund meets ERISA's requirements.

Mr. Chairman, this completes my statement. We would be happy to respond to any questions you or members of the subcommittee may have.

APPENDIX I

LIST OF FUND TRUSTEES, AS OF OCT. 29, 1976

| Tenure | Affiliations |
|---|--|
| Employer trustees: | |
| Albert D. Matheson..... (1) to October 1976..... | National Automobile Transporters Labor Council. |
| Thomas J. Duffey ² June 1962 to Oct. 1976..... | Motor Carriers Employers Conference Central States. |
| John F. Spickerman, Sr. ² February 1962 to April 1977..... | Southeastern Area Motor Carriers Labor Relations Association. |
| Herman A. Lueking, Jr..... December 1966 to October 1976..... | Cartage Employers Management Association. |
| William J. Kennedy..... July 1969 to October 1976..... | Information not available from Labor records. |
| Jack A. Sheetz ² April 1967 to October 1976..... | Southwest Operators Association. |
| Bernard S. Goldfarb..... December 1972 to October 1976..... | Cleveland Draymen Association, Inc., and Northern Ohio Motor Truck Association, Inc. |
| Andrew G. Massa ² January 1974 to April 1977..... | Motor Carriers Employers Conference—Central States. |

See footnotes at end of table.

| Tenure | Affiliations |
|---|--|
| Union trustees: | |
| Frank E. Fitzsimmons ² February 1962 to April 1977..... | General president, International Brotherhood of Teamsters (IBT). |
| Roy L. Williams ² ¹ to April 1977..... | Central Conference of Teamsters, Central States Drivers Council, and IBT Local Union No. 41. |
| William Presser..... (1) to February 1975; February 1976 to October 1976..... | IBT Local Union No. 337. |
| Robert Holmes..... April 1967 to October 1974..... | IBT Local Union No. 337. |
| Donald Peters..... October 1967 to October 1976..... | IBT Local Union No. 743. |
| Joseph W. Morgan ² April 1968 to October 1976..... | Southern Conference of Teamsters. |
| Frank H. Ranney..... April 1968 to October 1976..... | Retired IBT official. |
| Walter W. Teague..... September 1974 to October 1976..... | Georgia-Florida Conference of Teamsters. |
| Jackie Presser..... February to February 1975 to 1975..... | IBT Local Union No. 507. |

Source: Department of Labor record.

¹ Information not available from Labor records.

² Also a trustee of the Teamsters' Health & Welfare Fund.

APPENDIX II

LIST OF FUND TRUSTEES, OCT. 29, 1976 TO APR. 30, 1977

| Tenure | Affiliations |
|--|---|
| Employer trustees: | |
| John F. Spickerman, Sr..... February 1962 to April 1977..... | Southeastern Area Motor Carriers Labor Relations Association. |
| Leroy L. Wade..... October 1976 to April 1978..... | National Automobile Transporters Labor Council. |
| Howard McDougall..... October 1976 to present..... | Cleveland Draymen Association, Northern Ohio Motor Truck Association, Inc., and Cartage Employers Management Association. |
| Andrew G. Massa..... January 1974 to April 1977..... | Motor Carriers Employers Conference—Central States. |
| Robert J. Baker..... October 1976 to present..... | Do. |
| Union trustees: | |
| Frank E. Fitzsimmons..... February 1962 to April 1977..... | General president, IBT. |
| Hubert L. Payne..... October 1976 to July 1978..... | Secretary-treasurer, IBT Local No. 519. |
| Loran W. Robbins..... October 1976 to present..... | President, Indiana Conference, Joint Council 69, and IBT Local No. 135. |
| Robert E. Schlieve..... October 1976 to July 1979..... | Secretary-treasurer, IBT Local No. 563. |
| Roy L. Williams..... (2) to April 1977..... | Central Conference of Teamsters Central States Drivers Council. |

¹ Also a trustee of the Teamsters' Health & Welfare Fund.

² Information not available from Labor records.

APPENDIX III

LIST OF FUND TRUSTEES, APR. 30, 1977 TO APR. 15, 1980

| Tenure | Affiliations |
|--|---|
| Employer trustees: | |
| Leroy L. Wade ¹ October 1976 to April 1978..... | National Automobile Transporters Labor Council. |
| Howard McDougall..... October 1976 to present..... | Cleveland Draymen Association, Northern Ohio Motor Truck Association, Inc., and Cartage Employers Management Association. |
| Robert J. Baker ² do..... | Motor Carriers Employers Conference—Central States. |
| Thomas F. O'Malley ² April 1977 to present..... | Do. |
| Earl N. Hoekenga ² April 1977 to February 1978..... | Southeastern Area Motor Carriers Labor Relations Association and Southwest Operators Association. |
| Rudy J. Pullians, Sr. ² February 1978 to present..... | Do. |
| Employee or union trustees: | |
| Hubert L. Payne ^{1,2} October 1976 to July 1978..... | Secretary-treasurer, IBT Local No. 519. |
| Loran W. Robbins ² October 1976 to present..... | President, Indiana Conference, Joint Council 69, and IBT Local No. 135. |
| Robert E. Schlieve ^{1,2} October 1976 to July 1979..... | Secretary-treasurer, IBT Local No. 563. |
| Harold J. Yates..... April 1977 to present..... | President, IBT Local No. 120. |
| Marion M. Winstead..... do..... | President, IBT Local No. 89. |
| Earl L. Jennings, Jr. ² October 1978 to present..... | Southern Conference of Teamsters. |

¹ Deceased.

² Also a trustee of the Teamsters' Health & Welfare Fund.

CHRONOLOGY OF KEY EVENTS

APPENDIX IV

**KEY EVENTS OF GOVERNMENT
INVESTIGATION OF TEAMSTERS PENSION FUND
1975 TO PRESENT**

| | JANUARY | FEBRUARY | MARCH | APRIL | MAY | JUNE | JULY | AUGUST | SEPTEMBER | OCTOBER | NOVEMBER | DECEMBER |
|------------------|---|--|---|---|---|---|---|--------|---|---|----------|--|
| 1 9 7 6 | ERISA EFFECTIVE. | | | | | | | | LABOR INVITES JUSTICE & IRS TO JOIN INVESTIGATION. IRS REFUSES. | LABOR MEETS WITH FUND TO ADVISE THEM OF INVESTIGATION. FUND OFFERS VOLUNTARY COMPLIANCE. LABOR ACCEPTS. | | EXECUTIVE HEARINGS HELD BY FBI. LABOR FORMS SIB. LABOR & JUSTICE SIGN MEMO OF AGREEMENT TO COORDINATE INVESTIGATION. |
| | SIB BEGINS ON SITE INVESTIGATION AT FUND'S CHICAGO HEADQUARTERS. | | | | | | | | | | | |
| 1 9 7 6 | SIB ANALYZES FUND'S OPERATIONS, POLICIES, PROCEDURES, & RECORDS AND FOCUSES REVIEW ON SELECTED FUND LOAN PRACTICES & RECORDS. | | | | | | | | | | | |
| | | | FUND TRUSTEES DECIDE NOT TO MAKE ANY NEW LOANS. | | | IRS REVOKES (20) FUNDS TAX EXEMPT STATUS. | LABOR SUBPOENAS TRUSTEES IN CONNECTION WITH CERTAIN LOAN. CONGRESSIONAL HEARINGS HELD. | | SIB EXPLORES THE POSSIBILITY OF LIMITING THE TRUSTEES MANAGEMENT OF FUND ASSETS BY LEGAL MEANS. | | | |
| 1 9 7 7 | LABOR MEETS WITH IRS & JUSTICE TO DISCUSS REMEDIAL ACTION AGAINST TRUSTEES TO PROTECT FUND'S ASSETS. | | CONGRESSIONAL HEARINGS HELD. | 1 HOLDOVER TRUSTEE RESIGNS. IRS REQUALIFIES FUND'S TAX EXEMPT STATUS. | SIB TERMINATES ON SITE WORK. | FUND SIGNS CONTRACT WITH INVESTMENT MOR. TO TAKEOVER FUND'S ASSETS. | CONGRESSIONAL HEARINGS HELD BY PSL. SIB PLANS TO FOCUS ON 3rd PARTY INVESTIGATIONS. | | 1 TRUSTEE RESIGNS. | 11 TRUSTEES RESIGN. | | |
| | CHANGEOVER IN LABOR'S ADMINISTRATION. | LABOR MEETS WITH FUND TRUSTEES AND PRESENT GOVERNMENT'S DEMANDS. TRUSTEES ACCEPT THE GOVERNMENT'S DEMANDS. | | | | SIB FOCUSES ITS ACTIVITY TOWARDS ASSESSING DATA GATHERED TO DETERMINE WHETHER CIVIL ACTION FOR PERSONAL LIABILITY WAS WARRANTED AGAINST FUND FIDUCIARIES. | | | | | | |
| 1 9 7 8 | | LABOR FILES CIVIL SUIT AGAINST 17 TRUSTEES AND 2 ASSET MANAGERS. TO RECOVER LOSSES FOR FIDUCIARY BREACHES. | FUND FORMALLY TERMINATES VOLUNTARY COOPERATION WITH LABOR. CONGRESSIONAL HEARINGS HELD. | | LABOR COMMENCES DISCOVERY PROCEEDING STAGE OF ITS SUIT. | TRUSTEES FILE MOTION TO DISMISS LABOR'S SUIT. | CONGRESSIONAL HEARINGS HELD. LABOR FILES MEMO IN OPPOSITION OF DEFENDANT'S MOTION TO DISMISS. | | | | | COURT DENIES TRUSTEES' MOTION TO DISMISS SUIT. |
| | SIB CONTINUES TO ANALYZE LOAN RECORDS & CONDUCT 3rd PARTY INVESTIGATIONS. | | | | | | | | | | | |
| 1 9 7 9 | LABOR FILES MOTION TO ADD THE FUND TO IT'S SUIT AS AN INVOLUNTARY PLAINTIFF. | FUND FILES MEMORANDUM IN OPPOSITION TO LABOR'S MOTION. | | | | | | | | | | |
| 1 9 8 0 | SIB CONTINUES TO ANALYZE LOAN RECORDS AND CONDUCT 3rd PARTY INVESTIGATIONS. | | | | | | | | | | | |
| | | | CONGRESSIONAL HEARINGS HELD. | LABOR & IRS START NEW INVESTIGATION AT FUND'S HEADQUARTERS. | SIB DISBANDED. | | | | | | | LABOR'S CIVIL ACTION PENDING IN COURTS. LABOR CONTINUES WITH NEW ON SITE INVESTIGATION. |

APPENDIX V

PRINCIPAL OFFICIALS INVOLVED IN THE GOVERNMENT'S INVESTIGATION OF THE FUND

| | Tenure of office | |
|--|------------------|-----------------|
| | From— | To— |
| DEPARTMENT OF LABOR | | |
| Secretary of Labor: | | |
| Ray Marshall..... | January 1977 | Present. |
| William J. Usery, Jr..... | February 1976 | January 1977. |
| Consultant to Secretary: Eamon M. Kelly..... | | |
| | February 1977 | June 1977. |
| Solicitors Office: | | |
| Solicitor of Labor: | | |
| Carin A. Clauss..... | March 1977 | Present. |
| Alfred Albert (acting)..... | January 1977 | March 1977. |
| William J. Kilberg..... | April 1973 | January 1977. |
| Associate Solicitor, Division of Plan Benefits Security: | | |
| Monica Gallagher..... | November 1977 | Present. |
| Steven J. Sacher..... | February 1975 | August 1977. |
| Counsel for Special Investigative Service: | | |
| Robert Gallagher..... | October 1977 | Present. |
| Richard Carr..... | June 1978 | Do. |
| Labor-Management Services Administration: | | |
| Assistant Secretary for Labor-Management Relations: | | |
| William Hobgood..... | July 1979 | Do. |
| Vacant..... | January 1979 | June 1979. |
| Francis X. Burkhardt..... | March 1977 | January 1979. |
| Bernard E. DeLury..... | April 1976 | February 1977. |
| Deputy Assistant Secretary for Labor-Management Relations: Rocco DeMarco..... | | |
| | April 1979 | Present. |
| Administrator, Pension and Welfare Benefit Programs:¹ | | |
| Ian David Lanoff ² | May 1977 | Do. |
| J. Vernon Ballard (acting)..... | January 1977 | May 1977. |
| William J. Chadwick..... | October 1976 | January 1977. |
| James D. Hutchinson ³ | June 1975 | October 1976. |
| Deputy Administrator, Pension and Welfare Benefit Programs: | | |
| Morton Kievan..... | March 1980 | Present. |
| J. Vernon Ballard..... | December 1974 | December 1979. |
| Special Investigative Staff:⁴ | | |
| Director, SIS: | | |
| Norman E. Perkins (acting)..... | October 1977 | May 1980. |
| Lawrence Lippe..... | December 1975 | October 1977. |
| Principal staff: | | |
| Lester Seidel, counsel..... | January 1976 | September 1977. |
| Sal Barbatore, attorney..... | June 1977 | June 1977. |
| Loyd F. Ryans, Jr., attorney, assistant to Director..... | April 1977 | May 1980. |
| Bernard Freil, chief investigator..... | July 1976 | December 1977. |
| Edward Shevlin, investigator..... | September 1976 | March 1980. |
| Robert Baker, investigator..... | do. | Do. |
| Norman Perkins, chief auditor..... | June 1976 | October 1977. |
| James Benages, assistant chief auditor..... | July 1976 | February 1978. |
| Central States Pension Fund Investigation—Chicago: | | |
| James M. Benages, Administration Area Office..... | April 1980 | Present. |
| Rhonda T. Davis, track supervisor..... | do. | Do. |
| DEPARTMENT OF JUSTICE | | |
| Attorney General of the United States: | | |
| Benjamin R. Civiletti..... | August 1979 | Do. |
| Griffin Bell..... | January 1977 | August 1979. |
| Edward H. Levi..... | February 1975 | January 1977. |
| Assistant Attorney General, Criminal Division: | | |
| Benjamin R. Civiletti..... | do. | August 1979. |
| Richard L. Thornburgh..... | July 1975 | March 1977. |
| John C. Keeney (acting)..... | January 1975 | July 1975. |
| Chief, Organized Crime and Racketeering Section: | | |
| David Margolis..... | May 1979 | Present. |
| Kurt W. Muellenberg..... | May 1977 | April 1979. |
| William S. Lynch..... | August 1969 | May 1979. |
| Liaison, Justice-Labor: | | |
| Jerald Toner..... | December 1979 | Present. |
| Hamilton L. Fox..... | June 1979 | December 1979. |
| David Slattery..... | December 1975 | June 1979. |
| DEPARTMENT OF THE TREASURY | | |
| Secretary of the Treasury: | | |
| G. William Miller..... | May 1979 | Present. |
| W. Michael Blumenthal..... | January 1977 | May 1979. |
| Commissioner of Internal Revenue: | | |
| Jerome Kurtz..... | May 1977 | Present. |
| William E. Williams (acting)..... | February 1977 | May 1977. |
| Donald C. Alexander..... | May 1973 | February 1977. |

See footnotes at end of table.

CONTINUED

1 OF 6

APPENDIX V—Continued

PRINCIPAL OFFICIALS INVOLVED IN THE GOVERNMENT'S INVESTIGATION OF THE FUND—Continued

| | Tenure of office | |
|---------------------------------------|--------------------|----------------|
| | From— | To— |
| Regional Commissioner—Midwest Region: | | |
| Charles F. Miriani (acting)..... | December 1979..... | Present. |
| Edwin P. Trainor..... | October 1971..... | December 1979. |
| District Director—Chicago: | | |
| Donald E. Bergherm..... | December 1979..... | Present. |
| Charles F. Miriani..... | July 1979..... | December 1979. |

¹ The Office of Employee Benefits Security was established on Dec. 16, 1974, to administer the Department of Labor's responsibility under ERISA. The activities of the office were originally directed by the Director, Office of Employee Benefits Security. In April 1975, the position of Administrator, Pension and Welfare Benefit Programs, was established to direct the activities of the office. In May 1976, the title of the Office of Employee Benefit Security was officially changed to the Pension and Welfare Benefit Programs.

² Mr. ...anoff disassociated himself from the Teamster fund investigation, and Mr. Ballard acted in his place.

³ First Administrator of Pension and Welfare Benefit Programs.

⁴ The Special Investigative Staff was abolished on May 5, 1980 and its personnel transferred to the Solicitor's Office and other units in LMSA.

⁵ Information not available.

APPENDIX VI

CLASSIFICATION OF FUND ASSETS

[Dollar amounts in millions]

[The schedule below shows the Fund's investments at Oct. 3, 1977—when Equitable took over—and at the end of calendar year 1979]

| Classification | As of Oct. 3, 1977 | | As of Dec. 31, 1979 | | Increase or (decrease) from October 1977 |
|--------------------------------------|--------------------|------------------------|---------------------|------------------------|--|
| | Amount | Percent of total funds | Amount | Percent of total funds | |
| Mortgage loans..... | 818.9 | 51.4 | 549.2 | 24.8 | (\$269.7) |
| Real estate..... | 147.1 | 9.2 | 121.2 | 5.5 | (25.9) |
| Subtotal..... | 966.0 | 60.6 | 670.4 | 30.3 | (295.6) |
| Common stock..... | 117.9 | 7.4 | 657.1 | 29.7 | 539.2 |
| Publicly traded bonds..... | 402.4 | 25.3 | 645.9 | 29.1 | 243.5 |
| Short-term obligations..... | 51.4 | 3.2 | 154.5 | 7.0 | 103.1 |
| Subtotal..... | 571.7 | 35.9 | 1,457.5 | 65.8 | 885.8 |
| Horizon Communication Corp..... | 29.7 | 1.9 | 36.0 | 1.6 | 6.3 |
| Interest guarantee contracts..... | 20.0 | 1.3 | 32.1 | 1.5 | 12.1 |
| Cash and short-term (new funds)..... | 4.8 | .3 | 17.8 | .8 | 13.0 |
| Total..... | 1,592.2 | 100.0 | 2,213.8 | 100.0 | 621.6 |

Source. Monthly reports by Equitable submitted to the Department of Labor and the Fund.

APPENDIX VII

SCHEDULE OF CONTRIBUTIONS RECEIVED AND BENEFITS PAID BY THE FUND, JAN. 1 THROUGH DEC. 31, 1979

[In thousands of dollars]

| 1979 | Benefits and administration account balance (last day of month) ¹ | Contributions | Benefits | Transfers to Equitable |
|----------------|--|---------------|----------|------------------------|
| January..... | 85,662 | 47,061 | 25,721 | 19,000 |
| February..... | 91,052 | 42,168 | 26,263 | 10,000 |
| March..... | 91,400 | 37,876 | 26,745 | 10,000 |
| April..... | 100,155 | 46,762 | 26,555 | 10,000 |
| May..... | 95,782 | 40,535 | 26,678 | 15,000 |
| June..... | 95,532 | 44,001 | 26,326 | 15,000 |
| July..... | 110,312 | 57,990 | 26,758 | 15,000 |
| August..... | 122,862 | 56,048 | 27,373 | 15,000 |
| September..... | 126,537 | 48,792 | 27,320 | 17,000 |
| October..... | 139,387 | 61,358 | 27,765 | 20,000 |
| November..... | 143,897 | 53,866 | 27,840 | 20,000 |
| December..... | 142,137 | 49,105 | 28,005 | 20,000 |
| Total..... | | \$85,562 | 323,349 | 186,000 |

¹ Amounts reflected represent balances on the last day of each month. Benefit payments and transfers to Equitable are transacted during the 1st week of each month. Therefore, the balances reflected in the benefits and administration account are immediately reduced by the amount of such transfers and payments.

Source: Report by Assistant Executive Director, Teamsters Pension Fund, dated April 1980, supplied to GAO by the Senate Permanent Subcommittee on Investigations.

Chairman NUNN. I will ask counsel LaVern Duffy to introduce our next witness.

Mr. DUFFY. We would like to call Lawrence Lippe, former Director, of SIS.

We call Lester Seidel, who was his deputy, Ed Shevlin, investigator on the SIS staff, and Lloyd Ryan, who is an attorney on that staff.

Chairman NUNN. At this time, I want to swear in our witnesses, after which we will take approximately a 5-minute break until 12 o'clock. If each of you will come up and hold up your right hand for the oath.

Do each of you swear the testimony you give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LIPPE. I do.

Mr. SEIDEL. I do.

Mr. SHEVLIN. I do.

Mr. RYAN. I do.

Chairman NUNN. Let the record reflect each answered affirmatively.

If we can have an identification of the witnesses, starting here on your right, my left, so I know who I am talking to.

Mr. SHEVLIN. Edward F. Shevlin, investigator, U.S. Department of Labor.

Mr. RYAN. I am Lloyd Ryan.

Mr. SEIDEL. My name is Lester Seidel. I am an attorney in Washington, D.C.

Mr. LIPPE. I am Larry Lippe.

Chairman NUNN. We will take a break now for approximately 5 minutes and be back here at promptly 12 o'clock to begin.

[Brief recess.]

Chairman NUNN. Our subcommittee will come to order. One of the members of the panel isn't back yet. We will wait just a moment.

Mr. Ryan, I believe you have a prepared statement for the record. We will lead off with you, if that is satisfactory with you.

TESTIMONY OF LAWRENCE LIPPE, FORMER DIRECTOR, SPECIAL INVESTIGATIONS STAFF, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY LESTER SEIDEL, FORMER DEPUTY DIRECTOR; EDWARD F. SHEVLIN, INVESTIGATOR, U.S. DEPARTMENT OF LABOR, AND LLOYD F. RYAN, JR., ATTORNEY, EMPLOYEE BENEFITS DIVISION, OFFICE OF SOLICITOR, U.S. DEPARTMENT OF LABOR

Mr. RYAN. My name is Lloyd F. Ryan, Jr. I am 41 years old and an attorney. I am employed in the Employee Benefits Division, Office of Solicitor, at the Department of Labor. I have been with the Department of Labor since June 1976. From January 1970, to my joining the Department of Labor in June 1976, I was a staff attorney with the Securities and Exchange Commission here in Washington. While with the Securities and Exchange Commission, I specialized in developing and litigating cases involving fraud and securities violations.

In June 1976, Lawrence Lippe hired me to work on the Teamsters Central States pension fund investigation. The mandate of the investigation was to conduct a thorough investigation of the Teamster Central States health and welfare and pension funds. Because of the extremely limited resources available to us in this investigation, we did not commence our investigation on the Teamsters Central States health and welfare fund until 1977.

At the time I was hired in June 1976, the investigation had been ongoing since the latter part of 1975. It should be pointed out that the investigation that had been conducted in 1975 was preliminary in nature, utilizing borrowed Department of Labor personnel. It was not until January 1976 that a permanent staff was set up to conduct this investigation. It was called the special investigations staff or SIS. This special unit was unique in the Department of Labor because it combined both investigative and litigative functions in one unit. Normally the Solicitor's Office handles all litigation of the Department.

Mr. Lawrence Lippe was Director of SIS, and was appointed as a special assistant to the Solicitor of Labor. Mr. Lippe was responsible to James Hutchinson, Administrator of Pension and Welfare Benefit Programs, and reported to him directly. With respect to litigative matters, Lippe coordinated this function with the Solicitor of Labor. My immediate boss was Les Seidel, the Special Counsel for SIS and Lippe's deputy. Administratively as attorneys, who were assigned to the Solicitor's Office, but operationally we reported to Mr. Lippe. Among our duties, we were to conduct any court litigation emanating from our investigation of the Teamsters Central States fund.

One of my first assignments was to prepare a package of proposed delegations and rules of procedure in order to establish the legal basis for conducting the fund investigation. In other words, we needed to establish the legal authority and procedures for the staff to issue sub-

penas and obtain investigative depositions. The package I prepared around July or August 1976 was approved by Lippe and forwarded to the Solicitor's Office of the Department of Labor for approval. No action was taken by that office. We did, however, receive from Mr. Hutchinson interim authority to issue subpoenas.

The new investigators and auditors hired by the SIS during 1976 received no formal, and minimal, if any, informal, orientation or training concerning the provisions of ERISA before being assigned to cases. We were substantially understaffed. This held true throughout the investigation of the Teamsters Central States pension fund.

In June 1976, the IRS revoked the tax-exempt status of the pension fund. The uncoordinated IRS revocation of the tax-exempt status of the pension fund seriously diverted the investigation and further strained the limited SIS personnel resources, with devastating effects on SIS efforts. Although I did not directly participate in the negotiations with the IRS and the fund on fund restructuring, being fully occupied in the analysis of legal issues raised by these negotiations, my duties required me to be well informed of their course and effects.

The threat of IRS revocation could have been one of the most effective tools in the investigation. But it was employed as little more than a bluff. It soon became clear to all involved in the negotiations that the IRS had taken its action without being prepared to accept the consequences of a final revocation. These might have included a Teamsters strike and other economic consequences.

Moreover, it appeared that the IRS action had been taken on the basis of an investigation superficial at best. This made it impossible to adequately define what was at stake or the requirements for requalification. Thus the true issues could not be weighed against the consequences of not requalifying the fund to arrive at a cost/benefit analysis.

One of my initial duties in June 1976 was to review certain Teamster loan files. Our priority was to concentrate on loans because of the large sums of money involved. The assets of the fund were estimated to be \$1.4 billion. Our goal was to prevent any further dissipation of fund assets.

We selected for review a group of Teamster fund loans and Teamster fund-owned properties. Notwithstanding the disruption by the IRS action in June 1976, we were making significant progress on the groups of loans which we were pursuing. Beginning in July, we had been successful in issuing some subpoenas and taking some depositions and statements, including those from some fund trustees and fund employees. One of the 16 trustees resigned in September 1976. And this was followed by the resignation of 11 of the remaining trustees in October 1976.

By the end of November 1976, we had largely concluded the preliminary review of a number of Teamster fund loan files on transactions which we had targeted for initial investigation. We were now ready to begin the next important step of our inquiry: an extensive third-party investigation.

A vigorous third-party investigation is the core of any complex financial inquiry. An accurate picture can be obtained only by piecing together and weighing the information of many witnesses.

Particular attention must be given to locating sources of accurate information untainted by the interests of a principal, who may desire to distort and conceal the true nature of the transaction. This was, and is, especially true in the case of the Central States pension fund because of its remarkably incomplete files, the apparently misleading information contained in its files, and strong indicators of possible violations of Federal and State civil and criminal law by numerous individuals and entities, including reputed members of organized crime.

We made this decision to conduct the third-party investigation after a careful analysis of the material that we had gathered to that time.

From the fund files, we had prepared chronological summaries and analyses. Then from all available information, we prepared factual summaries of the targeted transactions and analyses of areas of probable ERISA violations.

This was followed with an investigative plan which we agreed to pursue. I would like to summarize this plan—

Chairman NUNN. "We" being SIS?

Mr. RYAN. SIS, that's correct.

After the analysis of the fund files and other records was completed, the second step was to be the gathering of documents from borrowers and other third parties having knowledge of the parties and the transactions. This was to be by investigative subpoena. This included a recommendation that a subpoena be issued to the fund rather than obtaining further documents by purported voluntary compliance, which had increasing problems associated with it. The third step, to be undertaken shortly after the first third-party subpoenas were issued, was to be the taking of investigative depositions of fund trustees on the subject of these loans. The fourth step was then to be a series of investigative depositions of key third parties and fund employees.

By this point in the plan, the details of the investigation were to be dictated primarily by the results of the investigation to that point. Accordingly, the plan for further investigation was indicated only in general terms: The fifth step was to be the completion of an analysis of the documents produced by the witnesses and the testimony of the witnesses. The sixth step would be the taking of further investigative depositions of old or new witnesses as indicated by the analysis to that point. The seventh step would include a reconsideration of the entire preliminary SIS audit of the fund's financial condition and operations, in view of the investigation.

Based on this plan, 60 subpoenas were prepared and ready to be served in beginning the second step of this third party investigative plan. Around the latter part of December 1976, Mr. Lippe informed me that there was a good possibility that our third-party investigation was to be postponed indefinitely. At that time, no specific explanation was given.

After the first of the year in 1977, SIS was informed that it was to suspend the pension fund investigation. Mr. Lippe told me he had been instructed that any further investigation of the fund at that time would be highly detrimental to the negotiations that were in progress with the fund.

I was told that the negotiations were at that time limited to (a) requalification of the fund by IRS, (b) transfer of fund assets to an

outside asset manager, and (c) resignation of the four holdover trustees. I informed Mr. Lippe that I did not agree with the decision to suspend the investigation, and that I was of the opinion that it would be highly detrimental to the negotiations. My view was that the best way to negotiate was from a position of increasing strength. The best way to accomplish this would be to pursue the investigation vigorously. I asked Mr. Lippe to appeal the position of putting a "hold" on the investigation to a higher authority. He responded he had tried this and had been unsuccessful.

For all practical purposes, the investigation ceased by December 1976, and never did get back on track despite several incomplete attempts to restart investigations of individual transactions.

By the beginning of January 1977, it appeared that the DOL negotiations with the IRS and the fund over the requalification of the fund had largely degenerated into a search for a face-saving formula for the IRS. The ultimate settlement tended to confirm this view.

In late December 1976 or early 1977, prior to the suspension of the investigation, our office was asked to prepare briefing papers for the new personnel within the Department of Labor and detailed presentations for Ms. Monica Gallagher and Steve Sacher of the Solicitor's Office. Sacher, Gallagher, and other solicitor personnel were briefed on the results of our review of selected fund loan files, SIS legal theories, and the SIS investigative strategy.

I recall particularly that Monica Gallagher was scathingly critical of the SIS. She raised numerous questions concerning what facts the SIS would establish by conducting its proposed investigation. We responded that we could not give her the facts until we concluded the investigation; all that we could give her then was the reasoning behind our investigative strategy. She expressed the view that the SIS investigative plan was inadequate and that she could quickly come up with a better plan.

From my conversations with Lawrence Lippe, Les Seidel, and the Solicitor's Office with respect to these matters, it became very clear during this period that Monica Gallagher and Steve Sacher, and their staff, had assumed control of any potential litigation and would control any further investigation of the two funds.

In February 1977, I was asked to accompany Mr. Lawrence Lippe to a meeting at the office of Mr. Robert Lagather, Deputy Solicitor of Labor.

Senator PERCY. Could I ask you to explain what you mean by that, "It became very clear during this period that Monica Gallagher and Steve Sacher and their staff had assumed control of any potential litigation"—how did that become clear to you? Was there any directive put out, any directive that would have detracted from the authority of SIS?

Mr. RYAN. Until April 1977, at which time the remaining attorneys on the SIS staff, with the exception of Laura Stone, were transferred to the SIS as Assistants to the Director, Deputy Director, and so forth, there wasn't to my knowledge, any written directive, but the amount of concern that the Solicitor's personnel were permitted to take in the affairs of the SIS had substantially increased. We shared the same office suite with these attorneys, and we had a lot of inter-

action. It just became increasingly clear that we were not going to be able to do things without their permission.

Apparently, from my recollection, it occurred in the course of a large number of fairly casual conversations conducted over a period of some time, plus the meetings we were then conducting, briefing Gallagher, Sacher and some of the other people.

Senator PERCY. At that time, from an organizational standpoint, didn't SIS report directly to the Secretary of Labor and didn't the Solicitor's Office report directly to the Secretary of Labor? What authority did they have to override you?

Mr. RYAN. I don't believe I can accurately address what the formal arrangement was at that point in time.

Senator PERCY. Maybe, Mr. Lippe, when we come to you, we can put that question to you.

Mr. LIPPE. I shall, Mr. Percy.

Mr. RYAN. In February 1977, I was asked to accompany Mr. Lawrence Lippe to a meeting at the office of Mr. Robert Lagather, Deputy Solicitor of Labor. Present at the meeting were Lagather, Monica Gallagher, Lippe, and myself. The subject of the meeting was to determine what steps should be taken in the Teamsters investigation in order to respond to strong expressions of congressional interest in the investigation.

During this period, I was aware that the Department of Labor was receiving substantial congressional pressure from various quarters to be more aggressive in the Teamster investigation. This intent was expressed by correspondence from Members of Congress, hearings and proposed hearings, and contacts from various staff members from Capitol Hill.

During this meeting in Mr. Lagather's office, Monica Gallagher did most of the talking. She recommended that, in response to congressional interest, we should put on a quick, high visibility show to get Congress off our back. She advocated that the SIS staff be directed to conduct a large number of brief interviews or depositions to create the appearance of activity in the investigation.

Chairman NUNN. Is this close to paraphrasing her words, are these her words, or your impression of her words?

Mr. RYAN. I am not quoting her but I believe this to be an accurate summary of what was explicitly stated.

Chairman NUNN. Thank you.

Senator PERCY. Did your other colleagues concur with your impression? Did you talk it over among yourselves and you all came to that same conclusion?

Mr. RYAN. Mr. Lippe was the only SIS member who was there. We talked about it at the time. I don't believe we have talked about it, however, for a period of several years after that.

Chairman NUNN. I think we should hear one witness at a time, Mr. Lippe, you might make a mental note of that one. We certainly would want your comments on that impression when we get to you.

Mr. LIPPE. I have noted it, Mr. Chairman.

Mr. RYAN. I understood the full substance of her remarks to advocate that the Department of Labor put on a false show of activity for the sole purpose of deceiving Congress concerning the progress of

the Central States pension fund investigation. This clear impression from her remarks caused me to conclude that the dictates of legal ethics required me to protest her proposal. I thereupon interrupted Monica Gallagher's presentation and stated that I believed it was unethical for a lawyer to try to conduct a "sham show" to deceive Congress, and that as a lawyer I could have no part of such a project.

When I voiced these comments, Monica Gallagher was noticeably angry but I do not recall any direct response to the objections I had raised. She ignored me the rest of the meeting. The meeting broke up a few minutes after this exchange.

While walking back to our office, I told Mr. Lippe that I felt this incident was the final straw in my relationship with the Office of the Solicitor. I asked him to make the necessary efforts to have me transferred to the program side of the SIS and out of the Office of the Solicitor.

It was not my intent to be removed from the Teamsters investigation, but to be outside the control of the Solicitor's Office. Shortly thereafter, I was informed by Mr. Lippe that such a transfer would be possible because the Department of Labor had determined that the SIS would not be permitted to conduct its own litigation and that any litigation would be conducted by Monica Gallagher's staff in the Solicitor's Office.

Beginning at this time, the SIS devoted practically all of its resources during 1977 to copying Teamster fund files in support of a civil suit in the event negotiations failed or the April 1977 requalification agreement with the fund was not implemented. The precise terms of the April 1977 settlement with the fund are unknown to me. In response to my inquiries, I was informed by officials of the Solicitor's Office that the agreement was embodied in the April press release issued by the Department. That is supposed to be the only written evidence of the agreement, although statements made by fund attorneys during the latter part of 1977 alleged extensive terms of the agreement beyond those reflected there. These alleged terms included an agreement not to investigate all or certain aspects of the fund's operations, not to sue the trustees who resigned from the fund, and not to investigate the activities of the new fund trustees. It should be noted that suit was in fact filed against certain former fund trustees and former fund employees in February 1978.

Chairman NUNN. This is an alleged agreement you have never seen or have hard evidence of. This was a rumor?

Mr. RYAN. This was a rumor. I tried to follow it up and was unable to find anything at all, except what I note here.

Chairman NUNN. This would probably be the same alleged agreement that GAO previously referred to as the phantom agreement where they said they could not find hard evidence.

Mr. RYAN. It sounds like that. Yes, I am sure it is.

Chairman NUNN. Are you saying there was in your office and the people you dealt with a strong skepticism or strong suspicion that such an unwritten agreement did exist?

Mr. RYAN. I would say there was a lot of wondering going on. I am not sure we had enough information to form an opinion that there was an agreement. But we heard these rumors pretty consistently

during this period of time, and we wondered why we were hearing them.

Chairman NUNN. Thank you.

Mr. RYAN. It was my recommendation based upon the legal analyses which I prepared during the early negotiations that any negotiated settlement with the fund be embodied in a consent decree in U.S. district court. As pointed out in my memoranda, such an arrangement would provide a timely and effective means of enforcing any agreement reached. The court would have at its disposal a wide arsenal of powers to grant ancillary relief and to supervise the fund.

It was also pointed out in SIS staff memoranda prepared in support of this analysis that while removal of trustees is a usual remedy where there have been breaches of fiduciary duty, this remedy would not be sufficient where the fund was concerned. As long as the manner of the selection of the fund trustees remained the same, control of the fund would remain in the hands of the same officials of the Teamsters as before. Additional active supervision, possibly including court trusteeship, would be necessary if this were to be avoided.

It was felt that the Office of the Solicitor took a much narrower view both of the types of suit which might be brought by the Secretary under ERISA, and of the remedies obtainable in such suits, than the SIS legal staff. The SIS expected its investigation to disclose not only whether fund trustees and employees had breached their fiduciary duties under ERISA, but whether certain borrowers from the fund, which included entities controlled by Mahnik, Glick, Shenker, and others, had improperly diverted moneys from the fund. The SIS planned to bring suits to recover moneys and damages from borrowers engaged in improper transactions as well as from culpable fund employees or trustees. The Solicitor's office has limited its single suit to former pension fund trustees and employees.

Until Lippe resigned in October 1977, I continued to prepare plans to get the investigation back on track. I prepared written memoranda for Lippe—which he forwarded on—setting out what should be done, and staff needs.

During most of 1977, I was informed that Mr. Lippe had been unsuccessful in his attempts to obtain permission to resume all or a selected portion of the Teamster investigation. In late 1977, we began third party investigation of two or three loan groupings, but none of these initial efforts was completed either. These investigations were stopped in midstream at the time of Lippe's resignation and were not resumed.

From November 1977 to February 1978, the SIS staff did no investigative work on the *Teamster Pension Fund* case. They devoted their time exclusively to the preparation of reports to the Office of the Solicitor, which were apparently used in the preparation of civil suit papers which were filed in February 1978—the civil suit against the pension fund. These reports simply restated information previously provided to the Office of the Solicitor as early as a year before.

Also, during this period, the Department of Labor was searching for replacements for Messrs. Lippe and Seidel. With the filing of the civil suit against the fund in February 1978, all SIS resources were fully committed to supporting the Office of the Solicitor in the pend-

litigation. A similar commitment was made in support of the litigation of the Office of the Solicitor in the civil suit against the Teamsters Central States Health and Welfare Fund.

The planned investigation of various areas of possible ERISA violation outside the areas of asset management and loan administration were not conducted because of the initial understaffing of the SIS and the later suspension of the fund investigation.

One transaction not pursued involved the 1976 deposit of Teamster fund money in the National Bank of Georgia, placed there by a bank acting as a fund investment advisor. The SIS learned of this matter in mid-1977. Allegations had been made—by persons unknown to me—that the return on this investment was unusually low compared with other deposits made for the fund by the same investment advisor.

Also, it was alleged that this deposit did not represent the independent judgment of the investment advisor, but had been directed by the fund trustees. It was further alleged that the deposit with the National Bank of Georgia was, or may have been, intended as either a compensating balance to collateralize a loan which the fund would not make directly or to help the financial condition of the bank or a combination of these.

When I first learned of these allegations, I was told that Mr. Lippe had conducted preliminary discussions with Wynn Thompson of Assistant Secretary Burkhardt's office concerning the SIS desire to investigate the matter.

Mr. Thompson was said to be unreceptive. In view of the potential importance of these allegations, Mr. Lippe and Mr. Seidel determined that it was appropriate to bring the matter formally to the attention of Assistant Secretary Burkhardt. I was to, and did, prepare a memorandum on the matter to Assistant Secretary Francis X. Burkhardt for the signature of Mr. Lippe, as well as other documents in aid of our attempts to investigate the matter.

I was informed by Mr. Lippe that he discussed the matter with Mr. Burkhardt and that Burkhardt declined to authorize the investigation. Had the SIS been authorized to pursue the matter by subpoena, or been successful in obtaining the voluntary cooperation of the fund, I would have supervised the investigation.

The SIS was unsuccessful in obtaining either the support of the Assistant Secretary and the Office of the Solicitor, or the voluntary cooperation of the fund, in an investigation of this matter. This was notwithstanding the fact that if the trustees had caused funds to be deposited in the National Bank of Georgia at an unnecessarily low rate of return for purposes unrelated to bona fide investment, such as obtaining political influence, a very strong case of violation of ERISA fiduciary standards might have been brought against them.

The SIS received no information from the fund, did not receive subpoena authority, and conducted no investigation of the matter. To my knowledge, the matter has not been pursued at all by the Department.

The SIS was not permitted to investigate allegations of misconduct and ERISA violations on the part of the present fund trustees apart from a 1980 inquiry regarding a possible willful technical violation of ERISA in connection with a purchase and sale of a fund airplane. The Special Investigations Staff continued to support the

activities of the Office of the Solicitor until April 1980, when the bulk of SIS staff was absorbed by the Office of the Solicitor as a litigative support unit.

In May 1980, I was transferred to the Division of Employee Benefits, Office of the Solicitor, where I am currently employed.

Chairman NUNN. Thank you very much, Mr. Ryan.

We appreciate your cooperation, your complete cooperation with the subcommittee. I have just a few questions. I think it might be more orderly if we ask these as we go along and then go to the other witnesses.

Could this investigation have been conducted to accomplish the goal of protecting fund assets, at the same time you also address the potential criminal aspects of the case. In other words, can you pursue both civil and criminal effectively at the same time?

Mr. RYAN. In my opinion, it was necessary to address the potential criminal aspects of this case in order to fully develop the suits to recover moneys on behalf of the fund and to devise adequate procedures and techniques for the future protection of fund assets. You have to understand the risks to the assets in order to protect them.

Chairman NUNN. What is the impact of the failure of the Department of Labor to pursue the third-party investigations in the case which you referred to?

Mr. RYAN. The third-party investigation was the core of our investigation. The failure to pursue it gutted our efforts. This had the effect of insulating borrowers from an examination of both the civil and criminal implications of their conduct. It removed our ability to detect and eliminate organized crime influence on the operations of the fund and on the use of fund assets. It makes it unlikely that there will be a significant recovery of the money taken from the pension fund.

Chairman NUNN. On a scale of 1 to 10, how seriously would you rate this disruption of third-party investigations in the failure to pursue that?

Mr. RYAN. Which side is 10?

Chairman NUNN. Ten is one the devastating side, one is on the mild side.

Mr. RYAN. I would put it at about 9½.

Chairman NUNN. You deem this to be very, very important?

Mr. RYAN. That is correct.

Chairman NUNN. Of course you protested at the time?

Mr. RYAN. I did, indeed.

Chairman NUNN. What were the principal effects of the failure to conduct third-party investigations before bringing civil suit in February 1978?

Mr. RYAN. Most importantly, we lost the broad powers of an administrative investigation with respect to those transactions. An administrative investigation has the broad scope of the grand jury.

Discovery in a lawsuit is limited to the allegations of the complaint. This has several effects.

First, unless the parallel administrative investigation is conducted for purposes beyond the suit, the effect is to shield the activities of the fund borrowers from any extensive examination.

Second, it makes it more difficult to prove imprudence on the part of the former trustees and fund employees. For example, to prove the damage from a failure to make prudent inquiries before granting a loan, it is generally necessary to show the facts that such an inquiry would have disclosed. This is best studied in the broad scope of administrative investigation.

Chairman NUNN. What criteria were used for the selection of loans for investigation by SIS?

Mr. RYAN. We selected, first of all, a number of loans based on the number the staff could handle at one time. The loans were selected from loans which had been identified by the staff as having investigative potential from a partial audit of fund records and other available information.

The characteristics which indicated investigative potential were numerous. Some examples were: Unusual concentrations of loans with a small number of borrowers; borrowers with reputed organized crime connections; loans or investments involving unusually high risks; unusual accounting practices; collateral of doubtful value; delinquencies and defaults; and similar characteristics.

Chairman NUNN. I understand from previous testimony that you proceeded by voluntary agreement rather than by subpoena. What effect did this pursuit of evidence by voluntary agreement rather than subpoena have on the investigation?

Mr. RYAN. We encountered substantial delays in obtaining required records and in many cases didn't obtain the records we asked for. There were substantial doubts in many instances that the files were complete. We had some evidence that certain documents we saw once were missing later.

The requirement that we work with the fund files on the fund's premises meant that we could not maintain proper working conditions and proper security. We were also inhibited because of this informal arrangement from taking sworn testimony from fund personnel concerning particular records, and from insisting on the rights of the Department to conduct a full investigation.

Chairman NUNN. Did you ask, during the course of your work on this investigation, for subpoenas to be issued?

Mr. RYAN. As early as August 1976.

Chairman NUNN. What was the response to that request?

Mr. RYAN. I was told each time that the Department, as a matter of policy, desired to proceed in a voluntary manner.

Chairman NUNN. Who told you that? Who did the request go to?

Mr. RYAN. Mr. Lippe, and the answer came from him also.

Chairman NUNN. That it was a matter of policy not to issue subpoenas?

Mr. RYAN. That is correct.

Chairman NUNN. Did he tell you where the policy originated?

Mr. RYAN. I don't recall where it originated or where he said it originated. I do recall that he was referring to someone higher up.

Chairman NUNN. I will ask Mr. Lippe that question. One of the results of not issuing subpoenas is you didn't get all the records you needed?

Mr. RYAN. That is correct.

Chairman NUNN. What was the result of not getting all the records you needed?

Mr. RYAN. It effectively precluded us from proceeding with a number of transactions, and made it impossible to obtain a full picture of the relationship between various borrowers and transactions and the fund as these were reflected in the fund records. There were two particular transactions which were significant in that regard that we didn't get.

Chairman NUNN. Two significant transactions?

Mr. RYAN. I can recall two significant transactions that involved voluminous records that were not copied.

Chairman NUNN. Do you care to mention those two?

Mr. RYAN. The Rancho Penasquitos file and the file involving La Costa.

Chairman NUNN. You did try to get information on that and were not successful?

Mr. RYAN. The staff members in Washington requested that these files be copied and they were not copied prior to the time the fund cut us off from further access to the records.

Chairman NUNN. The what?

Mr. RYAN. The fund cut us off from further access to the records.

Chairman NUNN. These were never subpoenaed?

Mr. RYAN. These were never subpoenaed.

Chairman NUNN. How many of the loan transactions that you referred to as being targeted by your group would you categorize as being fully investigated by the Department of Labor?

Mr. RYAN. None of them.

Chairman NUNN. Zero?

Mr. RYAN. Zero.

Chairman NUNN. Were you interviewed by Mr. Kotch and Mr. Crino concerning the Central States investigation?

Mr. RYAN. Yes, sir.

Chairman NUNN. Who were those two gentlemen?

Mr. RYAN. Let me tell you what I was told.

Chairman NUNN. Give us the circumstances of that interview.

Mr. RYAN. During the first part of 1979, Mr. Jack Ballard, who was then Deputy Administrator of pension and welfare benefit programs, held a special staff meeting with the special investigations staff. I attended that meeting.

Mr. Ballard announced that the Office of the Inspector General of the Department of Labor would soon begin an inquiry into the conduct of the Central States Pension Fund investigation, which was then the subject of the General Accounting Office investigation.

John Kotch, of the LMSA Pittsburgh office, and Richard Crino, of the LMSA Cleveland office, were being specially detailed to the Inspector General for this purpose. We were told to cooperate fully.

Several days after the announcement by Mr. Ballard, I was called to the Office of Field Operations, LMSA. I entered a room where two gentlemen were present. They introduced themselves as John Kotch and Richard Crino. They stated that their purpose was to make an internal inquiry of the Central States Pension Fund investigation, which was the subject of a GAO investigation.

I asked Kotch and Crino under whose auspices the inquiry was being conducted. They answered: "LMSA."

I told them that it had been announced that the investigation was to be conducted by the Inspector General. I referred to a copy of the Inspector General Act which I had brought with me, and noted that this switch of signals was disturbing because the IG Act provided a number of safeguards and for reports to Congress.

They responded that the announcement had been made in error and that this was a management inquiry. I said that I would cooperate fully.

In response to their questions, I gave Kotch and Crino a full account of my participation in the investigation, my frustrations, my concerns that there may be an obstruction of justice, and my suggestions on what steps might be taken to successfully conclude discovery in the suit against the pension fund.

Chairman NUNN. When you said there might be obstruction of justice, what were you alluding to there?

Mr. RYAN. I expressed to Mr. Kotch and Mr. Crino that I was unable to produce any kind of proof, but I had a certain amount of investigative experience and a certain instinct in these matters, and I could not understand what was going on, without substantial suspicion of an obstruction of justice. I recommended to them that an internal investigation be conducted to determine whether my suspicions had any basis.

Chairman NUNN. Did you give them tangible hard evidence of that, or did you make a general statement? Did you relate to them circumstances that would lead you to come to that suspicion?

Mr. RYAN. I related to them circumstances that led me to that conclusion.

Chairman NUNN. What was their reaction?

Mr. RYAN. They were busy writing notes.

Chairman NUNN. Did you ever see any investigation take place on the basis of that rather serious suspicion that you had related to them of possible obstruction of justice?

Mr. RYAN. Nothing has come to my attention which would indicate any followup of anything that happened at that meeting.

Chairman NUNN. Mr. Ryan, as an attorney in the Solicitor's Office, Department of Labor, deeply involved in the pension fund investigation, what is your personal evaluation of the investigation?

Mr. RYAN. I joined the Department of Labor for the purpose of assisting in the development of what I expected to be one of the most significant cases to be brought by the United States in many years. Now, a little bit more than 4 years later, I come before you to report a failure. That is a great personal and professional disappointment to me.

Chairman NUNN. Do you feel the investigation has been a failure?

Mr. RYAN. I feel it has failed to meet the objectives that were set forth.

Chairman NUNN. In what respects has it failed in your view?

Mr. RYAN. I think there has been a failure to undertake much more than the preliminary preparation for an investigation. Also, we have not conducted, in my professional opinion, an investigation suitable

to vindicate the rights of the funds and fund beneficiaries under ERISA and to recover moneys that may be due them.

Chairman NUNN. Do you believe that the problems with this investigation that you have enumerated here in your testimony and in answer to questions are a result of incompetence, or do you believe that they are a result of a plan to defeat the investigation or impede the investigation?

Mr. RYAN. As I told Mr. Kotch and Mr. Crino, after relating to them what had occurred, I carefully considered this matter over a number of years, and I honestly cannot account for what has happened purely in terms of incompetence.

Chairman NUNN. Do you think it goes beyond incompetence?

Mr. RYAN. I can't imagine that it does not, but that is just my opinion.

Chairman NUNN. You have a lot of suspicions but not hard evidence; is that accurate?

Mr. RYAN. That is correct. I think the only way you can bring these suspicions to any conclusion is to conduct an investigation.

Chairman NUNN. That has not been done to the best of your knowledge?

Mr. RYAN. Not to my knowledge.

Chairman NUNN. Senator Percy?

Senator PERCY. I would like to pursue one area where you had some concerns and suspicions you alluded on page 11 of your affidavit to the National Bank of Georgia.

As I understand it, on February 23, 1975, the full board of trustees of the pension fund approved \$200 million being taken and invested in six banks for the purchase of securities and the six banks: one in New York, one in Chicago, one in Cleveland, one in San Francisco, one in Pittsburgh, and then one in Atlanta, Ga., the National Bank of Georgia.

You have said in your testimony that allegations have been made that the return on this investment—that is, the investment, account: \$17,500,000 given to the National Bank of Georgia—was unusually low, compared to other deposits made to the fund by the five other banks.

How did you know that the return on that investment was unusually low?

Mr. RYAN. This was information that was provided to me by staff members of the SIS. My function at this particular time was primarily to organize the materials that had come to the staff into a formal request to the assistant secretary for authority. I did not independently obtain any of that information.

Senator PERCY. You say it was alleged that this deposit did not represent the independent judgment of the investment adviser but had been directed by the fund trustees. How did you know that it had been directed by the trustees and was not a judgment of the investment adviser?

Mr. RYAN. Once again, that was based on information provided me by other members of the staff.

Senator PERCY. You also say that it was alleged that the fund deposit with the National Bank of Georgia was or may have been intended

as either a compensating balance to collateralize a loan which the fund would not make directly or to help the financial condition of the bank or a combination of these.

Do you have any idea what loan might have been involved or why there might have been a motivation by the trustees of the pension fund to help the financial condition of this particular bank?

Mr. RYAN. It is my recollection that at this time there was discussion of possibility of a loan, I believe, to the Carter campaign. But these were just—

Senator PERCY. In other words, this would be a collateralization of a political loan?

Mr. RYAN. That was the discussion.

Senator PERCY. That was the discussion?

Mr. RYAN. That is correct.

Senator PERCY. Did you personally, based on what you had heard, believe that that was a plausible explanation? It might then offset the rather low return on investment?

Mr. RYAN. I formed no belief concerning the truth of the allegations. What we were doing was requesting authority to investigate these allegations. The information that I received was that these allegations had come from sources that were sufficiently credible to warrant our investigating.

Chairman NUNN. In other words, you made no judgment on these matters and you didn't investigate them and you don't know whether they are true or false, but you felt there was substantial enough evidence to warrant a thorough and complete investigation?

Mr. RYAN. That is correct.

Senator PERCY. Did you prepare a memorandum dated August 23, 1977, for Assistant Secretary Burkhardt from Lawrence Lippe? Did you have anything to do with the preparation of that memorandum?

Mr. RYAN. I don't recall at this time the date of the memorandum which I prepared. I can say that I prepared a memorandum. I have just had my recollection refreshed. The information probably came from the IRS.

Senator PERCY. So that the memorandum we have from Lawrence Lippe is a memorandum that you helped prepare, and it states that based on the allegations and the available evidence an investigation was warranted and that your office intended to proceed with that investigation?

Mr. RYAN. That is correct.

Senator PERCY. I understand that in preliminary discussions, according to your testimony this morning, Wynn Thompson of Assistant Secretary Burkhardt's office seemed unreceptive.

How did you learn that he was unreceptive to this investigation?

Mr. RYAN. It is my recollection that Mr. Lippe had returned from a meeting in which he had just met with Wynn Thompson and recounted the meeting to me, and I believe to Mr. Seidel.

Senator PERCY. Can you expand a little bit on why Mr. Burkhardt, in light of the very clear memorandum, seemed to be unreceptive and why permission was denied to proceed with this particular investigation?

Chairman NUNN. Mr. Ryan, you answer any question that you want to answer here. I just would say that we do have other questions and

I think the other witnesses here at the table may have more direct knowledge on some of these subjects. But I leave that completely up to your judgment.

Mr. RYAN. I was going to suggest that I think Mr. Lippe would be a better witness for this because I don't recall.

Senator PERCY. Were you or your colleagues aware of the fact that the trustees knew of the alleged poor performance of the National Bank of Georgia?

Mr. RYAN. I do not presently recall.

Senator PERCY. If the allegations prove to be true, would there have been a very strong case of fiduciary violation?

Mr. RYAN. It is my memory now that if all of the allegations, or substantially all of the allegations, which have been made are proven to be true, there would have been a strong case. But I do not have a present memory of each of the elements of that case.

Senator PERCY. Finally, on page 12 of your affidavit, you state:

The SIS was not permitted to investigate allegations of misconduct and ERISA violations on the part of the present fund trustees apart from the 1980 inquiry regarding a possible willful technical violation of ERISA in connection with a purchase and sale of a fund airplane.

Could you expand on why the fund owned an airplane and what usage was made of that plane to your knowledge?

Mr. RYAN. The fund airplane—I may have this a little backwards. As I recall, a Teamster organization, I think it was the Central Council of Teamsters had an airplane that they sold through a broker to the Central States pension fund and it was the broker who was allegedly interjected—Central Conference of Teamsters.

The airplane broker was allegedly introduced as a pro forma separation of a transaction which should have required approval as a party-in-interest transaction.

The use of the airplane that I was told had occurred, or was supposed to occur, was to permit various fund trustees and employees to visit various pieces of property that they were owning or managing, to inspect those properties. But I don't have access, and I don't recall that I had any access, to the flight logs which were obtained by other members of the staff.

Senator PERCY. Perhaps someone else then can fill us in on that. Thank you very much.

Chairman NUNN. Thank you, Mr. Ryan. We appreciate your cooperation. If you would remain there, we would appreciate it. We may have other questions for you, although I think that covers most of them.

Our next witness is Mr. Shevlin.

Mr. Shevlin, I understand that you also have a prepared statement.

Mr. SHEVLIN. That is correct, Senator Nunn.

I am Edward F. Shevlin. I am employed by the Department of Labor as an investigator in the Branch of Investigations and Audits, Labor Management Standards Enforcement, Labor Management Services Administration. From September 12, 1976, to April 20, 1980, I was an investigator with the Special Investigations Staff—SIS—with the Department of Labor.

My previous Government service after graduating from Providence College in 1954 is as follows:

From 1954 to 1956—U.S. Army Counterintelligence Corps; 1956 to 1972—Naval Investigative Service; 1972 to 1974—Defense Investigative Service.

During that time—1972 to 1974—I received a master of science degree from the George Washington University in investigative techniques.

From 1974 to 1975—Small Business Administration; 1975 to 1976—Defense Supply Agency.

On September 12, 1976, I was hired as an investigator by Bernard Friel, the Chief Investigator of the SIS staff of the Department of Labor. This special unit was formed to conduct the investigation of the Teamsters Central States, Southeast and Southwest Area Pension Fund.

My first assignment was as lead investigator on the Alvin I. Malnik loans that had been targeted for investigation by the SIS staff. Prior to beginning my duties, I was told this was a highly complex investigation of the pension fund that involved potential civil and criminal violations involving complex financial transactions.

I was told the statutory authority for our investigation was ERISA but was given no training as to the meaning of its highly technical provisions. I was told my duties would be coordinated with a staff attorney, Lloyd Ryan. This arrangement of working with the attorney who would handle any future civil litigation that might result from my investigative efforts was unique to the SIS staff. In the usual case within the Department of Labor, the Office of the Solicitor would handle litigation matters.

Substantial progress was made during 1976 by the SIS staff on a number of the fund loans that had been targeted for investigation, including the Malnik loans that I was working on. During November and December, the SIS staff had proceeded to the point of expanding our review to a full-fledged third party investigation.

The tedious groundwork had been laid. We had prepared initially approximately 60 subpoenas to kick off our third party investigations. The first indication to me that we were not going to be successful in this effort was in late 1976 when Chief Investigator Bernard Friel confided in me his intention to resign. He spoke very frankly, and was very much concerned about the future of the investigation.

He predicted disastrous results. He said they will never let you go all the way in this investigation. He then recommended that I make every attempt to find another job and apologized for hiring me and the other investigators on the staff. Friel resigned in early January 1977.

In late January 1977, the SIS staff was told they would not proceed with the planned third party investigation. We were to concentrate our efforts on supporting a civil suit to remove the four remaining trustees. The remaining trustees resigned in April 1977.

During this period, prior to these resignations, many of the SIS staff, professional and clerical, were utilized to copy loan files in the fund offices in Chicago. Early in 1977, it became clear to me the third party investigation we had planned was now dead in the water and never, in any substantial way, would get back on track.

Early in 1977, rather than let the investigation take its normal course with the third party investigation we had planned, the Solicitor's Office

advocated going directly to principals for depositions. Monica Gallagher of the Solicitor's Office wanted to begin a 60-90-day high visibility investigation. She had selected 81 persons that she wanted us to take depositions from without the SIS staff having done any preliminary work on the persons named by her.

Prior to my going to a May 4, 1977, meeting where the Gallagher investigative plan was to be discussed, I had a discussion with Larry Lippe on the matter. I cautioned Lippe that for the SIS staff to depose the individuals selected by Gallagher without any preliminary work would totally destroy any future opportunity for the Labor Department or the Department of Justice to conduct a meaningful investigation as to them. I actually handed to him my credentials and commented, "If you agree to what she wants to do, you had better take these," or words to that effect. I told him that I had over 20 years civil service status; and, if he wanted someone to fall on the sword for him, I would be glad to argue our investigative position.

He responded in a reassuring way that that would not be necessary. We then went to the May 4 meeting. I recall the meeting well. Present at the meeting were Monica Gallagher and Steve Sacher of the Solicitor's Office. Larry Lippe, Les Seidel, Salvatore Barbatano and I represented the SIS staff.

The discussion quickly centered on the Gallagher approach vis-a-vis the SIS approach. She was told the SIS did not have sufficient information and substantive data on many of the people she selected. During the meeting, Gallagher stated on several occasions that she did not understand what SIS was doing. She commented that many of the names that SIS had targeted for depositions were the same old people that we had already been working on.

Monica Gallagher claimed that she had come up with a list of 81 names in a little over 3 hours that could be deposed by reviewing minutes of trustees' meetings of the Teamsters Central States fund. One of the names on the Gallagher list was former Attorney General Richard Kleindienst. She said that she would ask him how much money he offered—as a bribe—in connection with a certain loan. Seidel pointed out that the loan she had reference to had never been disbursed. She commented she would ask him if he thought the loan would have been approved if he, Kleindienst, offered more—bribe—money. I was incredulous. I could hardly believe my ears. I never heard anything quite so professionally irresponsible concerning an approach to a witness.

Chairman NUNN. Is Monica Gallagher still in the Labor Department?

Mr. SHEVLIN. Yes, sir.

Chairman NUNN. Is she still in the Solicitor's Office?

Mr. SHEVLIN. My understanding is she is head of the Division: Plan Benefits Security Division.

Chairman NUNN. Is she the person referred to earlier by the General Accounting Office as still being in charge of this investigation?

Mr. SHEVLIN. That is correct, Senator.

Chairman NUNN. Thank you.

Mr. SHEVLIN. The balance of the summer of 1977 was spent by the SIS staff gathering, reviewing, and summarizing as much information as we could on all of the 81 persons on the Gallagher list and the loan files in which they were involved.

Our previous planned objectives were set aside and we were unable to keep our original target loan files up to date because of the priority given to copying loan files pertaining to Monica Gallagher's list.

We prepared approximately 100 individual memorandums for Robert Lagather and Monica Gallagher. Monica was not satisfied with our results because they were not sufficiently detailed. This was so because a significant number of these memorandums represented transactions for which we did not have copies of loan files.

Throughout this exercise, it was my feeling that it would be more effective to conduct third party investigations on these loans which we had originally targeted because they were all documented. What we had been asked to do was investigate an arbitrary list of individuals in which no preliminary groundwork had been done.

During July and August 1977, it was evident that control of the investigation and plans for litigation were taken out of Lippe's hands. All the SIS attorneys, except Lloyd Ryan, resigned, and Lippe made arrangements to leave. Lippe resigned in October 1977.

During August 1977, one of Monica Gallagher's associates, Judy Burghart, made it known to SIS Investigator Hugh Schmittle that Gallagher wanted her own investigators. Through these intermediaries, it appeared that Monica Gallagher was sounding me out in this regard. Schmittle knew the idea was anathema to me, but we played along with it to see what the real purpose was. After much deliberation and with reluctance, I agreed to meet with Monica Gallagher for lunch.

Judy Burghart was present but left before any substantial discussion took place. At lunch, I had hoped to perhaps smooth out the relationship between her office and SIS. Monica Gallagher claimed she came up with the list of 81 people to depose by reading the minutes of the fund and she saw no problem in the likelihood that most of the persons deposed might take the fifth amendment privilege or even lie or give false leads, while the SIS would have insufficient information to effectively question them.

I raised the point that we might be, in effect, precluding a second interview or deposition and possibly compromise the interests of the Department of Justice by prematurely deposing the principal without seeking other evidence. Her reply was—I will omit the spelling of the vulgarity—"F— Justice." It was clear that we were in disagreement about how to pursue an investigation and that I could never work directly for her under her concept of how to utilize investigators. We parted amicably, however.

[At this point, Senator Percy withdrew from the hearing room.]

Mr. SHEVLIN. During the latter months of 1977, with the resignations of Lippe and Seidel, the Teamsters Central States Pension Fund investigation with respect to the SIS staff involved little more than paperwork.

Mr. Ryan and I spent several weeks in Florida during September and November 1977 doing a limited third-party investigation of the Malnik loans. After Norman Perkins became acting director of the SIS staff succeeding Lippe, Ryan and I were reassigned to other duties before we completed our work on Malnik.

From November 1977 through January 1978, the SIS staff was involved in almost a duplication of the July-August 1977 project of pre-

paring individual memoranda on selected loans in support of the civil suit that was filed in February 1978.

The Labor Department was now restricted to the rules of civil procedure in developing evidence. The powerful investigative tool, the investigative deposition, which was incorporated into section 504 of ERISA, had given way to the narrow and restrictive civil discovery process. Ironically, the civil complaint was based largely on loans which had been originally targeted in 1976 on which the third-party investigations were either never started or completed.

Chairman NUNN. Would you agree with Mr. Ryan's testimony that no loans were fully investigated?

Mr. SHEVLIN. Senator Nunn, I would concur completely and subscribe to Mr. Ryan's prepared statement and his answers to this committee. I found that a very evident continuing concern.

Chairman NUNN. Thank you.

Mr. SHEVLIN. We were now under the strictures of the Federal rules of civil procedure in completing our investigative leads. Naturally, this precluded effective coordination with the Department of Justice on serious potential criminal violations in these cases that we had already detected.

It is also significant through 1978 and 1979 we were further handicapped by the Solicitor's Office of the Department of Labor in providing copies of any SIS report to the Department of Justice because the Solicitor's Office told SIS we would have problems with discovery in our civil suit if we gave the information to Justice.

Before I close, I have another matter about this case that I would like to bring to your attention. In 1978, I learned that Senator Nunn and his Senate Permanent Subcommittee on Investigations had requested that the General Accounting Office conduct an investigation of the Department of Labor's inquiry of the Teamsters Central States Pension Fund.

In January 1979, I also became aware that the Department of Labor became concerned about what the GAO was discovering in a review being conducted by them for the subcommittee. On January 29, 1979, I had a chance meeting with Rocco DeMarco, the Acting Inspector General of the Department of Labor. At that time he was still acting in the capacity of Inspector General. He told me he had been ordered by the Under Secretary of Labor Robert J. Brown to commence a complete critical review of the Central States Pension Fund investigation by the Department of Labor.

Chairman NUNN. You have some handwritten notes that resulted from that meeting, do you not?

Mr. SHEVLIN. Yes; I do. I would respectfully request that they be entered into the record but that they be sealed, inasmuch as they contain additional information that is not completely germane to the matter currently before this committee.

Chairman NUNN. Without objection, staff concurs in that request after having examined the material. They will be part of the record and sealed and appropriately labeled as "Exhibit No. 4."

[The document referred to was marked "Exhibit No. 4" for reference and is retained in the confidential files of the subcommittee.]

Mr. SHEVLIN. I was told time was short, and he would like to talk to me right away for some "background." This meeting was off the

record. From his questions, I got the impression that he did not fully understand or appreciate the situation we were in as to: mission, jurisdiction, manpower and shifting policy directions affecting the SIS staff.

He seemed to be thrusting at why the investigation was not moving. I told him we were finally getting people out to contact voluntary sources in support of the pending civil suit. I made it very clear to him I was disappointed that more investigation had not been done in the field before the civil litigation was filed in February 1978. I also told him we had never been organized as a normal investigative organization as far as structure, reporting procedures and files were concerned. I told DeMarco he would have to look back beyond the present management to see the root causes of some of our problems, but that the current management and direction of the entire operation was the worst I had ever seen particularly the involvement of the Solicitor's Office in directing SIS operations.

My impressions from the meeting were that the Department of Labor was concerned about the GAO inquiry, and that the critical view or inquiry by the Office of the Inspector General of the Department of Labor was either to learn what problems existed and correct them in advance—or to bury either the people responsible for the problems and/or the people who may have surfaced the problems.

Chairman NUNN. What do you mean by "bury?"

Mr. SHEVLIN. My feeling from the inquiry was that depending on what the critical review, in-House review, ordered by Mr. Brown developed, there might be a scapegoat among the current managers or supervisors of the staff, or they might be inclined to try to determine if any of the staff or other people had surfaced some of these problems through appropriate authorities and to take retribution against them.

Following the DeMarco meeting, I received different indications as to who would do the actual investigation. The assignment was given to John Kotch who was with the Pittsburgh office of the Labor Management Services Administration and Richard Crino of the LMSA office in Cleveland.

I was one of the last to be interviewed on this matter. I talked to both Kotch and Crino on March 15, 1979. The interview lasted for about 1½ days. I made a complete disclosure to them. I was very candid. At the beginning of the interview, I asked them the purpose and nature of the investigation. They said it was a "management review" of the Labor Department's investigation of the Teamsters Central States Pension Fund investigation. It was made at the specific direction of Under Secretary of Labor Brown, and the results would be forwarded to Brown through DeMarco.

Near the end of the second day, Kotch and Crino started pressing me as to my opinion if I thought the investigation had been impeded and if I thought there was a possible obstruction of justice. I said that there was, in my opinion, but I could not prove it. I stated I had no direct evidence, but that I felt I could offer corroborative testimony to show a pattern of activity that could only be deliberate. I stated that if I had any direct evidence, I would immediately have gone to the Inspector General of the Department of Labor or the FBI. They inquired as to whether I had discussed this matter with anyone out-

side the Department of Labor. They wanted to know what questions were asked by the GAO, what I told GAO, and what, if any, documents I had given them.

I also advised Kotch and Crino that I had been contacted by the staff of the Senate Permanent Subcommittee on Investigations. Based on questions that were put to me by Kotch and Crino, and what other Department of Labor staff personnel told me of their conversations with Kotch and Crino, I was convinced the purpose of their efforts was to determine the nature and substance of what was developed by the GAO during the review.

I concluded that the Department of Labor wanted to know how damaging the GAO report would be and determine what steps the Department of Labor could take to rectify any problems before they were publicly disclosed. I was particularly concerned with what would become of the results of the Kotch-Crino investigation because I knew that the first periodic report to Congress by the Inspector General of the Department of Labor was due the beginning of April 1979.

I speculated that the inquiry was conducted by LMSA personnel rather than the Inspector General's staff so that any evidence of mismanagement and inefficiency would not have to be transmitted to the Congress as part of the April 1979 Inspector General's report.

Chairman NUNN. Did you speculate on that to yourself internally, or did you say that to Mr. Kotch or Crino?

Mr. SHEVLIN. I speculated that in my own mind and also with two or three trusted SIS staff members who shared the opinion.

Chairman NUNN. Thank you.

Mr. SHEVLIN. I did not disclose that feeling to Mr. Kotch and Crino. However, in a subsequent informal memorandum I questioned to them the actual thrust or purpose of the investigation, pointing out that they had given me different reasons behind the investigation, as opposed to that which they had allegedly given to other members of the staff who were interviewed by them.

Several months after my interview with Kotch and Crino in March 1979, I was informed that John Helms, one of the staff auditors who was interviewed during the Kotch-Crino inquiry, filed for a copy of his interview under the Freedom of Information and Privacy Act.

My source indicated that Helms was advised that no report was made or it had been destroyed. Helms later confirmed to me that he did file for the report and was told it no longer existed. This did not surprise me because John Kotch had subsequently told me that because of the embarrassing content of the report, "I can see why they would want to destroy it."

Chairman NUNN. When did he tell you that approximately?

Mr. SHEVLIN. That was on July 17, 1980; a little over a month ago.

Chairman NUNN. Did you just happen to run into him? Does he work in the same area?

Mr. SHEVLIN. He is currently my immediate supervisor and this was merely a chance meeting; rather a chance mention of the fact when I discussed the fact that Helms had put in this request.

Chairman NUNN. So he told you in his words, you have got this in quote marks, that indicates that these were his exact words, "I can see why they would want to destroy it"?

Mr. SHEVLIN. That is as close as I can come to the exact words. I did make a generally contemporaneous notation at that time and this is the true substance of what he said. He did not elaborate, nor did I press the matter. I was not trying to obtain any commitment or comment from him. It was something that just came up in my discussions of the possibility of being called by this committee.

Several other Department of Labor senior staff members also told me that they felt this report would be too damaging to see the light of day and would be destroyed. They also voiced the view, which I share, that the information given to Kotch and Crino would be more embarrassing than what GAO developed during their investigation.

Thank you.

Chairman NUNN. This report that Mr. Kotch referred to as being very damaging, you said very damaging, so forth, this is the report that would contain, if it were a complete report, the interviews with both you and Mr. Ryan, and in which both of you alluded to very strong suspicions and circumstances as to possible obstruction of justice?

Mr. SHEVLIN. That is correct, Senator.

Chairman NUNN. Thank you.

Mr. Shevlin, it appears from your statement that a great deal of time, over a period of years, was spent copying files and preparing memoranda with respect to the investigation. Can you give us an idea of how much time was spent by the professional staff of SIS in copying documents and preparing memoranda as compared to the actual investigation of the case?

Mr. SHEVLIN. It is impossible to accurately quantify the man-hours based on recollection. However, I would estimate up to the time the case was put into litigation, February 1978, no more than 5 percent of our time was spent doing third-party investigative work in the field. The rest of the time was spent primarily in copying documents, preparatory drafting of subpoenas and memoranda.

Chairman NUNN. Actual copying of documents, you mean you were performing the job?

You spent a lot of time yourself, and others did, using a copying machine?

Mr. SHEVLIN. In many instances I and other senior staff members as well as lower-grade professionals and clerical personnel spent countless hours doing our own copy work and assembling files.

Chairman NUNN. Was this task something that should have been done by people at your level with your background and experience?

Mr. SHEVLIN. Formally this would not be the case. However, I think I can say that during the time that Mr. Lippe was our director, almost all our personnel had a spirit of pitching in and doing whatever was necessary to accomplish the job. Mr. Ryan and I had spent considerable time trying to put forth a position whereby files would be microfilmed and an effective accountability system would be employed. However, our representations to the then-Chief Auditor got nowhere.

Chairman NUNN. You refer in your statement to the fact that the SIS staff prepared memoranda on the new targets selected by Monica Gallagher in which copies of loan files had not been obtained from the fund. Is that your testimony?

Mr. SHEVLIN. Yes; that is essentially correct.

Chairman NUNN. Did there come a time in 1977 when the fund itself cut off all further Department of Labor access to the loan files?

Mr. SHEVLIN. Yes, sir. However, this apparently occurred over a period of time extending from the so-called press release agreement in April 1977 until approximately August 1977. During this time, it became increasingly difficult to expeditiously get copies of those loan files that we had to analyze for the list of 81 prepared by Monica Gallagher. But also very significantly, we had to set aside much of our effort and plans to work the originally targeted loans because we were unable to get up-to-date copies of the latest transactions in those loan files.

Chairman NUNN. Did the Labor Department issue a subpoena at that time for the loan files that were needed?

Mr. SHEVLIN. No, sir, they did not.

Chairman NUNN. Did you make a request or know about a request that the subpoenas be issued?

Mr. SHEVLIN. I made several recommendations in conversation with in the SIS staff. However, it would appear that the policy, as I could perceive it, was that no subpoena would be issued and I formed that conclusion because subsequently I did become aware of certain correspondence in the SIS files pertaining to the dispute concerning our hopes to get documents concerning the National Bank of Georgia transactions from the fund.

Chairman NUNN. Because of the failure to have the necessary loan files from the fund on the new targets that were selected by Monica Gallagher, did you recommend resuming the long-delayed third-party investigation of the original 1976 SIS targeted loans?

Mr. SHEVLIN. Yes, sir, I did. I felt at that time the most effective use of our personnel would be to do the third-party investigations on those loans which were best documented because the information was getting stale or out of date.

The other information was coming to us slowly and we were not able to process it.

Chairman NUNN. When Mr. Kotch told you, according to your statement, to the best of your recollection, "I can see why they would want to destroy it," did you have any understanding with him or was he rather specific in alluding to who "they" were? Did you know who he was talking about?

Mr. SHEVLIN. No, sir; I had no indication of whom he meant by "they," and I did not get the inference of the understanding that he was referring to any particular individual or group within the Department. I think he used it in the most general terms.

Chairman NUNN. Did you have occasion during the investigation to examine the records of the people who actually borrowed from the fund?

Mr. SHEVLIN. After the so-called press release agreement of April 1977, our efforts were turned toward working on particular loan transactions which pertained to particular groups of borrowers inasmuch as we felt that since we were evidently cut off from attacking the real core of the problem with the fund; that is, the cash flow, the manipulation of assets, the question as to how the fund really operated. We

felt that in order to get some effective litigation out of this we should attack certain transactions and try to establish acts or omissions by specific trustees which showed fiduciary breaches. We, therefore, proceeded with many of the loans we had originally targeted but with a little bit of a different thrust as to how we would go about it.

Chairman NUNN. During the course of the investigation, of a particular loan transaction, were you and other staff members reassigned to other tasks?

Mr. SHEVLIN. We were frequently reassigned from one project to another, particularly during the period of the summer 1977 and the succeeding months. This was a very definite lowering of the morale factor and it caused a great deal of speculation as to whether or not this was a deliberate attempt to upset us, to impede our progress, or just lack of coordination. None of us at that point in time could fathom this.

However, I think it is very important to point out that over the months, and even after the time we filed civil litigation in February 1978, auditors and investigators were frequently taken off different loans that they were analyzing sometimes shortly after they started to develop substantive indications of either civil or criminal violations. It was of special concern to me that these particular loans would sometimes lay dormant or unattended until Mr. Perkins or someone else would hear that the Department of Justice was beginning to conduct a grand jury investigation on that particular loan.

On a number of occasions, I surfaced my concern that he would direct an auditor/investigator to begin working that loan again and duplicate essentially the functions of the Department of Justice grand jury investigation. I was also greatly concerned, and expressed this to some of the other senior members whom I felt I could speak freely to, that if there were leaks in the Department of Labor, as many of us suspected, our action in duplicating and paralleling the work of the Federal grand jury would be tantamount to identifying many of the sources of documentary evidence and testimony heard by grand juries, and if leaked to the defendants, would in effect be working counter-productively to the interests of not only the Department of Labor but the Department of Justice.

Chairman NUNN. In other words, you suspected there was at least the danger that there were leaks going on from the Labor Department to people who might be defendants that would not only impede Labor's investigation but also Justice's grand jury investigation.

Mr. SHEVLIN. That is correct.

Chairman NUNN. Did you develop any hard proof of that?

Mr. SHEVLIN. I have nothing which I could subscribe to as proof. However, there were many rumors and I can recall one specific instance, wherein Mr. Friel related to me that in one of his first trips to Chicago, he was told by a representative of another agency that they were reluctant to give any sensitive information to the Department of Labor and they suspected it was a leak from the Labor Department that may have caused a key witness to be "blown away." I think the particular case he was referring to was the instance of a key witness being murdered by a shotgun blast in Michigan.

Chairman NUNN. In where?

Mr. SHEVLIN. In Michigan. This was, I believe, in connection with a case which involved one Allen Dorfman and other associates.

Mr. STEINBERG. Mr. Shevlin, can you ascribe any other reason for Mr. Perkins ordering a resumption of these dormant files after such a long time period other than the reason you just testified to?

Mr. SHEVLIN. About the only other reason I can think of is possibly embarrassment or orders from somebody above him in the Department who felt that they had been neglected long enough and that we should demonstrate that we were doing something.

Chairman NUNN. Could it have been an innocent effort just to stay abreast of the Justice Department and not make it look like Justice was doing Labor Department's work? In other words, you have described a possibly very, very serious motive which would not only be obstruction of justice but something far beyond that. Was it possible that it was more innocent?

Mr. SHEVLIN. Senator, it is very possible that could be it. I will not ascribe any direct motivation to any staff member because I certainly cannot prove it and I would not want to impugn either their integrity or competence. I can only say these are the factors which concerned me and the other senior professional staff members in whom I at least put great faith in their judgment.

Chairman NUNN. Mr. Shevlin, you have been a professional investigator for 25 years, with quite an impressive background. You have been in many different investigations in several different agencies, according to all the information I received. Could you capsule for us your professional evaluation of this investigation?

Mr. SHEVLIN. Yes, sir. It is my feeling based on experience and training in investigative management, and actual investigation and supervision of many types of investigations that this investigation started with a worthwhile purpose and the appropriate organizational concept and planning to succeed. Once outside interference was experienced, and the mission of the SIS was eroded, all effective direction and control of the investigation ceased. The primary investigative function, factfinding, was subverted in favor of the role of advocacy. I have found over the years that the administration of justice is more effectively served when the investigative effort is properly managed so as to develop all the relevant facts to be presented in a timely and well-documented report to the Solicitor, General Counsel or other chief law adviser of the particular agency.

At that point and consistent with jurisdictional considerations and policy, decisions are made by the agency head or his designee concerning prosecution. When the investigation is directed from the perspective of advocacy or political considerations, there is the real danger that justice will not be saved. To develop a litigation strategy before the probative value of the evidence is tested and before a third-party investigation evolves is to diminish the chances for ever learning all the facts.

In the case at hand, the new direction given to the case at the beginning of 1977 may have had seemingly successful results in ousting the trustees and transferring management of the assets. However, the so-called agreement shut us off from the real heart of the problem, the actual operation of the huge cash flow and the disposition of the money to reputed organized crime activities.

The initial audit by the task force in Chicago and subsequent audit work by the SIS in 1976 developed many areas of irregularities which signaled greater trouble than is apparent from just the loans.

I questioned the actuarial soundness of the fund from the outset because of the "puffing" of the book values. The indications of the fund being a bank for organized crime were too classic to be ignored, yet the Department of Labor quickly bargained away our ability to further investigative asset management and overall management of the fund.

The golden opportunity for this Government to use the tools at its disposal as envisioned by the Congress was thrown away. The continuing ineffective direction thereafter served only to promote frustration and turmoil among otherwise dedicated men.

The failure to even fill the positions budgeted and allocated for the buildup of the SIS demonstrated there was no real intention of success. This, charitably, was a classic case of how not to do it.

Chairman NUNN. I will ask you the same question I asked Mr. Ryan. You can answer it if you have a definite opinion on it. Do you think the circumstances that you described can be attributable solely to incompetence?

Mr. SHEVLIN. No, sir, I can suggest there may be a healthy mix of the cook's brew, but I have been firmly convinced for many months that there has to be some guiding force and direction because I cannot envisage people at the professional level from which our direction came being so inconsistent in applying policy and direction, and constantly churning our operation.

Chairman NUNN. Thank you very much, Mr. Shevlin. I would hope you could remain here during the rest of this panel so we can have a chance to ask you other questions.

At this point, we have an affidavit from Mr. Friel, who has been referred to here in the testimony. We have an affidavit from Mr. Raphael Siegel, and we have various attachments to the Siegel affidavit. Because of pending litigation, I am asking staff to look at each of these exhibits.

I would think the affidavits could be open. If they can't, I want the maximum amount of information to be available to the public. Those attachments that would interfere with pending investigations or pending litigation will be appropriately sealed by the staff.

I will leave that up to the staff to make that determination under those general rules with the maximum amount being available, as appropriate.

[The documents referred to were marked "Exhibit Nos. 4A, 4B, and 4C" for reference; exhibits 4B and 4C were sealed and are retained in the confidential files of the subcommittee. Exhibit No. 4A follows:]

EXHIBIT No. 4A

AFFIDAVIT

I Raphael Siegel, who reside at 13824 Flint Rock Road, Rockville, Maryland, freely and voluntarily make the following statement to LaVern J. Duffy, who has identified himself as a member of the staff of the United States Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs.

I am currently employed as an auditor by the Enforcement Section, Pension and Welfare Benefit Programs, Labor-Management Services Administration of the U.S. Department of Labor. I received my B.S. degree in accounting from Long Island University, Brooklyn, New York, in 1953. From 1956 until 1971, I

was employed as an insurance examiner in the Welfare Funds Bureau of the New York State Insurance Department. In that capacity, I examined more than two hundred pension and welfare plans. This included the performance of comprehensive audit and investigative procedures; the preparation of analyses, workpapers, and detailed and summary reports on examination; and participation in hearings and conferences. I joined the Department of Labor in New York City in October 1971. During the years 1972-1975, I was a Department of Labor representative on the Manhattan and Brooklyn Organized Crime Strike Forces, where I worked under George Nash.

In October 1975, I was detailed from the Labor Department New York Office to the Washington Labor Department headquarters as a member of the Central States Task Force. The task force consisted of four Department of Labor employees specially selected to review existing information on the Teamsters Central States Health and Welfare and Pension Funds. This information, nearly all of which related to the Pension Fund, was obtained from Labor Department records, from the files of other Federal agencies such as the Department of Justice and the Internal Revenue Service, and from press accounts.

The information which had been assembled for our analysis in Washington suggested probable relationships between the Funds and reputed members of organized crime, dubious business and financial relationships, excessive loans, inadequate security for loans, and irregular accounting practices. Our assignment was to use this information to develop an overall picture of Fund activities and to target areas for additional inquiry.

It did not appear that the IRS had conducted any significant investigation of the Fund. However, a copy of the Central States Pension Fund general journal included in the IRS material, covering several years pre-ERISA, proved extremely helpful. It was the only actual Fund record available to us during our Washington project. The entries in this journal showed a clear pattern of irregular practices affecting the value of Fund assets and the allocation of Fund expenses. A list of some of these irregular practices is item "A" of the Appendix to this Affidavit, and a list of some of the transactions in which these practices were found is item "B" of the Appendix.

It was concluded that the Pension Fund's loan practices and accounting procedures, including reclassifications, modifications, allocations, write-offs, interest capitalizations, consolidations and moratoriums, showed a clear and consistent pattern or irregularities. This pattern would permit selection of particular transactions and loans to be earmarked for intensive audit and field investigation.

In performing these analyses, and throughout my work on the Central States Fund, I utilized techniques learned while I was employed with the New York State Insurance Department and the Organized Crime Strike Force. The utilization of these techniques made it possible to zero in on areas of probable ERISA violation. This required an understanding of the Fund's handling of financial transactions, the flow of accounts, bases of authority, responsibility for transactions, book entries, and the Fund's reporting and disclosure. The above techniques were used to develop a plan of action for the investigation necessary to properly document the case.

After completion of this initial phase, it was expected that a third party investigation would be conducted. This would have included financial analyses of third party books of accounts and records, interviews, depositions and other procedures in fulfillment of a well defined audit and investigative plan. The full and systematic execution of such a plan would be central to the development of the case. Over the years I was employed with the New York Insurance Department and the New York Strike Force, the use of these techniques resulted in the development of a large number of successful civil and administration cases as well as criminal convictions.

In January 1976, my assignment to the Central States Pension Fund investigation was continued by Lawrence Lippe, the newly appointed Director of the Special Investigations Staff (SIS). The SIS was the permanent staff which had been established to conduct the investigation of the Teamsters Central States Funds and similar investigations.

Shortly after the creation of the SIS, access was obtained to the records of the Teamsters Central States Pension Fund pursuant to an agreement with the Fund. Thereafter, for the most of 1976, I was assigned to the SIS Chicago operation. There I was engaged in the examination, review and audit of the Fund's account-

ing records, loan documentation, office procedures, and structure of authority and responsibility.

My review of the Fund records disclosed substantial evidence that the irregular Fund practices which I had detected in the pre-ERISA general journal were also prevalent in the Fund's activities post-ERISA. Examples of such practices were found in a number of Fund loans listed in the Appendix, item "C."

Although the primary SIS mission was the detection and litigation of civil violations of ERISA, the findings in many cases gave rise to strong implications of serious criminal violations. It should be pointed out that while most civil violations of ERISA probably would not involve criminal offenses, nearly all criminal offenses involving employee benefit plans involve civil ERISA violations. To engage in or to condone criminal activity with Fund assets is hardly a prudent use of those assets solely in the interests of Fund beneficiaries. And a case that can be proved criminally beyond a reasonable doubt can certainly be proved civilly by a preponderance of the evidence. Therefore, it was neither feasible nor desirable to separate the civil element from the criminal element in the analyses of Fund transactions. Accordingly, I attempted to fully develop areas of possible criminal violation in conjunction with my analysis of civil ERISA violations.

It should be pointed out that during the time I was performing these analyses and audits in 1976, the SIS had, in effect, two separate operations: one in Chicago and one in Washington. This separation was very real and limited the effectiveness of our work in Chicago. Management personnel were not adequately available in Chicago to provide day to day direction to the staff effort and evaluation of the work we had completed. We were given our assignments in Chicago virtually without explanation. We were not given any indication once an assignment was complete of whether or not the end product satisfied the requirements of management. We were also limited in certain instances by our inability to obtain legal opinions on legal documents.

In view of the extreme complexity of the Central States investigation, coordination and continuity of our everyday activities was required to achieve proper results. Yet once a memorandum on one subject was completed by a staff member, that staff member was usually given an assignment on a different subject. At no time were we given a definite, concise plan for our work. It was not apparent that there was a consistent "flow of endeavor" or a follow-up toward a specific objective for any specific transaction. It was also impossible to relate work performed on a given transaction to an overall SIS strategy. I later learned that substantial progress was being made by the SIS Washington staff toward the initiation of a third party investigation in late 1976, but we were unaware of this in Chicago, and the investigation was not in fact begun. This situation continued through most of 1976, until I returned to Washington.

The Chicago staff was also greatly inhibited by the fact that we were required to perform all of our review of Fund files on Fund premises. We worked in a conference room in the Fund building at 8550 West Bryn Mawr, Chicago. Our work area could not be secured and was accessible to Fund personnel at any time. In fact, a large number of microphones were installed in the ceiling of this conference room so as to be directly above the chairs around the large conference table at which we were seated. Presumably, these microphones were installed to record the meetings of Fund trustees held there. However, we had no way of knowing whether these microphones were "live." We could not talk in the conference room without fear of being overheard through the microphones or by bystanders in nearby Fund offices.

Most of the reports and workpapers that we had in preparation in Chicago were stored for varying lengths of time in the conference room. They were kept in the same file cabinets in which we kept the Fund files under review. These cabinets were ordinary file cabinets protected by locks which could be easily opened. Moreover, I recall at least one occasion when the Assistant Chief SIS Auditor, James M. Benages, Jr., left all of the keys on top of the cabinets overnight. We could never be sure that our reports and workpapers were secure.

Our concerns regarding security were communicated to Mr. Lippe and Mr. Benages. I recall that in the autumn of 1976, Mr. Lloyd Ryan of our staff visited us in Chicago and informed us that he had recommended that we microfilm all of the Fund files of interest to SIS. This would insure the integrity of the Fund files and permit us to continue our analysis of Fund files and store our work-

product in secure surroundings. Although Mr. Ryan was then making arrangements for the microfilming, I understand that he was not permitted to go forward.

In late 1976, I returned to Washington where I was assigned responsibility for the analysis of specific Teamsters Fund loans. Let me first describe the operational organization of our small staff. The SIS staff was divided into three or four investigative teams. Each team was headed by a member of the SIS legal staff. Each team was assigned full responsibility for the "investigation" of Fund transactions assigned to it. This required, first, an analysis and audit of Fund records and the preparation of an initial report. On the basis of this review, a third party investigation and audit plan was to be prepared. A full field investigation was then to be conducted by the team to develop proof of the suspected violations as well as further violations. The team was then to prepare a full audit and analysis of the evidence obtained in the field investigation and to organize it for use in any suits which might be brought against the Fund or Fund borrowers, and for criminal referrals. Legal and administrative support with regard to such things or subpoenas was provided by Mr. Ryan and others.

We successfully prepared analyses of Fund records and investigative plans for a number of very promising loan transactions. Summaries of three major transactions are set out in item "D" of the Appendix. Unfortunately, our efforts to conduct investigations on these loans were entirely frustrated. No field investigative activity was conducted on any of my assigned loans during 1977 despite significant findings. Our plans came to a final halt with the filing of the civil suit against the Fund in February 1978.

SIS did not conduct the field investigations necessary to substantiate and document the findings made in staff reports. The minimal field activity that was conducted was not performed in a timely fashion, but sporadically, and not pursuant to a well defined and comprehensive audit and investigative plan. This activity did not contain the "flow" and depth necessary to obtain the facts for proper development of the cases.

By the end of 1977, all of the SIS attorneys but one, including SIS Director Lawrence Lippe, had resigned, SIS activities came to a standstill. Then a civil suit was filed against the Central States Pension Fund in February 1978. The staff was reorganized to support the litigation, and I was soon thereafter placed in charge of a team of auditors and investigators.

After the filing of the suit against the Central States Pension Fund in February 1978, all SIS activities fell under the control of the attorneys assigned to the suit from the Plan Benefits Security Division of the Office of the Solicitor of the Department of Labor. As of early 1978, none of these attorneys had any significant familiarity with the facts underlying the transactions which I or members of my team had analyzed. I also observed that the attorneys with whom I had contact demonstrated a near total lack of the background necessary to understand complex financial, accounting, and investigative problems such as those presented by the Central States Pension Fund litigation. Perhaps because of this, the attorneys conducting the suit maintained only minimal contacts with the members of my team and did not take the steps necessary to familiarize themselves with much of the available evidence and analyses.

On a number of occasions, attorneys from the Solicitor's Office conducted interviews with key witnesses without the knowledge of the SIS staff members assigned responsibility for the transactions. Because of their failure to work with members of the SIS staff, these attorneys acted without full knowledge of facts relevant to their areas of inquiry and without utilizing the developed expertise of SIS staff members. I was informed that this occurred in connection with at least three loans: C & S Golf and Country Club; Indico Corp.; and Hyatt Corp. Many times these attorneys did not either advise us, or fully advise us, of the results of these meetings or interviews.

During the period 1978-1980, the attorneys from the Solicitor's Office (Robert Gallagher and Richard Carr) and Norman Perkins, Acting SIS Director, repeatedly instructed me and members of my team that we were to concentrate entirely on civil matters and that no mention was to be made of any criminal implication of any transactions in any SIS report. This was repeatedly confirmed in conversation with my team members during the entire period when I was the Team Leader (1978-1980).

This is illustrated by the following incident, one of several. A meeting was held at our offices in Washington, in late 1979 or early 1980, with Richard Montrose and Barry Silvers of the Brooklyn Office of the Inspector General of the Department of Labor, Richard Williams of my team, Dick Carr of the Solicitor's

Office and myself present. While discussing a case I was rudely interrupted by Mr. Carr as he was leaving the room. Mr. Carr exclaimed: "Pop (meaning me) is only interested in criminal matters and he cannot understand that I am only interested in civil matters." This was indeed a strange remark as Montrose and Silvers were at this meeting to be briefed on the criminal aspects of this case.

In early 1979, J. Vernon Ballard, Deputy Administrator of Pension and Welfare Programs, announced at a special staff meeting of SIS that the Office of the Inspector General of the Department of Labor would within the next several days begin an inquiry into the Department of Labor investigation of the Central States Pension Fund, which was then the subject of a General Accounting Office investigation. He noted that most of us had probably already been contacted by the GAO. Ballard announced that the investigation would be conducted by John Kotch from the LMSA Pittsburgh Office and Richard Crino of the LMSA Cleveland Office, who were being specially detailed to the Inspector General for this purpose. He stated that most of us would be interviewed.

A short time after this meeting, I was called to the Office of the Field Operations where I was interviewed by Richard Crino with no other person present. He stated that he was investigating SIS for Under Secretary Brown, and not the Inspector General, and showed me his LMSA credentials. He also stated that he would ask me questions regarding the SIS. His opening question was whether I was interviewed by the GAO. I replied, "yes," and that I would tell him everything that I told GAO investigators. I thereupon gave Mr. Crino a full and candid account of my experiences with the SIS and of my concerns about its investigation of the Teamsters Fund pursuant to his questions.

The emphasis and procedures of the SIS continued without essential change until April 1980, when the bulk of the remaining SIS staff became a litigation support staff within the Office of the Solicitor and I was transferred to LMSA-PWBP Enforcement Section. In connection with this transfer, I was reclassified from supervisory investigator to an auditor.

In concluding this Affidavit, I would like to add a personal comment concerning the frustrations of my experience with the Special Investigations Staff. It was unlike anything that I had ever experienced in my professional life. In the Central States Pension Fund investigation, we were not permitted to proceed in a professional manner with a well defined plan of action and full and timely follow through.

One very unusual and disturbing factor was our inability to conduct a proper field investigation. It has been my professional experience that no complex financial matter of this sort can be properly investigated without extensive fieldwork. We were not permitted to undertake even limited follow-up fieldwork to fill in gaps in our initial analysis of Fund loans. As a result, some key areas of those analyses necessarily contained gaps and assumptions, and possible distortions and limitations.

Of course, the most distressing thing was my inability to promptly and thoroughly investigate the loans assigned to me in accordance with the approved investigative plans. Nothing at all was done during 1977, and with the filing of the suit against the Pension Fund in 1978, further investigative efforts would have been bogged down in court discovery rules. I am not, however, aware of any significant attempts to proceed with discovery since the suit was filed. In my opinion, every attempt should have been made to avoid bringing matters under investigation into any suit until the investigation was completed. In my opinion, this was not done.

I have read the foregoing statement, and to the best of of my knowledge, it is true and correct.

RAPHAEL SIEGEL.

Subscribed and sworn to before me this 21st day of August, 1980.

DONNA E. WOOD, Notary Public.

My commission expires: January 1, 1982.

Chairman NUNN. Our next witness is Mr. Lester B. Seidel, who is a former attorney with the U.S. Department of Labor. Mr. Seidel, I believe you are no longer with the Government, is that correct?

Mr. SEIDEL. That's correct, Senator Nunn.

Chairman NUNN. I understand you have a brief statement. We don't have a copy of it or anything but you are welcome to go ahead and give that as you so desire before we begin to ask you questions.

Mr. SEIDEL. Thank you, Senator. First, I would like to applaud the courage of Mr. Ryan and Mr. Shevlin, who are still employed at the Department of Labor, for their forthcoming statements. I find their statements to be consistent with their loyalty and dedication in the past.

My name is Lester B. Seidel. I am an attorney in private practice in Washington.

Chairman NUNN. If you could pull that mike up as close as comfortable.

Mr. SEIDEL. Is that better?

Chairman NUNN. Yes.

Mr. SEIDEL. I am an attorney in private practice in Washington. My legal career started as an attorney with the U.S. attorney's office in Washington, D.C., where the major amount of my time was spent in the Fraud Section prosecuting fraud, white collar crime, and some organized crime cases.

When I left the U.S. attorney's office, I joined the Church committee, which was formally named the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, if you can say it all in one breath; we never could then. That is the forerunner of the present Senate Intelligence Committee.

My duties at that time were essentially to investigate domestic intelligence abuses, for the most part working along with a colleague who was an aide to Senator Huddleston, who was also a former U.S. attorney.

When I left the Senate Select Committee on Intelligence, I joined the U.S. Department of Labor with the title of special counsel to the special investigations staff, whose mission this committee knows.

Chairman NUNN. What year was that when you joined the Department of Labor?

Mr. SEIDEL. January 1976, Senator.

I left the U.S. Department of Labor in September 1977, joined a law firm in Washington. I am presently engaged in the practice of civil and criminal law, mostly in the Federal courts, essentially on a nationwide basis.

My appearance and testimony today, I must admit, give me some ambivalence. I not only consider it my duty to appear here, but it is also a pleasure to be able to be of any aid I can to this committee in its mission.

As just mentioned, I have worked in the Senate and I know the importance of Senate investigations. However, I find it sad that there is a necessity for a hearing such as this and especially this late in the day, so to speak.

Consequently, there is a certain aura of professional unpleasantness in appearing. Nonetheless, after I make two brief points, largely motivated by my discussions with the staff and reviewing many matters that occurred many years ago—after I make those two brief points, I will be happy to respond to any questions from the committee and the staff.

The facts apparently being developed here in this hearing show that the public interest has been greatly disserved. In my limited opportu-

nities to meet with Secretary Marshall, when I was in the Labor Department, I always found him particularly attentive to the facts and sensitive to policy development.

I can only conclude that Secretary Marshall himself has been disserved and it is not my purpose to defend any individual or any organization. I say that because there apparently has been a deliberate attempt at non-policy in the Teamsters investigation.

I come to this conclusion on learning of many matters that occurred even since I left the Labor Department, and having had the opportunity and the courtesy of your staff to read the draft GAO report.

Second, last week, the Department of Labor, and a former colleague there, contacted me and asked me if I was going to participate in these hearings; there was nothing sinister about this, and he asked me what I thought the focus of this committee investigation would be, and we had an hour-long conversation, mutually frank and candid.

I told him what I thought was going to happen. I didn't find this contact particularly unusual, especially because the Labor Department has contacted me in the past, since I left the employ of the Labor Department, concerning matters that deal with the Teamster case.

For example, during the case of the M. & R. litigation, the Dunes litigation, the Labor Department contacted me.

From this conversation I had with a representative of the Labor Department, I infer, perhaps, that their position, if they do appear before you, might be something along the line of, look, we made mistakes; maybe only a little, but they are done; that's water under the bridge. We finally have our stuff together; let us proceed; don't interfere.

It is what I might call a "mea culpa"—but only a little—defense.

I respectfully suggest to this committee that before accepting that alone, that the committee—to paraphrase William Butler Yeats—cast a cold, or very cautious, eye on that type of presentation and to consider whether or not there should be a recommendation that the Department of Justice or some other agency take over complete supervision of all Teamsters litigation, civil as well as criminal.

That concludes my unprepared prepared statement. I will be happy to respond to any questions.

Chairman NUNN. Thank you very much, Mr. Seidel.

You were there from what date in 1976?

Mr. SEIDEL. I entered duty January 18, 1976, which was a Sunday, at which time Mr. Lippe and I journeyed to Chicago to begin the next morning our onsite investigation of the fund—January 19, 1976.

Chairman NUNN. You worked directly for Mr. Lippe?

Mr. SEIDEL. I did.

Chairman NUNN. Did Mr. Ryan and Mr. Shevlin work for you or under you?

Mr. SEIDEL. Mr. Ryan came in June 1976; Mr. Shevlin, I believe, shortly thereafter.

Chairman NUNN. September?

Mr. SEIDEL. September 1976, and on the organizational chart we had, they did work for me. I held essentially two positions. I was special counsel to the staff and I was at that time de facto, Mr. Lippe's deputy. Later, that was writ more large in stone; I became Deputy Director.

Chairman NUNN. Were you there when the Internal Revenue Service brought their action against the fund?

Mr. SEIDEL. I was.

Chairman NUNN. What were the results of IRS failure to cooperate with the SIS investigation and the results of the action taken by IRS in June 1976 to revoke the tax-exempt status?

Mr. SEIDEL. In addition to the effects and the results already testified to here today, I have to say that the investigation, in terms of development of new cases, almost came to a halt or floundered, began to flounder because, in a sense, the head was cut off for awhile.

What I mean by that is that Mr. Lippe was lost to the investigation for quite awhile. I was lost for some time for the reason that this created a whole set of problems, circumstances, almost a conundrum, which took our attention away from the investigation.

One thing that was the most immediate effect, and this was on the eve of the first investigative depositions we were taking of seven of the trustees, was that we were called up to testify before Congress, the Committee on Human Resources—maybe it was the Senate Labor Committee then. Our appearance in Congress, on about July 1 and 2, 1976, was motivated also, we think, by the fact that then Secretary Usery had just made a speech at the 5-year Teamsters convention held at the Aladdin Hotel in Las Vegas and the speech had something to do with "I'm on the team of the Teamsters" which seemed to be contrary to a forceful investigative posture. You don't kiss somebody you are hitting in the stomach, in a sense.

There also has been a feeling, since that time, that perhaps that was one thing that motivated, without notice to us, the IRS disqualification action, that Commissioner Alexander, then Commissioner of the IRS, was suspicious of Secretary Usery or the Labor Department investigation. That is speculation, but it is the type of thing I would put my money on if I had enough money to wager, discretionary funds in any event.

Chairman NUNN. So the suspicion was, the suspicion some people had, you included, was that Secretary Usery's statement in an appearance before the Teamster Union's convention may have led Director Alexander to take what turns out to be premature action.

Mr. SEIDEL. I would say it was a contributing factor. Maybe it was the straw that broke the camel's back. I don't know. There were a lot of things hanging with the IRS at that time in terms of participation, not only our investigation but other investigations, strike force investigations which I am sure this committee is aware of, not to excuse it; it didn't make it unusual that we wouldn't get cooperation and that there was suspicion, for some reason or another.

In any event, to return to your original question, the effects were felt very hard on our investigation. It did not prevent the depositions taking place. They started on or about July 7, as I recall, but since I was primarily responsible for those depositions, and engaged in depositions and other subpoena returns throughout the summer, the loss of Mr. Lippe, and he and I essentially had the overall view of what was going on in many areas, that loss was very great, and we had an infernal number of meetings with the IRS—infernal—it is the only way I can describe it, on what are we going to do, are we going to grant them this relief, that relief, whatever.

Chairman NUNN. How was the SIS investigation proceeding up to that point when IRS took that action?

Mr. SEIDEL. We thought it was proceeding pretty well. What happened, as a result of initial cooperation with Justice, showing the wisdom of cooperation, we had developed an investigation into a grouping of loans, essentially called the Shenker grouping this time, which led us to investigate pretty thoroughly a lot of aspects of the Shenker loans. It also resulted in the fund rescinding the \$40 million commitment to the Dunes Hotel, which was the basis of the M. & R. litigation, because we made it clear to the fund that if something wasn't done about that, that we were prepared to litigate on that issue.

A full explanation of that would require more esoteric matters than I think this committee wants to hear, but we had made it clear that we were going to litigate on that.

Also, we started onsite in mid-January. I would say by mid-March, pretty early on, we had concluded that the next logical step in the investigation was to depose the trustees. I called up the fund attorneys and I said, we want to depose the trustees.

They said why don't you interview them in Chicago? I said why don't we take their testimony under oath in Washington? They said I will get back to you: they said we will need subpoenas. I said I have got a drawer full. At that time we had subpoena authority in blank from Mr. Hutchinson.

He knew what we were doing; he had signed subpoenas in blank; it was totally within the discretion of Mr. Lippe and myself on how we issued those subpoenas, although I think it is clear we kept Mr. Hutchinson and everybody else aware of exactly what we were doing.

So we issued the subpoenas for the trustee depositions. At the same time, a little preceding this, we already issued subpoenas and we had done some third party investigation, essentially in San Diego and in Los Angeles, on the Shenker grouping of loans where we had subpoenaed borrowers, subpoenaed a bank, three bank officials from a bank in Beverly Hills, which had been the source of moneys for the former Irving J. Kahn empire and later those events resulted in the Shenker groups of loans.

So we thought the investigation had great momentum, was proceeding well, we thought we had the trustees absolutely dead on their general asset management procedures.

As I recall, there was one document, I think in October 1975, guidelines the trustees had adopted on how they would administer the fund assets, grant loans. It was a page and a half or two pages, not very detailed, and it had one provision having to do with loans under emergency circumstances. Of the depositions we took, we received five different definitions of "emergency."

The other two deponents were taking the fifth amendment on any question we asked. So I would assume that an emergency to one person wasn't an emergency to the other. So we thought they were very dead on the general asset management procedures.

Chairman NUNN. When did your authority—you said you had a drawer full of subpoenas under Mr. Hutchinson. When did your authority to issue subpoenas terminate and who terminated it?

Mr. SEIDEL. It is really hard to pin down a date, Senator. But I would say beginning in late 1976 on into the spring of 1977, culminat-

ing in a directive, and I don't remember it being formal, a directive saying that all subpoenas have to go through the Solicitor's Office. Why, I was never able to understand.

I am sure Mr. Lippe and I, between us, probably drafted a thousand subpoenas. If I get back to my office this afternoon, I will probably draft some more. Drafting subpoenas, you do it a lot, you get to know how to do it, but those had to go through the Solicitor's Office.

Now that was a policy that was generally in effect in the Labor Department because the investigators are generally nonlawyers. But Mr. Lippe and I, we are both lawyers. Mr. Ryan is a lawyer, so forth.

There was really no reason for that. So I can speak of the culminating events more clearly than I can of the commencement of the series of events, especially for the reason that many things were going on in the fall and early winter in 1976.

Chairman NUNN. Did the SIS actions cause meetings with Teamster representatives to consider various courses of options or actions?

Mr. SEIDEL. Yes.

Chairman NUNN. What occurred at these meetings?

Mr. SEIDEL. During the course of the depositions, the deposition of trustee Spickerman, in July 1976, his attorney from Atlanta during a break, during which he and I were talking and the fund attorneys were talking, his attorney said in regard to these general asset management procedures, look, why don't you try to work something out, some type of settlement on that issue?

And I turned to the fund attorneys, who really had authority to speak for the fund at that time, and I said what do you think, is it worth talking about? They said we will get back to you. That culminated in a meeting of July 30, 1976, in Chicago, attended by three representatives from the Labor Department, Mr. Benages, myself and another staff attorney and two fund attorneys, in which Labor Department's positions were put forth because we had obviously staffed this above in the Labor Department—put forth that we wanted a consent decree, essentially judicial action concerning the asset management procedures.

Chairman NUNN. Let me ask the clerk at this point to show you the memos we have concerning those meetings and see if you can identify those memoranda.

Mr. SEIDEL. The first memo I recognize my handwriting in the upper right-hand corner. I had better translate it in case anybody else can't read it. It says memo from July 30, 1976 meeting and this is part of a letter from the fund attorneys, Coughlan & Joyce, attorneys at law, in Chicago, to the trustees.

Chairman NUNN. Could you identify each one of those?

Mr. SEIDEL. Yes; I was going to do that. The second memo, which has a notation of September 7, 1976 at the top, has in my handwriting prepared by C.S., which is Central States fund counsel, is an agenda item at a meeting we had with fund attorneys as late as September 20, 1976, concerning the consent decree. And throughout this memo, there are various handwritten notations, most of them mine.

Chairman NUNN. Did you get the impression that the fund would accept a consent decree during those meetings?

Mr. SEIDEL. The general asset management procedures?

Chairman NUNN. Yes.

Mr. SEIDEL. Certainly, I did. We were unwavering in our position. Let me just identify these other documents and I will further explain that answer.

There is an August 3, 1976 memo to me from Lloyd Ryan, which I came back I guess from the July 30 meeting, said, Lloyd, this is what we are talking about, give me a brief memo on what type of settlement we should have. This was later expanded into a larger memo, identifying an undertaking and consent judgment as two possibilities.

What we were essentially looking for was an agreement which had teeth in it. What I mean by teeth is something that is enforceable.

The last memo, what I think is the last, yes, is an August 11, 1976, memo from Jim Benages to Mr. Lippe and me, concerning his version of the July 30 meeting.

Chairman NUNN. The memorandum referred to will be sealed exhibit 5, without objection.

[The documents referred to were marked "Exhibit No. 5" for reference, and will be retained in the confidential files of the subcommittee.]

Mr. STEINBERG. From all of those memos and from your independent recollection, Mr. Seidel, of those meetings with the representatives of the trustees, would you state that at that time the fund was on the verge of or willing to accept a consent decree?

Mr. SEIDEL. It is my belief that we could have gotten that, yes. I say that in fuller answer to Chairman Nunn's prior question for this reason: These discussions weren't the only thing going on. As soon as the discussions started, we energized our investigation even more because we wanted to negotiate from a position of strength.

We took the depositions, I think, of two fund attorneys. We took the deposition of the assistant executive director of asset manager, Mr. Hank, and we took the deposition of Mr. Chuckray, who was the loan management functionary at the fund. So, in the course of August, we had at least four additional depositions going on.

Also what we did is we began to implement a theory we developed even before the depositions were taken and this theory was that if the trustee invokes the fifth amendment privilege against self-incrimination in an ERISA civil investigation, conducted by the Labor Department, that he could be removed for that invocation, that unlike there being no penalty against the invocation of a fifth in the criminal proceedings, in civil proceedings, and in actual litigation the sanctions for invocation of the fifth either in discovery or trial can go to evidence preclusion, can result in directed verdicts, or something as mild as an adverse inference being drawn against that witness who fails to come forward.

However, we took it a little further. We said that in a Taft-Hartley trust with a trustee who has a duty to account, the primary duty of a fiduciary handling somebody else's money, that there is no property right in being a trustee and that trustee, we think, can be removed at the instance of the Government, probably at the instance of a private litigant who has standing, but not only that but surely as he can be removed that the other trustees had a duty to remove him, the principle of fiduciary liability which is ERISA, I think it is section

409, and if those other trustees did not remove the trustee who fails to account, then they can be proceeded against for removal.

So that is another track we were proceeding on. The last track at this time is on the Shelter Island Hotel Corp. IJK loan, which was part of the Shenker grouping. That is the one on which we had them dead to rights, we thought. We were prepared at that time to litigate on that issue, although we hadn't done everything that we wanted to do.

It so happens about 8 months later I found out some new and interesting information about that loan and did some other investigation in March and July 1977. We certainly had more than enough to file a complaint, both on imprudence grounds and on the prohibited transaction grounds. So we were in a pretty strong position.

Mr. STEINBERG. Included in these memos about the attorneys for the fund, there is a statement that regardless of any settlement it was necessary that the investigation be continued for so long and with such an intensive degree as the circumstances would require.

Did you tell the fund attorneys that you would continue the investigation despite any settlement?

Mr. SEIDEL. Absolutely. The consent decree and the only settlement we were prepared to make at that time, because we didn't have to give anything away, was on the general asset management procedures. Any other things that we wanted to throw in that would be beneficial to us, we would have done but we weren't about ready to stop our investigation.

Mr. STEINBERG. Did you and did SIS recommend an official consent decree to the Department of Labor?

Mr. SEIDEL. Yes; we did.

Mr. STEINBERG. As an option?

Mr. SEIDEL. I think we went to them and said this is what we had. We think you ought to do it.

Mr. STEINBERG. Eventually, did the Teamsters counter with a suggestion of mass resignations?

Mr. SEIDEL. I think sometime in late September 1976 a lawyer for the Teamsters and the fund came over to see Mr. Lippe and me and said instead of a consent decree how would you feel about mass resignations?

We said how many? Eventually, it turned out to be a dozen. The mass resignations of the trustees. I think Mr. Lippe and I and I don't know if there are notes in the files or not, Mr. Lippe is a much better note taker than I, and there might be some handwritten notes of his in the files.

I think we said that we would take it to our superiors, that we thought it was a little late in the day, the consent decree was going to be approved. It was clear that they didn't want a consent decree, no matter how much they found it attractive, as opposed to contested litigation, at that point.

One of the reasons they gave, which is a legitimate reason, one that I would advise my client, nobody can ever accuse the Teamsters of the pension fund of not being well-represented. They are well-represented. They didn't want the contempt power, for violating a court decree hanging over their head.

If they violated the consent decree, of course that is what we wanted, I believe there was another point to it also, that we said that we wanted venue in the U.S. District Court for the District of Columbia. If we thought they were in violation, we could walk across the street from our main office and seek enforcement of the consent decree, rather than having to go out to Chicago on their home turf with all the implications that has and seek enforcement there, away from home.

We thought this was a case of national implications, it was a nationwide fund, for the most part it should be in the Nation's Capital. They raised some question about the venue. We all decided that venue was not jurisdictional, the U.S. District Court in the District of Columbia had subject matter jurisdiction. We could also find some personal jurisdiction also.

So our thoughts were pretty much far ahead, we had thought this through, had discussions in the Labor Department, kind of knew where we wanted to go.

So we were a little surprised by the mass resignations proposal, but it was something that we could not avoid taking back to our superiors.

Mr. STEINBERG. Mr. Seidel, you said that you had already successfully caused the removal of a trustee or made two trustees resign using your fifth amendment theory. So in effect you had an adequate procedure available to remove trustees; is that correct?

Mr. SEIDEL. We had caused the removal by threatened litigation of Mr. Presser, who resigned at that time. So you say we had an adequate procedure already. In a sense, yes, because it had worked; but in a sense, no, because the remedy we would have gotten in litigation over the fifth amendment issue. But, the theory was already proved: Mr. Presser was resigning.

So that particular procedure remained viable but we could pick them off one by one. I think they kind of knew we were going to pick them off one by one. We would bring them back and bring them back. So that is why they offered the mass resignations.

Mr. STEINBERG. Eventually the Department of Labor accepted the proposal of mass resignations instead of these other ideas, court orders, consent decree, and so forth. Did anyone in the Department of Labor state that this action was taken because it would be quick and dramatic?

[At this point, Senator Percy entered the hearing room.]

Mr. SEIDEL. One of the attractive things about that proposal to persons in the Labor Department at that time is it would be a dramatic act; and that it would not hurt the investigation.

Mr. STEINBERG. Do you remember who, if anyone, in the Department of Labor gave you that characterization?

[At this point, Senator Nunn withdrew from the hearing room.]

Mr. SEIDEL. I think the only person that I can remember at this time, with any degree of reasonable assurance, is Mr. Chadwick.

Mr. STEINBERG. With respect to the mass resignation, would the Government have had any enforceable agreement with respect to that option?

Mr. SEIDEL. In terms of how that was to proceed, but didn't end up that way, part of the package for the mass resignations was that we had

an undertaking, a contract, an agreement with the fund on asset management procedures which would spell out how the assets of the fund would be managed. And that type of agreement would be enforceable.

Mr. STEINBERG. But the mass resignation in and of itself had no effect of forcing the fund to do anything?

Mr. SEIDEL. No. In fact, I think as time went on and because of the number of meetings we have on the mass resignation issues, people thinking about it, thinking about it, thinking about it, there was a certain fear that developed that the trustees are just going to resign anyway, take away an attractive remedy from us and we won't even get any type of enforceable agreement.

Mr. STEINBERG. Was the acceptance of the mass resignations adversely affected by the fact that the Department of Labor would not get involved in the selection process for the new trustees?

Mr. SEIDEL. I think to give a one-word answer to the question, yes. It depends on the degree of involvement you are talking about. That is also something and we shouldn't mix up these fall of 1976 talks in which I was an integral part with the spring of 1977 talks in which I wasn't there when some of the same issues were raised.

On the issue of selections of new trustees and who the holdover trustees would be, focusing on the fall of 1976, those issues were talked about a lot. It was then decided that we wouldn't take any position.

Mr. STEINBERG. Who decided that?

[At this point, Senator Nunn entered the hearing room.]

Mr. SEIDEL. It was essentially a decision of the policymakers at that time. I would think it was a decision of the Secretary, Secretary Usery, because I am sure that he was staffed, he was briefed on all important matters by the staff.

The staff at that time essentially being Mr. Kilberg, Mr. Chadwick, who were the two chief executive officers of their respective branches.

Mr. STEINBERG. How could the Department of Labor insure that the new trustees would adequately protect the funds and resist the influence of the former trustees if the Department of Labor refused to participate in the trustee selection process?

Mr. SEIDEL. Maybe they could hold their breath and wish. I don't know. The answer is that they couldn't, I guess. We, Mr. Lippe and I, were in favor of at least having a veto power over who the new trustees would be.

The Federal Government has a lot of records. The FBI has a lot of records. It would have been very bad to have a trustee appointed who maybe at that time was the subject of an FBI investigation. We didn't think that there was anything wrong in terms of our getting involved, of our involvement in how the fund was going to be managed in terms of its assets anyway, to be able to have a veto power over a trustee.

Mr. STEINBERG. Wasn't the Department of Labor in fact aware of a prior strawman or conduit trustee situation such as the situation occurring after Mr. Presser resigned?

Mr. SEIDEL. Well, actually, it was Mr. Presser's first resignation you are talking about. Because of a prior criminal conviction, in a certain defined category of offense, Mr. William Presser had to step down during a disability period, legal disability period, as being a trustee of the Central States fund. He had to step down.

I think there was a year of disability remaining under the applicable law. During the time that William Presser was not a trustee, which was approximately early 1975 to early 1976, Mr. Jack Presser, his son, became a trustee. That was obviously—a strawman is a kind word, a kind description for that. There was no attempt to hide it. It was kind of a yuk-yuk type of thing at the fund, I would imagine.

Mr. STEINBERG. So on prior occasions there was evidence that trustees had put people in who would speak for them if they had to be removed?

Mr. SEIDEL. I think that is a conclusion that you could safely reach.

Mr. STEINBERG. Was there any reason advanced to you for the Department of Labor's failure to get involved in the trustee selection process?

Mr. SEIDEL. I can't remember any particular reason. I can remember the issue being discussed a great deal. It was essentially a question of they didn't want to get too involved in who the trustees would be. It was my opinion, still is, that exercising the veto power wouldn't get you too involved.

When these discussions really got started and when the decision was made that we can't even mention any names on who the holdover trustees would be, to the fund, couldn't pick and choose on that, I said, guys, wait a minute, because I want to tell you right now that in an off-the-record conversation with various fund lawyers, I have already named one person who I don't think should be back on the board for various reasons. So that is off the record.

I made it clear to them that I wasn't speaking for the Department of Labor, but we can't undo that, but still it was said and nobody I don't think was greatly upset by that. They understood the dynamics of the negotiating process but it was decided that there would be no more picking and choosing of who would remain, who would be replaced, and so forth.

I think a lot of the reason was the deadline, essentially the trustees had set. They were meeting in La Costa, I believe, on October 11, their annual meeting at La Costa, and they wanted to resign then.

Senator PERCY. I would think also that in the defense of the Department of Labor's position on that, if it had named people to go on as trustees, the Department was really assuming full responsibility for them then. After all, they are the trustees and they are responsible for what they did. I don't think the Department should have been in that position.

Mr. SEIDEL. Senator, I agree with you that there is a possibility. I wasn't talking about that. I was talking about exercising the veto power.

Senator PERCY. That is quite different. That is our process here in the Senate confirmation. We don't initiate all of the appointments, but we take some responsibility, due diligence, and investigating appointments, but we don't name them to start with. The ultimate responsibility for that appointment is the administration. In this case the ultimate responsibility should be someone other than the DOL, although it ought to have the right to veto.

Mr. SEIDEL. I think it is very important that insofar as the trustees had discretion left and whatever, that they do maintain responsibility for whom they select and they not be insulated from liability on that.

I think that is true, but as you said that is quite different from exercising veto power or establishing perhaps minimal criteria. For example, we took the deposition of Jackie Presser, and I recall as a result of that deposition he testified that, No. 1, during the year he was a trustee he had no conversations with his father about the fund—I will let others judge the credibility of that comment—and also as a result of his deposition, which probably is available to this committee, in which we probed his background—qualifications—to be a trustee of a \$1½ billion pension fund—we established the doctrine or the concept of “apprentice trustee.”

From what he told us he had no experience. So we thought based on what we have learned about the fund so far, how can we apply that lesson to significant steps we are going to take?

So one thing we certainly wanted, I thought, would be to establish some minimal criteria. I am sure from the pool of applicants or potential appointees they had, with all the trucking conferences and all the unions, they could come up with some people who are pretty qualified, probably served on the boards of banks, and so forth, who knew a little about asset administration.

Mr. STEINBERG. At a certain point in time, did the Solicitor's Office from the Department of Labor take over the Central States matter?

Mr. SEIDEL. Over a period of time, events occurred which culminated in the Solicitor's Office having de facto control. I heard testimony here previously today, what was the authority for that, and so forth.

I don't know what the authority was, if there was any, but that is true.

Mr. STEINBERG. No one ever explained to you why they took control of this from SIS?

Mr. SEIDEL. No.

Mr. STEINBERG. Did you assist in preparing a massive third-party investigation in late 1976?

Mr. SEIDEL. It was in the fall and early winter of 1976, a project was embarked upon based upon our experience in the third-party investigation in the spring and summer. Mr. Ryan, I believe, was in charge of it in which we drafted, I would say, somewhere between 50 and 100 subpoenas. They were plugged into our memory typewriter, word processor.

So we were beginning to have an information collection system, geared toward litigation and the subpoenas were done and we were ready to go in November-December 1976.

Mr. STEINBERG. Do you concur with Mr. Ryan that this was a necessary step in any civil or criminal investigation?

Mr. SEIDEL. Yes. Instead of repeating what he said, may I give one example?

Mr. STEINBERG. Yes.

Mr. SEIDEL. Thank you.

There is a transaction which I believe is in the litigation that was filed in February 1978, called the G. & H. transaction. This was essentially an outgrowth of an investigation into the construction loans given to Mr. Glick and the Argent Corp., for a couple of hotel casinos in Las Vegas, I believe the Stardust and the Fremont. It was a very large loan, in excess of \$20 million.

As I recall, these loans were about 89.5 or 90 percent loans, which means that the borrower had to come up with the remaining equity. During the course of our review of this, we came across a supervising agency, supposedly to supervise the general contractor, called G. & H., which turned out to be one of your basic desk drawer corporations. It is a corporation essentially in name only. We couldn't find out a particularly good function, which for its supervision activities was paid 10 percent of the construction loan invoices and they were paid as it was invoiced.

This 10 percent clearly made up a balance of the loan. It is a concept that I think you would all like to do in real estate. I would like to do it with my home. I would love to mortgage out and not come up with any down payment. Of course the down payment shows the financial wherewithal of the buyer. But this was also, I think, from my experience in the fraud and crime cases, an invitation to siphon off loan proceeds. Not only were only 90 percent of the funds that were supposed to go into the building going to be used, but 10 percent of that 90 percent was being siphoned.

So you had 81 percent essentially of the funds available to get the building built, which is an invitation for refinancing during construction. In any event, we knew this pretty early on in the investigation. We had also determined that a fund lawyer, whose deposition we had taken and found some incriminating what we thought evidence in terms of conflict of interest with another borrower, that a fund lawyer was approving the construction draws.

Maybe that was standard operating procedure with the fund. I can tell you I represent a lot of general contractors and you couldn't get me to approve a construction job. It is just not a lawyer's job in that sense. Those are business decisions. We thought that that was very unusual.

A third-party investigation of that right then was critically important. Mr. Glick, from my understanding, was later thrown out of the thing and they found, I think there was some finding that he was fronting for a Chicago mobster in terms of ownership of various Las Vegas properties.

You probably know more about that than I do. We could have developed that fairly easily.

Mr. STEINBERG. To your knowledge, was Mr. Glick named in the Department of Labor civil suit in 1978?

Mr. SEIDEL. Named as a defendant?

Mr. STEINBERG. Yes.

Mr. SEIDEL. From what I understand; no.

Mr. STEINBERG. Was this third-party investigation you had planned, a massive third-party investigation, ever carried out?

Mr. SEIDEL. I guess you could call it massive in terms of we were going to do blanketing of third-party sources, including banks, so forth, on essentially four loan groupings. I might be wrong. It might have been more than that. There were four categories of loans we were always interested in: Malnik, Glick, Shenker, probably Drake.

Actually, I think what I am thinking of is some particular problems with Penasquitos, which was a series of about 100 loans in which we found the fund funded \$23 million in interest in 1 year on the Penasquitos loan. Funding interest means capitalizing interest. They are not

making payments on the loan, put aside the principal interest for a moment, the interest payments they are not paying get funded or capitalized into the principal amount.

So in this instance, let's say it was \$100 million, it became \$123 million principal. We thought that \$23 million to fund in 1 year was very large. I remember Mr. Benages did a series of memoranda just on funding of interest, a rather bland sounding, but critically important, investigative category because it exaggerates the asset picture.

Mr. STEINBERG. Then the third-party investigation was not carried out?

Mr. SEIDEL. Not at that time.

Senator PERCY. Could I ask a fundamental question then? Did everyone in SIS agree that a third-party investigation was absolutely essential to carry out your mandate?

Mr. SEIDEL. No dissent.

Senator PERCY. In other words, it was universal. What happens to morale on a staff when they are overruled on an issue involving a responsibility given to them which they consider absolutely essential to the discharge of their duties?

Mr. SEIDEL. As a general matter, it depends on the substitute put in the place—

Senator PERCY. Was there an accurate substitute put in place here?

Mr. SEIDEL. There were a number of substitutes discussed over the next number of months, none of them making much sense from an investigative standpoint, and from what I understand in terms of conversations with your staff in preparation for these hearings, essentially the Departments ending up doing what we recommended they do at that time in any event. That is, they are now, 4 years later, doing the third party investigation.

Senator PERCY. Then I have to come back to the very fundamental question, why? If it was universally believed by those given the charge and responsibility in this case that the third-party investigation was an essential part of your responsibility and yet you were told not to go ahead, why was the decision made not to go ahead then?

Mr. SEIDEL. As an attorney, I am obviously reluctant to guess about what went on in other people's minds. To infer from that, what I probably can tell you and try to aid you in answering that, is I think there essentially was a turf problem.

Senator PERCY. What kind of problem?

Mr. SEIDEL. A turf problem in terms that SIS was a new creature in the Labor Department. Heaven forbid that investigators should talk to lawyers, or that lawyers should act as investigators. That was anathema to the Labor Department. The Justice Department was doing it for years. The SEC does it every day, 100 times a day. It was never accepted.

Senator PERCY. Yet the principle was accepted by the highest authority in the Labor Department. The Secretary established it and gave SIS a clear mandate. As the mandate was being implemented, you are testifying, the turf problem developed, there was rivalry and jealousy by the Solicitor's Office and for that reason you were prohibited from going ahead. Is that the sole reason, do you suppose, just professional rivalry?

Mr. SEIDEL. Senator, I am a native Washingtonian. I am 36. I read the papers a lot, have worked for the Government a lot. It is not the first instance in which an executive mandate from a transitory official is slowly but surely eroded by the bureaucracy that lives on, and that is not to knock the bureaucracy, but it is not the first time that has happened.

So the answer to your question, without necessarily adopting the characterization you use, is I think we both agree on the import of that, that is true. There are some other things that I would say, probably aren't as mundane as the way you characterize them. I thought you were pretty strong. I thought there were political appointees who wanted to do something, make headlines so they could be carried over to a new administration.

Senator PERCY. There were political considerations, but the ones that you mentioned were personal political ambitions you might say of political appointees?

Mr. SEIDEL. Not partisan political considerations. For example, everybody in October, when the mass resignations issue came up, knew that in a number of weeks there was going to be an election, but nobody ever said we are going to do this because of the election and without solid evidence, I wouldn't impute that to them. Not only that, especially officials who were making decisions at that time.

Mr. Kilberg, I would never impute that to him. He already announced his resignation. He was going no matter who won the election. There was nothing in it for him. About others I can't speak. This committee will have to investigate and draw its own conclusion, but clearly there was an attitude of "we are not going to fire the coach in the middle of the game."

Senator PERCY. From the time frame standpoint, when was the decision made not to have SIS proceed with third-party investigations?

Mr. SEIDEL. It was made de facto, without our knowledge, apparently, and it became abundantly clear on December 14, 1976, but it obviously had been made prior to that time by others.

What happened, you see, is that Mr. Hutchinson, who was the Administrator, left. Mr. Kilberg was leaving. There were power vacuums.

Senator PERCY. Having been in Washington a number of years now, I think the phraseology we sometimes use, the termites start to work, policy is established, and the termites start to burrow away at it and eventually you hardly recognize it. Thank you.

Mr. STEINBERG. Mr. Seidel, the change in strategy to civil litigation on a few isolated loans, did that limit the Department of Labor's investigation in terms of who would be pursued as potential defendants, what items would be pursued as potential abuses, possibly limiting the evidence and limiting the liability because of the statute of limitations?

Mr. SEIDEL. I think the effect of it was that, but I probably disagree and I don't want to quibble too much—from our prior conversations, sometimes I can be a quibbler.

When you say the change in strategy, there was a strategy. What was substituted, therefore, to call it strategy, is a charitable description. A number of substitutes were put forth. First in December, immediate

litigation. Then some type of negotiation. Then litigation again, and whatever happened between December 1976 and February 1978 is a question for this committee to answer.

That is why I said in my opening remarks this has all the characteristics of a nonpolicy.

Mr. STEINBERG. This nonpolicy that was adopted, did that have the effect I just mentioned?

Mr. SEIDEL. Everyone of them and more.

Mr. STEINBERG. And is there a real danger that potentially culpable third parties who manipulated fund assets will escape liability because of the Labor Department's actions?

Mr. SEIDEL. Yes; there is, but don't be fooled a minute by an artificial date of January 1977, in which, there has been testimony, violations will be pursued, Mr. Steinberg, you know. You were a prosecutor for a number of years. Even if you do have a statute of limitations problem in cutoff for violations, there is no statute of limitations investigative bar, especially in conspiracy cases.

In developing evidence of pattern in practice, motive and intent, look at rules 404, 405, and 406 of the Federal rules of evidence. You can investigate prestatute of limitations matters to show absence of mistake, state of mind, motive, pattern, habit, and so forth. Am I correct? I don't want to venture into your field too much.

Chairman NUNN. Just a minute, we have been here now for 2½ hours. I have left once. I want to at least give you the right to excuse yourselves if you want to and come back. We are going to be here a while longer. If any of you need to leave momentarily to take a break, go ahead.

Mr. SEIDEL. I could use a break.

Chairman NUNN. Why don't we take about a 5-minute break for everybody?

[Brief recess.]

Chairman NUNN. Mr. Seidel is back. We will go ahead and begin again.

Mr. SEIDEL. Thank you, Senator.

Chairman NUNN. Mr. Seidel, after the Solicitor's Office became more involved in late 1976 and early 1977, did the Department of Labor's cooperation with the Department of Justice suffer?

Mr. SEIDEL. From my point of view—well, I would have to say yes, the answer to that is "Yes."

Chairman NUNN. What is your opinion of the failure of the Department of Labor to transfer potential criminal matters to Justice?

Mr. SEIDEL. Some people have talked about that as being a violation of the memorandum of understanding of December 1, 1975, between the Labor and Justice Departments. I never thought it was my mission and my job at Labor to specifically enforce an intraexecutive agency contract, so to speak, so I don't think that is the main sin.

I think the refusal to turn over evidence of criminal violations is on a continuum from the unwise through the unethical to the potentially illegal and a direct violation of any ethics of a government attorney.

Chairman NUNN. Did you inform Monica Gallagher and other persons in the Solicitor's Office that a lot of work needed to be done on the few loans picked for the potential lawsuit?

Mr. SEIDEL. I am sure I did.

Chairman NUNN. Do you know about when that was?

Mr. SEIDEL. Starting in December 1976 until the time I left in September 1977.

Chairman NUNN. Was she in charge at that time or was that later?

Mr. SEIDEL. At which time?

Chairman NUNN. December 1976 and early 1977.

Mr. SEIDEL. No, sir.

Chairman NUNN. But she was involved?

Mr. SEIDEL. Yes.

Chairman NUNN. In February 1977, were you told to "take a vacation and get lost for a couple of weeks"?

Mr. SEIDEL. I was.

Chairman NUNN. By whom?

Mr. SEIDEL. Mr. Lagather.

Chairman NUNN. What gave rise to that instruction?

Mr. SEIDEL. I think there was a lot of tension and very hard dealings because of the refusal to accept or the vociferous objection to some of the plans or what I have termed before, the general aura and atmosphere of nonpolicy.

Chairman NUNN. You were complaining?

Mr. SEIDEL. Yes, a almost the highest levels of the Department.

Chairman NUNN. Did you make it clear to the people at the highest levels that you did not agree with the course of the investigation and what was happening?

Mr. SEIDEL. I didn't make it clear to the Secretary or the Under Secretary but I am sure the Assistant Secretary and the Solicitor knew my feeling.

Chairman NUNN. Did you make it clear to Mr. Lippe?

Mr. SEIDEL. To Mr. Lippe? He was with me most of the time when I was making it clear to others.

Chairman NUNN. So you and he saw it eye to eye?

Mr. SEIDEL. Yes.

Chairman NUNN. Who were you two reporting to; who were you complaining to?

Mr. SEIDEL. That is a good question, who were we reporting to? It wasn't clear who we would report to all that time. Maybe it was Mr. Kelly, maybe it was people in the Solicitor's Office, maybe it was Mr. Lagather, maybe later on it was Assistant Secretary Burkhardt or his deputy.

Chairman NUNN. Different people. It wasn't a clear line of authority then?

Mr. SEIDEL. It was jumbled.

Chairman NUNN. Did you, indeed, take off for a couple of weeks?

Mr. SEIDEL. I went to San Diego to do some more third-party investigation on Shelter Island Hotel, which at that time had now gone into chapter XI. All our worst fears came true on that loan. And after that, I went to Mexico for about 10 days.

Chairman NUNN. Vacation or work?

Mr. SEIDEL. Mexico vacation.

Chairman NUNN. You were gone then from Washington 3 or 4 weeks?

Mr. SEIDEL. I was gone from probably March 4 to March 20 or 21. About 17 days.

Chairman NUNN. When you returned, what did you observe with respect to the Teamster investigation and SIS?

Mr. SEIDEL. The investigation was at a complete standstill. I learned that most, if not all, of the investigators in Chicago were embarked upon a 24-hour-a-day xeroxing job of the fund files and that is essentially what was happening.

At the request of Mr. Lippe, I went to Chicago and found morale to be very low.

Chairman NUNN. The General Accounting Office reported to us in this report they gave us today orally and gave it to us previously in writing that the Department of Labor, No. 1, stopped the third-party inquiry; No. 2, effectively eliminated SIS; No. 3, neglected many areas of inquiry; No. 4, entered into agreements which have questionable benefit to the Government and finally, they did not fill the positions that were authorized by Congress even though there were many matters they did not investigate.

Do you generally concur in these observations by GAO?

Mr. SEIDEL. From my knowledge of the situation, I do. The one that is most troubling to me of all of those is the lack of an enforceable agreement. I understand that there is no written agreement with the exception of a press release arising from the March to April 1977 or January to April 1977 negotiations.

I find that particularly troubling because the starting point of all those events was with the specific aim of having some type of enforceable agreement. Even if it weren't a consent decree, Senator, I can say to you many things could be seen and I have tried to put myself back in those times and not just make hindsight judgments, many things can be seen as judgment calls as long as certain specific criteria were met, the most important of which is to have something that is enforceable.

How else is the public interest going to be served? How do you enforce what the GAO talked about was a phantom agreement or non-agreement?

Chairman NUNN. You never brought a lawsuit to enforce a press release?

Mr. SEIDEL. Amen.

Chairman NUNN. Did you become aware that the fund was considering indemnifying the trustees for personal liabilities and attorneys' fees?

Mr. SEIDEL. The fund early on—

Chairman NUNN. I think the staff has a memo on that. Would you look at this memo, identify it to refresh your recollection?

Mr. SEIDEL. This is a September 15, 1976, memorandum to Mr. Lippe from me, concerning a conversation with one of the attorneys for the pension fund. This conversation took place at a time smack in the middle of our negotiations for a consent decree and the pension fund attorneys always wanted to put indemnification on the table.

I think this memorandum speaks for itself. I think I concluded in that or what I said to the fund attorney essentially was that there is no use in talking if indemnification was on the agenda.

Chairman NUNN. Did you tell the Solicitor's Office about that?

Mr. SEIDEL. Yes; in terms of questions that had to do with overall ERISA policy, putting to the side investigative types of decisions, had to do with ERISA policy, in terms of indemnification, what was legal or not, they would go to the Solicitor's Office.

The SIS wasn't set up to be the ultimate authority or the policy-maker on ERISA for the Department of Labor. It had a discreet mission.

Additionally, the fund always was making attempts to try to get advisory opinions from anybody they could so they could, one would think, try to develop some type of reliance defense in any litigation, and we were fairly sophisticated, we knew what they were doing.

We would transfer those questions to the appropriate place either PWBP or the Solicitor's Office and tell the funds on those questions we didn't develop policy, speak to them. They have administrative procedures for those things. But indemnification was not a negotiable item.

Chairman NUNN. If they had indemnified the trustees, wouldn't that negate to a great extent the whole civil suit?

Mr. SEIDEL. Indemnify for personal liability if you are suing them for personal liability? That would be absurd.

Chairman NUNN. If they have personal liability, in order to reimburse the fund and the fund is indemnifying the personal liability, when you get through if you win a lawsuit against them personally, they pay into the fund, the fund turns around and indemnifies them, the net effect is zero.

Mr. SEIDEL. They could burn the money and avoid the middleman. Chairman NUNN. I have a few more questions and then I will turn it over to Senator Percy.

How would you characterize the mission of the Department of Labor relating to the Teamsters Central State Pension Fund as to whether it has been a successful investigation?

Mr. SEIDEL. I am really reluctant to conclude that. You have got the facts. The results that could have been have not been, plainly and simply—plainly and simply.

Chairman NUNN. Measured against the potential, you would say it has failed?

Mr. SEIDEL. Failed miserably.

Chairman NUNN. When did you leave the Department of Labor?

Mr. SEIDEL. September 10, 1977.

Chairman NUNN. Was there a particular reason?

Mr. SEIDEL. All bad things must come to an end.

Chairman NUNN. Senator Percy.

Senator PERCY. I wonder if you could discuss with us, Mr. Seidel, the situation with respect to National Bank of Georgia? Can you tell us when you learned that Assistant Secretary of Labor Francis Burkhardt had ordered Mr. Lippe to stop any investigations of the moneys invested by the Teamsters fund in the National Bank of Georgia?

Mr. SEIDEL. As far as I can recollect—can you hear me, Senator?

Senator PERCY. Yes.

Mr. SEIDEL. As far as I can recollect, I became aware of that sometime in August 1977.

Senator PERCY. Were you surprised when you heard it?

Mr. SEIDEL. I was astounded. No. 1, there has been some discussion about it here today already and in a sense it is like producing Hamlet without the Prince of Denmark because we haven't mentioned the name. And the name is Bert Lance.

The parent committee of this committee was engaged either in hearings at that time or in deep preparation in hearings at that time.

Senator PERCY. I remember.

Mr. SEIDEL. Yes. We thought that there was validity in that investigation, even if we were just going to cover our tails so nobody could accuse us of a white wash later on but it wasn't as if we were proceeding on that investigation on innuendo. We were proceeding with information Mr. Lippe had received from the Internal Revenue Service concerning the performance of various banks which the fund had given a total of \$200 million to.

Senator PERCY. Did you have any evidence that IRS was intending to investigate that?

Mr. SEIDEL. I just don't recollect that.

Senator PERCY. Did you look upon it as a part of the SIS charter to go ahead on that investigation if you had knowledge that less than a market return on investment, as judged by the performance of five other banks, was being realized by a bank under severe attack by four or five regulatory agencies of Government, including the Comptroller General and the Department of Justice?

Mr. SEIDEL. Unequivocally. Not only that, not even for those reasons. When the fund gave the banks those moneys a year and a half previously, I believe in the resolution establishing that expenditure they said that they would themselves, the trustees themselves, would monitor on a periodic basis, maybe it was quarterly, the performance. If there is evidence that they are not doing that, completely apart from the return on investment, there is investigative interests in the fund not following its own rules.

Senator PERCY. Doesn't this one instance then go to the very heart of what the whole investigation is all about?

Mr. SEIDEL. Absolutely; absolutely.

Senator PERCY. What did you do when you learned that Mr. Burkhardt had ordered Mr. Lippe to terminate the investigations?

Mr. SEIDEL. First, during the development of this, I obviously supported Mr. Lippe in his desire to get this investigation started and participated, I believe, in the drafting of the memoranda which the staff has shown me. Probably Mr. Ryan took them over after me and edited out all the vitriolic stuff I was feeling at that time. It was on the eve of my departure.

Senator PERCY. You were feeling a little more freedom?

Mr. SEIDEL. Yes.

Senator PERCY. But you weren't puffing it, you were really putting down on paper how strongly you felt about that?

Mr. SEIDEL. Of course. There was just no rational basis for it. I remember the explanation being given that it will thwart the negotiations. Negotiations for what? For the asset managers on an agreement that only existed like a ballad, that is handed down through the ages in the oral tradition?

Senator PERCY. You wrote a memorandum, but what form of protest was then made, to your knowledge, by Mr. Lippe, by anyone else, against this decision of Mr. Burkhardt's? This was not an irreversible decision. It was subject to appeal and subject to rational argumentation.

Mr. SEIDEL. During the course of this matter I left the SIS and shortly after I entered private practice, maybe on the first or second day, I called Larry and said, what is happening on that matter, the NBG matter, and he told me that a meeting was scheduled, I believe for the next day on that. At which time I said, what do you expect?

He said he expects the same old thing, he won't get the go-ahead. I said, OK, I have an idea. Larry asked me what it was. I told him I didn't want to infect him at that time with my idea. So what I did is I call a friend of mine, a former colleague who works for a Senator, did at that time in any event.

The Senator probably is on the Governmental Affairs Committee and I said this is what is happening: I think it will really be detrimental to blow the whistle in terms of going public at this time, although I am certainly free to do that because the most important thing is to provide information to the Senate, but to get this logjam broken at the time.

So what I would suggest if you could do is place a call to Assistant Secretary Burkhardt. The matter left my hands at that time. The next day in the early afternoon, Mr. Lippe called me and said, you will never believe what happened. I went into a meeting this morning with Burkhardt, and whomever, and they were all acting very paranoid, or something. But the net effect of it was, I believe, that the investigative logjam was partially removed, that there was at least a go-ahead given for that investigation.

Mr. Lippe also said to me, he said I went in there, it was the strangest thing, they asked me if I knew somebody or another, I can't even remember or pronounce it, he made an attempt, he said do you know anybody by that name?

I said, yes, that's my friend who works on the Hill and called him to see what he could do. Larry and I laughed a lot and concluded in terms of some of these silly things that went on at that time, probably if they are going to impede and I intentionally don't use the word obstruct, but if they were going to impede the investigations even with the effect of the impediment being to delay the transmission of information to Congress which was investigating at this time, Congress was the main show at that time, I said at least if they are going to do that, they are not going to let you know about it any more because they think you have sources of power outside the Department.

Senator PERCY. As a result of the protests that were made, how did Mr. Burkhardt actually modify his instructions?

Mr. SEIDEL. I was not in the Department at that time and probably you will get most authoritative answers from Mr. Lippe on that subject.

Senator PERCY. Could you tell us whether in your professional judgment the Department of Labor fulfilled the initiative embarked upon in its investigation of the Teamsters Central States Pension Fund?

Mr. SEIDEL. I can only conclude based on the GAO testimony that I have heard that they have not.

Senator PERCY. Have the Department of Labor's actions provided for lasting protection of the Teamsters fund and the thousands of members of the Teamsters Union who rely upon that pension fund for their retirement income?

Mr. SEIDEL. The only lasting protection you get with an organization with the history such as this one is not only to mule them, as they say in Kentucky, but to have a leash on them that every time they get ornery, you yank the leash. If that has happened then the Department has succeeded. If that hasn't happened, then I don't think the Department has succeeded.

Senator PERCY. In a January 17, 1978, memo authored by Monica Gallagher to the Solicitor and the Assistant Secretary of Labor, Ms. Gallagher wrote the following, after asserting that the fund was threatened by the proposed Department of Labor investigation—I will just quote what she wrote, to refresh your memory.

On February 23, 1976, the board approved and implemented the recommendation of the investment committee created in June 1973 for the externally managed investment program. For this program a group of five banks is handling the investment of approximately \$200 million of fund assets, each bank investing its share at its sole discretion.

Each bank's discretion is subject only to the fund's discretion. The SIS investigation has not significantly concerned itself with the process by which the banks were selected or are retained, the bank's fiduciary performance, or the trustee's performance in viewing the bank's results.

Ms. Gallagher mentioned five banks. Did she leave one out and if so, which one do you suppose she left out? I thought the banks were located in the cities of New York, Chicago, Cleveland, San Francisco, Pittsburgh, and Atlanta. That is six.

Mr. SEIDEL. I can't vouch for what she does, did, nor would I in that area. However, I would say that the amount of money, \$200 million, is right. So perhaps it is just a typographical error, an oversight. It should be six instead of five. However, to anticipate your question which I would think would be something along the lines of how does that square with the National Bank of Georgia matter which we discussed, I say this: Your staff showed me this memorandum, a portion of it Friday, for the first time. That is why I decided to give a brief opening statement here and what I referred to as misleading if not totally false advice given to the Secretary.

This, at best, is terribly misleading. At worst, it is false.

Senator PERCY. Could I read again then what appears to be from your testimony misleading if not false information in this report.

The SIS investigation has not significantly concerned itself with the process by which the banks were selected or are retained, the bank's fiduciary performance, or the trustee's performance in viewing the bank's results.

Mr. SEIDEL. That is as if—

Senator PERCY. That might be true of five banks. Was there any question in your mind about investigating any one of the other five whose performance seemed to come close to what would have been expected?

Mr. SEIDEL. Not that I recall.

Senator PERCY. But it is rather interesting that only five are mentioned and the statement is true about five, but it is totally mis-

leading and false to say that there were five, not six, and then to make the categorical statement that SIS was not significantly concerned when there was a big rhubarb about this reaching the Assistant Secretary level.

Mr. SEIDEL. Senator, if this type of drafting could be put into an SEC prospectus, the SEC would be all over you like the Chicago wind on January 10.

Senator PERCY. That is right. Finally, can the Labor Department adequately investigate labor unions and trust funds considering its possible conflict of loyalties, or should the Government be addressing this issue in some other way, possibly through a Government entity other than the Labor Department?

Mr. SEIDEL. I have thought about the issue; not exactly in those terms a number of times. I even thought about it contemporaneously when I was at the Labor Department in terms of when the issues, related issues arose such as Mr. Ryan's work on putting together procedure and rules and regulations for our investigation.

We were hired and modeled upon before we got there, an investigative apparatus such as the SEC, a strike force, the fraud section of U.S. attorney's office in a large city, Washington, southern district of New York, northern district of Illinois.

You have to have a cooperative effort insulated from perceived bureaucratic needs of others in order to make an investigation such as this one successfully. I don't think that is possible in the Labor Department. I will give you one example. We wanted to develop a subpoena which would be a combination of a subpoena duces tecum and a subpoena ad testificandum because there were two separate forms. We wanted to develop it just for our investigation. We had to staff it around the Labor Department.

We got the answer back, that well, the subpoena duces tecum is white in color and the ad testificandum is buff in color and we have been doing it this way for years and people can tell them apart. So we think we shouldn't change.

Mr. Hutchinson sent that back to me saying "your comments" and I wrote him a handwritten note saying "let's compromise: How about a two-tone subpoena?" Those are the problems you are up against.

Senator PERCY. Thank you very much, indeed, for your help.

Mr. SEIDEL. Thank you, Senator.

Chairman NUNN. Thank you very much, Mr. Seidel, for your cooperation with the subcommittee.

Mr. STEINBERG. Mr. Chairman, I would ask to be placed in the record the two sets of memos Mr. Seidel referred to with the caveat of sealing them in case they affect pending litigation.

Chairman NUNN. I will leave it up to staff to go through and decide which ones ought to be sealed based on the litigation now pending.

At this stage we have Mr. Lawrence Lippe, former director of the Special Investigations Staff. Mr. Lippe, you have been mighty patient sitting here most of the day. Do you need to take a break before you begin?

Mr. LIPPE. I am ready to begin, Mr. Chairman. If I may make a very brief statement before we proceed, I would like simply to say that I fully support the efforts of this committee to investigate and conduct

this inquiry into the Department of Labor's inquiry into the Central States pension fund. There is clearly a need and indeed a right of the public, in general, and of the participants and beneficiaries of this fund, in particular, to know just what went on and is going on in this matter. I believe I can most effectively assist this committee now by fully responding to the comprehensive questions for which this committee has a well-earned reputation.

Chairman NUNN. Do you generally agree with Mr. Seidel's testimony?

Mr. LIPPE. I do, sir.

Chairman NUNN. Do you generally agree with Mr. Ryan's testimony?

Mr. LIPPE. In substance and in most part, yes.

Chairman NUNN. And Mr. Shevlin's testimony, do you generally agree with that? I am not asking every detail.

Mr. LIPPE. I would want to withdraw, however, from any suspicions which I could not, for which I could not find adequate basis in fact. Or speculation to the extent any of the previous testimony has included that. While all of us have our own personal views, I would prefer to let the facts speak for themselves and let this committee and the public draw their own conclusions from the facts.

Chairman NUNN. Thank you. What were you told the mission of SIS was when you were selected to become director of the Special Investigative Unit?

Mr. LIPPE. To conduct a comprehensive investigation into the operation of the Central States, the so-called Central States pension fund and, later on, the health and welfare fund, to determine essentially whether it was being operated in a manner consistent with fiduciary standards and for the sole and exclusive benefit of its participants and beneficiaries as it ought to have been.

Chairman NUNN. Did you understand that you would be given subpoena power when you took over as head of this unit?

Mr. LIPPE. Yes. One of the principal reasons I was asked to assume this position was because of my background and experience as a Federal prosecutor, which spans some 20 years of continuous service with the Federal Government, during which time I had extensive experience in the drafting and use of investigative and trial subpoenas of all types including, in particular, those involving so-called white-collar crime or complex financial investigations. It was in that context that I had a discussion with then administrator of the pension program, Jim Hutchinson, to whom I directly reported. He thought that it made eminent sense for me to have the authority to issue subpoenas when often time was of the essence. Since he fully respected the capabilities of my legal staff, Mr. Seidel, Mr. Ryan and others like them and me, to use our best judgment, he therefore delegated that power to me.

I had the subpoena authority.

Chairman NUNN. How long did you retain that subpoena authority? When was it terminated if it was terminated?

Mr. LIPPE. It was ultimately terminated. As Mr. Seidel has previously explained, I could not say that on a given date it was, by some edict or decree, taken away. It was eroded, commencing roughly in December 1976 and I would say that by very early 1977 I could not issue

a subpoena without the blessings of an official in the Solicitor's Office; in particular, either Ms. Gallagher or Mr. Sacher.

Chairman NUNN. Who were the two that you had to clear it through?

Mr. LIPPE. Monica Gallagher and/or Steven Sacher, for the most part.

Chairman NUNN. Previously identified people that have been talked about here today?

Mr. LIPPE. Yes.

Chairman NUNN. When did you first learn the IRS would not participate in the joint investigation?

Mr. LIPPE. When I was leaving my house on the morning that it was publicly announced and a neighbor of mine, who happened to work for the IRS but had nothing to do with this investigation or that action, asked me if I had heard about it on the morning's radio.

Chairman NUNN. You are talking about the revocation?

Mr. LIPPE. Yes. I thought the question was revocation.

Chairman NUNN. I was saying when did you first learn that they would not participate jointly in the investigation?

Mr. LIPPE. When I assumed the position of Director in January 1976, I obviously spent a fair amount of time reading the historical file that led up to the creation of our staff. There were memoranda and some correspondence, principally between and by Mr. Hutchinson and IRS, in which this whole issue was discussed. So it was about the time that I took over the staffing or created the staff in early 1976.

Chairman NUNN. In your opinion was there an adequate reason given to you as heading up this unit as to why IRS would not participate in the joint investigation?

Mr. LIPPE. No reason was ever given to me, Senator. The files that I read simply reflected that IRS had declined to participate and in any conversations that I ever had subsequent to that, as I can recall, either no satisfactory or absolutely no basis was ever furnished to me for their nonparticipation.

Chairman NUNN. You have heard GAO's testimony that the authorized positions, a good many of them, were never filled during the course of this investigation. Did you request assistance from the Department of Labor in filling these positions or were you satisfied with the number of people you had working on the investigation?

Mr. LIPPE. I had from time to time requested a great number of people and indeed at one point in time our authorized strength was increased, I believe, from its original 20- to 40-some-odd positions. But that was quite some time into the investigation that that increase was budgeted for and approved.

Chairman NUNN. In other words, you did not get all of the people you asked for?

Mr. LIPPE. No, sir.

Chairman NUNN. Was there reason given to you why you did not get all of the people you asked for?

Mr. LIPPE. No. It would be incorrect to say that I was not furnished—the authorized ceiling of 45—probably if all of those positions had been filled it would have been sufficient, at least in the beginning.

Chairman NUNN. What I am asking is why were those positions not filled?

Mr. LIPPE. I believe there has been previous testimony part of which is entirely accurate, to the extent that the civil service hiring regulations were extremely cumbersome and burdensome to comply with while we were very actively, literally from day one, engaged in the investigation which commenced without any permanent staff. The only two permanent staff members at the time we went onsite in January of 1976 were Mr. Seidel and a secretary who couldn't take dictation.

We went onsite with 20, and I must say, very dedicated detailees who we had drawn from the nationwide ranks in the Labor Department's Compliance Officer cadre, while all the while trying to comply with the civil service regulations and bring on the staff.

Chairman NUNN. In other words, were you or were you not blocked from getting the number of people you needed from the Labor Department?

Mr. LIPPE. No. Circumstances, more than anything else, prevented us from being fully staffed.

Chairman NUNN. Were you aware of qualified investigators who could not be hired?

Mr. LIPPE. Yes, sir. Under the civil service regulations I could only get people hired through the so-called competitive process. I knew, for example, a number of FBI agents with whom I had worked on a number of white-collar crime cases. They were accountants by profession and would have liked to come with us but, since they did not have civil service competitive status, I could not consider hiring them.

Chairman NUNN. So this was the lack of the number of people ever fulfilling the congressional authorization was not a deliberate policy of the Department of Labor.

Mr. LIPPE. Not that I can discern. There is no evidence of that of which I am aware, sir.

Chairman NUNN. You have heard Mr. Seidel describe the problems caused by the precipitous decision of IRS to revoke the fund's tax-exempt status. Do you generally agree with his analysis?

Mr. LIPPE. Yes, sir.

Chairman NUNN. When did you first learn of the IRS revocation?

Mr. LIPPE. As I started to say before, as I left the house on the morning that it became public—I believe the last week in June of 1976—I was advised by a neighbor who had heard it on the radio and was aware that I was involved in the Teamster investigation. He asked me if I had heard about it. I didn't know what he was talking about until I went, turned the car radio on, and heard it myself.

Chairman NUNN. Did you complain to anyone about a decision being taken without any coordination whatsoever with your office?

Mr. LIPPE. Yes.

Chairman NUNN. Who did you complain to?

Mr. LIPPE. Certainly to my superiors in the Department of Labor. Subsequently I had conversations with various officials in the IRS.

Chairman NUNN. Had you been told by anyone in IRS that there was no imminent possibility of IRS revoking the fund's tax-exempt status? Had that been told to you shortly before they revoked it?

Mr. LIPPE. Yes.

Chairman NUNN. By whom?

Mr. LIPPE. One individual whom I am sure told me that, some 4 or 5 days prior to the actual revocation, was a man whose last name

was Durkin, D-u-r-k-i-n, who, I believe, was on staff of the District Director in Chicago, and was a fairly high-ranking official on that staff. I believe further, although my memory in this regard is not as certain as it is with respect to my conversation with Mr. Durkin, that I had a similar conversation during that same timeframe with District Director Miriani, Chicago District Director. The substance of each conversation was that while certainly revocation was an option which could be considered, clearly it was not an option which anybody in IRS was considering implementing or putting into effect in the near future.

Chairman NUNN. That was shortly before the revocation?

Mr. LIPPE. That was something between 3 to 5, 5 or 6 days or so prior to the actual revocation. Yes, sir.

Chairman NUNN. After this, did you have any discussion with any IRS officials concerning the reasons why IRS revoked the fund's tax-exempt status at the time they did?

Mr. LIPPE. I am sure I had a number of conversations, Mr. Chairman, and one in particular stands out. I recall that I prepared a fairly extensive memorandum to file relative to that conversation. That was a conversation I had with then-Assistant Commissioner Al Lurie.

Chairman NUNN. I hand you a memo that we have and ask you to identify that memorandum, the circumstances of it.

Mr. LIPPE. I have been handed a memorandum dated August 24, 1976, to the files, from me. If I may take just a moment to review this, Mr. Chairman.

Chairman NUNN. Certainly. Go ahead.

Mr. LIPPE. Yes. I recognize this as a memorandum that I placed to the file. I dictated it almost immediately after having a conversation by telephone with Mr. Lurie.

Chairman NUNN. What were the reasons given you for the revocation at that time?

Mr. LIPPE. Referring to the memorandum, which most accurately reflects my recollection since I prepared it right after the conversation, and my current recollection which is somewhat refreshed by this, Mr. Lurie told me that there were a variety of reasons, among which were—and I am quoting them, since I show here that I placed these words in quotes, meaning that at the time I wrote this memorandum these were Mr. Lurie's exact words—"congressional heat," as well as the "Commissioner's views." Congressional heat and Commissioner's views are both in quotes.

Chairman NUNN. The Internal Revenue Service, I believe, publicly claimed that the revocation was strictly a local IRS action with no national office input. Based on your conversations with Mr. Lurie would you agree with that IRS position?

Mr. LIPPE. Sir, the exact words that Mr. Lurie used in his conversation with me are obviously inconsistent with the representation that it was strictly local action.

Chairman NUNN. You remember that representation?

Mr. LIPPE. I do. Yes.

Chairman NUNN. Was there any reason for the Internal Revenue Service to act in this kind of manner without coordinating that you could discern?

Mr. LIPPE. I can discern no rational basis for that.

Chairman NUNN. After the fund entered into discussions as a result of the SIS depositions being taken in the spring and summer of 1976, did you recommend to your superiors in the Department of Labor that they attempt to obtain a court order consent decree?

Mr. LIPPE. As Mr. Seidel has fully explained, we strongly recommended and endorsed that course of action.

Chairman NUNN. Did you make any recommendations about whether the Labor Department should be involved in either the selection of the trustees, new trustees or in a veto over the new trustees?

Mr. LIPPE. I participated in the same discussions that Mr. Seidel previously described. Once a policy decision had been made to accept the fund's suggestion of so-called mass resignations, we believed that at the very least, some minimal criteria—rational criteria—for the selection of trustees, should be developed and also, that the Department should exercise the veto power.

Chairman NUNN. And that recommendation, neither of those recommendations were followed?

Mr. LIPPE. Not to my knowledge.

Chairman NUNN. Do you know who made the decision not to follow either of those recommendations?

Mr. LIPPE. I couldn't say with precision. It certainly was at least at the level of the then-Administrator, Mr. Chadwick, and the then-Solicitor, Mr. Kilberg. Whether or not the decision was participated in and made by the Secretary or Under Secretary, I couldn't say.

Chairman NUNN. Were you given a reason as to that decision?

Mr. LIPPE. As has been previously described to you, among the reasons given was a concern about a possible claim of departmental endorsement of any trustee who might subsequently be found not to be acting according to fiduciary standards, but they were general and not specific in their nature.

Chairman NUNN. Did the Department of Labor know specifically how the new trustees were selected?

Mr. LIPPE. All I knew—and I can't speak for knowledge on the part of any of my superiors or other officials—was that the selection was made in accordance with the existing plan or trust documents which called for the selection by various conferences of Teamsters and employer organizations.

Chairman NUNN. Did the Department of Labor or did you know anything about whether the old trustees had any influence in selecting the new trustees?

Mr. LIPPE. I was not privy to any knowledge on that issue one way or the other, Mr. Chairman. I do not know whether any other departmental officials delved into that matter.

Chairman NUNN. Were you aware or do you know whether anyone else was aware as to whether the old trustees continued to have a strong influence on the fiduciary decisions of the new trustees?

Mr. LIPPE. I don't or cannot now recall any specific instance at this time. You are referring now, I assume, Mr. Chairman, to the time-frame of late 1976, early 1977.

Chairman NUNN. That is right.

Mr. LIPPE. I cannot recall any incident, any particular transaction or whatever with respect to which I could say that the old trustees did or didn't have influence.

Chairman NUNN. When did you leave the Labor Department?

Mr. LIPPE. I left the Department in either late October or early November of 1977.

Chairman NUNN. Where did you go then?

Mr. LIPPE. I became the Assistant Inspector General of the Department of HEW in charge of its criminal investigative function. I was in charge of a staff of approximately 150 criminal investigators, nationwide, under the Inspector General Act.

Chairman NUNN. Did you go to the Justice Department after that?

Mr. LIPPE. Yes. Since April 1979 to the present time, have been Chief of the General Litigation and Legal Advice Section in the Department of Justice's Criminal Division, where I head a staff of approximately 43 attorneys. We are involved, on a nationwide basis, in the oversight and actual conduct of criminal as well as civil trials which are related to a wide variety of law enforcement activities.

Chairman NUNN. And you still have that position?

Mr. LIPPE. Yes, sir.

Chairman NUNN. Did anyone in the Department of Labor hierarchy discuss with you the fact that the mass resignation procedure was preferable to other options because it would be a quick, traumatic action?

Mr. LIPPE. That phrase was used during at least one meeting in which I believe I participated along with Mr. Seidel, and certain of our officials.

Chairman NUNN. Who told you that?

Mr. LIPPE. As best I can recall, that phrase was used by then-Administrator William Chadwick.

Chairman NUNN. Was anyone else present at that meeting?

Mr. LIPPE. I believe that Mr. Kilberg was present. Mr. Seidel was present and so was I. There may have been others present. I cannot recall.

Chairman NUNN. In December of 1976, did the Solicitor's Office change the direction of the SIS investigation?

Mr. LIPPE. In December 1976, Mr. Seidel and I were called to a meeting. I believe that it was about the middle of December 1976. At that time, we were told that the plans which we had been making for an extensive third-party investigation would cease. The plans to which I am referring are those which have been adequately and effectively described by the witnesses that have testified before me. We were told at that meeting by Mr. Sacher and Mr. Chadwick that we would not carry those plans out and would instead, begin planning immediately for the institution of litigation. That decision was communicated to us for the first time around the middle of December. I cannot tell when the decision was made.

Chairman NUNN. 1976?

Mr. LIPPE. Yes, sir.

Chairman NUNN. Were you asked to comment on that new direction; were you asked for your views?

Mr. LIPPE. No, sir, we were ordered to stop whatever plans we had made for third-party investigations—as have been previously described, and I won't take the time of the committee to describe them at this time—and instead to begin immediately preparing for litiga-

tion. By that I mean that our role—the SIS's role—was explained to me to be one in which we would immediately begin briefing representatives of the Solicitor's Office, prepare briefing papers, and in general do all the kinds of things one would do to support potential major litigation.

Chairman NUNN. Did you dissent from that?

Mr. LIPPE. Yes, sir.

Chairman NUNN. Who did you dissent to?

Mr. LIPPE. To the very people who were telling us to do that. They were, at that time, Mr. Sacher representing the Solicitor's Office and Mr. Chadwick who was then the administrator of the pension program and was in effect, my immediate boss.

Chairman NUNN. What were your reasons for dissenting? What did you tell them?

Mr. LIPPE. I stated that in my judgment, it would be, much more beneficial to continue the course of action on which we had been embarked—which was, on one hand, to begin hammering out with the pension fund's counsel a set of rational procedures by which the fund would govern its asset management activities and, on the other, and most importantly, simultaneously to commence forthwith the third-party investigations to keep the momentum going and to get the other side of the picture, if you will, on the many loans which we had targeted. We felt that these transactions could form the predicate for ultimate litigation. We further believed that we should conduct this fact finding in the context of the ERISA subpoena powers, which we had and which were far more effective tools for getting witnesses in and developing facts than were the procedures for discovery under the Federal rules of civil procedure.

If I may take one more moment to elaborate, under ERISA, as we had proven when we took our first round of depositions in July 1976 you get the witnesses in with their counsel present but nobody else; the proceedings are in the nature of private investigative depositions, much as the SEC and FTC have used effectively for years. When compared to the most cumbersome kind of discovery I can think of—that required under the civil rules of procedure and which would be the type of discovery to which you are relegated once you file a lawsuit—the advantages of ERISA investigative depositions are self-evident as far as we can see.

[At this point, Senator Percy withdrew from the hearing room.]

Chairman NUNN. What response did you get when you made this strong opinion known to your superiors in the Solicitor's Office?

Mr. LIPPE. Unresponsive. We were simply ordered to continue or to begin making the preparations as they had ordered us to do at this meeting in mid-December of 1976.

Chairman NUNN. They didn't give you a reason? They simply made the decision; is that right?

Mr. LIPPE. That's correct.

Chairman NUNN. Did you have clearance as to who made the decision?

Who was it who overrode your views?

Mr. LIPPE. As I said, Mr. Chadwick who was the administrator of the pension program at the time.

Chairman NUNN. Did he succeed Mr. Hutchinson?

Mr. LIPPE. He succeeded Mr. Hutchinson, that is correct. Mr. Chadwick and Mr. Sacher, who were the associate solicitors of the Department of Labor for the pension program, are at the very least, two of the people who made that decision. Who above them made it I really couldn't describe. Of course, by this time the new administration was in a transition period. I don't believe at that time any of the Secretary Marshall's people were yet permanently in place yet. To what extent anybody higher than Mr. Sacher in the Solicitor's Office endorsed or made that decision, I wouldn't want to speculate. But it was clear to me that Mr. Sacher, speaking in the presence of Mr. Chadwick, who was my immediate in-place boss as the duly appointed administrator of the program, was speaking with authority, at least the authority of Mr. Chadwick.

Chairman NUNN. In your opinion, could the Department of Labor adequately litigate without a third-party investigation?

Mr. LIPPE. To properly answer that question, Senator, I might just say that to bring a civil suit in good faith requires very little, so it really depends on who's definition of adequate you are using. If you are using the definition that I am used to as a Department of Justice attorney of many years vintage—both on the criminal and civil side—I would have to say no. Our philosophy in litigating is that, unless you are otherwise suddenly under some kind of constraints because of the running of the statute of limitations or some other legal prohibition over which you have little control, you ought to, in my judgment, prepare the case you are going to bring as best you can by preindictment or precomplaint investigation. In that regard we weren't yet adequately prepared. If the question means, did we have, perhaps, technically enough for a prima facie case at the time, well, I guess we did. But that is not the way to litigate unless there are some legal constraints on your having to go to court at that time.

Chairman NUNN. Were there any legal constraints; was the statute about to run?

Mr. LIPPE. No, sir, not that I was aware of.

Chairman NUNN. So, in terms of your definition of being ready to litigate, you do not believe the Labor Department was ready to litigate, although you could see how others would take a contrary view based on a different criteria?

Mr. LIPPE. That is a point that could be debated.

Chairman NUNN. Did you ever attend a meeting with Monica Gallagher where she discussed a "high visibility" and a "quick roadshow" approach to the investigation?

Mr. LIPPE. I did, sir. I believe it was the same meeting that has been previously described by Mr. Ryan.

Chairman NUNN. Would you describe it for us, in your own words?

Mr. LIPPE. This was a meeting that occurred, as I recall, in Mr. Lagather's office. He was then, I believe, the deputy solicitor of Labor.

Chairman NUNN. Time frame, approximate?

Mr. LIPPE. In March, April 1977, the spring of 1977, maybe a little sooner, in that time frame. It could be as early as February, within that time frame.

We were called to this meeting at which time Ms. Gallagher either produced, or said she had back in her office, a list in which approximately somewhere between 50 to 75 or so principals were identified as being involved in as many loans. She said that we should immediately subpoena these persons in and question them about each of the loans with which they were associated. When I probed further and asked her what the basis for her selecting those names and those loans or transactions was—by what criteria were they selected—the only response that she gave that I can recall that even sounded like an answer, if you will, was that those were loans which she had quickly read about in some minutes of the fund's trustees meetings and loans in which the principals could be easily identified. We could then, she said, go after them in what would be a quick roadshow fashion.

Chairman NUNN. She used those words?

Mr. LIPPE. Yes, sir.

Chairman NUNN. Did she use the words "high visibility" also?

Mr. LIPPE. Or to that effect, yes, sir.

I protested vigorously for all the obvious and logical reasons that any experienced investigator and prosecutor would protest. I don't know whether the chairman wants me to go into all the reasons I articulated.

Chairman NUNN. I think you ought to go into detail on that one.

Mr. LIPPE. Among the reasons that I clearly recall is that I, of course, reminded Ms. Gallagher that we had been focusing on a number of other loans which in our judgment were extremely egregious. These are the various loan groupings which have been previously described by today's witnesses, the Malnik grouping, the Shenker grouping, and the Glick grouping of loans, for example, as to which we had prepared extensive third-party subpoenas and were prepared to do extensive work. We did not know very much, if anything, about these loans that she wanted us to question these folks about. The newest investigator or prosecutor would not have the temerity to begin questioning borrowers involved in complex financial transactions without knowing anything about the transaction, other than what you might read about in a few sketchy fund minutes. And at best, fund minutes in many instances were sketchy. No investigator or trial attorney wants to question a witness who knows 100 times more about the transaction than he does. This could, indeed, have an adverse impact on other potential civil or criminal inquiries which would be based on much more adequate preparation. In short, I told Ms. Gallagher that I thought this was sheer and absolute irresponsible madness.

Chairman NUNN. What was her response?

Mr. LIPPE. Totally unresponsive to any of either Mr. Ryan's protestations or mine. She continued to order that we forthwith begin preparations to carry out this activity which she had planned. This was with the apparent support of Mr. Lagather who was present during the meeting.

Chairman NUNN. Did she say this course of action was to appease Congress? Did she ever use words to that effect?

Mr. LIPPE. I believe that phrase was used during the meeting, or words to that effect.

Chairman NUNN. Did this occur after the SIS third-party inquiry was terminated?

Mr. LIPPE. Yes; this was clearly subsequent to the instructions which Mr. Seidel and I received during that mid-December meeting which I described earlier and, as I said, sometime commencing either in February, March, or April 1977.

Chairman NUNN. Did your office indeed begin the line of inquiry she had advocated?

Mr. LIPPE. Only in the most token fashion, in effect, to get her off our back. So long as I was there, Mr. Chairman, that inquiry was not going to proceed in any meaningful way.

Chairman NUNN. You felt it was improper?

Mr. LIPPE. Ridiculous at the very least. Certainly improper.

Chairman NUNN. Do you feel it was unethical?

Mr. LIPPE. Certain aspects of it could have bordered on that.

Chairman NUNN. Did there come a time when the coordination and cooperation with the Department of Justice was adversely affected by these various actions?

Mr. LIPPE. There did come such a time. Again, Senator, to try to pinpoint it on a certain date would be difficult, if not impossible. But, commencing particularly in January and February 1977, as the Solicitor's Office began to assume greater and greater, and ultimately, total control of our activities, there was a concomitant and equally increasing failure and breakdown of our relationship with the Department of Justice—over our protestations, of course.

Chairman NUNN. Were SIS staff ever told by the Department of Labor personnel not to cooperate or give information to the Department of Justice.

Mr. LIPPE. I was told that.

Chairman NUNN. By whom?

Mr. LIPPE. Steven Sacher and Monica Gallagher.

Chairman NUNN. Did they give you reasons?

Mr. LIPPE. None that were acceptable. Usually none. On one or two occasions, it was explained by either Ms. Gallagher or Mr. Sacher, or both—they both repeated this from time to time—that giving the matter over to Justice might impede their ability to perfect or go forward with civil litigation. I had lengthy discussions with them about the ability to proceed by way of so-called parallel proceedings but was obviously unsuccessful. More often than not, I was simply told not to cooperate and no reasons were given.

Chairman NUNN. Did you carry out these instructions?

Mr. LIPPE. I flaunted them with impunity.

Chairman NUNN. You mean you went ahead and did give the information to Justice?

Mr. LIPPE. That is correct.

Chairman NUNN. Did you think this was possibly an impeding of the investigation, a deliberate impeding of the investigation?

Mr. LIPPE. I would not want, Senator, to speculate on the motives of the people that were giving me these instructions.

Chairman NUNN. Obviously, you felt if you carried out the instructions you would indeed be impeding the investigation.

Mr. LIPPE. Certainly it would impede our investigation, since there was a mutual flow of information between the Justice Department and us within the confines of the Federal Rules of Criminal and Civil Procedure and the dictates of grand jury secrecy and the like. To the extent that it was legally permissible, there was a constant flow of information between my staff and me and the permanent Justice Department representatives with whom I was in almost daily contact. This lasted during all of 1976 and the early part of 1977, up until the assumption of control by the Solicitor's Office. It was, of course, greatly beneficial to the Department of Justice to maintain this kind of flow because it had forgone, from the beginning of our onsite investigation in January 1976, its own obtaining of fund records. They depended on us to obtain those records which they might want in connection with any of their inquiries. At the very least, if a strike force in some city wanted information, it would assume first that the records could be obtained through us. Accordingly, any new instructions under which we would not be permitted to continue this flow of information to Justice would certainly impede ours as well as their investigation.

Chairman NUNN. Do you recall the approximate timeframe when Mr. Sacher and Ms. Gallagher basically instructed you not to cooperate with the Department of Justice?

Mr. LIPPE. It became apparent in February or March 1977, and I guess it began to build to a crescendo in March, April, and May. As I said, Senator, it was a dynamic situation, if you will. It just was ever increasing. From time to time, strong invective was used by both Mr. Sacher and Ms. Gallagher in describing their views toward the Department of Justice.

Chairman NUNN. You mean they personally were bitter toward the Department of Justice? Were they envious toward the Department of Justice?

Mr. LIPPE. Again, I don't know what their motivations were. I can only describe to you what was said and done.

Chairman NUNN. Tell me what was said to the best of your recollection.

Mr. LIPPE. They both, from time to time, would suggest that the Justice Department engage in sexual activity with itself, although they used different words to make that suggestion. I am sure the committee knows what I am referring to.

Chairman NUNN. And they said this to you?

Mr. LIPPE. On a number of occasions, yes, sir.

Chairman NUNN. Each one of them?

Mr. LIPPE. Yes, sir.

Chairman NUNN. Were any other people present during these conversations? I believe we had some previous testimony on that from Mr. Ryan.

Mr. LIPPE. I believe Mr. Shevlin testified to some conversation he had at a luncheon with Ms. Gallagher. I was not present at that luncheon. I was no longer a member of the Department of Labor at the time.

Chairman NUNN. It was not just one or two occasions, it happened frequently.

Mr. LIPPE. More than two and from time to time over a period of months. It happened on a number of occasions, yes, sir.

Chairman NUNN. Did this attitude from the Solicitor's Office in fact impede the delivery of information to the Department of Justice, as long as you were there?

Mr. LIPPE. So long as I was there, it certainly didn't assist it. But, to the extent that I still had any ability to do anything, I saw to it that whatever I felt should be properly in the hands of the Justice Department—materials in which they ought to be interested—was furnished to them.

Chairman NUNN. What was your feeling if you had carried out those orders; do you feel you would have been part of impeding the Justice Department's criminal investigation, if you had carried out the orders?

Mr. LIPPE. It would have made their investigation much more difficult.

Chairman NUNN. After you left, who was then in your position?

Mr. LIPPE. To my knowledge, Norman Perkins, who was my chief auditor when I was there, was designated as acting director.

Chairman NUNN. Can you personally testify as to what happened after that as far as delivering information to the Department of Justice?

Mr. LIPPE. Only what I have been told.

Chairman NUNN. What is your understanding of what occurred?

Mr. LIPPE. I have been told that there was a total shutoff of the flow of information and a termination of any meaningful relationship between the two departments. I can't vouch to the accuracy of that, however. I have no personal knowledge.

Chairman NUNN. So, you were basically told by Mr. Sacher and Ms. Gallagher basically to shut off the flow of information to the Justice Department and you to the greatest extent possible disregarded those orders?

Mr. LIPPE. I disregarded it. I think there came a time when both of them realized I was disregarding it. I can recall one instance in which finally, after months of my insisting that we formally turn over to Justice some memoranda which had been prepared by my staff and revised by theirs, I was given official approval to do what I already had done. I just wanted some sort of confirmation from them. So, they did, from time to time, change their direction somewhat and, at least on the surface, allow for some cooperation. But, I would have to say, unfortunately, that their purported cooperation was not real or sincere.

Chairman NUNN. Did you have to go over their heads in terms of going to someone above them to complain about their attitudes and their actions?

Mr. LIPPE. On one occasion I can clearly recall, I did that, Senator.

Chairman NUNN. What was the occasion?

Mr. LIPPE. I complained to Mr. Lagather that I considered ludicrous a position which was being taken both by Mr. Sacher and Ms. Gallagher. That position was that certain legal analyses which some of her attorneys had prepared, but which were based on facts which my staff had gathered concerning certain particular loans—rather exten-

tive analyses—could not be turned over by me to the Department of Justice's attorneys because, as Mr. Sacher and Ms. Gallagher stated, they were still internal draft memoranda of the Department of Labor. I thought that position was untenable and complained to Mr. Lagather but was never given, as I can recall, any official approval to give those memoranda to the Justice Department.

[At this point Senator Percy entered the hearing room.]

Chairman NUNN. Did you, in fact, give them to the Justice Department?

Mr. LIPPE. Yes, sir.

Chairman NUNN. But he did not overrule them?

Mr. LIPPE. Not that I can recall.

Chairman NUNN. What you did was just go ahead and do it anyway?

Mr. LIPPE. I just gave it to them.

Chairman NUNN. Did you ever talk to Secretary Marshall about this?

Mr. LIPPE. I don't believe I did. At this period of time, my dealings were principally with Mr. Lagather and, from time to time, with Mr. Eamon Kelly who was a special consultant to the to the Secretary.

Chairman NUNN. Did you ever talk to Secretary Marshall about the general investigation or were you always acting through people below him?

Mr. LIPPE. In early February when certain policy decisions were being made—after Mr. Kelly was already in place as special consultant to Secretary Marshall who had by then assumed office—I participated in a number of general briefings, fact briefings, during which we described primarily what facts we had ascertained up to that point. I did not, however, participate in any meeting in which I was asked or called upon to give an opinion as to which way we were going.

Chairman NUNN. You never did really then appeal anything all the way up to Secretary Marshall, or go directly to him?

Mr. LIPPE. I made appeals to Mr. Kelly—Eamon Kelly—who I know had daily access to Secretary Marshall, but I did not directly sit in Secretary Marshall's office and make those same kinds of appeals.

Chairman NUNN. What was your impression about the degree to which Secretary Marshall knew what was going on in terms of these actions you have described, and we hear described by the Solicitor's Office?

Mr. LIPPE. I would hesitate to speculate on that, Mr. Chairman. I might say though, that if Ms. Gallagher's memorandum of January 1978, in connection with the National Bank of Georgia matter—from which Senator Percy has read some portions—is representative of the kind of advice that Secretary Marshall has been getting from his staff; it isn't very good or complete.

Chairman NUNN. In other words, your impression is Secretary Marshall may himself not have been fully informed of what was happening below him?

Mr. LIPPE. That is entirely possible.

Chairman NUNN. Would you say it is likely? Would you say it is unlikely?

Mr. LIPPE. I can only say, I would prefer to say, let's let the facts speak for themselves. You have the memorandum of Ms. Gallagher.

You have the agreements, so-called agreements, of July 1977 about which I know no more than anybody who read the press releases knows, no more, no less. I would prefer to let those facts speak for themselves. I am reluctant to speculate further than that.

Chairman NUNN. You were the man heading up the investigation by the Labor Department, but you were not included in the labor relations about the agreement with the pension fund that was entered thereto?

Mr. LIPPE. That is entirely correct.

Chairman NUNN. No one asked your opinion?

Mr. LIPPE. That is correct.

Chairman NUNN. You had no knowledge of it until you read it in the paper?

Mr. LIPPE. I knew that discussions were going on when, from time to time, my staff would, at my direction, request certain records and documents from the pension fund concerning various transactions. We constantly had—we began to experience—a lot of difficulty in obtaining those records. The fund's counsel would constantly be referring to the negotiations for, and then, ultimately, the actual so-called agreement. So I knew, therefore, that there were negotiations on-going.

Chairman NUNN. But not the details?

Mr. LIPPE. I knew nothing of the details. Neither Mr. Seidel, nor I nor any other member of my staff, to my knowledge, had any role in those negotiations.

Chairman NUNN. At that stage, you were still heading up the investigation?

Mr. LIPPE. That is correct. I was Director of the Special Investigations Staff. Who was actually directing the course of the investigation, however, I think is a matter which we could debate at some length.

Chairman NUNN. Didn't you find that rather incredible that you would be heading up the staff that had at least theoretical charge of this investigation and you were not consulted before a very significant agreement was entered into by the Department of Labor and the Teamsters Pension Fund?

Mr. LIPPE. I had difficulty then and still have difficulty today in understanding that; the basis for that decision.

Chairman NUNN. Did you complain to anyone about that while it was occurring or after it occurred?

Mr. LIPPE. I am sure I complained to Mr. Kelly. On one occasion, I believe he made some statement to the effect that the lawyers should do the negotiating and that my staff and I should just continue to prepare for litigation, in the event that the negotiations did not prove fruitful.

Chairman NUNN. You are a lawyer also. Right?

Mr. LIPPE. Yes, sir.

Chairman NUNN. Did they ever tell you why you were not included? Did they give you a reason?

Mr. LIPPE. Other than what I just stated, no.

Chairman NUNN. Senator Percy, I think you want to ask some questions.

Senator PERCY. Thank you.

Mr. Lippe, when was it discovered that the trustees had short circuited the investment procedure that had been established and took not an inconsiderable sum, \$200 million, and sent it to six banks for the purchase, on their decision, of securities?

Mr. LIPPE. The program under which the \$200 million was invested in varying amounts at six banks was a program which was entered into, I believe, sometime in 1976. So we were aware generally of the program. It was not, however, until, I think, sometime in either late August or early September 1977, that an official of the Internal Revenue Service brought to my attention that one of those six banks, the National Bank of Georgia in particular, was, under a formula for the measurement of the performance of those banks, performing at or in a manner substantially less than the other five banks.

So it was around September. I might add that as this began to emerge, as this information came to my attention, I wrote a series, or had staff assist me in writing a series, of memorandums which fairly well chronicled the events during September and October, prior to my resignation, concerning this matter.

Senator PERCY. If you would like on any of the questions to refer to any of those memorandums, we have copies of them and would be happy to furnish them to you to refresh your memory.

Did you ever examine any documents that led you to believe that fund trustees were aware of this poor investment record by the National Bank of Georgia?

Mr. LIPPE. Yes. After my attention was focused on the possibility of an inferior performance by the National Bank of Georgia, we reviewed a number of fund minutes of meetings in which it was indicated that at least during one, or perhaps several more meetings, the trustees acknowledged their knowledge of the National Bank of Georgia's performance. The minutes reflected—I cannot recall precisely what the minutes said—but in substance they indicated a knowledge on the part of the trustees of the Bank of Georgia's performance or inferior performance.

Senator PERCY. In order to have a complete record, if you would like to keep the record open, so that you can insert an exact day from your memorandum, we will certainly do that.

Did you plan to initiate any investigation into this matter and if so, for what reason or reasons?

Mr. LIPPE. Yes. We certainly planned to initiate an investigation and, for a variety of reasons, we felt that it was clearly within our mandate. It was our responsibility, indeed our obligation, if we were going to carry out our investigative mission, that we determine the basis for selection of the bank. We wanted to ascertain the real facts about the performance of the bank with respect to about \$17½ million of the \$200 million. If the information that I received was true and the bank's performance was in fact inferior—and all I had at that point were indications that that was correct—if that was true, I wanted to find out why the trustees did not take some definitive or corrective action. We generally wanted to examine the entire relationship as we would with any other investigative avenue that we were following.

We wanted to get to the facts. We didn't want to reach unfounded conclusions or see evil where maybe there was no evil. But certainly

enough had been brought to our attention that it was clearly a proper avenue of inquiry. And I wanted to follow up on it so that I could know what the facts were.

Senator PERCY. Did you discuss with any high Labor Department officials your intention to initiate a discussion as to why the return on investment appeared unreasonably low in contrast with the investment returns received by other banks on securities that they had invested for the pension fund?

Mr. LIPPE. Yes, sir. Among those persons with whom I discussed it was then-Assistant Secretary Burkhardt who, as I recall—again, maybe I should look at some of the memoranda which chronicle the events—but as I recall whose initial response was—for maybe a period of 24 hours because the response changed dramatically within the next 24 or 48 hours—well, OK, that sounds like a reasonable line of inquiry. But that position did not last for very long and from that point, for maybe 24 to 48 hours subsequent to that initial response, the reaction by Assistant Secretary Burkhardt was negative in one way or another.

I was not able to pursue the line of inquiry that I have just described to you.

Senator PERCY. How were you told you should not pursue it? Was it a written memorandum or was it by verbal instruction? If it was a verbal instruction can you recall how it was put to you?

Mr. LIPPE. It was always put to me verbally, as I can recall. Either Mr. Burkhardt or his then-special assistant, Wynn Thompson, would from time to time, tell me not to pursue the line of inquiry or, that we should wait, or that we should not upset the negotiations that were ongoing. In other words, the reasons varied from time to time, but the sum total effect was that I was instructed to not pursue it, at least at that time. I would chronicle those discussions. The only writing, then, would be my dictating a memorandum to the file, from time to time, which reflected whatever the instructions were at a given time.

Senator PERCY. Did you protest or try to reason with either one of those gentlemen?

And if so, what were your arguments?

Mr. LIPPE. I discussed this matter at various times with combinations of Assistant Secretary Burkhardt, then-Associate Solicitor, Ms. Gallagher and Mr. Lagother. She had replaced—she had been promoted to Associate Solicitor when Mr. Sacher left to take the position on Capitol Hill. Sometimes all three were together, sometimes it was just one of them. I remember a meeting—I know there is a memorandum to the file that I wrote Ms. Gallagher—in which Mr. Ryan and I discussed the possibility of issuance of the subpoena to the fund. By the way, the fund was at all times refusing to honor our document request for any documents relating to this transaction.

Senator PERCY. So they refused to furnish documents, and you were preparing subpoenas to get those documents?

Mr. LIPPE. That is correct. Subpoenas certainly weren't issued while I was there, to my knowledge. By this time my authority to sign off on subpoenas, which had been previously given to me by Mr. Hutchinson, had been taken away. I was under instructions to clear all subpoenas with the Solicitor's Office. On at least one occasion, I recall

discussing the issuance of a subpoena to the fund for its records concerning this transaction with Ms. Gallagher, and was refused. Again, I believe your staff has memorandums which reflect these incidents.

Senator PERCY. What would have prevented you from saying, "Gentlemen, I appreciate your advice, but I've got a job to do, I am going to issue these subpoenas." Did you have the authority to issue the subpoenas or did you feel that you would simply be bucking an impossible situation and might be accused of malfeasance in office if you reversed the decision of your superior? Did you interpret those instructions as any reasonable person would have?

Mr. LIPPE. Yes. Those were unequivocal orders or instructions by anybody's definition. There was no equivocation in what I was being told at the time. Any reasonable person, no reasonable person could disagree as to their meaning.

Senator PERCY. You did at your initiative have several meetings with various combinations of people in the echelon of command to pursue this matter and unequivocally as a result of those meetings, the instructions were, do not proceed, do not issue the subpoenas. Is that right?

Mr. LIPPE. That is correct.

Senator PERCY. Why? What reasons did they give you when you put the question why to them?

Mr. LIPPE. As my memory would serve me, without reading the memorandums—

Senator PERCY. Any time for the purposes of this testimony you would prefer to refer to the memos, we will certainly see that you have a copy.

Mr. LIPPE. Very well. I can recall at least two reasons, among others, that may have been given. One was that to proceed in the manner I had been suggesting would upset the delicate negotiations which had not yet been finalized.

Senator PERCY. That is negotiations with whom?

Mr. LIPPE. With the pension fund.

Senator PERCY. The pension fund and the trustees.

Mr. LIPPE. Being conducted by the members of the Solicitor's Office, Mr. Kelly, and representatives of the fund. Those are the negotiations which, as I stated before, I was not privy to.

On another occasion, I remember a discussion with Ms. Gallagher the essence of which was that we didn't have enough to proceed on, my recollection being that the reasoning which was then being articulated made no investigative sense to me.

I believe, but I am not certain, that Mr. Ryan may have been present at that meeting.

Senator PERCY. But in your judgment and in the judgment of SIS, there would have been enough on which to proceed?

Mr. LIPPE. Well, certainly. We weren't talking about probable—

Senator PERCY. You have six banks and five are performing at an acceptable level and one of them is performing at a much lower level. It doesn't take an 11-year-old boy to wonder why. What delicate negotiations could have been going on that would have been upset?

Mr. LIPPE. I can't address an answer to that question, Senator, because I don't know what negotiations were in fact ongoing. I did not know then and I do not know today.

Senator PERCY. You do not today. Did you ever have a meeting with Mr. Burkhardt where he modified his original negative response?

Mr. LIPPE. Yes. I had the meeting which has already been described to you, in part by Mr. Seidel in his testimony.

Senator PERCY. The original response was go ahead and proceed. Then 24 hours later you were told not to proceed.

Mr. LIPPE. From very early on.

Senator PERCY. Was the second decision ever modified?

Mr. LIPPE. To put it in sequence—and maybe after we finish this line of questioning, if I could review some of the memorandums, I could correct any misstatement I may have made—as I recall, the sequence of events spanned perhaps a 2-month time period at the beginning of which there was a very brief nonnegative response, if not an enthusiastic positive, which was very short in duration and then a rather long—

Senator PERCY. Was that Mr. Burkhardt?

Mr. LIPPE. Yes, sir. Then there was a rather long period of time of fairly absolute negativism, as I have described, and then finally, there was the meeting which apparently followed the phone call that Mr. Seidel has testified he made, which resulted in a slight modification of the—no, let's not do it—to a sort of, well, maybe we need a little more information, after which we then can pursue it. I seem to recall—and there may be some drafts of it in the files—a letter which ultimately was sent to the pension fund with Mr. Burkhardt's authority. Indeed, he may have signed it. I remember my original draft. It was in the nature of a demand for the records, but this time over a signature higher than mine.

My draft said that if you don't give us these records voluntarily, we are going to issue a subpoena, or words to that effect, or exercise our rights of access under ERISA, which would include issuance of a subpoena. I recall that Secretary Burkhardt ultimately opted for a letter, while he drafted, which said, in essence, give us the records, but didn't go on to say that in event you don't give us the records we will issue a subpoena. That was stricken. I know that a letter—I am fairly certain that a letter—like that went.

No response to that letter was ever made while I was there.

Senator PERCY. That letter from Mr. Burkhardt went to whom?

Mr. LIPPE. I am sorry. To probably the executive director of the fund, Dan Shannon.

Senator PERCY. So a letter was sent.

Mr. LIPPE. It either went to the executive director of the fund or to the fund's counsel.

Senator PERCY. All it did was confirm in writing what you had already learned—that they weren't going to give you those records. You had to issue subpoenas in order to get the records.

Mr. LIPPE. That is right.

Senator PERCY. That was the process that was stopped as I understand it.

Mr. LIPPE. That is correct. I was never permitted to issue a subpoena. What resulted after the meeting, which apparently followed the Seidel phone call was this compromise of a sort.

Senator PERCY. To whom did Mr. Burkhardt as an Assistant Secretary report?

Mr. LIPPE. Probably to the Secretary, whether he reported through the Under Secretary I cannot recall at this time.

Senator PERCY. On a matter like this would he deal with the Under Secretary or would he deal directly with the Secretary?

Mr. LIPPE. I cannot speculate on that. I do not know to what extent Kelly, who clearly was the man to whom Secretary Marshall was looking for advice and counsel on these matters, was in the picture at this time.

I don't want to give an inaccurate answer on that.

Senator PERCY. How did the meeting come about where the change in policy was made?

Did Mr. Burkhardt ask you to come in to see him?

Mr. LIPPE. It was either a meeting or a phone call from either Mr. Burkhardt or his special assistant, Mr. Thompson, in which it was communicated to me that I should put a hold on any further activity in this matter, or words to that effect.

Senator PERCY. Then that led to a series of meetings where you reasoned it out?

Mr. LIPPE. That is correct.

Senator PERCY. When the change in policy came, under what circumstances did that come about?

Mr. LIPPE. It may have been prompted by some memoranda of protest, if you will, that I had written to Mr. Lagather, who, by that time, had been placed in overall charge of investigations and/or litigation that might ensue. That is a distinct possibility. I cannot today recall precisely what prompted that meeting.

Senator PERCY. Did Mr. Burkhardt or Mr. Thompson at any time tell you what caused these U-turns?

Mr. LIPPE. More often than not, the response to my request to pursue that avenue of investigation was in effect, a direction to go on to other things—continue our preparations for a lawsuit, if that became necessary; or don't upset this, do other things—because to insist on this would upset the negotiations.

Why they were saying these things, or to whom they spoke, or with whom they consulted, would be sheer speculation and I would prefer not to engage in that.

Senator PERCY. Did the fund officials ever tell you why they would not cooperate in providing information about the fund investments with the National Bank of Georgia?

Mr. LIPPE. Fund officials never gave us any substantive reasons, nor did they ever engage in any substantive discussions concerning the transactions as to which we were asking for records. The only comments that the fund officials would ever make to either my staff or me is that "we are not going to give you these records because to do so goes beyond the understandings we reached during and the scope of the July agreements." By the "agreement," they were referring to the agreement by which the four trustees resigned and the independent investment managers were ultimately put in place.

Senator PERCY. What was your reaction to that line or argument?

Mr. LIPPE. Somewhat incredulous, as it was told to either staff or me. I tried to ascertain whether or not there was any accuracy to that rep-

resentation by speaking with those, who as best I could determine, had something to do with the negotiations in the Department of Labor.

I cannot recall precisely the responses I would get other than that the fund's position was not entirely accurate or words to that effect, but that we should not upset the delicate negotiations which were still on-going because at that point in time, the final agreements with the independent investment managers had not yet been put in place. At least that's what was represented to me.

I didn't know myself whether they had or had not, but I was told they had not. So the answers were a little fuzzy, as best I can recall. No one ever said, yes, they are right. The answers were more to the effect, well, that is not really correct, but, as best that I can recall, I was never really given any direction as to what I ought to do next in contradicting the fund's representation.

Senator PERCY. Did you at any time ever have knowledge or a feeling that the top Department of Labor officials wanted to limit the scope of the investigation?

Mr. LIPPE. All I can say in response to that question, Senator, is to refer to the press release and our statements before this committee in which we stated that the investigation was shifting its focus to third-party type investigations. It was always my intention throughout to ultimately resume those third-party investigations. My staff was always under instructions and were indeed carrying out our instructions to crank up again for such investigations. So, to that extent, we were going to shift focus and really go "third-party." Of course, it never turned out that way but it was never my intention—I cannot speak for what the intentions of others were—for that to be in lieu of our ability to obtain records from, and pursue matters with, the pension fund itself. There was no doubt in my mind that as we pursued a third-party investigation, for example, and saw the borrowers independence, and spoke to all sorts of witnesses and got records from other people on that side of the loan, that we probably would want to go back to the fund and ask questions about the transaction predicated on what we had learned through the third-party work. So, at no time was it ever our or SIS's intention for the shift in focus to third-party work to be in lieu of, or in derogation of, our ability to deal with the fund. I cannot speak for what others had as their intentions. I don't know.

Senator PERCY. If, as you stated, you were kept out of the negotiations with the fund, did you have any way of knowing whether the fund's comments about a DOL agreement not to pursue certain avenues of investigation were true?

Mr. LIPPE. I cannot speak to the accuracy of those representations in any way other than what I have previously testified to, Senator.

Senator PERCY. After the fund refused to give you access to the appropriate records with respect to the National Bank of Georgia, did you request the Solicitor's Office to issue any subpoenas?

Mr. LIPPE. Yes.

Senator PERCY. What response did you receive?

Mr. LIPPE. As I previously stated, Senator Percy, I had a discussion at length with Ms. Gallagher and was ultimately denied permission or authority to issue such a subpoena.

Senator PERCY. Were you satisfied with the response given to you?
Mr. LIPPE. No.

Senator PERCY. Did you actually have the authority to issue those subpoenas?

Mr. LIPPE. In fact, no. Once it was very clearly stated to me in February or March 1977 that I did not—when those instructions come from as many people as they came from—that, in effect, means that you don't any longer have authority. I did not.

Senator PERCY. The fund refused to give you records, and the Department of Labor wouldn't issue the subpoenas for the fund records. Is that correct?

Mr. LIPPE. That is correct.

Senator PERCY. Am I correct to assume since Mr. Burkhardt told you not to pursue the investigations and the Department of Labor had previously shut down a third-party inquiry and as a result you couldn't get the records from the National Bank of Georgia, in effect there was no way to investigate this matter involving the National Bank of Georgia?

Mr. LIPPE. That's essentially correct, Senator Percy.

Senator PERCY. During this period of time, did Wynn Thompson, who worked for Mr. Burkhardt, call you with regard to the National Bank of Georgia investigation?

Mr. LIPPE. Yes; it was Wynn Thompson who from time to time conveyed to me the instructions of Secretary Burkhardt.

Senator PERCY. Can you clarify without looking at the memorandums now what he did tell you? Do you recall exactly what he might have covered?

Mr. LIPPE. It may well have been Mr. Thompson who, after Secretary Burkhardt's initial nonnegative response, called me to say, "Mr. Burkhardt wants you to put a hold on that activity," or words to that effect.

Senator PERCY. Did you know that in December 1977 the board of trustees of the Teamsters Central States Fund voted a formal resolution denying your original request for fund records relating to the National Bank of Georgia?

Mr. LIPPE. I had resigned my position prior to that, so whatever I would know would only be from hearsay. I have no personal knowledge of that, Senator.

Senator PERCY. We do have a copy of that resolution here, do we not? We will hand you a copy. Have you ever seen it before?

[Witness tendered document.]

Mr. LIPPE. I do not recall ever having seen this before and if this was a resolution which was passed during September 1977, I would not have seen it. I was not any longer with the staff.

Senator PERCY. Thank you. Was there a definite way for Mr. Burkhardt or anyone else in the Labor Department to be certain of the actual performance of the National Bank of Georgia? Was there any kind of written analysis of the comparative investment returns, rate of return of investment by the various banks that might be accepted by security analysts?

Mr. LIPPE. It was those kinds of records that we were hoping to obtain through our efforts. I do not know what kind of records the

fund had relative to this performance. I certainly hope they had some. It would have been imprudent not to have any. It was these kinds of records that we wanted, but for me to tell you what the fund did or did not have would be, Senator, pure speculation. I do not know what they had.

Senator PERCY. Subsequent to the National Bank of Georgia matter, did the fund become increasingly reluctant to supply records to the Department of Labor?

Mr. LIPPE. Subsequent to what time, sir?

Senator PERCY. Subsequent to the National Bank of Georgia matter. Do you happen to know whether or not there was an increasing reluctance to cooperate and supply records after that?

Mr. LIPPE. If you recall, Senator, it was during late October that I was probably in my last week or two with the Department of Labor. During that time, they certainly were reluctant.

What the fund's position was, commencing the day after I left and the period subsequent to that, you will have to ask other witnesses.

Senator PERCY. You were about to issue subpoenas for records and you were denied that privilege. Do you happen to know if after the Department of Labor could not get records, subpoenas were issued?

Mr. LIPPE. I don't know, sir.

Senator PERCY. Does anyone know whether or not subpoenas were ever issued by the Department of Labor to get records from the fund?

Mr. RYAN. I am unaware of any such subpoenas being issued, although I heard rumor there might have been.

Senator PERCY. We will have to put that question to other Department of Labor representatives. Were any records relating to cases of potential abuse missing?

Mr. LIPPE. I am not sure, sir, exactly what you are referring to. Certainly during the time period commencing in approximately January 1976 until we were told in mid-December 1976 to change the direction of our activities, if we received a file from the fund relating to any particular loan and there were apparent gaps in that file, we brought it to the fund's attention and, as my recollection serves me, resolved it in a fashion which was satisfactory to us. I really can't speak for the completeness of files obtained during the middle and latter part of 1977, which probably weren't fully analyzed until much later, after I had left the Department of Labor. Other people would have to tell you about that.

Senator PERCY. Do you know whether or not the Department of Labor ever monitored the benefits and administration account, that is, the B. & A. account, that was under the jurisdiction of the trustees?

Mr. LIPPE. I have no knowledge of that, Senator. As I recall, that was not an account that was in place at the time I was involved with the staff.

Senator PERCY. As I understand it, you have left the Department of Labor. When did you leave the Department, and why did you decide to leave?

Mr. LIPPE. I left the Department in either late October or November 1977 to assume the position of Assistant Inspector General of the Department of HEW, working with Chuck Ruff and Inspector General Tom Morris. I am currently chief of a section within the Justice Department's Criminal Division.

As to why I left—in addition to the position of Assistant Inspector General being one of even greater challenge, involving a staff of over 200 people nationwide, it would also be fair to say that I was experiencing considerable frustration in my capacity as Director of the Special Investigations Staff, at the very least.

Senator PERCY. Mr. Chairman, I would ask that Mr. Lippe's memorandums dictated for the file, copies of which are in the possession of this committee, be sealed and made a part of the record and further determination be made by the staff after appropriate study as to how they should most appropriately be used.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 6" for identification and is retained in the confidential files of the subcommittee.]

Senator PERCY. Mr. Lippe, I want to thank you very much indeed for your help, Mr. Seidel, Mr. Ryan, and Mr. Shevlin. We very much appreciate your assistance. I think this is the best way we can carry forward a job to which you were devoted and were totally frustrated in trying to carry out.

Chairman NUNN. I want to thank each of you for your tremendous cooperation with this subcommittee and our staff during the course of this investigation. I also want to express my appreciation to you for coming forward today.

Three of you are still employed by the Government, two of you still employed by the Labor Department. I think you testified frankly and fully. For that you have our thanks.

I also want to express my appreciation to you for your patience in sitting here today. For what has been at least 7½ hours of rather tedious testimony. We appreciate your being here and we particularly appreciate your cooperation. We are hoping that out of this investigation there will be some specific recommendations. We don't know what they are going to be at this stage, but we share your tremendous frustrations, not to the degree, perhaps, you have, having worked directly in this investigation, but I remember very well when Senator Griffin from Michigan introduced a resolution to create a special committee to undertake a complete and thorough investigation of the Teamster Pension Fund and I recall vividly Labor Department officials stating over and over again that this is something the executive branch could and would do in a thorough and complete and effective way with total cooperation from the other branches of the executive branch. It is apparent today at the very least that that kind of investigation has not occurred and there is a real serious question as to whether it ever will occur under the institutional standards we now have.

We appreciate very much your being here. If any of you have anything you would like to add to your testimony, if you have any pertinent question that should have been asked that wasn't, that you think is material to this inquiry, we will be glad to hear further from you now.

Senator PERCY. Mr. Chairman, I think that is an excellent suggestion. I have written to Senator Griffin and assured him that this subcommittee would pursue this matter and I felt dutybound to do so and was very gratified when you and the majority staff initiated this second hearing, but I think we have all fulfilled our duties.

We didn't seek this job originally, but it is clearly in the charter of this subcommittee, and we would have been derelict not to follow through. I didn't think it necessary to go through the cost and expense of setting up a special select subcommittee to do this, but if we hadn't committed ourselves then, the assistant minority leader at that time, I am sure, would have pursued it.

We have honored our pledge to him as a former colleague. I think it has been worthwhile and necessary.

Thank you.

Chairman NUNN. Mr. Shevlin, do you have anything else to add?

Mr. SHEVLIN. No, sir.

Chairman NUNN. Mr. Ryan?

Mr. RYAN. No, sir.

Chairman NUNN. Mr. Seidel?

Mr. SEIDEL. No, sir.

Chairman NUNN. Mr. Lippe?

Mr. LIPPE. No, sir, not at this time.

Chairman NUNN. Thank you very much. We appreciate your being here. We do have one other witness for brief testimony relating to this latter item Senator Percy has been asking questions about, National Bank of Georgia, and Assistant Secretary Burkhardt.

Mr. LaVern Duffy is a member of our staff of the Permanent Subcommittee.

Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth so help you God?

Mr. DUFFY. I do.

Chairman NUNN. Mr. Duffy, we don't have the microphones now. I ask the staff if we can get those restored by tomorrow morning. I don't think they are working at the present time so speak as loud as you can.

**TESTIMONY OF LAVERN DUFFY, GENERAL COUNSEL,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

Mr. DUFFY. Mr. Chairman, this matter first came to our attention, I think, on July 22, 1980. We conducted a number of interviews and decided to interview Mr. Burkhardt and Mr. Thompson.

Chairman NUNN. You are talking about the National Bank of Georgia matter?

Mr. DUFFY. It relates to the National Bank of Georgia.

Chairman NUNN. Go ahead and tell us what you have done as a result of that investigation?

Mr. DUFFY. I called Mr. Burkhardt on the telephone on August 21, 1980. I located him here in his office in Washington. He is the director of research of the Interntional Brotherhood of Painters and Allied Trades. He held that position before he became affiliated with the Department of Labor. He told me he was leaving the city that afternoon for an extended period—I think it was 2 months, and that he would not be available for a formal interview.

He did agree to submit to an immediate telephone interview, however. That interview was conducted by Mr. Steinberg and myself.

Mr. Chairman, because Mr. Burkhardt has confirmed the accuracy of a memorandum prepared by Mr. Steinberg and myself with some

minor exceptions, as he indicated in his letter to us of August 18, I ask that both the memorandum of the telephone conversation and Mr. Burkhardt's response be made exhibits in the record.

Chairman NUNN. Is there objection?

Without objection.

Can those be open exhibits or do they need to be sealed?

Mr. DUFFY. They can be put in the public record.

[The document referred to was marked "Exhibit No. 7" for reference and follows:]

EXHIBIT No. 7

MEMORANDUM

Re Interview of Francis X. Burkhardt, Former Assistant Secretary of Labor for Labor Management Relations, August 1, 1980.
To File.

From Marty Steinberg.

On August 1, 1980, I along with LaVern Duffy telephonically interviewed Francis X. Burkhardt concerning the Department of Labor's investigation of the Teamster Fund and, more particularly, the portion of that investigation dealing with the Fund's placing assets in the National Bank of Georgia.

At the beginning of the conversation, I explained to Mr. Burkhardt that we were conducting a preliminary inquiry into the DOL's investigation of the Teamsters Fund with the possibility of a hearing starting August 25.

I confirmed that Mr. Burkhardt had been Assistant Secretary of Labor during 1976 and 1977, the time period we wanted to question him about with respect to the Labor Department's investigation of the Teamsters Central States Fund. I briefly explained to Mr. Burkhardt the limited areas of inquiry we were interested in.

Mr. Duffy had talked to Mr. Burkhardt a few minutes earlier and informed him that we wanted to interview him by telephone right away because he, Burkhardt, was leaving town shortly and would not be available for the next two months.

I explained to Mr. Burkhardt that we were interested in the Teamsters Central States Fund transferring approximately \$17 million into the National Bank of Georgia in 1976. This was the bank that was, at the time, linked to Bert Lance. I further explained to Mr. Burkhardt that the SIS staff had determined in conjunction with IRS that the National Bank of Georgia had a substantially poorer record managing the funds allotted to it than the other five banks which also received fund assets. I stated that the SIS staff had requested an investigation concerning why the National Bank of Georgia was selected for the placement of Teamsters Funds, what the problem was with the relatively poor record of the National Bank of Georgia in managing the Funds assets, and why the Teamsters trustees, as fiduciaries, would not move the money from the National Bank of Georgia considering its poor record.

I then informed Burkhardt that the SIS staff had requested authority to investigate this situation and I asked him whether he was familiar with the situation. Mr. Burkhardt acknowledged that he was familiar with the situation I was referring to. I asked him specifically whether or not he had been involved in making a decision to pursue this particular aspect of the Teamster Fund investigation. I asked him whether he had told any member of the SIS staff not to pursue this investigation. He initially told Dr. Duffy and myself that he could not remember whom he had talked to on the SIS staff but he was sure that someone had talked to him about the matter. When we suggested the name of Mr. Lawrence Lippe, he seemed to recognize that name as the one he had talked to about this matter.

We asked him if it was true that he told Mr. Lippe not to pursue an investigation of this particular incident. Mr. Burkhardt recounted that this was at the time of Mr. Lance's problems and Mr. Lance was a highly publicized figure at that time.

He stated that after reviewing the facts of the situation which included examining a written analysis, he believed (1) that the rate of return of the Bank of Georgia was not that poor, only a point or a point and a half different than the other banks, and (2) that the manpower allocation of resources and direction

of the investigation dictated that they spend their time in other areas rather than this particular area, that this was not a particular priority with him. Mr. Burkhardt also stated that no one else, including the Secretary of Labor, influenced his decision not to pursue this part of the investigation.

I then asked Mr. Burkhardt if he remembered the SIS staff attempting to obtain records from the Fund concerning the National Bank of Georgia regarding the same matter and the Fund refused to cooperate. Mr. Burkhardt replied that it was a continual problem with the DOL receiving records from the Fund and although he didn't remember the specifics, he supposed that this could have been one of those situations where the Fund did not comply with their request.

I went on to ask him if he remembered a situation where the SIS staff requested the DOL Solicitor's office to subpoena the records from the Fund relating to the National Bank of Georgia, but the Solicitor's office, namely Monica Galaher, refused to subpoena said records. Mr. Burkhardt stated that he had no recall or had any recollection of this other than the fact he believed other subpoenas had been issued in other situations but he does not remember any direct contact with the Solicitor's office on this specific matter. Mr. Burkhardt stated he had no specific knowledge about any request for a subpoena to the Fund concerning the National Bank of Georgia records. At the same time he stated that he had a number of conversations with the Solicitor's office concerning various aspects of the National Bank of Georgia matter. When asked if he got involved in attempting to request the Solicitor's office to enforce the Department of Labor request for records or issue a subpoena, he jokingly stated, "Did you ever try to get the Solicitor's office to do anything?"

I then specifically asked Mr. Burkhardt whether he told Mr. Lippe or anyone from the SIS staff not to go forward with the investigation. He said that, to the best of his recollection, based on the analysis of the priorities of the investigation he did tell the SIS staff not to go forward. Mr. Duffy then asked Mr. Burkhardt whether or not he had talked to anyone on Capitol Hill or anyone on a Senator's staff about this matter concerning advice that he should reconsider his position of not pursuing this investigation. Mr. Burkhardt stated that he doesn't recall such a thing happening. He then added he would not say it didn't happen if someone said it did.

I asked Mr. Burkhardt if there was any other motive, other than his explanation, for his not wanting to pursue this matter. Mr. Burkhardt stated that the Georgia group in the White House was not favorably disposed to like him (Burkhardt) and, therefore, he believed that he wouldn't be expected to act on their behalf in this matter.

I then asked him if there was any effort to protect the Teamsters trustees from possible fiduciary violations. Mr. Burkhardt said no.

Mr. Duffy mentioned to Mr. Burkhardt we should keep in touch with him over the next two months in order to offer him the opportunity to respond publicly to any criticism that may surface in a public hearing with respect to his actions in this matter. We offered to prepare a written memorandum of our phone conversation and send it to Mr. Burkhardt for his review so that in case this matter was brought up in a public forum Mr. Burkhardt's views could be represented and his actions could be explained. We made arrangements to mail this memo to Mr. Burkhardt at 1750 New York Avenue, Washington, D.C. 20006. Mr. Burkhardt explained that his secretary would read the memo to him over the phone because he would be unavailable for the next two months. We also offered to make available to Mr. Burkhardt at our PSI office Department of Labor memos which may help him refresh his recollection on this matter. I requested that Mr. Burkhardt call me to confirm that the substance of the memo of our conversation on the telephone today was accurate after his secretary reads it to him on the telephone. He agreed.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES,
Washington, D.C., August 18, 1980.

Mr. MARTY STEINBERG,
Chief Counsel, U.S. Senate,
Committee on Governmental Affairs, Washington, D.C.

DEAR MR. STEINBERG: I have reviewed your three-page memorandum which attempted to recount our telephone conversation of August 1, 1980.

Let me first say, as a general statement, that the paragraphs in your memorandum represent a disjointed and severely out of context representation of our conversation.

Since it represents your version of our conversation and not mine, I will address only the factual misrepresentations and not try to restate complete context.

The third paragraph on the first page begins by stating that "I confirmed that Mr. Burkhardt had been Assistant Secretary of Labor during 1976 and 1977, . . ." This is to inform you that I was Assistant Secretary of Labor from March, 1977 through December, 1978. Consequently, I had nothing to do with the transferring of approximately \$17 million into the National Bank of Georgia in 1976, which is also erroneously referred to in the first sentence of the fifth paragraph.

The fifth paragraph is also a disjointed confluence of many separate statements but I think it important to point out that in addition to looking into the financial performance of the National Bank of Georgia and the actions of the Trustees to the Fund, you might do well to look into the National Bank of Georgia performance compared with other United States Banks performing similar money management functions during the same time period. Also, you might consider the conventional time frame against which trustees measure the performance of their money managers and how often and under what circumstances they move money from one bank manager to another.

In the second paragraph on page two, you totally ignored my point with regard to Mr. Lippe's infatuation with the National Bank of Georgia—it was, I believe, because of Mr. Lance's highly publicized involvement in the National Bank of Georgia that prompted Mr. Lippe's interest.

The last paragraph on page two refers to a quote of mine that, while jokingly stated, is out of context and referred to the time frames of action for which the Solicitors Office has been able to historically respond to such subpoena requests not because of any individuals inability but because of the complex nature of the investigation.

On page three, the first paragraph next to the last line, I said that I could not recall any such conversation between myself and an unnamed Senator's staff member asking me to reconsider. And I said if someone alleged such a conversation, I could not prove that I did or did not have such a conversation, but that I could not recall one.

This letter fulfills my agreement to respond to the accuracy of your memorandum.

Sincerely,

FRANCIS X. BURKHARDT.

Senator PERCY. What explanation was given to you as to why Mr. Burkhardt would be unavailable for 2 months?

Mr. DUFFY. He didn't tell me what he was going to do but it was a business trip for his job and he would be gone and unavailable for a 2-month period. I thought because of the importance of this matter which would be coming up in public hearing, we should give him an opportunity to respond.

Senator PERCY. Is he in the country?

Mr. DUFFY. He didn't indicate if he was leaving the country or not. Did he, Mr. Steinberg, do you recall?

Mr. STEINBERG. No; he did not. He just said he would not be available at all.

Senator PERCY. Is there a Labor Department official in the room—

Chairman NUNN. He is not in the Labor Department any more. He has a private job. He is no longer with the Labor Department.

Senator PERCY. I see. There is no way we can pursue that without going directly to him, then.

Mr. DUFFY. We always can contact his office and find out if we can locate him. He has made a clear statement to us he would not be available for approximately 2 months.

This memorandum is dated August 4 Mr. Steinberg and I prepared. I would like to briefly summarize it.

Mr. Steinberg explained to Mr. Burkhardt that we were interested in the Teamsters Central States Fund transferring approximately \$17

million into the National Bank of Georgia in 1976. The National Bank of Georgia had a substantially poor record of managing the funds allocated to it than the other five banks which also received fund assets. The SIS staff had requested an investigation concerning the National Bank of Georgia, with its relatively poor record of managing the asset funds and why the fund trustees as fiduciaries would not move the money from the National Bank of Georgia, considering its poor record.

We asked Mr. Burkhardt if it was true that he told Mr. Lippe not to pursue an investigation of this particular incident. His answer was, after reviewing the facts of this situation, which included examination of a written analysis, he believed; one, that the rate of return of the Bank of Georgia was not that poor, only a point or a point and a half different than the other banks and, two, that the manpower allocation of resources and direction of the investigation dictated that they spend their time in other areas rather than in this area, since this was not a particular priority with him.

Mr. Burkhardt also stated that no one else, including the Secretary of Labor, influenced his decision not to pursue this part of the investigation.

Mr. Steinberg asked Mr. Burkhardt if he remembered a situation where the SIS staff requested the Department of Labor Solicitor's Office to subpoena the records from the fund relating to the National Bank of Georgia, but the Solicitor's office, namely, Monica Gallagher, refused to subpoena such records.

Mr. Burkhardt stated that he had no specific knowledge about any request for a subpoena concerning the National Bank of Georgia records. At the same time, he stated he had a number of conversations with the Solicitor's office concerning various aspects of the National Bank of Georgia matter.

When asked if he got involved in attempting to request the Solicitor's office to enforce the Department of Labor's request for records or issue a subpoena, he jokingly state, "Did you ever try to get the Solicitor's Office to do anything?"

I might add, Mr. Chairman, this is one of the points in our memorandum that Mr. Burkhardt addressed in his August 18 letter to Mr. Steinberg. He said on page 2 of his letter:

The last paragraph on page 2 refers to a quote of mine that while jokingly stated is out of context and referred to the time frame of action for which the Solicitor's Office has been able to historically respond to such subpoena requests, not because of any individual's inability, but because of the complex nature of the investigation.

I am not quite sure, Mr. Chairman, if I know what that means.

Mr. Steinberg then asked Mr. Burkhardt whether he told Mr. Lippe or anyone else on the SIS staff not to go forward with the investigation. He stated that to the best of his recollection, based on the analysis of priorities of the investigation, he did tell the SIS staff not to go forward.

[At this point Senator Percy withdrew from the hearing room.]

Mr. DUFFY. I think, Mr. Chairman, those are the salient points of the interview and I have placed the entire memorandum in the record.

Chairman NUNN. Do you think there are any other points in his letter to be clarified, making sure points he brought out that will clear the record are well known?

Mr. DUFFY. We have made his answer a part of the public record. It speaks for itself. I don't think there are any other substantive points there.

[At this point Senator Percy entered the hearing room.]

Chairman NUNN. Mr. Steinberg, do you have any questions you want to ask? If you are going to testify, we will have to swear you in.

You are part of this memorandum.

Mr. STEINBERG. Mr. Duffy, did you also inquire of the only other participant, Mr. Wynn Thompson?

Mr. DUFFY. Yes; on August 1, 1980, I also contacted by telephone Mr. Wynn Thompson, who is the former executive assistant to Mr. Burkhardt, who lives in Searcy, Ark. When I asked him about this case—

Chairman NUNN. He is no longer with the Department of Labor?

Mr. DUFFY. He is practicing in Searcy, Ark. When I asked him about this case—

Mr. STEINBERG. You are referring to the National Bank of Georgia matter?

Mr. DUFFY. I gave him a complete background—pretty much the same material that we gave Mr. Burkhardt.

The telephone conversation must not have been more than an hour after we talked to Mr. Burkhardt. He said he had only a vague recollection of the entire incident. He recalls some discussion with Mr. Lippe about some trust funds and a bank. He could not recall anything involving the National Bank of Georgia. That was the extent of his recollection of this entire matter.

The telephone conversation lasted only a few minutes and I didn't pursue it further.

Chairman NUNN. Senator Percy, do you have any questions?

Senator PERCY. I have no questions; thank you. Mr. Chairman. Staff has one question on which I may ask them to amplify.

So far as you know, did the Department ever issue a subpoena for these records of the fund or obtain them in any other manner?

Mr. DUFFY. Not to my knowledge, Senator.

Senator PERCY. Thank you very much.

Chairman NUNN. Tomorrow morning, at 10 o'clock, we will be back in this room. We will hear from Mr. Jack Key, staff investigator, about possible connection with organized crime relating to this overall matter.

We will also hear from Mr. Duffy again on another matter which will relate to an internal investigation by the Labor Department, to which we have alluded today and which allegedly they no longer had.

We will be going into some detail on that. We will also hear from Mr. Roy Williams, who was a former trustee.

We will also hear from the Internal Revenue Service regarding their role in this investigation.

The subcommittee is adjourned until tomorrow at 10.

[Whereupon, at 4:50 p.m., the subcommittee was recessed to reconvene at 10 a.m., Tuesday, August 26, 1980.]

OVERSIGHT OF LABOR DEPARTMENT'S INVESTIGATION OF TEAMSTERS CENTRAL STATES PENSION FUND

TUESDAY, AUGUST 26, 1980

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Lawton Chiles, Democrat, Florida; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Marty Steinberg, chief counsel; LaVern J. Duffy, general counsel; W. P. Goodwin, Jr., staff director; William Colombelli, Jack Key, and Raymond Maria, investigators; Myra Crase, chief clerk; Mary Robertson, assistant chief clerk; Joseph G. Block, chief counsel to the minority; Charles Berk, general counsel to the minority; Richard Shapiro, Howard Marks, and Howard Shapiro, investigators to the minority.

Chairman NUNN. The subcommittee will come to order.

We started a series of hearings yesterday and heard from the General Accounting Office about their overall investigation of the Labor Department's probe of Teamsters Pension Fund.

Of course, we heard what I perceive to be very significant criticism of the Labor Department's activities in the last 5 years in pursuing the overall pension fund investigation. I think that it was from the panel of witnesses we had after the General Accounting Office testified that most of those witnesses felt that there were explanations in these overall omissions that could not be explained simply by incompetence.

Today, we will hear first from one of our investigators, Jack Key, who will be giving testimony about allegations and evidence relating to the Teamsters Pension Fund, the trustees involved in that, and certain organized crime figures. Then we will call Mr. Roy Williams, who will testify after Mr. Key, and after that, we will call the Internal Revenue Service. Of course, part of the General Accounting Office findings yesterday related to the role of the Internal Revenue Service, the lack of coordination between the Internal Revenue Service, and the Labor Department and the Justice Department, the overall timing of the revocation of the tax exemption by the Internal Revenue Service, as to the Teamsters Pension Fund. So we do have a full sched-

ule today and, of course, tomorrow we will continue these hearings. Senator Percy, I believe you have a statement you would like to make.

Senator PERCY. Mr. Chairman, I would like to make a short comment. After thorough investigation by our staff, it was determined by the subcommittee that a public hearing should be held, and must be held, on this matter. Yesterday certainly appeared to justify that decision. The 3 days of oversight hearings that we have planned will present disturbing testimony. The testimony we received yesterday was deeply disturbing to me, as I know it was to the staff, other committee members, and the chairman.

The Comptroller General, Mr. Staats, and four former members of the Labor Department's Special Investigations Staff, which conducted the fund investigation during 1976 and part of 1977, gave disturbing testimony about what was accomplished or not accomplished in that investigation. The Comptroller General told us that this 5-year investigation of the Central Teamsters Union Pension Fund was conducted at a cost to the American taxpayer of more than \$5 million, and was highly deficient.

Important investigative leads were not vigorously pursued, or were ignored. The investigation was, on the whole, poorly planned, poorly managed, and poorly executed.

The four former SIS investigators, including the SIS Director and Deputy Director, corroborated the GAO findings. They recalled their own frustration in attempting to pursue vital third-party investigation of pension fund loan transactions, and being rebuffed in their pursuit by high-level Labor Department officials. I again must question whether the apparent reform of the Teamsters Pension Fund instituted as a result of the Labor Department's investigation will stand the test of time. I hope the remaining witnesses can provide us with an answer.

Chairman NUNN. Thank you very much, Senator Percy. We would first call our witness, Jack Key. I will ask you to hold up your hand and take the oath. Do you swear the testimony you give before this subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. KEY. I do.

**TESTIMONY OF JACK KEY, CHIEF INTELLIGENCE OFFICER,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

Chairman NUNN. Give us your name for the record and, of course, your position with the subcommittee, Mr. Key, and if you could begin by giving us a brief background of your career in law enforcement.

Mr. KEY. My name is Jack Key. I am the chief intelligence officer for the Permanent Subcommittee on Investigations. I have been employed by the Permanent Subcommittee on Investigations for the past year. Prior to that, I spent my life in the State of Florida and was in law enforcement for 16 years. While in Florida, I was assigned to the Organized Crime/Racketeering Section of the Miami Strike Force and was a bureau supervisor and special agent with the Florida Department of Law Enforcement.

Mr. Chairman, I would like to call to your attention a hearing that was held by this subcommittee in April 1980, the subject of inquiry being organized crime and use of violence.

If you recall, we had two witnesses in particular, Mr. William Ouseley, who is a special agent with the Federal Bureau of Investigation, assigned to the Kansas City, Mo., field office, and Mr. F. Harvey Bonadonna, who is currently in the witness protection program.

Special Agent Ouseley testified on April 30, 1980, that in May 1978, a court-authorized electronic surveillance was approved in the Western District of Missouri and from that date until February 14, 1979, virtually continuous electronic surveillance was conducted, aimed at the core membership of the established organized crime family in Kansas City, commonly referred to as the "outfit."

According to Special Agent Ouseley, a series of telephone and microphone surveillance at a variety of locations in the Kansas City area provided details of the "outfit" to carry out a killing and additionally uncovered the hidden illegal interest of the Kansas City mob and similar crime families in other cities in various Las Vegas hotel/casinos.

The affidavits submitted by the FBI set forth information to the effect—Nick Civella's ability to control the Central States Pension Fund loan was the key to their obtaining an interest in the Tropicana Hotel.

As you will recall, Nick Civella was identified as being the head of the Kansas City "outfit."

Mr. Chairman, I have personally reviewed the affidavits that were submitted by the FBI for the court-authorized interceptions and noted that on August 8, 1978, Joseph Agosto, who was the Kansas City "outfit" principal management agent in Las Vegas, made a telephone call to Carl "Tuffy" DeLuna, who was identified during our hearing on organized crime as being in the hierarchy of the Kansas City "outfit" and discussed certain individuals' organized crime loyalties.

Further discussion was had about the payments due to the Central States Pension Fund and the physical assets of the Stardust Casino.

On page 18G of the affidavit filed on November 10, 1978, in the U.S. District Court for the Western District of Missouri, requesting court authorization to intercept wire communications of Carl Angelo DeLuna, Nicholas Civella, Carl James Civella, Peter Tamburello, Charles Moretina, Carl Caruso, Joe Agosto, Carl Thomas, Morris Shenker, and Anthony Chiavola, states that:

On Tuesday, October 10, 1978, Peter Tamburello was intercepted placing a call over the Quinn and Peebles telephone to a Kansas City number listed to the Dunes Hotel and Country Club.

Carl Caruso, known to agents of the Kansas City Office FBI as the Kansas City junket organizer for the Dunes Hotel-Casino, answered and was asked by Nicholas Civella to confirm that he gave something to a person who was supposed to read it. Caruso related that he had. Civella instructed Caruso to contact the man and tell him "Mr. Quinn" was waiting for him to call Quinn back. While Civella waited on one line, Caruso called for Morris Shenker, owner of the Las Vegas Dunes Hotel-Casino, and instructed Shenker to call "that party at Mr. Quinn's office." Civella called Caruso back immediately and told him to say only that Mr. Quinn's office would like the person to call them, not that a guy was waiting. Civella stressed that the person they were talking about understood "Mr. Quinn's office" and that Caruso should also.

Shortly thereafter an incoming call was intercepted over the Quinn and Peebles telephone requesting to speak to Mr. Quinn. The switchboard operator first stated Mr. Quinn was not in, but when advised the caller was Morris Shenker, stated "he" was on another line.

Nicholas Civella then answered and was addressed by Morris Shenker as Mr. Quinn, although the speakers seemed to be well acquainted. Civella told Shenker that all the people were at La Costa, a southern California resort, and the local fellow was going to reach for Shenker. Civella instructed Shenker to reach for him, and asked if Shenker understood. Shenker confirmed it was the man from Civella's place, believed to refer to International Brotherhood of Teamsters official Roy Lee Williams, Civella instructed Shenker to go to LaCosta, to talk with him alone, tell him what was on Shenker's mind, and he would tell Shenker what he could do for Shenker.

On page 19 D and E of this same affidavit, dated November 10, 1978, it further states that:

Immediately thereafter Civella unsuccessfully attempted to reach Sam Ancona, another Kansas City Teamster official, at LaCosta, over the Quinn and Peebles telephone.

On Thursday, October 12, 1978, Morris Shenker was observed at LaCosta resort, and on Friday, October 13, 1978, Roy Lee Williams and Sam Ancona were observed arriving in Kansas City on a private jet from the San Diego, Calif., area.

The affidavit further states that Nicholas Civella and the Kansas City organized crime group as holding concealed interests in a number of Las Vegas casinos. In another affidavit dated September 24, 1978, it states that Nicholas Civella's organized crime family and his associate, Allen Dorfman, have a strong voice within the Central States Teamsters Pension Fund and control a portion of kickbacks paid for loans from that fund.

According to the affidavit, loans of questionable merit, including a loan to the Dunes Hotel-Casino, have been approved through Dorfman and Civella's influence.

In this same affidavit of September 24, 1978, it states that the Kansas City organized crime group headed by Nicholas Civella has a concealed interest, fronted by Morris Shenker, in the Dunes Hotel-Casino.

While on pretrial bond travel restrictions in the Western District of Missouri, Nicholas Civella was surveilled visiting Las Vegas, Nev., between August 6 and 9, 1974. Subsequent investigation by the FBI and Nevada Gaming Control Board established that Civella stayed at the Dunes Hotel, of which Morris Shenker was then a principal owner, utilizing a fictitious name and address. Civella's hotel registration bore a notation that "* * * this man can get anything he wants," authorized by management. The Dunes Hotel was fined \$10,000 for furnishing complimentary treatment to a person forbidden by State regulations to be in a gambling establishment because of his hoodlum notoriety.

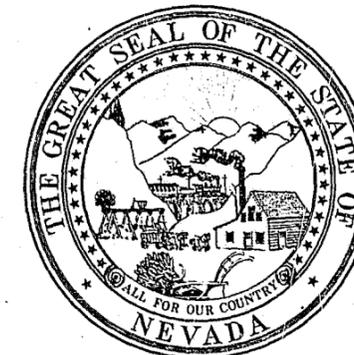
Mr. Chairman, I would like at this time to enter into the record a copy of the list of excluded persons furnished to the Permanent Subcommittee on Investigations by the State of Nevada Gaming Control Board, which identifies Nicholas Civella and Carl James Civella as individuals who are prohibited from owning, participating in or even being on the premises of any gaming establishment in the State of Nevada.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 8" for reference and follows:]

LIST OF EXCLUDED PERSONS

STATE GAMING CONTROL BOARD



PART 1
AUTHORITY

Statutes providing for Regulations requiring exclusion, ejection of certain persons from establishments licensed to operate any gambling game or conduct pari-mutuel wagering are contained in Chapter 463 of the Nevada Revised Statutes as amended 1977 (The Nevada Gaming Control Act).

NRS 463.151 - Persons included.

1. The commission may by regulation provide for the establishment of a list of persons who are to be excluded or ejected from any establishment which is licensed to operate any gambling game or conduct pari-mutuel wagering. This list may include any person:

- (a) Who is of notorious or unsavory reputation;
- (b) Who has been convicted of a crime which is a felony in the State of Nevada or under the laws of the United States, a crime involving moral turpitude or a violation of a provision of this chapter; or
- (c) Whose presence in a licensed gaming establishment would, in the opinion of the board and commission, be inimical to the interests of the State of Nevada, or of licensed gambling, or both.

2. Race, color, creed, national origin or ancestry, or sex shall not be grounds for placing the name of a person upon the list.

NRS 463.152 - Notice to person whose name is placed on list.

Whenever the name and description of any person is placed on a list pursuant to NRS 463.151, the board shall serve notice of such fact to such person:

1. By personal service;
2. By certified mail to the last-known address of such person; or
3. By publication daily for 1 week in one of the principal newspapers published in the city of Reno and in one of the principal newspapers published in the city of Las Vegas, Nevada.

NRS 463.153 - Hearings.

1. Within 30 days after service by mail or in person or 60 days from the time of the last publication, as provided in NRS 463.152, the person named may demand a hearing before the

commission and show cause why he should have his name taken from such a list. Failure to demand such a hearing within the time allotted in this section shall preclude such person from having an administrative hearing, but shall in no way affect his right to petition for judicial review as provided in paragraph (b) of subsection 3.

2. Upon receipt of a demand for hearing, the commission shall set a time and place for the hearing, which shall be held in the offices of the board at Carson City or Las Vegas, Nevada. Such hearing shall not be later than 30 days after receipt of the demand for such a hearing, unless the time and place of the hearing are changed by agreement of the commission and the person demanding the hearing.

3. If, upon completion of the hearing, the commission determines that:

- (a) The regulation does not or should not apply to the person so listed, the commission shall notify all persons licensed under NRS 463.220 of such determination.
- (b) Placing the person on the exclusion or ejection list was proper, the commission shall make and enter in its minutes an order to that effect. Such order shall be subject to review by any court of competent jurisdiction in accordance with the provisions of NRS 463.315.

NRS 463.154 - Penalties for failure to exclude, eject.

The commission may revoke, limit, condition, suspend or fine an individual licensee or an establishment licensed to conduct any gambling game or pari-mutuel wagering, in accordance with the laws of the State of Nevada and the regulations of the commission, if that establishment or any individual licensee affiliated therewith fails to exclude or eject from the premises of the licensed establishment any person placed on the list of persons to be excluded or ejected.

NRS 463.155 - Unlawful entry by person whose name has been placed on list; penalty.

Any person who has been placed on the list of persons to be excluded or ejected from any licensed gaming establishment pursuant to NRS 463.151 is guilty of a gross misdemeanor if he thereafter enters the premises of an establishment which is licensed to operate any gambling game or to conduct pari-mutuel wagering without first having obtained a determination by the commission that he should not have been placed on the list of persons to be excluded or ejected.

PART II
IMPLEMENTATION

Regulation 28 of the Nevada Gaming Commission and State Gaming Control Board entitled "List of Excluded Persons" contains eight sections, excerpts of which are quoted below.

28.010 - List of exclusion and ejection.

Pursuant to NRS 463.151 through 463.155, the Nevada gaming commission hereby provides for the establishment of a list of persons who are to be excluded or ejected from any establishment licensed to operate any gambling game or conduct pari-mutuel wagering. Such list may include any person:

1. Who has been convicted of a crime which is a felony in the State of Nevada or under the laws of the United States, a crime involving moral turpitude, or a violation of a provision of NRS Chapter 463; or
2. Whose presence in establishments licensed to operate any gambling game or conduct pari-mutuel wagering would, in the opinion of the board or commission, be inimical to the interests of the State of Nevada, or of licensed gambling, or both; or
3. Who has been determined by the board or commission to be of notorious or unsavory reputation. Evidence of notorious or unsavory reputation may be established by identification of a person's criminal activities in published reports of various federal and state legislative and executive bodies which have inquired into various aspects of criminal activities including, but not limited to the following:
 - (a) McClellan Committee (Senate Subcommittee on Investigation);
 - (b) Chicago Crime Commission;
 - (c) New York Waterfront Commission;
 - (d) California Crime Commission.

28.020 - Definitions.

28.030 - Entry of names.

28.040 - Distribution and contents of the list.

1. The list shall be open to public inspection and shall be distributed to:

- (a) Every establishment licensed to operate any gambling game or conduct pari-mutuel wagering within the state;
- (b) Law enforcement agencies situate in the State of Nevada.

2. The following information and data shall be provided for each excluded person:

- (a) The full name and all aliases the person is believed to have used;
- (b) Description of the person's physical appearance, including height, weight, type of build, color of hair and eyes, and any other physical characteristics which may assist in the identification of the person;
- (c) Date of birth;
- (d) The effective date the person's name was placed on the list;
- (e) A photograph and the date thereof.

3. The list shall contain the names of those persons now living who have been previously listed in that certain list promulgated on the 13th day of June, 1960, by the Nevada gaming commission; such inclusion shall be made without the necessity of notice and hearing as provided for in sections 28.060 and 28.070 of these regulations.

28.060 - Notice of candidacy.

28.070 - Hearing.

28.080 - Petition to remove from the list.

28.090 - Duty of licensee to exclude.

1. The area within an establishment licensed to operate any gambling game or conduct pari-mutuel wagering from which an excluded person is to be excluded is every portion of said gaming establishment including but not limited to the casino, rooms, theater, bar, pool, lounge, show-room and all other related facilities of said gaming establishment.
2. Whenever an excluded person enters or attempts to enter or is upon the premises of an establishment licensed to operate any gambling game or conduct pari-mutuel wagering

and is recognized by the licensee, its agents or employees, then the licensee and its agents or employees must do the following:

- (a) Immediately notify the board of the presence of the excluded person in any area of the gaming establishment;
 - (b) Request such excluded person to not enter or if on the premises to immediately leave;
 - (c) Notify the appropriate local law enforcement agency and the board if such excluded person fails to comply with the request of the licensee, its agents or employees.
3. Failure to request such excluded person to leave or to prohibit entry of such person upon its premises in a timely fashion or failure to properly notify the board of the presence of such excluded person is an unsuitable method of operation.
 4. Catering to any excluded person, including the granting of complimentary room, food or beverage or the issuance of credit to any such person, or permitting the use by any such person of the facilities of any licensed establishment is an unsuitable method of operation.

(Amended April 1978.)

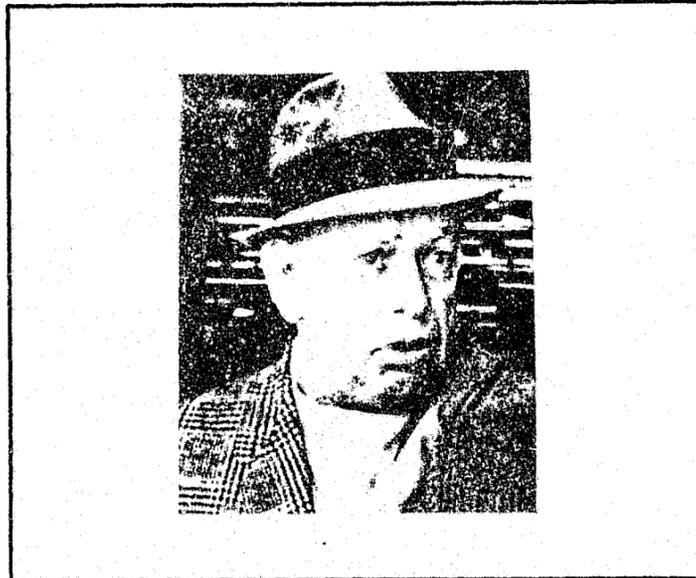
PART III

EXCLUSION AND EJECTION LIST

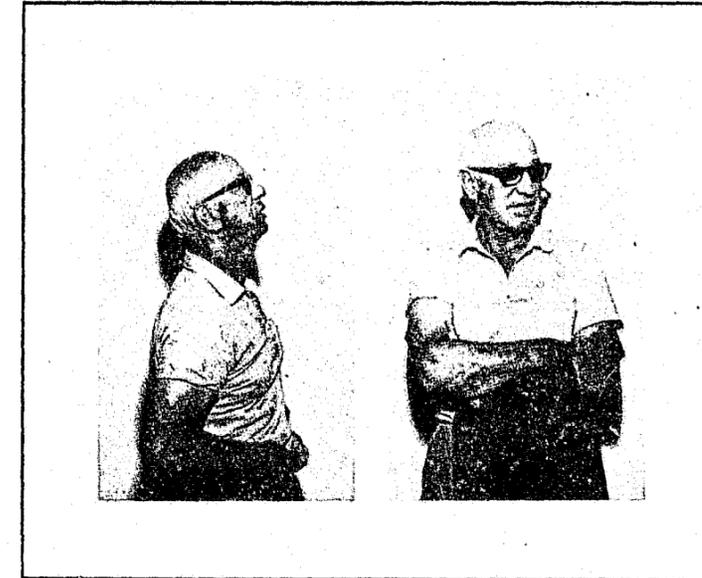
EXCLUSION/EJECTION LIST IDENTIFICATION RECORD
JAN. 1975



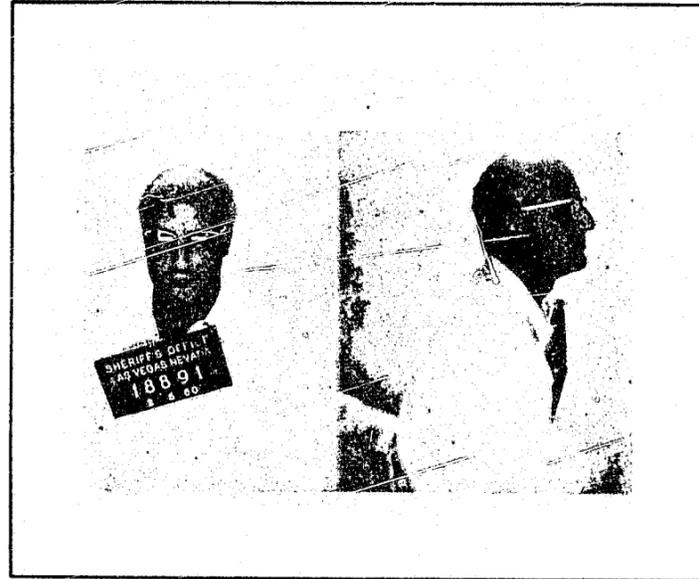
| | | | | | | | |
|---|------|-----------------------------|-----|---------|------|------------|-----------------------|
| NAME/ALIASES AKA: Marshall Cafano, Joseph Rinaldi, Marshall MARSHALL CAIFANO Califano, John Marshall, John Michael Marshall | | | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | W | 65½ | 150 | Gry | Brn | Small | |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| July 19, 1911 | | New York, N.Y | | 552 863 | | | |
| LAST KNOWN ADDRESS | | | | | | | |
| 1337 North Latrobe Avenue, Chicago, Illinois | | | | | | | |
| DATE LAST UPDATE | | OTHER INFO | | | | | |
| Jan. 23, 1975 | | | | | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | | PHOTO DATE | |
| June 13, 1960 | | June 13, 1960 | | | | 1973 | |

EXCLUSION/EJECTION LIST IDENTIFICATION RECORD
JAN. 1975

| | | | | | | | |
|--|------|-----------------------------|-----|---------|------------|--------|-----------------------|
| NAME/ALIASES | | AKA: James Bove | | | | | |
| CARL JAMES CIVELLA | | Corky Civella | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | W | 70 | 180 | Gry | Brn | Medium | Receding hairline |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| Jan. 28, 1910 | | Kansas City, Mo | | 679 493 | | | |
| LAST KNOWN ADDRESS | | | | | | | |
| 1505 Northeast 50th Terrace, Kansas City, Missouri | | | | | | | |
| DATE LAST UPDATE | | OTHER INFO | | | | | |
| Jan. 23, 1975 | | | | | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | PHOTO DATE | | |
| June 13, 1960 | | June 13, 1960 | | | 1969 | | |

EXCLUSION/EJECTION LIST IDENTIFICATION RECORD
JAN. 1975

| | | | | | | | |
|--|------|--|-----|-----------|-----------------|--------|-----------------------|
| NAME/ALIASES | | AKA: Nick Civella, Nick Civello, Nick Bove, Giuseppe | | | | | |
| NICHOLAS CIVELLA | | Nicholi Civello (TN), J.P. Sanders, Joe Meyer | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | W | 68 | 189 | Gry | Brn | Stocky | |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| Mar. 19, 1912 | | Kansas City, Mo. | | 1 224 024 | | | |
| LAST KNOWN ADDRESS | | | | | | | |
| 1500 Northeast 50th Terrace, Kansas City, Missouri | | | | | | | |
| DATE LAST UPDATE | | OTHER INFO | | | | | |
| Jan. 23, 1975 | | Last Known to Visit D.V.: August 6, 1974 | | | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | PHOTO DATE | | |
| June 13, 1960 | | June 13, 1960 | | | October 2, 1970 | | |

EXCLUSION/EJECTION LIST IDENTIFICATION RECORD
JAN. 1975

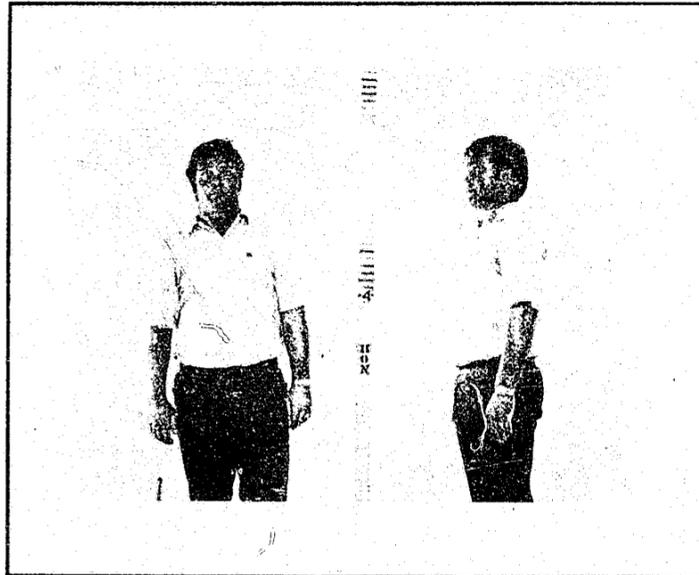
| | | | | | | | |
|---|------|---|-----|-----------|--------------|---------|-----------------------|
| NAME/ALIASES LOUIS TOM DRAGNA | | | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | W | 72 | 180 | Gry | Brn | Medium | |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| July 18, 1920 | | California | | 4 677 209 | | 337 487 | |
| LAST KNOWN ADDRESS 21546 Covina Hills Road, Covina, California | | | | | | | |
| DATE LAST UPDATE | | OTHER INFO | | | | | |
| Jan. 23, 1975 | | Business Address: Roberta Manufacturing co, Inc. 3330 N. San Gabriel, Rosemead, Cal. | | | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | PHOTO DATE | | |
| June 13, 1960 | | June 13, 1960 | | | Feb. 5, 1960 | | |

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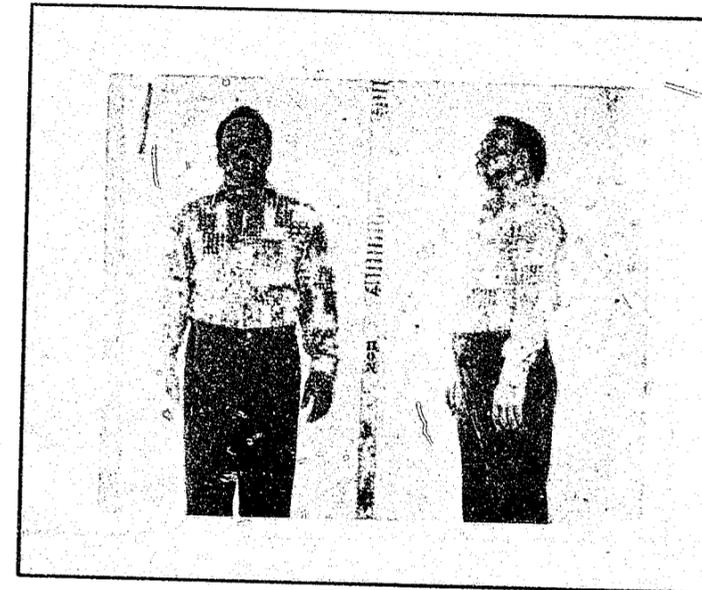
2 OF 6

EXCLUSION/EJECTION LIST IDENTIFICATION RECORD
JAN. 1975

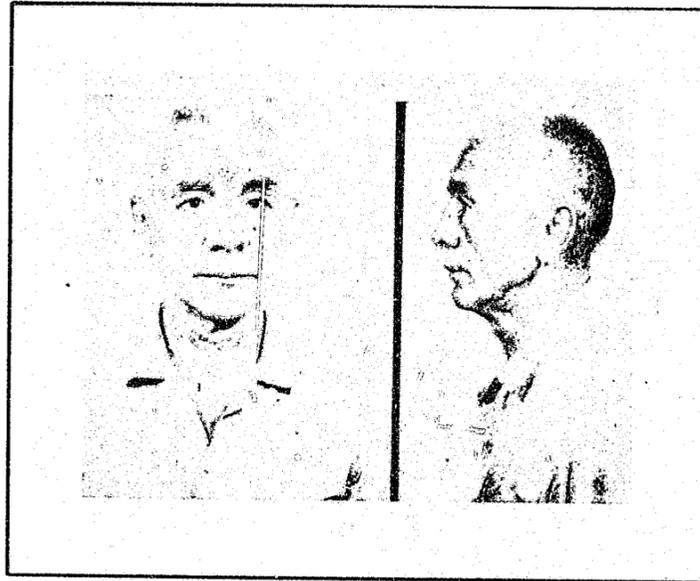
| | | | | | | | |
|--------------------------|------|--|-----|----------|------|---------------|-----------------------|
| NAME/ALIASES | | AKA: Louis R. Romero, Bobby Garcia, Robert Lewis | | | | | |
| ROBERT LOUIS GARCIA | | Garcia, Taco Bob | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | W | 66 | 170 | Gry | Brn | Medium | |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| Aug. 31, 1911 | | California | | 87 508 A | | 424 026 | |
| LAST KNOWN ADDRESS | | | | | | | |
| Palm Springs, California | | | | | | | |
| DATE LAST UPDATE | | OTHER INFO | | | | | |
| Jan. 23, 1975 | | | | | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | | PHOTO DATE | |
| June 13, 1960 | | June 13, 1960 | | | | Oct. 12, 1955 | |

EXCLUSION/EJECTION LIST IDENTIFICATION RECORD
JAN. 1975

| | | | | | | | |
|------------------------------------|------|-----------------------------|-----|-------------|------|---------------|-----------------------|
| NAME/ALIASES | | AKA: "Alibaba" | | | | | |
| ALVIN GEORGE KAOHU | | | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | Haw. | 70 | 215 | Brn | Hzl | Large | |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| Nov. 16, 1937 | | Honolulu, Hawai | | .162 108 L8 | | 4 842 279 | |
| LAST KNOWN ADDRESS | | | | | | | |
| 1136 Puolo Drive, Honolulu, Hawaii | | | | | | | |
| DATE LAST UPDATE | | OTHER INFO | | | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | | PHOTO DATE | |
| Jan. 23, 1975 | | Jan. 23, 1975 | | | | Mar. 11, 1974 | |

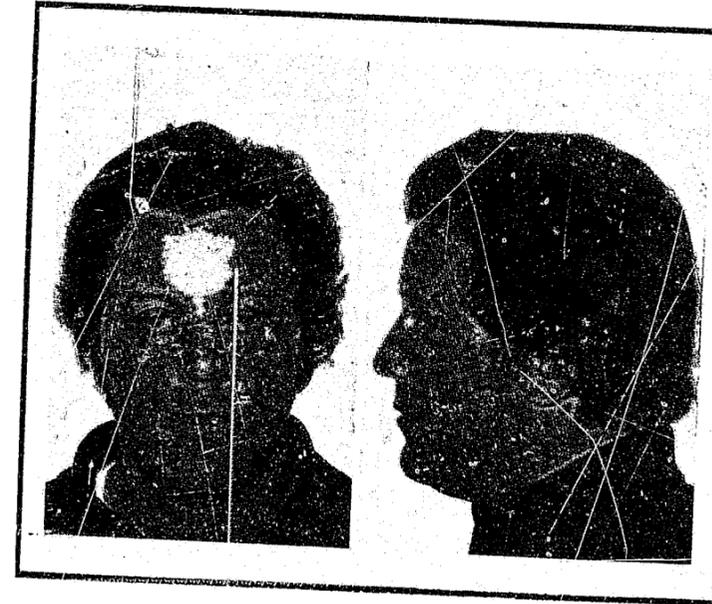
EXCLUSION/EJECTION LIST IDENTIFICATION RECORD
JAN. 1975

| | | | | | | | |
|---|------|-----------------------------|-----|------|------|---------------|-----------------------|
| NAME/ALIASES | | AKA: Nappy Pulawa, Brother | | | | | |
| WILFORD KALAAUALA PULAWA | | | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | Haw. | 72 | 220 | Blk | Brn | Large | Tan Complexion |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| Dec. 12, 1935 | | Honolulu, Hawaii | | | | | |
| LAST KNOWN ADDRESS | | | | | | | |
| 1024-A 19th Avenue, Honolulu, Hawaii 2825 So. King Street, #3401, Honolulu, Hawaii | | | | | | | |
| DATE LAST UPDATE | | OTHER INFO | | | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | | PHOTO DATE | |
| Jan. 23, 1975 | | Jan. 23, 1975 | | | | Feb. 16, 1974 | |

EXCLUSION/EJECTION LIST IDENTIFICATION RECORD
JAN. 1975

| | | | | | | | |
|--|------|-----------------------------|-----|------------|------------|---------|-----------------------|
| NAME/ALIASES AKA: Joseph Russell, Joe Lewis, Wild Cowboy, Joe Sica | | | | | | | |
| JOSEPH SICA Sica | | | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | W | 68 | 170 | Gry | Brn | Medium | |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| Aug. 20, 1911 | | New Jersey | | 343 378 | | 123 211 | |
| LAST KNOWN ADDRESS | | | | | | | |
| 10219 La Tuna Canyon Road, Sun Valley, California | | | | | | | |
| DATE LAST UPDATE | | | | OTHER INFO | | | |
| Jan. 23, 1975 | | | | | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | PHOTO DATE | | |
| June 13, 1960 | | June 13, 1960 | | | Sept. 1970 | | |

EXCLUSION LIST IDENTIFICATION RECORD



| | | | | | | | |
|---|------|-----------------------------|-----|--|---------------|-----------|-----------------------|
| NAME/ALIASES AKA: Tony Pasquale Spilotro | | | | | | | |
| Anthony John Spilotro Pasquale Peter Spilotro | | | | | | | |
| "The Ant" | | | | | | | |
| SEX | RACE | HT | WT | HAIR | EYES | BUILD | OTHER CHARACTERISTICS |
| M | Cauc | 65½" | 160 | Brn | Blu | Stocky | |
| DATE OF BIRTH | | PLACE OF BIRTH | | FBI | | CII | |
| May 19, 1938 | | Chicago, Ill. | | 860 142 B | | 3 319 488 | |
| LAST KNOWN ADDRESS | | | | | | | |
| 4675 Balfour, Las Vegas, Nevada | | | | | | | |
| DATE LAST UPDATE | | | | OTHER INFO | | | |
| | | | | Business: Gold Rush Ltd. (Jewelry Store) | | | |
| | | | | 228 W. Sahara, Las Vegas | | | |
| PLACED ON LIST | | COMMISSION'S FINAL DECISION | | | PHOTO DATE | | |
| Dec. 2, 1978 | | December 2, 1978 | | | March 3, 1974 | | |

Mr. Key. On pages 17 and 18 of an affidavit dated August 30, 1978, filed in the U.S. District Court for the Western District of Missouri, seeking authorization to intercept conversations of Carl Angelo DeLuna, Nicholas Civella, Carl James Civella, Pete Tamburelo, Joe Agosto, and Carl Thomas, information is outlined in the affidavit which states that major organized crime groups, including the Kansas City organized crime group, had hidden interests in the Tropicana Hotel-Casino, and that Carl Thomas had been hired as the casino manager at the Tropicana Hotel-Casino to insure the granting of a Teamster Pension Fund loan to the Tropicana Hotel-Casino. It further states that Vito DeFilippo, of the Joe Bennano organized crime group, was overheard stating that once the Teamsters loan for the Tropicana Hotel-Casino was approved, several organized crime groups, including the Kansas City organized crime group, headed by Nicholas Civella, would have a hidden ownership interest in the Tropicana Hotel-Casino.

The affidavit further reveals that an individual overheard Joe Agosto state that Nicholas Civella, the head of the Kansas City organized crime group, will have the final voice in the granting of the Teamsters loan to the Tropicana Hotel-Casino and that Nicholas Civella will invest his money in a concealed manner in the Tropicana Hotel-Casino.

Chairman NUNN. Mr. Key, we have a vote on right now. Senator Percy and I have only 3 or 4 minutes to vote. We will take a 10-minute break and come back at that point for further testimony.

[Brief recess.]

Chairman NUNN. Mr. Key, would you please resume where you left off?

[At this point Senator Chiles entered the hearing room.]

Mr. Key. All right sir.

The second witness that appeared in our organized crime and use of violence hearing was Mr. F. Harvey Bonadonna. If you recall, Mr. Bonadonna testified about his experiences with the Kansas City outfit and violent acts perpetrated by that organized crime group.

Government witnesses at our hearings on organized crime violence testified that they considered Mr. Bonadonna to be a very reliable witness. They cited his prior testimony that led to the convictions of outfit members and his supplying information to the FBI which was corroborated by independent investigation.

In Mr. Bonadonna's testimony before the subcommittee on May 1, 1980, he referred to a Teamsters official who was controlled by the Kansas City outfit.

I have had several conversations with Mr. Bonadonna both prior to and after our organized crime violence hearings. During those conversations, Mr. Bonadonna identified that Teamsters Union official as Mr. Roy Lee Williams.

Mr. Bonadonna stated to me that he has known Roy Lee Williams since he—Mr. Bonadonna—was a young boy. He said that he knew Mr. Williams when Mr. Williams was a so-called "go-fer" for the Kansas City outfit and used to play an Italian card game called Pitch with outfit members.

Mr. Bonadonna also told me that as a young boy, he overheard conversations between his father—the late David Bonadonna, a known member of the Kansas City outfit—and other mob members regard-

ing the grooming of Roy Lee Williams by Nick Civella in order for Mr. Williams to obtain a position of power within the Teamsters Union—thereby enabling the outfit to gain access to Teamsters' funds.

Mr. Chairman, I also would like to introduce at this time into the record a portion of testimony that was given to the U.S. House of Representatives Ways and Means Committee's oversight subcommittee hearing on June 6, 1978, concerning Teamsters fund matters.

This document outlines information which was contained in a purported Department of Justice memorandum detailing Roy Lee Williams' connection with the Kansas City outfit and in particular his association with Nicholas Civella identified as being the head of the outfit in Kansas City. I ask this exhibit be placed in the record for reference.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 9" for reference and may be found in the files of the subcommittee.]

Chairman NUNN. Mr. Key, you quoted from several affidavits in your testimony. Where are those affidavits filed?

Mr. Key. They are currently being maintained by the Permanent Subcommittee on Investigations. They were introduced as part of our record during the "Organized Crime and Violence" hearings.

Chairman NUNN. They were affidavits from people who gave that testimony to us?

Mr. Key. Yes; Mr. Ouseley was the affiant on several of those affidavits and he testified before this subcommittee.

Chairman NUNN. The affidavits you referred to by the FBI, from what sources does the FBI appear to have prepared this testimony?

Mr. Key. In reviewing those affidavits, Mr. Chairman, there were numerous confidential sources of information that was referred to. There were previous conversations during court authorized wire interceptions, there were physical surveillances and investigations conducted to corroborate not only the physical surveillances but information from the confidential sources of information.

Chairman NUNN. Were the wire interceptions court-authorized interceptions?

Mr. Key. Yes; every one of them.

Chairman NUNN. Mr. Key, you mentioned in your testimony that the Central States Pension Fund loans regarding the Tropicana and Dunes Hotels in Las Vegas—you mentioned those two. Are there any other hotels and casinos mentioned in the affidavits that have been the recipient of Teamsters loans?

Mr. Key. Yes. What is interesting Mr. Chairman, is that when the Kansas City outfit and the Chicago mob interests discussed various hotels and casinos, only those that either had a Teamsters Union Pension Fund loan or were in the process of negotiating with the Teamsters to obtain a loan were mentioned. So the only ones that were mentioned, were those related to the Teamsters.

Chairman NUNN. You stated that information contained in the sworn affidavit you made reference to—Nick Civella was overheard in a court-authorized interception, instructing Morris Shenker to make contact with an individual believed to be Roy Williams who was at the La Costa Country Club at the time of the conversation. Is that correct?

Mr. KEY. Yes, sir.

Chairman NUNN. From what information contained in the affidavits was it confirmed that Morris Shenker did, in fact, visit La Costa Country Club shortly thereafter?

Mr. KEY. In the affidavits the FBI notes a physical surveillance that was conducted at the La Costa Country Club on October 12, 1978, at which time Morris Shenker was observed at La Costa.

Chairman NUNN. Mr. Key, you stated that Mr. Bonadonna told you that it was Roy Lee Williams he was referring to in his previous testimony on May 1, 1980, during our organized crime and use of violence of hearings. Have you had the occasion to interview Mr. Bonadonna since his last appearance?

Mr. KEY. Yes, sir, I have.

Chairman NUNN. Have you had contact with Mr. Bonadonna recently and has he related to you substantially the same information concerning Roy Lee Williams he furnished on previous occasions?

Mr. KEY. Yes, sir; in fact, Mr. Chairman, I had a conversation with Mr. Bonadonna last night and, again, he related to me the information about Roy Lee Williams that he has furnished me on prior occasions.

Chairman NUNN. Is Mr. Bonadonna part of the witness protection program?

Mr. KEY. Yes, sir, he is.

Chairman NUNN. Senator Percy?

Senator PERCY. I have no questions, Mr. Chairman.

Chairman NUNN. Thank you, Mr. Key. Our next witness is Mr. Roy Williams. Mr. Williams, before you take your seat, we swear in all our witnesses before the subcommittee. Hold up your right hand. Do you swear the testimony you give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WILLIAMS. I do.

TESTIMONY OF ROY L. WILLIAMS, FORMER VICE PRESIDENT OF TEAMSTERS, ACCOMPANIED BY THOMAS J. WADDEN, JR., COUNSEL, AND WILLIAM KREBS, COUNSEL

Chairman NUNN. Thank you, sir. Mr. Williams, you might want to introduce the people with you.

I assume you are represented by counsel. If you do have counsel, have them give their names and addresses.

Mr. WADDEN. Thomas J. Wadden, Jr., member of the bar, North Carolina.

On Mr. Williams' right, Mr. William Krebs, member of the bar of the District of Columbia.

Senator, I have a statement which Mr. Williams wishes to pass to the committee before he testifies.

Chairman NUNN. We will reserve judgment on that. If you hand me the statement I would appreciate it.

Mr. Williams, these gentlemen are representing you as your legal counsel here today; is that right?

Mr. WILLIAMS. Yes, sir.

Chairman NUNN. Both of them are representing you?

Mr. WILLIAMS. Yes, sir.

Chairman NUNN. I ask counsel if it is his intention to have Mr. Williams make this statement?

Mr. WADDEN. Yes, it is, Senator Nunn.

Chairman NUNN. Mr. Williams, you could proceed to make the statement, if you want. I first would just like to get your full name and current address, if I could ask you that question.

Mr. WILLIAMS. My name is Roy L. Williams. The "L" stands for Lee. My home address is Route 1, Leeton, L-e-e-t-c-n, Mo., Box 183.

Chairman NUNN. Thank you.

Mr. WILLIAMS. Mr. Chairman and members of the permanent subcommittee, I appreciate the opportunity to appear before you and in addition to being a vice president of the International Brotherhood of Teamsters, I am also secretary-treasurer and director of the Central Conference of Teamsters, president of Joint Counsel 56 and president of Local 41.

From 1955 to 1977, I was also a trustee of the central States south-east and southwest areas' pension and welfare fund.

I am aware of the purpose of this committee and fully support its aims. However, as you no doubt are aware, I am presently under investigation by the U.S. Department of Justice with respect to several grand juries. Additionally, I have been informed that I have been and perhaps still am the subject of extensive electronic surveillance by the Department of Justice. Neither my counsel nor I have been afforded the opportunity to hear the tapes or read the transcripts based upon the electronic surveillance.

Prior to yesterday afternoon, my counsel requested that the committee staff inform them of the subjects on which the committee intends to question me. We were given no meaningful guidance.

Late yesterday afternoon, my counsel met with the committee staff and renewed their request for detailed lists of the subjects which you intend to cover in this hearing. My counsel were merely advised in the most general terms that the questioning would cover some six areas, including my role as trustee of the pension fund without further particularity.

As I previously stated, I was a trustee for some 22 years. Hundreds of decisions were made and votes taken during that 22-year period. Without further definition of the subject matter and an opportunity to review the documents or otherwise prepare myself, it is impossible to respond to your questioning. Although it has been my intention to try and answer your questions as best I could, my counsel has reminded me in light of the pending Federal grand jury investigation and the impossibility to fully recall and recollect the many, many conversations, let alone the context of each conversation, which I have had in my home, my office, and on my telephones over the past years and which may have been intercepted by the Department of Justice by virtue of its wholesale electronic surveillance of me and others, that any answers which I give which may be inaccurate because of my inability to properly prepare myself might place me in jeopardy for, among other things, charges of perjury.

I should like to point out to the committee that the electronic surveillance, to which I have referred, is that directed at me. As far as I am aware, all of the electronic surveillance which has been the subject of testimony before this committee on April 28, 29, 30, and May 1, 1980, does not purport to include any conversations in which I was a participant or that I was, in fact, even aware of their existence. I can say that I have never received any notice from the Department of Justice suggesting otherwise.

Therefore, it is with great reluctance that I must follow my counsel's instructions and respectively decline to answer the committee's questions on the basis of my fifth amendment privilege.

Finally, as the committee is aware, I have repeatedly requested my appearance before the committee to be continued until after the grand jury had completed its investigations. Those requests were denied. However, I would like to take the opportunity to reaffirm to the committee that after I have been afforded an opportunity to review the transcripts, recordings, and authorizations of the electronic surveillance and obtain a judicial determination as to their legality in a court of law and, further, after the grand juries have had an opportunity to resolve their investigation, I would not only be willing to appear before this committee to answer its questions in furtherance of its stated legislative purpose, but I would welcome such an opportunity.

Chairman NUNN. Thank you, Mr. Williams. I would like for counsel, Marty Steinberg, to recount the conversations he has had with Mr. Williams' attorneys as far as the scope of this hearing is concerned.

Mr. STEINBERG. We have met with Mr. Williams' attorneys on a number of occasions and have talked to them over the phone and in person. We have told Mr. Williams' attorneys the categories of questions we would be asking Mr. Williams in numerous areas. We refused to detail the exact questions we would be using today. There was a request made by Mr. Williams' attorney that we delay his appearance until sometime in September, when a grand jury in Chicago was allegedly to take action one way or the other in his matter.

Upon discussing that matter further, Mr. Williams' counsel stated that that was not the only matter for which Mr. Williams was under potential investigation and that, in fact, he had been served with approximately 10 wiretap inventories from various parts of the country and there were potential other criminal investigations that might come up or may have already come up which could be pending against Mr. Williams which led to our decision to call Mr. Williams today.

Chairman NUNN. Thank you, Mr. Steinberg. Just before we begin any questions, Mr. Williams, the particular matter of this hearing I described in the opening statement I made in yesterday's hearing as far as the purpose, the legislative authority and the extent of our hearing. To give you a little bit more detail before we ask any questions, and I think all of this has been conveyed to you by counsel, but I repeat it to you before we propound questions, our scope is very broad in terms of this committee's jurisdiction. We are particularly looking at the Labor Department investigation of the overall Teamster pension fund investigation. Our subject matter in this hearing could be described as follows:

To provide oversight concerning the Government's investigation of the Teamsters Central States Pension Fund. Two, to determine the influence of former trustees of the fund, the amount of influence they have had and the amount of influence they now have as to the activities of the new trustee.

Of course, you were one of the old trustees.

Three, to determine if any former or present trustees are influenced in their actions by members of organized crime. That is one of the key areas that we are concerned about and we are vitally concerned about that. Of particular legislative interest to the subcommittee, we are concerned about the protection of union trust funds from would-be predators. We are concerned about the appropriate responsibility of the Federal agencies charged with the responsibility of investigating and litigating matters concerning the fund and we are concerned about measures to insure that the fund operations are free from the influence of organized crime.

Mr. Williams, you have your attorneys with you this morning. We permit you to consult with your attorneys after any question is propounded. If you desire to, you have every right to be represented by legal counsel. Your counsel will not be permitted to testify but certainly will be permitted to advise you before you testify. I have asked Chief Counsel Steinberg to conduct these questions and I will defer to him in just a moment.

In the meantime, Senator Percy, I have asked Chief Counsel Steinberg to propound these questions. I don't intend personally to ask any questions unless something naturally develops from the questions he asks. The committee has every right and duty to ask the questions. We hope Mr. Williams will answer them. That will depend on his own decision based on his constitutional rights, which we respect.

Do you have any statement you would like to make at this time before we ask Marty Steinberg to ask the questions?

Senator PERCY. Mr. Williams, you are uniquely qualified to help this subcommittee if you choose to do so. You were a trustee for 22 years, and intimately involved with the policymaking for the fund.

I have just two questions. They do not involve any telephone conversations you might have had at any particular time. I would be very happy to have someone from the staff give to your attorney a copy of these two questions. He can then determine whether or not there is any possible infringement of your rights by your answering the questions. We would very much appreciate your cooperation on those.

Why don't we have Mr. Steinberg begin to ask the questions? You can think that over to see whether or not there is any problem involved in responding to my questions.

Mr. WADDEN. Thank you, Senator.

Mr. STEINBERG. Mr. Williams, in April and May 1980, this subcommittee received testimony from the FBI based on affidavits of wire intercepts that Nick Civella had the ability to control the Teamsters Central States Pension Fund. Mr. Civella was described as the head of the mob in Kansas City.

Later, in that same hearing, a witness named Fred Bonadonna, whose father was a member of the Kansas City mob, testified that

the mob in Kansas City put their own man in power in the Teamsters to get access to union funds and power.

Since that hearing, evidence this subcommittee has received indicates that you are the person Mr. Bonadonna referred to and you are the source of Mr. Civella's influence over the Teamsters Fund assets.

Do you personally know Nick Civella?

Mr. WILLIAMS. On the advice of my attorney, I respectfully decline to answer that question on the grounds that my answer may incriminate me or tend to do so.

Mr. STEINBERG. Mr. Williams, if you intend to rely on the privilege, you may state that you are relying on the same privilege in future questions.

Mr. WILLIAMS. On the advice of my attorney, I respectfully decline—

Chairman NUNN. I think what counsel is saying, Mr. Williams, is we are going to propound several questions. We hope we can get your testimony on some of the questions as we go along. If you are asserting your rights under the fifth amendment, then you can simply say you are asserting your rights under the fifth amendment and we would certainly stipulate that.

You can answer it the way counsel has instructed you, whatever you prefer to do. If you want to make a shorter answer, you can do that. We do hope you can testify and counsel will propound other questions.

Mr. WILLIAMS. Thank you, Senator.

Mr. STEINBERG. Mr. Williams, GAO reported to this subcommittee yesterday that the Teamsters trustees participated in a transparent attempt to transfer \$91 million from the control of the asset managers to the B. and A. account to pay off a loan for a hotel in Las Vegas, Nev. The loan in the suit that GAO referred to was the so-called M. and R. transaction involving the Dunes Hotel-Casino and would have resulted in a \$91 million benefit to Morris Shenker by manipulation of fund assets from one account to another.

Mr. Key has pointed out in his testimony that Federal wiretap affidavits reflect on October 10, 1978, Morris Shenker and Nick Civella were overheard on a phone conversation and Mr. Shenker was told to go to La Costa to meet you to discuss this matter.

In October 1978, did Nicholas Civella tell you to meet with Morris Shenker at La Costa to attempt to get the Teamsters Fund to pay off Mr. Shenker?

Mr. WILLIAMS. I rely on my privilege.

Chairman NUNN. You are relying on your fifth amendment privilege?

Mr. WILLIAMS. Yes, sir, my fifth amendment privilege.

Mr. STEINBERG. Did you, in fact, meet with Morris Shenker on October 12, 1978, at La Costa?

Mr. WILLIAMS. I rely on my fifth amendment privilege.

Mr. STEINBERG. Did you discuss with Morris Shenker on October 12, 1978, an arrangement whereby you would attempt to manipulate the Teamsters fund assets to pay off Mr. Shenker?

Mr. WILLIAMS. I rely on my fifth amendment privilege.

Mr. STEINBERG. Did you use your influence on the present trustees of the Teamsters fund to attempt to get them to increase the benefits and

administration account by \$91 million to circumvent the independent asset managers?

Mr. WILLIAMS. I rely on my fifth amendment privilege.

Mr. STEINBERG. Mr. Williams, are you aware of a meeting between Allen Dorfman, Joe Lombardo from Chicago, and Nick Civella at the Crown Hotel in Kansas City on March 25, 1979?

Mr. WILLIAMS. I rely on my privilege of the fifth amendment.

Mr. STEINBERG. Mr. Williams, after that March 25 meeting, did you personally have a meeting with Nick Civella and Allen Dorfman on April 23, 1979, at the residence of Phil Simone to discuss the manipulation of Teamsters fund assets?

Mr. WILLIAMS. I rely on my fifth amendment privilege.

Mr. STEINBERG. Did you know Allen Dorfman?

Mr. WILLIAMS. I rely on my fifth amendment privilege.

Mr. STEINBERG. Did you in fact meet Allen Dorfman at a shopping center and drive Mr. Dorfman to this meeting?

Mr. WILLIAMS. I rely on my fifth amendment privilege.

Mr. STEINBERG. Did you discuss at this April 23, 1979, meeting the fact that you were going to, under Mr. Civella's directions, change the fund trustees and administrators, take over the position of Frank Fitzsimmons as president of the Teamster International, regain control of the Teamsters fund assets, and use a specific medical prescription plan requested by Mr. Civella?

[At this point Senator Chiles withdrew from the hearing room.]

Mr. WILLIAMS. I rely on my fifth amendment privileges.

Mr. STEINBERG. Mr. Williams, as a result of this April 23, 1979, meeting, did Mr. Civella inform you to initiate formal fund action in the form of letters or resolutions to be filed complaining about the independent asset managers? And I will hand to you at this time certain documents prepared by fund counsel and trustees.

Chairman NUNN. The clerk will please hand the witness the documents.

[Documents tendered to the witness.]

[At this point Senator Chiles entered the hearing room.]

Mr. STEINBERG. All of these documents purport to challenge the contracts of the independent asset managers to seek to terminate the independent asset managers' agreements. Did you have any role in influencing counsel or trustees to prepare such letters or reports?

Chairman NUNN. If counsel would like to—

Mr. WADDEN. Mr. Chairman, it is obvious that there is no opportunity at this time for the witness to review these documents. I would assume they are approximately at least 15 or 20 pages. So he doesn't have the ability to answer the question if he wants to.

Chairman NUNN. I don't think the question was aimed at the documents themselves but, rather, the influence Mr. Williams may have had over the new trustees in arriving at those decisions. Of course, Mr. Williams would know whether or not he influenced the trustees in this regard.

I would ask counsel not to direct the question as to details of the document but to propound questions that would be within Mr. Williams' knowledge, without having to review the documents themselves. If we decide to ask him questions on a document, I would respect counsel's right to have a chance to review those documents.

Mr. WADDEN. Thank you, Mr. Chairman.

Mr. WILLIAMS. I rely on the privilege of the fifth amendment.

Mr. STEINBERG. Did you discuss with Nick Civella in April 1979 a meeting he had with the representative of Joe Aiuppa from Chicago concerning the fact that the Chicago mob wanted direct access to your power and influence in the Teamsters fund?

Mr. WILLIAMS. I rely on my privilege under the fifth.

Mr. STEINBERG. Did you at the instruction of Nick Civella insure that John Dwyer resigned as executive director of the Teamsters Central States Pension Fund?

Mr. WILLIAMS. I rely on my privilege under the fifth amendment.

Mr. STEINBERG. FBI wiretap affidavits reflect that Nick Civella was able to gain a hidden interest in the Tropicana Hotel in 1975 by helping a financially troubled owner with a Central States loan. Did you take any part in the granting of this loan to the Tropicana Hotel in 1975?

Mr. WILLIAMS. I rely on my fifth amendment.

Mr. STEINBERG. Have you ever participated in filling certain Teamster positions with relatives of Nicholas Civella?

Mr. WILLIAMS. I rely on my fifth amendment privilege.

Chairman NUNN. We just have a few more questions, Mr. Williams. We have hundreds of questions we would like to ask you, but I have asked counsel, in keeping with our practice, since you are obviously asserting your constitutional privilege under the fifth amendment, to summarize those questions. We, of course, again urge you to testify, but we respect your right under the fifth amendment.

Mr. WILLIAMS. Thank you.

Mr. STEINBERG. Did you, Mr. Williams, have any role in the selection of the new Teamster trustees or have you ever given any directions or influence to the new Teamster trustees?

Mr. WILLIAMS. I rely on my privilege under the fifth amendment.

Mr. STEINBERG. On September 19, 1979, some 2 years after your resignation as a trustee, did you meet with fund trustees to tell them to worry about their own business and keep their noses out of the pension fund business?

Mr. WILLIAMS. I rely on the fifth amendment.

Mr. STEINBERG. Are you aware of a search of the houses of Carl "Cork" Civella and Carl "Tuffy" DeLuna where certain records were found?

Mr. WILLIAMS. I rely on the privilege under the fifth amendment.

Mr. STEINBERG. Are you aware of the existence of any records showing the receipt of moneys by you?

Mr. WILLIAMS. I rely on the privilege under the fifth.

Mr. STEINBERG. Have you ever received any money or anything of value from Nick Civella, Allen Dorfman, or any of their associates?

Mr. WILLIAMS. I rely on my privilege under the fifth.

Chairman NUNN. Thank you, Mr. Williams.

Senator PERCY?

Senator PERCY. Yes.

Mr. Williams, I have given counsel a copy of the two questions that I—

Mr. WILLIAMS. Would you speak a little louder, Senator, please?

Senator PERCY. Yes. I have given to your counsel a copy of the two questions that I would put to you. The first deals with prudent management; the second with greater participation in the trustees meetings so that the 500,000 Teamsters that you represent might know what is going on with their hard-earned funds.

I will read the questions and I would hope that you would not feel compelled to exercise your fifth amendment right. I recognize your right to do so if there is any chance of self-incrimination.

During the time that you were a trustee of the Teamsters Central States Pension Fund, the fund had more than 70 percent of its assets tied up in real estate. The normal percentage of a fund of its size would be 5 to 10 percent. Delinquencies on interest and loan payments were casually and commonly overlooked. One of the most outrageous instances involved a very large loan secured by gambling chits from Las Vegas casinos.

Can you honestly say that the 16 trustees who were in place when the Labor investigation began in 1976 exercised the most prudent management of investments on which almost half a million Teamsters depend?

Mr. WADDEN. Would you indulge us just a minute, please, Senator?

Senator PERCY. Yes, of course.

[Discussion off the record.]

Mr. WILLIAMS. Mr. Chairman and Senator Percy, if you recall me after these matters that I spoke of in my opening statement are resolved, I would be glad to go into it with you. But now I rely on the fifth amendment.

Senator PERCY. All we are asking is whether or not these are prudent things for a trustee to do. We are asking you to justify decisions that you made over a period of 22 years, which you may feel are fully justified.

Real estate, I wouldn't have had the guts I don't think to go that heavily in real estate. Maybe, so far as the Teamsters is concerned, it has proven out because real estate values have skyrocketed.

Mr. WADDEN. Would you indulge us?

Senator PERCY. I am trying to give you an opportunity as a trustee to speak on behalf of your fellow trustees, and to justify your actions. I would be happy to have your comment.

Mr. WADDEN. Thank you.

Mr. WILLIAMS. Senator, I rely on the privilege of the fifth amendment.

Senator PERCY. The last question that I want to ask you is this: We have been told in these, and in past hearings, how very little is known by the rank-and-file Teamsters across the country about very important financial decisions being taken by those who control a pension fund that is in excess of \$2 billion in size.

The Congress believed, when ERISA was enacted, that there ought to be a good deal more public awareness. Participants who rely upon these funds for their future retirement, and the employers who contribute to them should know what is going on.

Why not permit representatives of the fund, participants to come to the meetings of the trustees, at least as observers, and see what is

going on as the trustees deliberate and make decisions that seriously affect their future security?

Mr. WILLIAMS. Senator, I rely on my privilege under the fifth amendment.

Senator PERCY. You have that privilege. Thank you very much.

I have no further questions, Mr. Chairman.

Chairman NUNN. Mr. Williams, we had many questions we wanted to ask you today. Of course, you have been in a key position in the pension fund for many years. You have been one of the leaders of the Teamsters Union for many years. There are very serious allegations relating to the management of the pension fund.

The ultimate objective, as you well know, of the pension fund is to protect the security and future for hundreds of thousands of employees and workers throughout the United States. So it has been an awesome responsibility to be a trustee. We had hoped to get answers, full and complete and candid answers from you.

As I said in my initial statement, we do respect your right, your constitutional right under the fifth amendment. We have very serious, very substantial allegations. We have substantial evidence relating to your involvement with certain people who allegedly are involved in organized crime. We have wanted to ask you that. We have wanted to give you an opportunity to clear up any of these charges and give you your day in court, so to speak, as far as we can in a Senate hearing. But obviously on the advice of counsel you have chosen to assert your constitutional privileges, which, of course, is in accordance with both the Constitution and the rules of this committee.

So you have made that choice. Certainly we would hope at some future date we could get you back when you would be willing and prepared to fully and completely testify about these very important matters and these very serious charges.

Mr. WILLIAMS. Thank you, Senator. As I stated in my opening statement, that once I have a chance to review, why, then certainly I have no objections and would welcome the opportunity to come back.

Chairman NUNN. Thank you, Mr. Williams. We thank both of your counsel for being with us this morning.

Mr. WADDEN. Thank you, Mr. Chairman, Senator Percy.

Mr. WILLIAMS. Thank you.

Chairman NUNN. Our next witness is from the Internal Revenue Service. I understand the Assistant Commissioner, Mr. Winborne, will be testifying.

Mr. Winborne, could you identify yourself, please? Are you Mr. Winborne?

Mr. WINBORNE. Yes; I am.

Chairman NUNN. Perhaps you could identify the people who will be testifying in answer to questions and we could have everyone who is going to testify sworn in at this time.

Mr. WINBORNE. At my far right is Mr. Don Bergherm, who is presently District Director in Chicago. To Mr. Bergherm's left, but I think will be sitting over here to my left, is Lester Stein, the Deputy Chief Counsel for the Internal Revenue Service. To my immediate right is Mr. Charles Miriani who was for many years the District

Director of Chicago but is now the Regional Commissioner for the Midwest Region.

Senator PERCY. Still based in Chicago?

Mr. WINBORNE. Mr. Miriani's office is in Chicago, yes, sir.

Chairman NUNN. If all of you will be testifying or answering questions, I would ask all of you to hold up your right hand. We swear in all of our witnesses on this committee.

Do each of you swear the testimony you give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WINBORNE. I do.

Mr. STEIN. I do.

Mr. MIRIANI. I do.

Mr. BERGHERM. I do.

Chairman NUNN. The record will reflect each answered affirmatively.

Mr. Winborne, we have a good many questions. Of course, we have been into 2 days of hearings related to the overall coordination, or lack thereof, between the labor union, the Labor Department's investigation of the pension fund, and the Internal Revenue Service, and also the Justice Department.

We are anxious to hear from the Revenue Service, particularly in regard to the very serious criticism that the General Accounting Office delivered yesterday about the timing of the Internal Revenue Service revocation of the tax exemption and the lack of coordination with the Labor Department.

So at this stage, rather than beginning with questions, I think you should have the right to make your statement.

TESTIMONY OF S. A. WINBORNE, ASSISTANT COMMISSIONER FOR EMPLOYEE PLANS AND EXEMPT ORGANIZATIONS, INTERNAL REVENUE SERVICE, ACCOMPANIED BY LESTER STEIN, DEPUTY CHIEF COUNSEL, IRS; CHARLES MIRIANI, REGIONAL COMMISSIONER OF IRS MIDWEST REGION; DONALD BERGHERM, IRS CHICAGO DISTRICT DIRECTOR

Mr. WINBORNE. I would like to very much.

I thank you for that, Senator. Of course, we attempted to structure my opening statement along the lines of the draft report we received from the General Accounting Office some 10 days ago. But as to other matters that were mentioned yesterday, we will do our best to answer questions the committee wants to put.

Chairman NUNN. Thank you.

Mr. WINBORNE. I am pleased to appear before you to discuss the role of the Internal Revenue Service in the investigation of the Teamsters Central States, Southeast and Southwest Areas Pension Fund. I have already introduced the gentleman with me so I will skip that portion.

The General Accounting Office at this hearing has raised several concerns about the investigation of the fund by the Department of Labor and the Service. I will try to cover generally the Service's

activities regarding the fund. Also, I would like to describe the impact of Reorganization Plan No. 4, that is, the President's Reorganization Plan No. 4 of 1978 and the coordinated compliance agreement on our examination activity. We will, of course, be glad to answer questions about these in the event we don't cover them satisfactorily. Let's start with the investigation of the Central States fund.

The Service's examination of the fund began in 1968 and eventually covered the plan years 1966 through 1975. With the enactment of the ERISA legislation in 1974, the functional responsibility for continuing the IRS examination was reassigned to the newly created Employee Plans and Exempt Organizations Division of the Chicago District. The Service's examination focused primarily on the fund's compliance with the exclusive benefit rule under the Internal Revenue Code.

The Department of Labor's investigation began in 1975 and was limited primarily to plan years beginning after January 1, 1975. Their investigation concerned the fund's compliance with the fiduciary standards under title I of ERISA.

The Labor Department and the Service, in our opinion, cooperated regarding their examinations beginning at an early date. Beginning in September 1975, in response to a request from the Labor Department's Administrator of pension and welfare benefits programs, the Service began to provide the Department with significant information regarding the Service's examination of the fund.

Officials of both agencies regularly consulted about the progress of their respective examinations. By June 1976, the Chicago District had identified the substantial and continuing dissipation of fund assets. The Service perceived a pattern of management showing a reckless disregard of participant welfare and considered it imperative to take decisive action.

The immediate means available to us of doing this was through revocation of the fund's exempt status. During the course of ongoing discussions with the Department of Labor, the Service advised the Department early in 1976 that the qualified status of the fund was seriously endangered. Then, of course, as we know, on June 25, 1976, the Chicago district office notified the fund that its qualification was revoked.

The immediate effect of the action by the Chicago district office was to deny the tax benefits associated with qualification of an employee plan. These included tax benefits available to the fund's contributing employers and participating employees.

To limit these severe consequences, on July 2, 1976, the then Assistant Commissioner, my predecessor, granted tax relief under section 7805(b) of the Internal Revenue Code to the contributing employers and participating employees who were innocent of the conduct that caused the fund's disqualification.

On September 20, 1976, the fund requested requalification of its plan and trust in an application for determination filed with our Chicago district office. In considering this application, the Service wanted to insure not only that the plan was amended to conform with ERISA but also that the fund had organizational controls and safeguards in place to insure proper implementation of the plan's benefit provisions and the protection of the fund's assets.

Extensive discussions ensued between the fund, the Department of Labor and IRS, which resulted in an agreement under which the fund was required to take certain corrective steps. A requalification letter with conditions was issued to the fund in April 1977. This requalification letter was subject to the fund's undertaking the corrective actions that had been formulated on the basis of our discussions. The conditions, which were announced in a news release issued by the Department of Labor and the IRS, embodied actions that the Service concluded were reasonable under the circumstances that existed at that time.

Before the requalification letter was issued, alternative actions were considered but rejected, including the alternative of obtaining a consent decree under which the fund would be required to undertake corrective actions. The conditional requalification letter approach that was adopted afforded several advantages to the Government.

First, the Government's principal objective of protecting the benefits of participating employees was achieved with the transfer of the great bulk of the fund's assets to independent asset managers.

Second, the delay that would have been experienced in any lawsuit against the fund was avoided.

Finally, the imposition of the conditions in the requalification letter did not preclude the Labor Department from bringing suit against the fund's former trustees for violations of title I. And, as you know, the Department did initiate such a suit.

Since the issuance of the requalification letter, the Service has continuously monitored the fund's affairs. The requalification letter required the fund to provide monthly reports to the Service regarding the fund's efforts to comply with the conditions in the requalification letter. Agents from the Chicago district office made onsite visitations at the fund's offices to verify statements made in these reports.

Early in 1979, the fund's cooperation with the service's audit activities began to deteriorate. On August 24, 1979, the fund sent a letter to the Chicago district office that in effect barred the Service from conducting audit activities on the fund's premises. Because the fund's records and administrative personnel were located there, this was a serious limitation on our ability to monitor the fund.

At that time, the Service was involved in reviewing the extent of the fund's compliance with the eight conditions imposed upon the fund as part of the 1977 requalification and also auditing the fund's postrevocation activities. The audit involved both the Central States Pension Fund and the health and welfare fund.

On September 10, 1979, the fund submitted a new application for exemption based on changes to the plan which had been negotiated with the trucking industry during 1979. This application for requalification was incomplete in several respects, lacking, for example, essential data with respect to participants.

With the fund's refusal to permit onsite examination and the filing of the incomplete application, it had become evident that the fund would not cooperate fully with respect to information on either our monitoring or examination activities.

At that time the Service decided that summon action was necessary. On November 19, 1979, two summonses were issued, one to the pension fund and one to the health and welfare fund.

In December 1979, the fund responded to the summonses. Its response to the summons with respect to the pension fund was wholly unsatisfactory. Its response to the summons issued to the health and welfare fund was acceptable because it provided us with the information that we needed. Thus, the Service continued its audit activities of the health and welfare fund and continued to consider its possible courses of action with respect to the pension fund.

Chairman NUNN. That summons, is that issued under your authority under ERISA or is that issued under your inherent authority?

Mr. WINBORNE. I think that was our inherent IRS authority. I believe that is correct, yes, sir. So far as I know there is no special summons authority in the ERISA statute.

Chairman NUNN. To IRS?

Mr. WINBORNE. To IRS.

Early in March 1980, the Service completed its review of the health and welfare records and reevaluated the ongoing examination of the pension fund. Throughout this period, there was continual coordination and exchange of information between the Service and the Department of Labor.

Chairman NUNN. Excuse me just a minute. Let me ask the staff, if the cameras are through, I would like to turn off these lights. It is like being in a sauna around here. Do you need the lights?

VOICE. No.

Chairman NUNN. Thank you very much.

Go ahead.

Mr. WINBORNE. As I said, early in March 1980, the Service completed its review of the health and welfare records and reevaluated the ongoing examination of the pension fund. Throughout this period there was continual coordination and exchange of information between the Service and the Department of Labor.

After extended discussions with representatives of the fund, it became apparent that audit and monitoring activities would be significantly hampered without enforced cooperation by the fund. As a consequence, the Service determined to issue additional summonses to the fund and so advised the Department of Labor. Subsequently, we had extensive discussions with the Department to resolve differences in approach to the examination between our two agencies. The Chicago district office issued two summonses to the fund in April 1980.

On May 13, 1980, the Department of Justice filed a suit on our behalf in the U.S. district court in Chicago to enforce the summons issued on April 14, 1980. The fund and its assistant executive director were named defendants.

After a hearing in the district court, the filing of certain motions by the parties and a counterclaim by the fund, the district court on July 21, 1980, entered an order dismissing the fund's counterclaim with prejudice and retaining jurisdiction over the summons enforcement case until the Service's examination of the fund's books and records as described in the summons was completed.

Since that time, the fund has cooperated with our examination and we have continued to coordinate with the Labor Department. As a matter of fact, our coordination is illustrated by the fact that we are sharing office space with the Department at the fund's headquarters. In

addition, we are using indices of fund documents that have been prepared by the Department and are providing the Department with all of the documentation and analyses that we receive from the fund.

We feel that the Service's ongoing examination of the fund's affairs has been a major factor in the significant reforms that have been achieved and that our continuing interest will be a strong incentive for the fund to comply with the conditions of the requalification letter.

Just a word about funding.

Chairman NUNN. Let me ask you a question there. Your continuing interest now, that agreement, oral agreement, expires in 1982.

Mr. WINBORNE. The oral agreement?

Chairman NUNN. With the fund.

Mr. WINBORNE. Well, there is a written agreement between the fund and the asset managers, if that is what you have reference to.

Chairman NUNN. I am speaking of the agreement between the Internal Revenue Service, the Labor Department, and the Teamsters Pension Fund that was culminated in the joint press release.

Mr. WINBORNE. Well, we heard that described yesterday as an agreement or a contract by press release. Frankly, that is the first time we had ever heard that description of it.

We don't view it as that at all. A press release is a normal thing the IRS does after it has made certain decisions and taken certain actions. Actually, the requalification letter is conditioned upon the fund's making every effort in completing to our satisfaction those eight conditions that were made a part of that requalification letter. This is a procedure which we use frequently.

Chairman NUNN. In other words, you feel you don't need anything in writing in any agreement with the trustees.

Mr. WINBORNE. Well, we did not specifically reduce it, to my knowledge, to a written contract. Now there are many writings which pass back and forth and there were actions by the trustees in terms of resolutions carried. If you would like, at this point, I can get Mr. Miriani to give us perhaps some more detail about those transactions.

Chairman NUNN. We can get into that a little later. I just wonder, when you say there are significant reforms, is it your view that these reforms are going to continue after 1982?

Mr. WINBORNE. It is our intent that we will continue to monitor them, and if there is any deviation from them, which in our opinion would be detrimental to the assets of the fund or to the exclusive benefit of the participants and beneficiaries, we will continue. As of right now—

Chairman NUNN. What would be your sanctions if the conditions are breached by the pension fund trustees?

Mr. WINBORNE. Well, the sanction of the IRS, of course, is to once again remove the qualification.

Chairman NUNN. I think that is a very powerful sanction, but it is so powerful that the IRS is reluctant to keep it in effect. That is the problem with it. That is the reason the General Accounting Office felt you needed something that was enforceable by court rather than that ultimate sanction which would be punitive not only to the trustees in the fund but to everybody that is depending on that for their security in the future.

In other words, it is like going after an infantry platoon with an atomic weapon. Nobody thinks you are going to do it. Therefore, it doesn't have the credibility. That is the reason they criticize no written agreement. And I share that apprehension, because a written agreement adhered to by the trustees or agreed to by the trustees would have some sanctions and enforceability in court, particularly if it was a consent decree, that could be enforced or there could be appropriated remedies if it was breached.

I know you have a very powerful weapon. But I think your past actions demonstrated that that weapon is not one you are going to keep in effect very long. You were scrambling around trying to find a way out of it more than the pension fund trustees were. That is the problem.

[At this point Senator Chiles withdrew from the hearing room.]

Mr. WINBORNE. We also like to think, Senator, that that weapon really caused some very worthwhile changes in the fund that had not been put into effect.

Chairman NUNN. We will get into that later. Maybe it did; maybe it didn't.

We also had testimony yesterday that that having been brought prematurely disrupted the whole Labor Department investigation.

Mr. WINBORNE. We will touch on that later.

Chairman NUNN. OK.

No doubt you have a powerful weapon. There is no doubt about that. The question is can you use it prudently and wisely and can you use it to enforce an oral agreement in a way that has credibility, that you can stick to?

Mr. WINBORNE. Let me ask counsel, Mr. Stein, to just discuss briefly the contract area for you, Senator.

Mr. STEIN. I don't want to indicate, Senator, that we have only the weapon of terminating the qualification, the exemption of the fund, in this instance. It is an area that some of us have thought about. There may be other possible remedies, civil in nature. I wouldn't want to say here now that that is our sole limitation.

But in addition to that, let me add that aside from the authority to terminate the qualification of the fund, if the Service feels that that is too severe a weapon, we do have the alternative of referring to the Department of Labor whatever information, in any case, be it this fund or any other fund, whatever information we feel might warrant the sanctions that Labor has available, civil in nature—receivership, other actions against trustees—without damaging the employees and the employers.

Chairman NUNN. Thank you. We will get into that. I didn't want to interrupt you for any long time here.

Senator Percy I think had a question at this point.

Senator PERCY. Mr. Winborne, on page 2 of your statement: you comment that,

During the course of ongoing discussions with the Department of Labor, the Service advised the Department early in 1976 that the qualified status of the fund was seriously endangered.

An important question seems to be whether there was proper coordination between Labor and IRS, and whether there were stated

intentions by IRS upon which the Department of Labor relied in the conduct of its investigation. I would like to read to you what Mr. Lippe said yesterday in response to a question from Senator Nunn. Senator Nunn asked the question:

Had you been told by anyone in IRS that there was no imminent possibility of IRS revoking the fund's tax-exempt status? Had that been told to you shortly before they revoked it?

Mr. LIPPE. Yes.

Chairman NUNN. By whom?

Mr. LIPPE. One individual whom I am sure told me that some 4 or 5 days prior to the actual revocation was a man whose last name was Durkin, I believe, who was on staff of the District Director in Chicago, and I believe, although my memory in this regard is not as certain as it is with respect to my conversation with Mr. Durkin, was a fairly high-ranking official on the Chicago staff. I believe I had a similar conversation during that same time frame with District Director Miriani, Chicago District Director who is here with us today—the substance of each conversation being that while certainly revocation was an option which could be considered, clearly it was not an option which anybody in IRS was considering implementing or putting into effect in the near future.

This, according to Mr. Lippe's testimony, was 4 or 5 days prior to the actual revocation.

Could you tell us whether in your judgment Mr. Lippe is wrong in that assessment? Did something happen in that 4- or 5-day period that caused a very quick decision by IRS to proceed with the revocation?

Mr. WINBORNE. We became aware late yesterday of that testimony. Fortunately, Mr. Miriani was with us and we did the amount of checking of records that we could.

I suspect this might be as good a place as any if you would like Mr. Miriani to give you his statement.

Senator PERCY. I would appreciate hearing from you on this point.

Mr. MIRIANI. To do this, I would like to take a few minutes of your time and give you a little bit of history with respect to the IRS involvement with the fund. Some of it, if you will excuse me, will be somewhat of a repetitious—repetitious being on what Mr. Winborne has already stated. Some of this is in the opening statement.

But the Service has been examining the fund—I think it is important that we keep this in mind—on and off since 1968. We were examining it from a different concept, but we have been involved in the fund for many years prior to the enactment of ERISA.

With the enactment of ERISA, there was a new focus on the examination. The emphasis with respect to IRS and Labor was somewhat changed. Audit plans were developed in 1975. We met quite extensively with the Department of Labor, each of us discussing our approaches to the audit plan. We also included at that time deliberations concerning whether we should make a joint audit, IRS and Labor.

It was mutually agreed that we would each make independent audits for a couple of reasons. One is that the thrust of our examination was going to be directed toward plan benefit and administration, whereas Mr. Winborne indicated that the thrust of the Department of Labor investigation was going to be on fiduciary standards compliance.

In addition to that, our examination was going to concentrate on years including those years prior to ERISA, while the Department

of Labor's examination was going to be emphasizing the post-ERISA era.

We did agree to give good coordination between the two agencies. As a matter of fact, we also exchanged audit plans. We gave the Department of Labor a copy of our audit plan and the Department of Labor gave us a copy of theirs.

We also discussed the disclosure aspects since we were going to be involved in pre-ERISA years. We agreed to give the Department of Labor disclosure for years on which the Department of Labor requested disclosure. The Department of Labor requested disclosure for the years 1969 on. This was granted by the Commissioner to the Department of Labor in 1975.

The examination proceeded very diligently, beginning late in 1975. There was almost constant contact with the Department of Labor. As a matter of fact, we were onsite with examiners from the Department of Labor, and in many instances discussions were almost on a daily basis.

We gave the Department of Labor whatever information we had. They also shared information with us. It is these discussions which give us the feeling, and without any doubt, that the Department of Labor knew the direction that we were heading because the discussions between our people and the Department of Labor people very clearly indicated that the exempt status of the fund was in danger. So, as I indicated, there was coordination and there was constant discussions.

In addition to that, there were a couple of general meetings, specifically to discuss the progress of the examination with people from the Department of Labor and people from the Internal Revenue Service.

These continued in the early part of 1976. The progress of the examination was given. In addition to that, we developed—there was another feature that developed. That is, as I mentioned earlier, our examination goes all the way back to 1968 and prior. The Department of Labor disclosure covered the years 1969 on.

We began to tell Labor that some of our feelings were also governed by the information that we were beginning to accumulate as a result of those years prior to 1969. We suggested to the Department of Labor that they amend their request for disclosure so that we could fully share not only the information from 1969 forward but also information prior to 1969.

So the Department of Labor at that time, and this was probably in January of 1976, the Department of Labor agreed that we should amend the disclosure request, and if they would come in with an amended request, the Commissioner would grant additional disclosure to cover even those years prior.

We continued on. As you all know, this concluded in a revocation in June of 1976. The question has arisen as to why we did not specifically advise Labor that we were going to revoke. Two reasons.

The Department of Labor did not have jurisdiction over the years that we were involved in, in our opinion, because the revocation covered the years 1965 through January 31, 1976. The other reason that the disclosure issue was somewhat—we weren't completely sure that the disclosure aspect had been completely taken care of because while we had

suggested to the Department of Labor that they amend their disclosure request, we had not received the amended request, and our disqualification was predicated not only on just what we had developed as a result of that examination but through the accumulation of everything we had learned to date.

I made the decision to revoke, and in retrospect it probably would have been somewhat easier had we told the Department of Labor. But at that particular time, there was great, growing concern about the continued dissipation of fund assets. Every day additional information came to our attention which gave us grave concern over the protection of the assets that were in the fund.

In addition to that, there were millions of dollars coming in over and above that which was paid out to plan participants which also was at the disposal of the trustees.

Our onsite examination also gave us the very distinct feeling that no good-faith efforts really prevailed with respect to any reform in the fund.

While we recognize that it was a very drastic action, we figured that the situation was so drastic and so imminent that we had to take an immediate action to stop what we considered a very gross dissipation of assets. That is the reason that we revoked in June 1976.

Now that gives you the background and also, hopefully, clarifies the coordination that was going on with the Department of Labor from the time that we got into the examination in 1975 and up until the time of revocation.

Senator PERCY. Mr. Miriani, your response gives us a good deal of background, but it doesn't specifically answer my question. My question was narrowly pinpointed to a period of just a few days. You may well have had reason not to advise the Department of Labor. It is even conceivable that there may have been sufficient and good reason in your judgment as to why you not only didn't advise them but, according to Mr. Lippee's testimony, misled them about the intention to revoke.

Once again, let me put the question to you. Mr. Lippe testified that he had spoken with you 3, 4, or 5 days prior to June 25, 1976, when revocation action was taken by IRS. That means sometime between June 20 and June 25 he would have talked to you. He specifically was told that, though this was an option, it was clearly not an option that any body in IRS was considering implementing in the near future. That is his testimony. Yet, on June 25, you did revoke.

My question is, did something occur in that period that led you to make a different decision? Was he told something that was totally misleading, and, if so, was that done intentionally? Were you concerned that, for instance, someone in the Department of Labor might leak this to the Teamsters Union?

There may have been sufficient reason. What I am wondering is whether there was sufficient coordination. We in the Senate had assumed there was good coordination; however, this seems to be not only a lack of coordination, but one agency of Government misleading another agency of Government in an important and vital area where they have overlapping jurisdictions and responsibilities.

Mr. MIRIANI. We did not mislead the Department of Labor. In preparation—

Senator PERCY. Do you remember that conversation with Mr. Lippe?

Mr. MIRIANI. If I may. In preparation for the hearings, I have discussed the matter, including the specific testimony of Mr. Lippe, with our team investigators. They cannot support the comment that Mr. Lippe made that Mr. Durkin advised him that we would not revoke.

Our records indicate that on June 23, we did have a discussion with Mr. Lippe. Mr. Lippe called me on the telephone—

Senator PERCY. June 21?

Mr. MIRIANI [continuing]. The 23d, June 23.

Senator PERCY. Fine.

Mr. MIRIANI. During this discussion, a couple of things were discussed. One was the fact that while we had discussed the amendment of the disclosure aspects back in January, we had still not received the amended request for disclosure that we had discussed with the Department of Labor.

My records indicate that Mr. Lippe did ask with respect to the progress of the fund, and I advised Mr. Lippe that I didn't feel comfortable discussing this with him since we had not clarified the disclosure aspects. But I did not tell Mr. Lippe that we were not going to revoke.

Senator PERCY. If I might ask of our staff, we are relying, are we, on the recollection of Mr. Lippe? Is there a memorandum supporting that recollection?

Mr. STEINBERG. Senator Percy, Mr. Lippe dictated a memorandum contemporaneously August 24.

Chairman NUNN. You said August?

Mr. STEINBERG. August 24 he dictated a letter which recounts various conversations. One of them is a conversation he had 5 days before the June 25 revocation letter in which he recounts:

I told Lurie that during those conversations Durkin and Miriani indicated to me that although revocation of the Fund's tax qualification was an option being considered by the IRS, that such a decision would not be made until sometime in the fall of this year. I explained that I was extremely disturbed when five days later the IRS took the action it did. Lurie responded by stating that a number of factors intervened during that five day period, among which were "congressional heat" as well as "Commissioner views."

Also, Senator Percy, there is another memo in the file to James Hutchinson, January of 1976, from Edward Daly, the Assistant Director, Division of Enforcement, which recounts a meeting with IRS personnel in Chicago, including Mr. Miriani, Mr. Durkin and others, which states—

Chairman NUNN. This is before the revocation.

Mr. STEINBERG. This is before.

Senator PERCY. That is 5 months before it.

Mr. STEINBERG. It states:

IRS hopes to complete by April its analysis of benefits. It hopes to complete the entire audit by Labor Day. Durkin said if this was any fund other than Central States, IRS would disqualify the fund. He then noted that it was highly unlikely that IRS would deny tax qualification to the Fund. To do so would have serious impact on the national economy. "There is no way the Fund will be disqualified." IRS is now concentrating on actuarial assumptions and the control of loans, with emphasis on imprudence. Durkin gave the impression that he hopes DOL will be in some position to take some action against the Fund so IRS will not be forced into a decision of removing the tax qualifica-

tion status of the Fund. Any decision relating to the tax qualified status of the Central States Fund will be made at the IRS national office.

Senator PERCY. Again, my concern is, what really happened? What precipitated this decision? Was it a decision deliberately made over a period of weeks or months as you began accumulating evidence? Was it made precipitously in a period of a couple of days? And, if so, what precipitated that drastic action which, while certainly dramatic, was highly disturbing and disruptive to the Department of Labor? The revocation decision itself was withdrawn sometime later after certain agreements were reached. What I am trying to do is to reconstruct what happened.

Mr. MIRIANI. When we projected our examination plan, we projected, as you do in any good investigation, what you are going to do and how long it is going to take you. We projected that approximately September 1976, it would take us that long to document our case so that we could solidify exactly what our position would be.

As we got into the examination, as I indicated to you, we found growing concern over—growing incidence indicating dissipation of assets. We also found that by the end of right early in June, whatever we were going to get by way of supporting any action that we were going to take, we had already accumulated. While we thought that making examinations of the records of the funds would be complete to enable us to appropriately document them and so on, we found that really we were not getting any more information than we had already achieved by the period of June.

So with again the growing concern over the dissipation of the assets, the fact that in our opinion and particularly in my opinion we needed to do something which would give us an immediate remedy, and the only remedy that we had was revocation. So we revoked.

Chairman NUNN. May I ask a question here at this point? Are you saying that Mr. Lippe's memorandum and his testimony are inaccurate where he says, and I quote:

I told Lurie that during those conversations Durkin and Miriani indicated to me that although revocation of the Fund's tax qualification was an option being considered by the IRS, that such a decision would not be made until sometime in the fall of this year.

Are you saying that that is not accurate?

Mr. MIRIANI. I am not saying that. I am not saying that that is not accurate. It is very possible, and I can't, without again going back into our records, we could have very easily shared in January 1976 what our projected target date for ultimate completion of our examination was, which again—

Chairman NUNN. No. His testimony was this came 5 days before the revocation.

Mr. MIRIANI. No. I have talked to Mr. Durkin and Mr. Durkin states that this is not correct.

Chairman NUNN. So this is inaccurate testimony.

Mr. MIRIANI. In my opinion, it is, yes.

Chairman NUNN. You just said the only remedy you had was revoking the tax status. Is that right?

Mr. MIRIANI. That is the only remedy we have, that is correct.

Chairman NUNN. Mr. Stein just said one thing you are considering now is the Labor Department might have other remedies that might be of lesser intensity and probably more credible and sustainable. Is that right, Mr. Stein?

Mr. STEIN. Yes.

Chairman NUNN. Why didn't you think of that back at the time that you revoked the first time?

Mr. MIRIANI. In our discussions with Labor, it was our opinion, based on the exchange of information, that the Department of Labor's action was somewhat down the road. And as I have indicated, in our opinion, and particularly in my opinion, we needed to do something and to do something quick to preserve the assets of the fund. We thought that, first of all, that was the quickest action that could be taken. For us it was the only action.

Chairman NUNN. But you didn't see any need, nor do you in retrospect see any need to have notified the Labor Department?

Mr. MIRIANI. As I mentioned to you previously, in retrospect it would have been easier had we notified Labor. But I gave you at that time the judgments that were made wherein we didn't notify Labor.

Chairman NUNN. Would you notify them if you were going to do it over again?

Mr. WINBORNE. Senator Nunn, I think I am going to cover what I think would be the situation today, because there have been certain material changes made in the procedures that would be followed. It would not occur again is the bottom line of my statement in that regard.

Chairman NUNN. You still have the authority to revoke. You still have a letter that you sent to them with certain conditions.

Mr. WINBORNE. Let me skip forward, if I may, to that part of my testimony. Then we can answer your questions if it isn't clear to you.

Chairman NUNN. Let me ask one other question, Mr. Miriani, here. Are you saying that this was your decision at the Chicago office, that this was not a national decision?

Mr. MIRIANI. The delegation to take this action is delegated to the field. It was a decision out in the field. I made the decision in Chicago, yes, sir.

Senator PERCY. Could you tell us what the immediate concerns were on June 25 that prompted you to take this action and what immediate effects you anticipated that action might have?

Mr. MIRIANI. This, as you know, was a very important case in the Chicago district. I was very frequently briefed on the status of the examination. And as I indicated to you previously, we didn't have any—we didn't think we would have any more information. And at the most recent briefing, around in June 1976, when we concluded that we have got as much information to support the action that we are going to take as we could get, the team said that, the examination team said that, "We have enough information to support the action we are recommending." I approved the recommendation.

Senator PERCY. Was it just an oversight that the Department of Labor was not given advance notice or was it a deliberate decision that you made not to advise the Department of Labor?

Mr. MIRIANI. It was a judgment decision that I made based on the two reasons that I gave previously, that the years covered pre-ERISA years and we had not completely resolved the disclosure.

Senator PERCY. The fact that they are engaged also in a large-scale investigation does not detract from the fact that overall coordination between various branches of Government working on the same central problem was important. I have not heard sufficient reason from you to warrant keeping them in the dark unless there is something beyond what you told us. Could you summarize again why you consciously did not advise the Department of Labor as to what action you were going to take?

Mr. MIRIANI. The Department of Labor had no jurisdiction because the years being pre-ERISA years, plus the fact I didn't have the authority to tell them because the disclosure aspect had not yet been clarified.

Senator PERCY. Didn't you realize that it would have a negative impact on the work they had been doing?

Mr. MIRIANI. In our discussions with Labor, I got no indications at all that the revocation action—the first time that I heard such things, such as the chaotic conditions and disrupting of the investigation was when I heard the testimony that was given yesterday.

Senator PERCY. And then I ask the question, what effect you felt the revocation might have?

Could you tell us what you anticipated the effect would be and whether or not it did have that effect?

Mr. MIRIANI. We anticipated that the fund would come in for a new application, which they did, and we would discuss reforms with respect to what reforms we felt should be put into the operation of the fund to prevent a reoccurrence.

Senator PERCY. It was suggested yesterday that certain actions in this matter may have been speeded up because there was a congressional investigation, and because there was heat on this whole particular question. In your discussions with your colleagues, did that factor ever come up and did that have any influence at all in your decision?

Mr. MIRIANI. None whatsoever.

Senator PERCY. Have you talked with Mr. Lurie about that? Is he still with IRS?

Mr. WINBORNE. Mr. Lurie is no longer with the Service.

Senator NUNN. Did anybody talk to him about that since he is quoted as having told Mr. Lippe that?

Mr. WINBORNE. We have not talked with him since we became aware of that, which was given to us yesterday.

Senator PERCY. Can you tell us how disclosure laws could possibly have prevented advance notice of revocation?

Mr. STEIN. The disclosure statute that was in effect at the time is not the same as the disclosure in effect today. In order to furnish information to another Government agency under the pre-1976 Reform Act section which was also incidentally numbered 6103, the agency had to ask for information.

It was only a request. We had no authority to volunteer information to an agency.

Senator PERCY. But as I understand it, a request was made by telephone on June 23, just 2 days before revocation. A discovery telephone call was placed directly to Mr. Miriani by Mr. Lippe. They have confirmed that that conversation did occur. Mr. Lippe felt he was led to believe there would be no revocation.

Mr. STEIN. Mr. Miriani can give you further details, but I just want to add this: That under the regulations in place at that time, the request for disclosure had to come from the head of an agency in writing to the Commissioner. Now those were the regulations and they had the force and effect of law.

Mr. Lippe's request for disclosure, if that is what he made, would not have been the vehicle whereby we could have made a disclosure. I think Mr. Miriani can supplement that.

Mr. MIRIANI. In January 1976, we discussed with the Department of Labor representatives, including Mr. Lippe, the fact that we needed an amendment to their disclosure request. The Department of Labor agreed to give us that request. We didn't receive it.

On June 23, when I talked to Mr. Lippe on the telephone, I again discussed the fact we had previously talked about, amending the Department of Labor's disclosure request, but that we had not received it.

As a matter of fact, the disclosure request did ultimately come in from the Department of Labor amending the disclosure aspects of the case and the Commissioner granted additional disclosure.

Senator PERCY. Isn't it true that the law prevents disclosure of tax information, not disclosure of a revocation? Could you clarify this for us? Maybe counsel can clarify that.

Mr. STEIN. Under the prior law, the disclosure statutes protected what is now called returns and return information. The scope of the prior law was as broad as one could conceive and it was so construed. If there was any information that may have relevance to the determination of tax liability, it would be protected.

Any steps taken by the Service leading to a revocation of a tax-exempt status would constitute protected information.

Senator PERCY. Thank you very much, Mr. Chairman.

Mr. Chairman, if I might inquire.

I have a meeting with the minority leader right now. What is your intention, to continue straight on with the questioning until you finish? What time do you estimate that we will finish?

Chairman NUNN. It depends on the number of questions. Probably about an hour, hour and a half.

Senator PERCY. I will make every effort to return. If I can, I will get back. I wish to express appreciation to our witnesses for being here and to welcome my constituents to Washington.

Thank you.

Mr. WINBORNE. Thank you, Senator.

[At this point Senator Percy withdrew from the hearing room.]

Chairman NUNN. You are saying, Mr. Stein, in 1976 before the Tax Reform Act passed, that the Internal Revenue Service's intention to revoke the tax-exempt status of the Teamster pension fund was protected information and that could not have been revealed to the Labor Department legally?

Mr. STEIN. That is the case, unless the requirements of the disclosure statutes were met, I would note in this regard that although the Tax Reform Act is generally more restrictive now, it contains a specific section that provides that the Labor Department is entitled to any information with respect to enforcement of title I of ERISA. We construe that to mean just what it says, and we will give the Labor Department whatever we have to the extent permitted under the law.

Chairman NUNN. But you interpreted the words "tax return" and "tax return information" to include a revocation of tax-exempt status?

Mr. STEIN. Yes.

Chairman NUNN. Was that part of your decision, Mr. Miriani?

Did you go far enough to request that the information be released and have it turned down on a legal basis?

Mr. MIRIANI. Not specifically. We did not have the authority to give it to the Department of Labor, because of the restrictions that Ms. Stein just addressed.

Chairman NUNN. What is the difference between that and the January discussions when you talked with the Department of Labor about your probable or possible revocation of the tax-exempt act? We have a memorandum right here from Mr. Edward Daly to Mr. James Hutchinson and he says who he met with and so forth, and so on, and in the memorandum he states, pages 7 and 8:

IRS hopes to complete by April its analysis of benefits. It hopes to complete the entire audit by Labor Day. Durkin said that if this was any fund other than CS, IRS would disqualify the fund. He then noted it was highly unlikely that IRS would deny tax qualification to the fund. To do so would have a serious impact on the national economy. "There is no way the fund will be disqualified."

If what Mr. Stein says is correct, he is violating the law right there.

Mr. MIRIANI. No, because we had disclosure for the fund for 1969 through 1975, I believe. Our records can validate whatever it is. But also about this time, we were beginning to accumulate information beyond 1969, prior to 1969 because as I indicated, the Service has been involved with Teamster activities for quite some time. Also about this time, it began to get very difficult to segregate what information we had received as a result of years prior to 1969 and subsequent, and so on. This was also about the time that we became concerned over the possible impact that the disclosure would have and is when we talked to the Department of Labor about modifying the disclosure.

We tried to be very careful and tried to tread on the line with respect to the disclosure we had already given them and the amended request for disclosure that we were suggesting that the Department of Labor ask for.

Chairman NUNN. You mean to tell me it is a violation of disclosure to tell the Labor Department in 1976 that you are going to revoke the tax-exempt status, but it is not a violation to tell them that you are not going to revoke the tax-exempt status? Now, if somebody can put a legal line between those two things, you really are quite a legal technician. If one violates the act, the other does. You are talking about the same subject matter, you are talking about either taking an action or not taking it and you people are sitting here telling us that

if you say you are going to take that action to revoke, it is a violation of the disclosure law, but if you tell them you are not going to do it, it is not.

Can you make that distinction, Mr. Stein?

Mr. STEIN. I am not going to try to make distinctions in situations with respect to which there may not be any differences, but let me say this: As I understand it, and I have just become involved in this yesterday, Mr. Miriani says that there was disclosure authority through 1975. They were asking, if I understand your testimony correctly, for further disclosure authority. You had asked Labor to ask for further disclosure authority with respect to 1976 and subsequent years; is that correct, Mr. Miriani?

Mr. MIRIANI. Prior years, prior to 1969.

Mr. STEIN. Well, did you have disclosure authority with respect to 1976 because that is when the action took place, in 1976, and consequently, I can see from a purely technical standpoint, if you are revoking in 1976, that affects the year 1976 and consequently the year 1976 should have been covered by a Labor request.

Now whether that was so or not, I don't know.

Chairman NUNN. These memorandums have all sorts of information that the IRS is telling Labor about, what they are, and are not going to do, what the options are, the fact it will affect the national economy, and all that business. I did not dream that any of this was a violation of the law until you state if you had told them that you were going to revoke that tax-exempt status that would have violated the law in your opinion. It seems to me we have got violations of law through the whole file here.

Do you think it is serious enough we ought to turn it over to Justice for possible prosecution?

I am being somewhat facetious. IRS is so accustomed to hiding behind the Tax Reform Act, no matter what charges you hide behind, or the disclosure provisions. You all have the greatest hiding spot I have ever seen in the history of my governmental experience. No matter what the question is, the answer is the same thing.

Mr. STEIN. Can I say that there is far greater awareness of the disclosure statute since the Tax Reform Act and the need to be very specific in what is done and pinpoint your authority than possibly prior to the 1976 act.

I say that as a possibility. I think, too, that Labor and the Service were cooperating under a disclosure authorization and at some point I guess the Service people became aware that maybe they better see whether their authorization is appropriate in the period of 1976.

Apparently this occurred and they did have some question as to whether they were properly disclosing information to Labor and they tried to clear it up in the manner in which they did, and they did not cut it off in January 1976.

Chairman NUNN. Mr. Miriani, just a few more questions on this.

You are saying that this was a decision that you had the authority to make, you were given that clear authority from the national office and you made the decision to revoke; is that right?

Mr. MIRIANI. Yes, sir.

Chairman NUNN. You just informed the national office; you didn't ask their permission or advice?

Mr. MIRIANI. I informed the regional commissioner who is my immediate superior.

Chairman NUNN. Did you have any fear—was any of your motivation in making this revocation at that time relating to not notifying the Labor Department, was any of that based on the fear of leaks from the Labor Department?

Mr. MIRIANI. The reason that we revoked?

Chairman NUNN. In other words, when you decided to revoke in June 1976, and you decided not to notify the Labor Department about your impending action, was your motivation affected by any fear of leaks from the Labor Department had you made that disclosure?

Mr. MIRIANI. No; that judgment did not enter into the decision not to advise the Labor Department.

Chairman NUNN. Had you read in the paper or heard about then Secretary of Labor Usery's appearance before the Teamsters convention when you made that revocation?

Mr. MIRIANI. I am aware of the incident. I can't swear for sure whether I was aware of it before or after. I think it was around that time. But it had no bearing whatsoever on the decision to revoke or not to tell the Department of Labor.

Chairman NUNN. As the official in charge of an IRS investigation and also in charge, I assume, of some coordination with the Labor Department, did that appearance before the Teamsters convention by then Secretary Usery have any effect on your overall attitude toward the cooperation with the Labor Department?

Mr. MIRIANI. No. Not that specific instance; no.

Chairman NUNN. You sound as if something else might have.

Mr. MIRIANI. I am aware of some feelings in the lower levels of the organizations, perhaps some feelings of distrust, but I could find no indications at all that his—couldn't validate nor could I find any indications—

Chairman NUNN. And it did not affect any of your actions?

Mr. MIRIANI. No, sir, it did not.

Chairman NUNN. You had actual confidence in the Department of Labor handling the investigation.

Mr. MIRIANI. Yes. As I mentioned before, based on our discussions with Labor, we saw the action the Department of Labor was going to take was somewhat down the road.

Chairman NUNN. You made reference to the fact a couple of times that Labor Department didn't have any jurisdiction except under ERISA. ERISA was passed January of 1977. You said they did not have jurisdiction was one of the reasons you didn't notify them; is that right?

Mr. MIRIANI. That was one of the reasons, that was one of the two reasons we didn't notify them; yes. Our revocation went through, my recollection, January 31 of 1976 and it went back to 1965.

Chairman NUNN. I thought the Labor Department had had jurisdiction over these pension funds for many years prior to ERISA. Is it your understanding that ERISA conferred original jurisdiction of Labor over union pension funds and they had no authority over those funds to investigate before ERISA?

Mr. WINBORNE. I tend to agree with you, they certainly had some kind of jurisdiction. I am not prepared this morning to try to outline it for you. I do know Labor was active in connection with pension funds prior to ERISA; yes.

Chairman NUNN. That was one of the main reasons Mr. Miriani gave for not notifying the Labor Department. That was an erroneous opinion. That was your opinion at the time?

Mr. MIRIANI. Yes, it was.

As a matter of fact, it was my recollection this was the reason the two prongs were used in making separate investigations.

As I indicated earlier, our examination was going to be toward planned benefit administration, it was going to cover the pre-ERISA years and Department of Labor would cover post-ERISA years.

Chairman NUNN. That may have been a matter of choice, because there were a number of authorities granted under ERISA and they may have made that investigative distinction.

I don't think anybody in Labor would have taken the position they had no authority or jurisdiction over the pension fund before ERISA. It is your opinion they didn't have any authority before ERISA?

Mr. MIRIANI. They did not have jurisdiction over the years we covered in our revocation; yes, sir.

Chairman NUNN. Mr. Winborne, that would be contrary to your opinion?

Mr. WINBORNE. I believe the Department of Labor had some activity or responsibilities in connection with pre-ERISA; yes.

Chairman NUNN. Mr. Miriani, when you made your decision did you feel that this action by the Internal Revenue Service would have any effect on the Labor Department's investigation, whatever their jurisdiction might be?

Mr. MIRIANI. No. We didn't feel as though the action we took would have any effect on the Labor Department's investigation.

Chairman NUNN. Did you know much about how they were proceeding on their investigation?

Mr. MIRIANI. We had a general idea of their exam plans because we had shared the exam plans earlier in 1975.

Chairman NUNN. You really did not believe that taking this kind of major action would have any effect on the pending investigation by the Labor Department dealing with the same pension fund?

Mr. MIRIANI. No.

Chairman NUNN. The same trustees.

Mr. MIRIANI. I think that what has transpired and I am aware of the testimony that was given yesterday but the fact that lawsuits were filed and additional activities were pursued by the Department of Labor indicate that it didn't have any effect on the Department of Labor's investigation or could not have had any detrimental effect on the Department of Labor's examination.

Chairman NUNN. All the testimony yesterday from GAO and from all the Labor Department investigators said it had a devastating effect.

Mr. MIRIANI. I said I was aware of that testimony but until I heard that testimony nothing has come up.

Chairman NUNN. Nobody ever came to you after you took this action, nobody in the Labor Department, any of your subsequent meet-

ings or conversations ever complained to you about not notifying them?

Mr. MIRIANI. No. There were differences of opinion with respect to the reforms that we wanted to take in connection with requalification and we considered whatever we would do and the impact that it would have on future labor actions but no, not with respect to the revocation.

Chairman NUNN. Nobody in the Labor Department even until this day has ever personally complained to you about not being notified of that action?

Mr. MIRIANI. Yes. They have. They have complained about not being notified but not from the standpoint that it caused chaotic conditions within the Department of Labor and things such as that.

Chairman NUNN. The first time you ever heard it, was yesterday, that it caused chaotic conditions?

Mr. MIRIANI. Yes.

Chairman NUNN. Why did they complain about not being notified? What did they say was the cause?

Mr. MIRIANI. We really didn't get into any substantive discussions with respect to that.

Chairman NUNN. Are you still in charge of the IRS's investigation in this area?

Mr. MIRIANI. No. Mr. Bergherm is sitting to my right.

Chairman NUNN. What role are you playing in this now?

Mr. MIRIANI. I am regional commissioner in the Midwest region one step removed from the district office.

Chairman NUNN. Do you still play any role in the Teamster pension fund investigation?

Mr. MIRIANI. I do exercise line authority over Mr. Bergherm, but Mr. Bergherm has full delegation authority to conduct the investigation.

Chairman NUNN. Who is responsible for coordinating with the Labor Department now?

Mr. MIRIANI. Mr. Bergherm and his crew.

Chairman NUNN. Under your jurisdiction?

Mr. MIRIANI. Under my jurisdiction.

Mr. STEINBERG. We have a number of memorandums in our file concerning discussions between the Internal Revenue Service and the Department of Labor over a myriad of subjects concerning IRS matters; that is, IRS's actions with respect to the fund, their tax-exempt status, what IRS is doing, what the fund's records are dealing with, and so forth.

Among the matters discussed as far back as January 1976 is the possibility of revocation and every time IRS was asked about it, or heard something about it, our memos reflect that IRS said there would be no revocation. Now you are stating that the disclosure provisions of the old Tax Reform Act prohibited you from discussing this potential revocation with the Department of Labor. Are you saying that the Department of Labor would have to somehow divine when you were going to revoke the tax-exempt status?

Mr. MIRIANI. No.

Mr. STEINBERG. And write out a written request in anticipation of your revoking the fund's tax-exempt status?

Mr. MIRIANI. No. What I am saying is we suggested to the Department of Labor that their request for disclosure not be so narrow as to include the years only 1969 through 1975, which they ultimately did and which the Commissioner ultimately granted disclosure.

Mr. STEINBERG. But you will admit that you discussed with the Department of Labor the potential IRS action in 1976, many times?

Mr. MIRIANI. We discussed as much as we could and as I indicated previously this is about the time that we became concerned with respect to the limitations placed on the disclosure laws but we did have several discussions with Labor concerning the progress of the examinations.

Mr. STEINBERG. I only have one more question about the statement you made concerning the fact that at the very beginning in 1975 you decided on a mutual agreement you say with the Department of Labor that you would proceed on parallel tracks in the same investigation because the thrust of your investigation was the plan benefits and the thrust of the Department of Labor investigation was fiduciary standards.

Is that correct?

Mr. MIRIANI. That is correct.

Mr. STEINBERG. Isn't it a fact that your letter of requalification when you are talking about requalifying the fund is based on a lack of fiduciary standards by the trustees?

Mr. MIRIANI. In many areas, yes.

Mr. STEINBERG. Isn't that the same thing the Department of Labor was investigating?

Mr. MIRIANI. These reforms were also discussed and agreed to with the Department of Labor at the time that we requalified the fund.

Chairman NUNN. I think that is good that you coordinated with them in requalifying the fund but doesn't it occur to you in looking back on it that if you had that kind of coordination with Labor on requalifying the fund, setting the conditions, that the Labor Department should have been notified before you took this action?

Mr. MIRIANI. As I testified earlier, in retrospect it would have been better to have notified the fund. But at the time facing the decisions that I had to make and the dissipation of assets that were going on and what we considered were gross improprieties, the only action that I could see that we could take was revocation.

Chairman NUNN. That may very well have been absolutely correct. It is hard to go back and place yourself in that position. I know that. But it just seems to me that, just prima facie evidence is that you felt Labor had to be involved in any settlement and they were very involved in negotiations on settlement, if they were involved in all of that it just seems to me they should have been notified before you took this kind of action.

Mr. MIRIANI. I have given you the reasons that we didn't.

Chairman NUNN. All right. I understand that.

Mr. WINBORNE. Senator Nunn, I was not there, of course, during the discussions but I have been a party to reviewing a lot of the documentation that we have. It appears to me that the strong complaints or problems voiced by the Department of Labor came over the disqualification and were really aimed at a requalification with conditions

which would have some adverse effect on their continued judicial action, naturally, in connection with the trustees and so forth. In short, they did not want IRS to give away any of the actions that they were pursuing.

Chairman NUNN. We had understood and had strong assurances from the executive branch of Government that this was going to be a coordinated approach. That was the reason the Senate decided even though we had the minority whip at that time, Senator Griffin, who felt strongly there ought to be a complete, total investigation by a Senate committee and at that point we felt it would take anywhere from 100 to 200 investigators and accountants to do that. When the Justice Department and the Labor Department and IRS portrayed to the Senate in hearings and so forth that there was going to be a joint effort and a coordinated effort that is what we based our decision on. Of course, that was a rather shaky basis as events developed.

Mr. WINBORNE. I might add to my statement that as far as I have been able to ascertain in this last few days that was the only area that had not been fully coordinated. There has been a suggestion here that there may have even been overcoordination, vis-a-vis the disclosure restrictions.

Chairman NUNN. Vis-a-vis what?

Mr. WINBORNE. Disclosure restrictions.

Chairman NUNN. I didn't suggest that. That was only after Mr. Steinberg gave his legal ruling. I don't intend for anybody to think that I think it is a serious violation of any disclosure act what went on here. I don't. I was being very facetious but I felt it was incredible to use the disclosure provisions to say you weren't going to notify them of the revocation. That is the ultimate and legalistic reasoning, but Mr. Miriani, I think, said that was not part of—you didn't think you had been violating the law to notify Labor Department, did you? Or did you? Did you think you would be violating the law?

Mr. MIRIANI. I was in doubt because of the disclosure uncertainties.

Chairman NUNN. I see. It wasn't just Mr. Stein.

I find that incredible. What about all—maybe you ought to read and give us your reply. Let's let IRS read these memoranda where we had all sorts of discussions between IRS and Labor about the Teamsters fund, all sorts of disclosures about what were you either might do, or refrain from doing, you even talked about the state of the economy, how it would be affected on revocation, read all of that and tell me how you distinguish that.

Mr. MIRIANI. I can't address that not having had the opportunity to—

Chairman NUNN. We will furnish it to you and I would like to get your answer on that for the record and Mr. Stein's answer also, because if you are serious about it, if you think that would have been a violation of law, then we have prima facie evidence of all sorts of violations here. Seriously, we do. Maybe we ought to be more serious about this if you really believe that. We have a whole file full of legal violations.

Mr. STERN. Senator, I am not prepared to state here now whether the disclosure actions taken were appropriate or inappropriate. What I was trying to do is give the background, as I understood it, of

what Mr. Miriani's concerns were. I would like, and I have not seen the letters requesting initial disclosure authority and I would like to see that letter frankly, before passing on whether or not the disclosures made were in violation or not in violation of the disclosure statutes that were in place prior to the Tax Reform Act of 1976. I won't want to pass today, but I was trying to give you an explanation as I understand it of what Mr. Miriani's concerns were.

Chairman NUNN. I think we have pursued that as far as we need to. We have a vote up there. We will take a 10-minute break and be back in 10 minutes.

[Brief recess.]

[Member of the subcommittee present at the time of recess: Senator Nunn.]

[Member present after the taking of a brief recess: Senator Nunn.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

Pursuant to Rules 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on Oversight of Labor Department Investigation of Teamsters Central States Pension Fund on Monday, August 25, 1980, Tuesday, August 26, 1980, and Wednesday, August 27, 1980.

SAM NUNN,
Chairman, Ranking Minority Member.

Chairman NUNN. I just want to ask one other question on this whole subject of disclosure and then we will move on to other areas, Mr. Winborne and get the rest of your statement. But we have heard as you know in other hearings and in our efforts to amend the Tax Reform Act over and over again the Internal Revenue Service takes the position that prior to the Tax Reform Act there was a loose dissemination of tax information that basically should be frowned on but now we understand that there was a very tight, at least legal interpretation, according to Mr. Miriani, as to disclosure of information between IRS and the Labor Department before the passage of the Tax Reform Act.

Mr. STERN. I think that the Tax Reform Act brought forcefully to the attention of everybody in the Internal Revenue Service specific rules which had to be followed completely and there was great awareness on the part of people in Internal Revenue of the need to follow the specific provisions of section 6103. Under the prior law the rules were contained in regulations. That statute itself said that all documents are public records and are to be disclosed in accordance to rules and regulations prescribed by the Secretary. And I can only give you my impression that there wasn't—there was keen awareness of the need to not disclose improperly, but I don't think that the agents in the field had the expertise and the knowledge under the old law that they do today and there may have been some misinformation that passed.

Chairman NUNN. We don't want to get back into that. We can save that for another day. Besides that the Internal Revenue Service has

now seen the light and is coming around on that overall subject. I am sure that Mr. Stein, you are a leader in that respect. So, I don't want to go into that in any great detail today.

Why don't you take up, Mr. Winborne, with you statement where you left off.

Mr. WINBORNE. I would be glad to. We were going to speak about funding next, particularly the ERISA minimum funding standards as they relate to the Central States Fund.

As we know, the sanction for not meeting these standards is the imposition of the excise tax, rather than the disqualification of a plan. We in the IRS intend to monitor the fund's compliance with the ERISA minimum funding standards. The standards become applicable to the fund as of the plan year ending December 31, 1981. Until that time the Service will not have the enforcement to question the fund's compliance with the standards. In addition, prior to the fund's filing of the form 5500 schedule B, that is the actuarial information form, for the 1981 plan year, we will not be in a position to project whether the fund will satisfy the minimum standards when they do become applicable as of the plan year ending December 31, 1981.

There are several reasons why we are unable to make such a projection. First, at the time when the ERISA funding standards became applicable to a plan, the plan may adopt any one of a number of funding methods. A plan is required to adopt a method based on assumptions that are reasonable in the aggregate. The contributions required in a particular year may vary considerably, depending upon which method is used.

Second, under the ERISA funding standards a plan sponsor has considerable flexibility in determining how contributions to a plan will be used to satisfy the standards. Contributions that are made within 8½ months after the close of the plan year can be applied to satisfy the deficiency for that year. Therefore, any potential funding deficiency can be eliminated long after the close of the plan year.

Third, future negotiated agreements such as the one in the Central States Fund can result in increased contributions to a plan, or can result in a change in the plan's benefit structure.

Finally, if a particular plan fails to satisfy the ERISA funding standards, the plan may request a waiver from the Service whereby, if a business hardship is demonstrated, a funding deficiency may be amortized over a period up to 15 years.

Because of the number of variables involved any prediction that we might make concerning whether the fund will satisfy the funding standards when they become applicable at the end of 1980 would be premature at this time.

Before I go on, we do have an interest in the fund's financial condition. We certainly intend to carry out all our responsibilities in that connection, and I have taken the liberty of bringing with me the chief actuary of the Internal Revenue Service, Director of our Actuarial Division, who can perhaps expand on what I have told you and answer any specific questions you might have.

If you would like him to, I will call him to the front of the room? Chairman NUNN. Why doesn't he give us a little summary at this time of what he has done and what his actuarial studies have shown?

Mr. WINBORNE. We would be happy to do that, if I can call Mr. Ira Cohen who is the Director of the Actuarial Division.

Chairman NUNN. Would you take the oath Mr. Cohen?

Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COHEN. I do.

TESTIMONY OF IRA COHEN, DIRECTOR OF THE ACTUARIAL DIVISION, INTERNAL REVENUE SERVICE

Chairman NUNN. Why don't you give us a status report on the actuarial soundness of the plan as you see it at this time?

Mr. COHEN. The question of actuarial soundness is a very difficult question. First of all, there is nothing in the law relating to actuarial soundness. You have an ERISA minimum funding standard, but you do not have standards relating to actuarial soundness. The term actuarial soundness has not been defined by the actuarial community.

One possible definition of actuarial soundness would be that the plan would be able to provide benefits as they come due within a specified period of time, that is, a cash-flow type test.

The minimum funding standards do not insure actuarial soundness. The minimum funding standards state that in a multiemployer defined benefit plan that you have to fund an amount equal to the normal cost, plus a 40-year amortization of past service liability.

Consider a plan, for example, where you have a high concentration of retirees relative to the assets so that the present value of retirement benefits for current retirees exceeds the assets and let's assume that the number of actives is relatively small.

In such a plan, the minimum funding would only require paying of the single sum necessary to provide all these retirement benefits over 40 years. However, the actual benefits are being paid over the lifetime of the individuals which may be sometimes an expectation of something around 15 years. In such a situation the plan could run totally dry even though it is satisfying the minimum funding standards throughout. Minimum funding can be less than pay-as-you-go, and the reason I am giving this background is the point is there are no actuarial soundness standards in the law. We really do not have any authority to deal with the subject of actuarial soundness.

Chairman NUNN. You have the authority to enforce the minimum standards and you are saying that the minimum standards do not assure actuarial soundness?

Mr. COHEN. That is correct, in recognition—

Chairman NUNN. Does that mean the minimum standards are really not sufficient in the law then in your opinion?

Mr. COHEN. Yes. The administration has made a legislative proposal which is being considered in H.R. 3094 relating to multiemployer plans. This proposal does encompass modifications to the minimum funding standards. It does not provide an actuarial soundness standard but some of the provisions are such that plans as they are running down hill, before they get to an immediate crisis, would have to elevate the funding over what is currently being provided.

If you want, I can go into more detail.

Chairman NUNN. No. I don't think we need to get into great detail but what you are saying is the administration now has proposals that would upgrade or toughen the minimum standard and that is a legislative proposal that is now pending?

Mr. COHEN. That is correct. I believe it has passed the House.

Mr. WINBORNE. Unanimously, I was told this morning. It passed yesterday.

Chairman NUNN. What is the status in the Senate Finance Committee?

Mr. COHEN. I am really not sure.

Chairman NUNN. But you are saying even that legislation would not assure the actuarial soundness as such?

Mr. COHEN. There is no legislation in my opinion that can totally assure actuarial soundness. After all, assets can become useless very rapidly for one reason or another, and you can legislate a requirement to put up enough money to provide given benefits but it is difficult to legislate the wherewithal to make those payments.

What I am saying is in recognition of some of the difficulties, if you look, if you were to look at the House committee report on H.R. 3094, this does indicate that the current standards are inadequate to insure financial soundness. And it is a recognition of this and the administration has done something about it.

Chairman NUNN. That is good. I am glad you have. I am glad there is an optimistic report. What you are saying is you believe when that new legislation has passed you have at least gone as far as you think necessary at this time in insuring minimum standards are met and if those minimum standards are met that will be about as far as the law can go and the Government can go in insuring soundness?

Mr. COHEN. No. What I am saying is that any legislation, the administration has proposed legislation, Congress has considered various aspects, made various changes and I am saying that this legislation is a step in the direction that would require more rapid funding in the case of multiemployer plans that are beginning to slide down hill.

Whether this is as far as can be gone, I really can't express an opinion.

Chairman NUNN. It is a step in the right direction but you are not sure it goes far enough?

Mr. COHEN. I am not saying it doesn't. The problem is that you have two conflicting social policies. One social policy from the point of view of ultraconservatism would be to require a plan to have sufficient assets to provide all vested benefits. And this would be the ultimate in adequacy.

On the other hand, this would require a lot of money up front if you were to provide any meaningful benefits for your older employees.

If you had to provide a past service benefit and fund for it immediately, or over a very short period of time, you would be unable to.

Chairman NUNN. So, you might drive the fund out of business?

Mr. COHEN. So, the plans would not be able except over the long term and a long term in the future be able to provide meaningful benefits for its employees. If you say that because you want to enable the plan to provide meaningful benefits for people who are near retirement, and

people who might need it at least instantaneously first, if you are to adopt that as a social policy, then you have two conflicting agencies and the Congress and the administration have to draw a

prepared at this point to make a Solomon-like decision and perfect balance. All I am saying is that this decision, and recommended, is moving more toward adequacy. It does not with a lot of young actives, it does not significantly as a recognition of this balance and a possible solution in mind.

I personally think the legislation that has the administration is in the right direction, step as an expert in this area? My opinion is the changes in the minimum step in the right direction. Thank you very much, Mr. Cohen. We appreciate

It is an excellent clarification. You cannot pass a law saying. As you point out, you make no company will provide companies particularly are two sides to it.

Senate. I knew it a note saying it the Senate be-

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revoking the qualification of a plan in cases similar to the Central States fund situation. These cases involve violations of both the exclusive benefit rule under the Internal Revenue Code and the fiduciary standards under title I of ERISA.

Under this provision, the Labor Department must in effect be in agreement with the IRS before disqualification could become a reality.

This mechanism also permits the Department to consider the use of alternative sanctions in lieu of disqualifications.

Moreover, to promote the more effective use of Government resources in the overall enforcement of ERISA, the Service established a formal interagency agreement with the Labor Department to cooperate in ERISA enforcement activities. This coordinated compliance agreement, as it has come to be known, was signed in November 1978 by the Commissioner of Internal Revenue and the Assistant Secretary of Labor for Management Relations.

The agreement not only promotes the efficient use of Government resources but also reduces the burden imposed on the private sector by the activities of the ERISA agencies by minimizing the number of cases where both agencies examine the same plan at or about the same time.

Under the agreement, lists of plans to be examined are exchanged by the Labor Department and the IRS.

During the examination of a plan, each agency considers various areas of plan operations that are of interest to the other agency by means of a checksheet. When items of interest to the other agency are noted on the checksheet, the checksheet is then referred to the other agency. Generally, the Labor Department enforcement program has emphasized the fiduciary standards under title I of ERISA while the IRS examination program has placed emphasis on compliance with the title II minimum participation, vesting and funding standards and the title II prohibited transactions provisions.

In addition, the Service has emphasized that pre-ERISA standards that apply to qualified plans under the Internal Revenue Code.

While this coordinated compliance agreement typically avoids the involvement of both the Labor Department and the Service in a given examination, it does and would permit the two agencies to conduct a coordinated examination of the same plan in appropriate cases.

As you will note, that completes my prepared statement. If the committee has any further questions, we will continue to try to answer them.

Chairman NUNN. Thank you. I am not sure I understand the top paragraph on page 9, where you say, "section 103"—maybe I am not reading this correctly—"section 103 of the reorganization plan requires the Service to obtain the concurrence of the Labor Department before revoking the qualification of a plan in cases similar to the Central States Fund." This reorganization took place after this matter we have been discussing here for the last 2 days.

You are saying now there has to be concurrence from the Labor Department before that kind of revocation could take place?

Mr. WINBORNE. There has to be concurrence or failure of the Labor Department to interpose any objections within a designated period of time, I think it is 90 days.

Chairman NUNN. You go on to say, "These cases involve violation of both the exclusive benefit and fiduciary standards." The next sentence is one I don't understand. "Under this provision, the Labor Department must not object to the Service's disqualification of a plan."

Mr. WINBORNE. I think you were talking to your counsel at that time. That is a typographical error.

Chairman NUNN. The word "not."

Mr. WINBORNE. I changed that to read, really, that the Labor Department in effect must not offer any objection before we can move forward. In a sense it is redundant of the earlier sentence at top of page. We have rewritten it at the last minute.

Chairman NUNN. I see, it appeared to be contradictory. I didn't hear you make that clarification.

Mr. WINBORNE. In short, in the case such as the Central States Fund, we would give them written notice of our intent to disqualify. The Department of Labor would have 90 days to either interject an objection thereto or they could allow the 90 days to run and we would proceed.

Chairman NUNN. Thank you.

Mr. Miriani, let me ask you a couple of questions about the revocation back in June 1976. You testified here this morning, as I understand it, that you yourself made that final decision and you did that under the authority you had. You made a decision to revoke, is that correct?

Mr. MIRIANI. That's correct.

Chairman NUNN. Who advised you to make that decision, did anybody either below you or above you advise you to make that decision?

Mr. MIRIANI. The team working on the examination below me.

Chairman NUNN. Did anybody above you in the Internal Revenue Service advise you to make that decision?

Mr. MIRIANI. No, I briefed my superior with respect to the status of the examination on occasion. He did not advise me to make that decision. The decision was made in the district office.

Chairman NUNN. Did you inform anyone above you that you were going to make the decision before you did or did you simply make the decision, assign the revocation, and then inform people above you?

Mr. MIRIANI. I informed my superior that we were going to revoke simultaneously with the time that we made the decision but we had not yet sent out the notification.

Chairman NUNN. You yourself signed the order; is that right?

Mr. MIRIANI. Under delegated authority, the Division Chief signed my name to the letter of revocation.

Chairman NUNN. That did not have to go through the Commissioner of the Internal Revenue Service.

Mr. MIRIANI. No, sir; not at that time.

Mr. BLOCK. Would it have to now?

Mr. MIRIANI. Under Reorganization Plan No. 4, yes.

Mr. WINBORNE. That specific case would go, but there might be others which do not involve both plan benefits and fiduciary responsibilities which might not go.

Chairman NUNN. We have here a memo dated August 24, 1976, to the file from Lawrence Lippe. In that memo he is quoting Mr. Lurie.

Lurie responded by stating that a number of factors intervened during that 5-day period. Among them were "congressional heat," as well as "the Commissioner's views."

Would you say that that is an accurate statement or inaccurate statement?

Mr. MIRIANI. I cannot make any comment on that statement. I do not know why Mr. Lurie would have made that statement. I am not aware of it.

Chairman NUNN. You are saying congressional heat nor the Commissioner's views had any bearing on your decision?

Mr. MIRIANI. No.

Chairman NUNN. We have another memo dated January 1976, a Labor Department memo from Mr. Edward Daly to Mr. James Hutchinson dated January 13, 1976.

On page 8 of that memo,

Durkin gave the impression he hopes DOL will be in a position to take some action against the Fund so that IRS will not be forced into a decision of removing the tax qualifications status of the plan.

This is what I want to ask you about. Any decision relating to the tax qualified status of Central States will be made at the IRS national office. No questions under that.

Do you agree that that was the policy, that this was the policy in January of 1976?

Mr. MIRIANI. No.

Chairman NUNN. That it would be made at the national office?

Mr. MIRIANI. No, sir.

Chairman NUNN. That was erroneous then?

Mr. MIRIANI. Yes; delegated authority was at the district director level then.

Chairman NUNN. At that time.

Mr. MIRIANI. At the time, that is correct.

Chairman NUNN. It was also obviously delegated at the time you made the decision.

Mr. MIRIANI. That is correct.

Chairman NUNN. If Mr. Durkin said this, he was in error?

Mr. MIRIANI. If Mr. Durkin said this, he was in error. It was not policy to go to the national office.

Chairman NUNN. Do you know whether IRS actually made—do you know whether Mr. Durkin actually made that statement to the Labor Department?

Mr. MIRIANI. No; I have no knowledge that he did.

Chairman NUNN. Does Mr. Durkin still work for the Internal Revenue Service?

Mr. MIRIANI. Yes, he does.

Chairman NUNN. You were supposedly at this meeting. You don't recall that?

Mr. MIRIANI. Without going back through our files, no. We had many, many meetings with the Department of Labor, many of which are recorded minutes of the meetings, but I don't recall that specifically.

Chairman NUNN. I am going to give you this memo for your review, and I would like your answer for the record, after reviewing

this memo and reviewing your files, as to what, if anything, in this memo is inaccurate.

Mr. MIRIANI. We will be happy to review it.

Chairman NUNN. Could we get the same opinion from Mr. Durkin?

Mr. MIRIANI. Yes, sir.

Chairman NUNN. Get his recollection here for the record.

Mr. MIRIANI. We will.

[The information furnished follows:]

Mr. Miriani's response and his comments on Mr. Lippe's testimony follow:

I did not inform the Department of Labor nor do I recall anyone at the January 12, 1976, meeting informing DOL that any decision to revoke the Fund would be made in the National Office. The DOL notes of the meeting allege that Mr. Durkin made the statement after Mr. Edwards and I left the meeting.

This 8-page memorandum is replete with mentions of two basic disclosure problems. The first is disclosure to DOL for information prior to 1969. The second is a very serious concern with the disclosure to the Department of Justice of I.R.S. restricted data by the Department of Labor. Messrs. Edwards, Palzkill, and I all expressed at various times our concerns over disclosure. The problem was not stated as insurmountable, only that it required a clarifying letter of request from DOL. Concerning this, on page 2, paragraph 1, Mr. Lippe indicated that "pre-1969 data is essential."

At the August 5, 1980 hearings before your Subcommittee Mr. Lippe stated that he was assured by Mr. Durkin and me in early June 1976 that IRS was not going to revoke the qualified status of the Central States Pension Plan. My review of the Chicago District files discloses numerous notes contemporaneously prepared concerning June conversations with Mr. Lippe which reflect that IRS representatives specifically declined to comment on our proposed action. These notes reveal that Mr. Lippe had indicated an unusually urgent need for information but was not at all specific in his requests. The notes I prepared on June 23, 1976, of that day's conversation with Mr. Lippe indicate that he asked if I knew which way the results of our audit were leading. I advised him I would rather not answer until disclosure was clarified.

Answer (B).

Mr. Durkin's response to the question follows: I have a general recollection of the meeting described in the Daly memorandum. From my review of the memorandum, I believe it broadly describes the events that occurred. However, I do not have a specific recollection of the statements reflected in the memorandum.

Chairman NUNN. We will put these in the record and give them appropriate exhibit numbers and also furnish Mr. Miriani and Internal Revenue Service copies.

[The documents referred to were marked "Exhibit Nos. 10 and 11" for reference and may be found in the files of the subcommittee.]

Chairman NUNN. You have been examining the fund since at least 1965, is that correct?

Mr. MIRIANI. I know since at least 1968.

Chairman NUNN. During that same time since, let's say, 1968, how many IRS criminal convictions have been obtained in this investigation?

Mr. MIRIANI. I cannot answer that. We can research the records and perhaps attempt to reconstruct it.

Chairman NUNN. Can you furnish that for the record?

Mr. MIRIANI. You are going back to 1968.

Chairman NUNN. I am going back to the date you really began your investigation, if that is 1968, that would be the appropriate time. If 1965, that would be the appropriate time.

Mr. STEIN. You are going to date?

Chairman NUNN. Up to now.

Mr. STEIN. To my knowledge, there was one criminal conviction involving an individual by the name of Baron. I believe that has been publicized to quite some extent.

Chairman NUNN. That is the only one you are familiar with?

Mr. STEIN. That is the only one I know of.

Mr. MIRIANI. That is the only one that comes to mind. Whether there were some going way, way back several years, I wouldn't want to comment without doing some more research. That's the only one in recent years, say, from 1975 on.

Chairman NUNN. Could you furnish for the record—I will leave it up to you whether it is 1965 or 1968, depending on when you feel you really got into the investigation as an agency—how many criminal convictions there were?

Mr. WINBORNE. We will try to draw that together for you.

[The information supplied follows:]

From the beginning of the investigation in 1968 to the present, one criminal conviction has been obtained. Mr. Alvin Baron was convicted of solicitation of a bribe to arrange a loan from the fund, filing a false income tax return, and five counts relating to a scheme to defraud by wire.

Chairman NUNN. Whatever information you can furnish on those criminal conditions in terms of the case and the disposition of it.

How many IRS civil cases have been finalized during this same time frame, do you know?

Mr. BERGHERM. Possibly I can respond to that since I am in the District Director's role in Chicago at this point in time. I do have tabulation with respect to what you would call a referral of these matters to the appropriate IRS district having jurisdiction over the cases. There were a significant amount of such referrals that did result from the involvement of IRS with the fund. I do have some numbers, such as there were 66 such referrals. I note from the tabulation that there were civil cases involving some 61 cases handled in a civil manner, and I remind you that there is a decentralization of authority within the Revenue Service organization and each district is responsible for the decisions it makes with respect to these cases, but these tabulations were received under a coordinated interest in the whole matter.

Chairman NUNN. You think those are pretty well up to date then?

Mr. BERGHERM. I would want an opportunity to be certain of that fact.

Chairman NUNN. If you could furnish that for the record.

[The information furnished follows:]

The figures we have involving IRS civil cases relate to an examination project initiated in 1976. Generally, the examinations did not involve tax years prior to 1974. The examinations were conducted in 12 district offices located within 6 different regions. The examinations involved 61 civil cases. Based on the information last reported, 4 cases are still in process; 21 were closed without changes; and, 36 were closed with adjustments made to taxes owed. In general, the examinations were conducted to secure information on the fund's operations, rather than to determine the income tax liabilities of third parties. Although tax adjustments were made in some cases, this was not the primary objective of the audits, and, therefore, statistical breakdowns concerning whether the adjustments related to transactions with the fund were not compiled. Since the case files relating to these third party examinations have been sent to records centers across the country, it would be time-consuming and burdensome to gather this information.

In our testimony, we alluded to the existence of 66 civil cases involving the fund. Five cases were identified in addition to the 61 just discussed. Although these five cases involved taxpayers who had some connection with the fund, they were not instituted because of our examination of the fund.

Mr. STEIN. Senator, I think we could give you a little more information on the detail of the criminal conviction that I mentioned. Mr. Richard Brennan, who is Deputy General Counsel of the Department of the Treasury, was involved in this subject matter generally at the time and he has the details.

Chairman NUNN. All right. We need to get you to take the oath. Do you swear the testimony you give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF RICHARD BRENNAN, DEPUTY GENERAL COUNSEL, DEPARTMENT OF THE TREASURY

Mr. BRENNAN. Yes, I do. I can elaborate on one point. There are indictments down in Nevada with respect to kickbacks in connection with the construction of the Aladdin Hotel. Those indictments I am somewhat familiar with. They did result generally from, I guess, the mutual efforts of the Labor Department, Internal Revenue Service, and the Department of Justice. I think when I ceased working on this particular case, I am aware the Department of Justice had a number of other ongoing investigations. I am sure they would be in a posture to tell you which have become public and which have not. There are at least two or three indictments down in the State of Nevada with respect to that particular matter.

The Baron matter is again a kickback case. There is a conviction on record with respect to that matter.

Mr. STEINBERG. Real quickly, with respect to those two matters we are interested in are IRS criminal and civil cases that have been completed, that is convictions or civil cases that have come to a conclusion, not referrals and not Justice Department criminal action?

Mr. BRENNAN. The Baron matter was not a conviction on a tax matter, although I understand the Service was of assistance to the Department of Justice in working the case. By the same token, the investigations in Nevada were not technically tax charges, as I recall them, but they did result from the mutual activities of the Revenue Service and the Department of Justice.

Mr. STEINBERG. Well, Mr. Stein, you have given us information like this in the past. You can make those distinctions when you supply it for the record.

Chairman NUNN. Any of that that you can supply for the record we would like to have.

Mr. WINBORNE. Be glad to do that, Senator.

Chairman NUNN. We have a January 7, 1977, memo, and that memo, I believe, was from Internal Revenue Service to the Department of Labor. There were certain minimum acceptable standards for requalification that IRS proposed, one, such items as access to records and control of all assets by recipients; two, control of all assets and receipts by independent managers; three, a neutral majority of trustees on the Board; four, Government involvement in the selecting of trustees; five, Government criteria for selecting trustees; six, veto power by Government in trustee selections. Most of these were not part of the

final agreement. Could you tell us why not? I will start with one, access to records. There was no assured access to records in the final agreement?

Mr. WINBORNE. It is my recollection that was not made a part of the requalification letter as such but I am confident that that was because we take the position that we are entitled to any records that we need in any matter involving a taxable entity. We have summons authority and we frequently have to enforce that summons authority in the district courts.

Mr. MIRIANI. That is correct. The only thing I can add to it is that the requalification provides for monthly reports to be submitted with respect to the progress being made implementing these conditions. The reason we went that route is to continue our monitoring efforts. As Mr. Winborne says, we had the authority without putting it in the requalification letter.

Chairman NUNN. Why a neutral majority of trustees on the board?

Mr. WINBORNE. If I may interrupt you on the last one, the requirement that we be allowed access to all report systems and analyses was made a part of the last paragraph of the requalification letter.

Chairman NUNN. It was?

Mr. WINBORNE. It was.

Chairman NUNN. How about no veto power over the trustee selection? That was one of the things you stipulated you needed earlier, why was it decided not to have that?

Mr. MIRIANI. When we sat down with the Department of Labor to discuss the conditions that we wanted to use in the requalification process, the restructuring of the Board and the change in trustees was the Department of Labor's concern. As we agreed when we got into these discussions with Labor, we both had our concerns that we wanted to get into the requalification process. We deferred that particular one dealing with the veto power on the trustees and the mutual Board of Trustees and so on, to the Labor Department, because we didn't think and we still don't think that our authorities go that far to require restructuring of the veto power over the trustees and so on.

Chairman NUNN. We have this letter of January 13, 1977, from Mr. William Chadwick, U.S. Department of Labor, to Mr. John Burke, in that there are some enclosures and there are certain minimum conditions that were portrayed as being the sort of the bottom line. I would like for you to take a look at each one of these and respond for the record as to why the decision was made not to have these as part of the agreement and finally, who made that decision, whether it was the Labor Department or Internal Revenue Service?

Mr. WINBORNE. We will be glad to do that, sir. That might facilitate things.

[The information supplied follows:]

In 1976, the Service internally formulated corrective actions that were intended to requalify the Fund under the Internal Revenue Code. These corrective actions included the requirement that the Fund's assets be transferred to independent managers. However, the corrective actions formulated within the Service did not provide for restructuring the Fund's board of trustees, or for a veto over the selection of new trustees. The Service did not believe that it had authority to impose the latter two requirements under the Internal Revenue Code. The Labor Department was advised of the Service's proposals for corrective actions in November, 1976.

At the time of the letter that you have described, Mr. William Chadwick was the Labor Department's Administrator of Pension and Welfare Benefits Programs. Mr. Chadwick believed that the Labor Department had the authority under Title I of ERISA to impose requirements concerning the selection of trustees. Under the approach suggested by Chadwick, the neutral trustees would be "highly qualified, independent professionals with recognized ability and independence."

The Service never wavered from the principles of the independent asset manager approach that it had previously developed. The focus of that approach was an immediate action to protect the assets of the Fund. The Service agreed with the professional trustee approach outlined in the Chadwick letter because that approach would have achieved the same goals as the corrective actions formulated by the Service. Both approaches involved the administration of the Fund's assets by qualified professionals.

At the time of the Chadwick memorandum, the Chicago District emphasized that while a restructured board of trustees was not a condition of requalification, the District would agree to presenting a unified Government position. In this same period, however, the District emphasized that IRS would be hard pressed not to issue a favorable qualification letter to the Fund if the Fund complied with the corrective actions that had been formulated by the Service.

The coordination of the actions by different departments of the Government was discussed at a meeting on February 8, 1977, attended by the Secretary of Labor, the Attorney General, the Secretary of the Treasury, and the Commissioner designate. Following this meeting the Service and the Labor Department agreed on a negotiating position.

The position of the Government was to propose both a restructure of the board of trustees so that a majority would be independent professional neutrals, and the resignation of the remaining original trustees. The Labor Department would take an active role in accomplishing the restructure. This position was very similar to the corrective actions formulated by the Service. By this time, the Labor Department had decided not to be involved in the selection of trustees. Instead, the majority of independent, professional trustees would be selected jointly by the International Brotherhood of Teamsters and the contributing employer associations and by a reputable consulting firm. Based on our discussions with the Labor Department, we expected that these independent trustees would come from a variety of backgrounds and disciplines, including institutional trustees, such as banks or insurance companies.

The agencies determined that, during negotiations with the Fund, the Government would not present any proposal other than the independent professional trustee approach that had been agreed upon. However, the Government would respond favorably if the Fund proposed some other acceptable method of asset control that incorporated the basic features of the independent asset managers concept. If the Fund did make an acceptable response, additional section 7805(b) relief would be granted to permit the Government and the Fund to conclude their negotiations.

The Government representatives met with the Fund on February 16, 1977, and presented their position. Subsequent to that meeting, the Fund submitted a written offer that included turning over the Fund's assets to independent managers.

The negotiations between the Government and the Fund were protracted and difficult. We concur with Secretary Marshall's testimony that the appointment of independent asset managers was the best available alternative for the protection of the Fund's participants and beneficiaries.

Chairman NUNN. As testimony has indicated yesterday, the withdrawal of the IRS tax exemption was so potentially disastrous as far as the effects on employees, employers and beneficiaries, the IRS had to continually file 7805 extensions to basically extend the effect of this action while the Government tried to decide what to do. Is that basically correct?

Mr. WINBORNE. Yes; I believe that is correct, and that, again, is not entirely without precedent because we were there dealing with people who were in effect innocent parties to the problems and difficulties of mismanagements.

Chairman NUNN. Was this effect felt that would be considered by IRS prior to the revocation?

Mr. WINBORNE. Was it considered prior to the revocation?

Chairman NUNN. Yes.

Mr. WINBORNE. I am not in a very good position to answer that.

Mr. MIRIANI. We knew of the existence of one but we had made no firm commitment that we would pursue the 7805-B route and the reason for that is revocation in and of itself would bring immediate action and we concluded that we would go from there with respect to what we would do.

Chairman NUNN. Didn't the wording of the extensions technically have to show some improvement in the fund in order to justify the extension; wasn't that a technical requirement?

Mr. MIRIANI. It wasn't a technical requirement, to my knowledge, but we did meet with the fund and also carried on discussions with the Department of Labor so that the relief to the innocent parties, as it were, would be given and at the same time we would get from the fund the necessary commitments that the assets would be preserved in the interim period.

Chairman NUNN. Were you concerned about the possibility of a nationwide Teamsters strike if employer contributions were terminated?

Mr. MIRIANI. I can recall that that issue was an issue discussed but just a very passing comment without any real significance.

Chairman NUNN. That must have concerned you when you granted the extensions, didn't it?

Mr. MIRIANI. The granting of the extensions was because we needed to protect the innocent parties, giving them the opportunity to deduct the contribution to the fund which is what kind of an impact in addition to other revocation has.

Chairman NUNN. Are you saying a possibility of a nationwide strike did or did not concern you in terms of granting the extension?

Mr. MIRIANI. When you say concern, something of that magnitude would always concern me.

Chairman NUNN. On page 51 and 52 of its statement, GAO stated the fund failed to satisfy four conditions of requalification, such as: Condition 2, have an adequate data base in operation to determine creditable service and benefits for all participants; condition 4, to review all loans and related transactions from February 1, 1965, to April 30, 1977; condition 7, to publish financial information on the fund in newspapers; condition 8, to decide on the appropriate reserve amount in the B and A account. Is that correct, GAO's analysis of that failure on those conditions correct?

Mr. MIRIANI. My recollection of reading the GAO report is that pretty well describes the conditions and their current status. I would like the opportunity to go over them one by one to make sure we are in agreement with the GAO report.

Chairman NUNN. Would you furnish that for the record if you have any comments on their analysis here, if you differ with it in any respect or if you agree furnish something with respect to that.

Mr. MIRIANI. With respect to degree of compliance with the fund, yes, sir.

[The information follows:]

The requalification letter issued to the Fund in April, 1977, required the Fund to comply with eight conditions. Conditions 1 and 5 dealt, respectively, with the requirements that the plan be amended to conform to ERISA and that the Trustees adopt a specific written investment policy. The Fund has complied with these conditions.

Condition 2 required the Fund to develop a data base to determine the eligibility of plan participants for benefit payments, to satisfy the ERISA reporting requirements, and to provide actuarial census data. In December 1977, the Fund ran a pilot program to test a computerized pension verification system. Fifty percent of the applications can now be processed through the data base immediately without any action by a reviewer. We are currently reviewing the data base to determine its capabilities and possible areas of improvement.

Condition 3 required the Fund to use its new data base to re-examine previously rejected benefit applications to determine whether qualified individuals were denied pension benefits. The Fund has made retroactive payments of over \$915,000 as a result of this review.

Condition 4 required the Fund to review its past loans to determine whether the Fund had causes of action against its former trustees or against third parties. This review was to have been conducted with the assistance of outside counsel. In January 1978, the Fund advised the Service that it was suspending its compliance with condition 4 until the Fund resolved its concerns about whether the loan review was cost-justified. Although the Service advised the Fund that the Fund was not relieved of its duty to pursue any known or suspected losses, the Fund's trustees indefinitely suspended compliance with condition 4 in August, 1979, because of what they termed "unreasonable and unjustifiable" expenses. The Service is considering the Fund's position.

Condition 6 required the Fund to establish a qualified internal audit staff to monitor the Fund's affairs. The staff was to review benefit administration, administrative expenditures, and the allocation of Fund receipts as to investments and administration. The Fund initially experienced delay in implementing this condition because of the time consumed in developing standards and in hiring qualified personnel. In March, 1978, the Fund's trust agreement was amended to establish the Internal Audit Division. Shortly thereafter, a chief auditor and staff member were hired, and review activity was begun. Subsequently, an additional staff member has been hired.

Condition 7 called for the Fund at its own expense to publish its certified financial statements annually in a newspaper of general circulation in each state where the Fund operates. In 1978, to avoid the expense involved in purchasing newspaper space to publish these statements, the Service agreed with the Fund that condition 7 would be satisfied if the Fund annually issued a news release containing the Fund's financial statements to a newspaper in each state. The Fund issued the required news release in July, 1978. However, in August, 1979, the Fund's Trustees resolved to terminate the Fund's compliance with condition 7. The Service is considering the Fund's position.

Condition 8 required the Fund to transfer all of its assets and receipts to independent asset managers. However, under this condition, the Fund was permitted to retain assets that are reasonably necessary for the payment of plan benefits and for the payment of administrative expenses. Except for the assets retained in the benefits and administration, or "B & A" account, this transfer was completed on October 31, 1977. Currently, the great majority of the Fund's assets continues to be administered by the Fund's independent managers. The amount of assets the Fund considers necessary to be maintained in the "B & A" account is under review by the Service.

Chairman NUNN. What enforcement has the Internal Revenue Service pursued of its requalification agreement in these areas where they are delinquent, out of compliance? What are you doing about it?

Mr. MIRIANI. The fund made application for a new exemption in September of 1979, as Mr. Winborne's testimony, opening statement gave. We are considering the impact of the conditions. As he also stated in his opening statement, we have brought some court actions with respect to getting current records to determine just exactly what the compliance with each of the conditions is as of today. The conditions and the extent of their compliance will be considered and

taken into account by Mr. Bergherm when he considers the present application which is pending.

Chairman NUNN. The application for?

Mr. MIRIANI. New application for exemption is pending.

Chairman NUNN. When does that have to be acted on?

Mr. BERGHERM. Senator, we are currently considering that. As you may know, there is a declaratory judgment period provided by law, I believe it is 280 days—270 days. However, that provision contemplates that if there are administrative activities going forward to deal with the issues involved in the determination, that the administrative processes can continue. Now where we are at the present beyond the 270-day mark, nonetheless there are active continuing administrative processes. It is my view that the matter will be concluded in the foreseeable future.

Chairman NUNN. Did you write a letter on August 24, 1979, advising the fund that it failed to comply with five of the conditions for requalification?

Mr. MIRIANI. The Service—we wrote a letter to the fund. I qualify that because I am not sure who signed it. We advised the fund, when they advised us what they viewed their status was with respect to compliance with the conditions, we replied with how we saw compliance with respect to the conditions.

Chairman NUNN. Looking back on it, do you think you would have been better off with some kind of consent decree that would be enforced in court?

Mr. WINBOURNE. Senator, I have not reached that conclusion. I think what occurred at that time had instantaneous effect on doing what, as I understand it, is of primary importance of the people involved; that is, assuring those assets were preserved from that day on. How long it might have taken in terms of getting a court action is speculative. There was some thinking at the time that it would require additional time beyond what occurred because shortly after the revocation, as I understand it, and Mr. Miriani can probably add to this, the fund agreed to stop making loans.

Is that not right, Mr. Miriana?

Mr. MIRIANI. That is correct. As part of granting 7805 relief and actually even prior to that, the fund agreed to make no more loans except honoring the loan commitments that had previously been made. By no means were we happy with incomplete reform. We felt we had sufficient controls to bring the mismanagement aspects of the fund to an immediate halt.

Mr. STEINBERG. These agreements were oral?

Mr. MIRIANI. If my recollection serves me right, the first one was in response to—we received communications from the fund in writing. Some of them were in resolutions. We would have to review that particular aspect.

Mr. STEINBERG. Let me ask you this: There has been testimony over the last few days that the Government as a whole—IRS, Labor, whatever—did not have an enforceable written agreement that the fund trustees signed off on. In other words, the only thing reflecting the requalification is your letter to them stating the conditions.

Mr. MIRIANI. No; we view the discussions, if you will, with the fund and Labor, so on.

Mr. STEINBERG. I understand that—

Mr. MIRIANI. We viewed we had—

Mr. STEINBERG [continuing]. With respect to the written agreement, there is none; is that correct?

Mr. MIRIANI. There isn't a written agreement when you look for one document signed by both parties, but there are exchanges of letters, there are resolutions passed affecting those conditions and then, of course, as you know they are enumerated in our qualification letter.

Mr. STEINBERG. In June 1977, when the IRS determined that the fund had a zero tax liability, didn't the IRS embody that in a document, an agreement which they made every fund trustee sign?

Mr. MIRIANI. The closing agreement?

Mr. STEINBERG. The zero liability agreement.

Mr. MIRIANI. As we call it, the closing agreement.

Mr. STEINBERG. I don't know what you call it.

Mr. MIRIANI. Yes; that was an agreement which we had to finalize by having all of the trustees execute and then—

Mr. STEINBERG. If you had an agreement of that type which found a zero liability in writing signed by all the trustees, why wouldn't you have the agreement the Government entered into with the fund in writing signed by all the trustees?

Mr. MIRIANI. There are specific provisions in the closing agreement, which is what the zero tax liability agreement was—

Mr. WINBORNE. I believe section 7121 provides for that type of agreement. There is no provision for the kind of agreement that you are asking us about otherwise.

Chairman NUNN. These will be placed in the record without objection.

[The document referred to was marked "Exhibit No. 12" for reference and may be found in the files of the subcommittee.]

Mr. STEIN. There are certain documents we have become aware of recently that may well indicate a possibility for a contractual right. The contract having been entered into, there was an agreement between the parties. As I understand it, there are resolutions that were approved by the trustees indicating acceptance of the conditions, things of that nature, that were forwarded to us. I wouldn't want to say that there isn't any possible remedy under contract, but to answer specifically whether there is one document which says we agree that these are the conditions, and it's a mutually signed document by the two parties, that doesn't exist.

Mr. MIRIANI. Notwithstanding this: The qualifications letter was completely contingent upon them meeting these eight conditions. The fund could have taken action when they received our qualification letter including taking action to move for declaratory judgment.

Chairman NUNN. Have you brought a lawsuit on the basis of any breach of these conditions?

Mr. WINBORNE. What was that question?

No; we have not.

Chairman NUNN. You say the conditions have been breached for the last year or over a year. You have a letter that sets forth failure to meet these conditions, but there has been no enforcement mechanism brought to bear.

Mr. MIRIANI. No; I think there has been enforcement actions brought to bear. We have issued summons to secure the records which will confirm or alter our feeling with respect to the conditions. We need the review of the records and the documentation from the fund before we can finalize any final judgments with respect to their compliance with the agreements.

Mr. BERGHERM is familiar with that and he can address the summons.

Mr. BERGHERM. Senator Nunn, I will rephrase the sequence of events that occurred and what I recall of the recent past. We had subsequent to the existence of the requalification, under the conditions specified, maintained a monitoring role with the fund to satisfy ourselves that the conditions were being adhered to. That proceeded in a fashion up until approximately August 1979, when we were informed in writing by the fund that in their view in substance they felt that the conditions had been complied with.

Also, concurrently with this written expression by the fund trustees there were oral expressions which led us to believe that our presence, the IRS presence at the fund headquarters and offices would no longer be allowed to exist. Subsequently, this was communicated in a more direct fashion in a written form. We obviously were up against the issue of, did we use the process of the summons to enforce what we believe was our responsibility and right with respect to the continuing monitoring of the conditions which were imposed upon this requalification.

We did issue summonses with respect to those matters. The report date came and passed without the response that we felt was adequate to those summonses. We, therefore, referred the matter through our counsel to Justice for enforcement of the summonses.

That process has taken place and the matter continues to be under review of the courts through the summons process. But we are back on site once again. We are receiving records relative to this monitoring process. So, it is an ongoing process. The conclusion has not been reached and it may be a continuing process for a period of time that I would not be capable of predicting.

Chairman NUNN. Thank you very much. We appreciate all of you being here today. We hope to get the other questions that we had for the record at your earliest convenience.

We would certainly continue to stay in touch with you and it is encouraging to me to hear today about the changes in the reorganization act and some of the coordinating mechanisms that are now taking place that were not in place back in 1976.

Do you have anything else?

Mr. WINBORNE. We have been operating under that now for over a year, and we find it operating very smoothly.

Mr. MIRIANI. Can we make one final comment to make sure that we, in our opinion, clarify the record with respect to the benefit of the administration account?

There was a lot of testimony with respect to that yesterday.

Chairman NUNN. Yes.

Mr. BERGHERM. Senator, I will make the statement.

What I heard yesterday, testified before this subcommittee was, or led one to the conclusion that the B. & A. account, so-called, was

independent asset managers. I think the four-fifths of the income of the fund was in fact being paid to the independent asset managers. I think that the funds of this

fund "leaned" that four-fifths that way. I think that the impression that wasn't

that the account to make is that as far as the reserve is concerned as a clearing account, the payments of the managers come into that account, and the administrative costs are

In fact, at a point in time, I think there was a specific balance yesterday, I believe that balance was \$142 million. The percentage of its relationship to the total funds is roughly 10 percent. The total amount of funds that are accounted for by the independent asset managers, if that is the right figure, are under the control of the independent asset managers.

I certainly agree that it is the role of the Internal Revenue Service in its monitoring effort to see that the balance in the B. & A. account is appropriate for the purpose that that account serves. I would give you assurance that we are facing that responsibility right now and are shaping our thinking with respect to the current determination.

Chairman NUNN. What concerned us, I think there has been some emphasis by IRS and Labor on this B. & A. account and obviously the loan that was attempted, but it failed, but it did bother us that it made that attempt and it is also a bit worrisome that they have the theoretical capability of depleting the investment account even though you are saying that you would be watching that very closely and probably would take some action. But theoretically they would have that legal capability.

Mr. MIRIANI. Backing up to the deliberations with respect to the conditions and whether reforms are long lasting, in previous testimony it is my recollection that we gave long-term reforms really are dependent on prudent, the trustees being prudent. If the trustees are not, we are obviously going to continue our monitoring process.

I say that because when we got into the conditions with respect to asset management we used the words "reasonable accumulation" because we had to provide the fund a reserve. We were going on the premise that the trustees would work with us again in retrospect maybe we should have been a little more definitive with respect to the word "reasonable" and there is the area Mr. Bergherm is addressing with respect to the current application that is pending.

Chairman NUNN. Thank you very much. We appreciate your being here.

We will recess until tomorrow morning at 10 o'clock in this room.

[Members present at time of recess, at 1:45 p.m.: Senator Nunn only.]

[Whereupon, at 1:45 p.m., the subcommittee was recessed, to reconvene at 10 a.m., Thursday, August 27, 1980.]

LABOR DEPARTMENT'S INVESTIGATION OF TEAMSTERS CENTRAL STATES PENSION FUND

MONDAY, SEPTEMBER 29, 1980

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9 a.m., pursuant to recess, in room 3302 Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Lawton Chiles, Democrat, Florida; Senator Charles H. Percy, Republican, Illinois; and Senator William S. Cohen, Republican, Maine.

Members of the professional staff present: Marty Steinberg, chief counsel; LaVern J. Duffy, general counsel; W. P. Goodwin, Jr., staff director; William Colombell, Jack Key, and Raymond Maria, investigators; Myra Crase, chief clerk; Mary Robertson, assistant chief clerk; Joseph G. Block, chief counsel to the minority; Charles Berk, general counsel to the minority; Howard Marks and Howard Shapiro, investigators to the minority.

[Member present at convening: Senator Nunn.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive session without a quorum of two members for the administration of oaths and taking of testimony in connection with the Oversight Investigation of the Department of Labor Inquiry of the Teamsters Central States Pension Fund on Monday, September 29, 1980 and Tuesday, September 30, 1980.

SAM NUNN,
Chairman.
CHARLES H. PERCY,
Ranking Minority.

OPENING STATEMENT OF SENATOR NUNN

Chairman NUNN. The subcommittee will come to order.
Today we resume our public oversight hearings of the Labor Department's investigation of the Teamsters Central States Pension Fund.

A month has passed since we held hearings on this matter in August. I want to briefly view some of the testimony we received and to review what has happened during the past month. But first, let me recount some of the background that led to these hearings.

As I explained when I opened the first of these hearings on August 25, the Central States Pension Fund has been the subject of various allegations for many years—such as mismanagement, misconduct, imprudent financial dealings, conflicts of interest, and ties to organized crime.

In 1975 the Labor Department organized a Special Investigations Staff to look into these allegations under the powers conferred upon the Department by the Employees Retirement Income Security Act of 1974—ERISA. This was to be a broad-based inquiry conducted in close coordination with the Department of Justice and the Internal Revenue Service.

There were some Senators who were pushing for our own investigation of the Central States Pension Fund, but that project was not undertaken so that we would not interfere with or duplicate the Labor Department's effort. We did, and have continued to try to keep an eye on and give oversight to this investigation.

We conducted an oversight hearing in July 1977 at which Secretary Marshall painted a rosy picture of the Department's progress. He cited an agreement reached with the fund in March 1977 under which the fund's trustees agreed to a number of Government demands. They agreed to appoint independent asset managers, and to make other procedural reforms. In addition, an entire new slate of trustees took over the fund.

I will ask Mr. Block, chief minority counsel, to give us a brief summary of the letters and the exchange of information that took place, and that did not take place, that gave rise to that GAO request.

Mr. BLOCK. Senator, following the hearings before this subcommittee, at which the Secretary appeared in July 1977, there was no—that I am aware of—further correspondence until the filing of the lawsuit by the Labor Department against the former pension fund trustees on February 1, 1978. That led to a letter from you and Senator Percy to Secretary Marshall on March 8, 1978, asking a number of questions about the lawsuit. A reply came back on May 12, 1978, that was not fully responsive. You and Senator Percy then replied by letter on June 7, 1978, and the following week on June 13, 1978, asked GAO to initiate their inquiry.

Chairman NUNN. Thank you.

The results of that GAO review, which began in 1978, were presented to us on August 25. In addition, we heard testimony from four men who were members of the Special Investigations Staff, and that staff is referred to throughout these hearings as SIS, and we received affidavits from two others.

In the opinion of GAO, the picture painted for us by Secretary Marshall in July 1977 was not so rosy as originally appeared. GAO testified that the Department's investigation was not effectively planned, staffed, coordinated, managed, or carried out. GAO said that areas of potential abuse were not investigated even though they were detected, and that the areas targeted for investigation initially were not prop-

erly pursued, thus potential civil and criminal violations were not detected.

They also stated several other findings, including the "agreement" reached between Labor and the funds.

The "agreement" reached between Labor and the fund's trustees in March 1977 was never reduced to writing. It consisted merely of press releases issued jointly by Labor and IRS.

Labor played no role in selecting the fund's new trustees, although it knew that the old trustees—some of who allegedly mismanaged the fund and had ties to organized crime—helped to select their own replacements and still influence the new trustees' decisions.

The new trustees have tried and nearly succeeded in getting around the terms of the agreement, and they are able to control considerable amounts of the fund's assets by keeping them out of the hands of the independent asset managers. The Labor Department has not adequately monitored these developments.

As late as November of last year, the Labor Department itself said it had "virtually no information available on the current operation of the fund."

Despite Secretary Marshall's assurances to the subcommittee, the Department never really went into a "third-party" investigation, which has left unresolved questions of potential criminal liability.

The Labor Department turned over very little criminal information to the Justice Department, and even when it did so, the information was of little value in criminal prosecutions.

Cooperation between Labor, Justice, and IRS was poor at best.

These and other GAO findings were confirmed and amplified by the testimony we received from four SIS members—former Director Lawrence Lippe; his deputy, Lester Seidel; former SIS attorney Lloyd Ryan; and former SIS investigator Edward Shevlin. These witnesses testified that:

Their superiors refused to let them conduct the investigation as they had planned.

They were not permitted to issue subpoenas for appropriate persons and records, including records of the fund itself.

They were told in December 1976 that they were not to go forward with the "third-party" investigation, which might have led to criminal evidence, but to prepare for a civil suit instead.

Their superiors ordered them with invective not to cooperate with or to turn over criminal information to the Justice Department.

They were ordered to put on a "quick, high visibility road show" investigation, without adequate preparation, in order to give the impression of great activity within the central States fund investigation.

The Labor Department and IRS were dealing from a position of strength against the fund in early 1977, but it gave away this advantage when it reached the "press release agreement" in order to create a dramatic impact.

The investigation was gradually taken out of their hands and absorbed by the Office of the Solicitor of Labor; that is, in the end of those particular allegations by those witnesses.

On August 26, we called Roy L. Williams to testify. Mr. Williams is an international vice president of the Teamsters Union, and he was one

of the pension fund trustees who resigned as part of the "press release agreement."

We called Mr. Williams because the Labor Department's own records indicate that the old trustees, such as Mr. Williams, were instrumental in choosing their own replacements, and that they still exert influence over the fund's operations. In addition, the subcommittee has received evidence—such as wire tap affidavits, Justice Department testimony, and our own staff investigation—which tends to show continuing influence of organized crime on the fund.

We asked Mr. Williams a series of questions about his continuing role in the fund's affairs and his associations with reputed organized crime figures. He refused to answer any of these questions on the basis of his fifth amendment rights.

Despite considerable evidence that organized crime members have attempted to reassert control over the pension fund, the testimony we received in August and in executive sessions since then indicates that the Department opted to proceed to civil litigation—which in effect left important criminal areas unexplored—and that it has not adequately monitored such items as the fund's benefits and administration account, which GAO says has amounted at times to more than \$140 million and which is still under the control of the fund's trustees.

I know Secretary Marshall will be going into considerable testimony on this and his own view and rebuttal as he sees it of the GAO report.

The testimony we have received so far tends to show that there are glaring deficiencies in the Department's efforts. While the "press release agreement" and the Department's civil litigation may protect some of the fund's assets over the short haul, the fund obviously was, is, and will continue to be a target of organized crime.

We are very interested in having the Secretary, and I am sure he will give us his plans for the future in this respect as well as what has happened in the past. It seems to me that long-term reform requires such actions as vigorous pursuit of criminal evidence, strict written agreements with the fund's trustees, and energetic oversight of the fund's day-to-day operations by the Labor Department.

In fairness to the Labor Department, there may be some very good explanations for the charges raised by the GAO and by the Department's own investigators. We had planned to have testimony from Department witnesses on August 27. Secretary Marshall was in Japan during that week, but he had assured us that other Department officials would be available to testify at that time.

On the second day of our August hearings, however, we were notified that no Department officials or employees would be permitted to testify except in public session at the same time that Secretary Marshall appeared. This was totally unsatisfactory to the subcommittee because we had received factual information which we felt would be explored only in executive session before deciding whether to make it public. And numerous allegations which we felt should be explored only in executive session before deciding on whether to make it public and how much to make public.

The purpose of the executive session request was for us to make a rational judgment in fairness as to how much of these raw allega-

tions should be made public if any should be made public. That was the reason we asked the Labor Department to cooperate by having their witnesses and their people appear in executive session.

We do this frequently. We have done it over and over again with the executive branch and people in various capacities within the Government.

Some of this information is in the form of raw investigative reports compiled by the Department's own employees who were assigned to evaluate the investigation.

[At this point Senator Percy entered the hearing room.]

Chairman NUNN. It contains serious allegations of misconduct on the part of various Department employees. I want to emphasize at this point we have made no determination as to the overall accuracy of all of these allegations. We are not trying to investigate all of these allegations. What we are trying to do is determine why the Labor Department itself did not investigate these allegations.

The subcommittee learned of this internal Labor Department review just prior to our August hearings. When our staff members asked the Department to give them a report on this internal review, they were told that a report had been prepared but that it had been destroyed. However, when we issued a subpoena for the report, documents were provided in compliance with the subpoena. As it turned out, the documents provided were incomplete, and it took two more requests before the report and all of its underlying material was produced.

We trust it has all been produced now, although I would not say that with absolute certainty, based on recent history.

As I said, much of this material is in the form of raw information, some but not all of which can be substantiated. The release of this information could have a very detrimental effect on the reputation of people who may not be guilty of any misconduct.

In our opinion, it would have been unprofessional for the subcommittee to have explored the allegations contained in this material in any forum other than private interviews or executive sessions. Accordingly, we requested that certain Department officials and employees be made available so that we could examine these matters and proceed to receive testimony from the Secretary on September 16. However, the Department insisted that all of these various matters be explored only in public hearings and refused to make its employees available for private interviews or executive sessions. Since the Department's recalcitrance made it impossible for us to proceed on schedule, we were forced—for the first time in the subcommittee's history—to subpoena executive branch employees to testify at the executive sessions which we have held over the past month.

Finally, on Thursday of last week, Secretary Marshall met with Senators Percy and Chiles and myself. He agreed to make the Department's witnesses available for these public hearings without our having to issue additional subpoenas. He also requested an opportunity to appear first at today's hearing in order to address the policy questions raised during our August hearings, before any other Department officials or at least with them.

We granted the Secretary's request, but only on conditions which were set forth in a letter I sent to him on September 25. That letter reads:

Dear Mr. Secretary:

I appreciate your meeting this morning with Senators Percy and Chiles and myself.

In light of your request to appear at the beginning of our hearing on Monday, September 29, we will be pleased to have you testify at 9:00 a.m. in room 3302 of the Dirksen Senate Office Building.

You indicated during our meeting that you wish to address the policy questions that were raised during our hearings on August 25 and 26. As we indicated to you, we would have preferred to complete the presentation of factual evidence before turning to the policy questions. However, Senators Percy and Chiles and I have discussed this matter at length, and we are willing to defer to your request to appear before this presentation.

We would point out that an adequate factual foundation concerning the possible destruction of Department of Labor records was not laid during our August hearings; therefore, it is our understanding that your opening comments will be confined to the overall policy questions raised during our previous hearings. In the event that you discuss factual questions for which a foundation has not been laid, we will have to interrupt in order to receive additional testimony on those points.

In addition to your testimony, we will hear from other witnesses regarding factual issues. We certainly will offer you ample opportunity to respond to this new testimony after it has been presented.

Rule 9 of the Subcommittee's Rules of Procedure requires any witness desiring to read a prepared or written statement to file a copy of that statement with the subcommittee 48 hours in advance of the hearings. We would appreciate your submitting a copy of your prepared testimony by the close of business on Friday, September 2.

Which was done, and we appreciate, Mr. Secretary, your complying with that request.

The Secretary's prepared statement, which I have read, and I understand has been released to the press—certainly that is the Secretary's privilege—goes beyond the conditions we set and addresses factual issues such as the so-called Kotch-Crino internal review.

We want the Secretary to address these issues, but we had planned to have that testimony on this factual basis before Secretary Marshall appeared at his request. We agreed for him to appear but on the condition that he would not get into this particular area at this time.

Before we hear the Secretary, because of that, we are going to have a couple of our staff people testify briefly to lay the adequate foundation because, Mr. Secretary, rather than getting in the middle of your statement and interrupting that statement, we felt it would be more appropriate to have this factual foundation laid. We will then accord you the right to go through your entire statement, including that information.

We have struggled trying to find a way to do this. We are not going to be calling any Labor Department witnesses before you testify. We will have our own staff testify. So I would ask you again, Mr. Secretary, if you would, to take a seat wherever you can find one back there. I am sure there is a table set. We will have our brief testimony and then we will call you next, before the Labor Department witnesses.

Senator Percy, I know you may have an opening statement at this point.

OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. Mr. Chairman, I would like to review for the Secretary the history of how this subcommittee got into this particular inquiry. I believe sometime in 1975, Mr. Secretary, Congress was con-

cerned enough about the Teamsters Union activities with respect to its health fund and pension fund that the then Assistant Minority Leader Senator Robert Griffin introduced a resolution in the Senate, calling upon the Senate to create a special select committee for the sole purpose of investigating the Teamsters Union.

I personally dissuaded him from that and my other colleagues and I, including Senator Nunn, determined together with other members of the Permanent Subcommittee on Investigations that our charter was clear with respect to the duty and obligation of this subcommittee to move forward with an investigation.

We were told by many of our colleagues, and by the evidence that we saw that the Teamsters Central States, Southeast and Southwest Areas Pension Fund, was rife with corruption, cronyism, and phony business practices that actually threatened its survival and the benefits of hundreds of thousands of employees that depended upon it.

However, after very careful deliberation, we decided not to conduct an inquiry at that particular time, because the Department of Labor pledged to launch a thorough investigation of the fund that would preserve its assets and maximize civil damages and criminal action wherever warranted. And based upon the representations by the Department of Labor, this subcommittee then stepped aside, did not go forward with the investigation that the Senate was pressing upon us, and decided that we would defer to the Labor Department this matter being within its jurisdiction and authority.

These oversight hearings are for the purpose of determining whether the Labor Department has actually kept its word.

We are not unmindful, Mr. Secretary, of certain successes of the Department's efforts to reform the fund and we have already publicly acknowledged them, as has GAO. The 16 trustees of the pension fund in place at the beginning of the investigation have all resigned, and in February 1978, the Labor Department filed a civil lawsuit against former trustees seeking millions of dollars in damages against them for irresponsible management of the fund.

Reputable, independent asset managers signed a 5-year contract with the fund in 1977 to manage what are now over \$2 billion in assets. These developments have been hailed by the Labor Department as major achievements that have cleaned up the fund and reasonably assured the continued viability of its assets. However, many people, both within and without the Labor Department, tell a story far different from the official version.

Last month we received extremely disturbing testimony from the GAO and from the former leadership of the Labor Department's investigation that strongly suggests these apparent successes are only temporary illusions of lasting reform.

We heard testimony that the June 1976 revocation by IRS of the tax-exempt status of the fund came as a complete surprise to the Labor investigators, throwing their inquiry off the track for several months.

We heard testimony that in December 1976 the Labor investigators were making progress, and were ready to launch a massive third-party investigation—absolutely indispensable in any financial inquiry—when they were ordered to abandon that plan by the Labor Department Solicitor's Office. Yet we were told a different story by the Labor Department in July 1977, when you, Secretary Marshall, testified be-

fore this subcommittee that third-party investigations were actively being undertaken.

Last month, we heard the former Director of the Labor Department's SIS testify that he had no idea—and still has no idea—what negotiations were conducted between the Solicitor's Office and the fund, and what agreements were reached. It appears that while Mr. Lippe and his troops were marching into battle, someplace, a secret peace treaty was being drafted by those higher up.

[At this point Senator Cohen entered the hearing room.]

Senator PERCY. We heard testimony that what was supposed to be a joint Labor and Justice Department investigation fell apart somewhere along the way, according to a January 1978 Justice Department memo. Less than a month later, when a civil lawsuit was filed against the former trustees, the Justice Department Criminal Division received notice less than 24 hours in advance. The filing of the lawsuit severely limited the ability of SIS to pursue potential areas of abuse other than those identified in the lawsuit. In effect, the door was slammed shut on establishing any further civil or criminal liability of the former trustees.

We were told that promising avenues of investigation were dropped, even as budgeted investigative staff positions went unfilled.

Regretfully, by the end of last month's hearing it appeared that, since the end of 1976, the hard-hitting investigation of the fund that the subcommittee had been promised was, for all practical purposes, dead in the water.

We certainly did not intend to let these charges linger on unanswered for weeks without hearing from the Labor Department. But, as you have pointed out, Mr. Chairman, the cooperation of the Labor Department has not really been forthcoming.

For the first time in our subcommittee history, we have had no choice but to subpoena executive branch documents and employees in order to complete our inquiry. Indeed, the Labor Department has come full circle, from pledging to reform the fund and fully cooperate with this subcommittee, to stonewalling our efforts to find out why this investigation seems to have gone astray.

Mr. Chairman, you and the subcommittee staff, in my judgment, have undertaken this sensitive review in a thoroughly professional and objective manner. I am certain that the next 2 days of hearings will be conducted in the same fashion.

We certainly welcome you, Secretary Marshall, to these hearings, so you can have an opportunity yourself, after a few facts have been laid on the record, to answer directly on behalf of the Department.

Part of the history, of course, preceded your own activities in the Department. But for the past 3½ years or so, it has been your direct responsibility, and you can answer directly for that part of the investigation.

Thank you.

Chairman NUNN. Mr. Secretary, one other brief comment before we get to the first witnesses this morning.

I have received a letter dated September 28 from Solicitor of Labor Carin Clauss. In this letter, Ms. Clauss goes into certain areas that

she would prefer not be part of the public domain. I certainly will take that up with the subcommittee before we get into any of these letters. Certainly we would agree with you on some of those matters as to the importance of keeping them confidential for many years, including litigation.

But it is somewhat perplexing, if not amazing, that we are here opening up the session on Monday morning, and we have been going for about 4 or 5 weeks and delaying this because we stated that we wanted to have executive sessions because a good bit of this information should not be in the public domain, both because of litigation and because of the reputation of employees. We received a letter from you dated—well, this letter is from Ms. Clauss—we received a letter from you, Mr. Secretary, dated September 5, when we were trying to get access to these Labor Department people for questioning.

I am not going to read the whole letter, but just one paragraph.

I am mindful of the possible risk of proceeding initially in a public session, particularly the risk that allegations and half truths might be unnecessarily damaging to the reputations of innocent individuals, as I believe some may have already done. After reviewing the situation, I have concluded, however, that my decision that the persons from whom you seek information should appear with me in a public session will best serve the legitimate interest of all concerned.

Of course, then we received a letter from Ms. Clauss, Solicitor of Labor, on September 8, again as we were trying to have access to interviews and executive session witnesses without subpoena. I quote from that letter.

Based on this review, I continue to believe that all of those matters relevant to the Department's conduct of the investigation can be fully explained during the course of a public hearing and that any other procedures indicated in Secretary Marshall's letter to you would have a serious adverse impact on the Department's ability to carry out its responsibilities in this matter.

I would like to reiterate my offer to have myself, Robert Brown, Robert Lagather and/or William Hobgood meet with you in advance of the public hearing.

Of course, those were not the people that we were primarily interested in interviewing. Again on page 2 of that same letter:

The public release of the interview statements, all of which were made more than a year ago, and at a time when it appears the Department so perceives, would have had a devastating impact on our attempts, which we believe have been somewhat successful, to improve the morale of the employees on whom we depend to carry out these efforts. The Department's overall effectiveness in Central States enforcement could only suffer.

So, Mr. Secretary, we are in a position of having spent a whole month of trying to get executive sessions and the Department of Labor has been in a position of refusing that. We have had to resort to subpoena to do that, primarily because we wanted to protect the reputation of people who may have been accused on unfounded allegations. And here we are, the day of the hearing, being requested to keep all sorts of matters confidential.

Secretary MARSHALL. May I respond to that, Mr. Chairman?

Chairman NUNN. Yes.

Secretary MARSHALL. The matter that we referred to in that letter has mainly to do with damage that would be done to our litigation.

Chairman NUNN. I understand.

Secretary MARSHALL. And not anything to do with protecting the employees in the Department. So I think it is a different question.

The other matter relates to whether or not the employees would have adequate protection in whatever kind of situation.

Chairman NUNN. Ms. Clauss, in her letter of September 8, deals with that, at the same time. She insists on a public session and then at the same time she is very concerned about releasing information because of documents. I am saying you have placed us in an impossible position. I also say that we do not enjoy having to subpoena Government employees for executive session testimony. I think it is unprecedented. I think it is unfortunate. I hope we are on a new road in that respect. You are appearing here voluntarily today and your other people will be appearing voluntarily this week. So we hope we have turned this corner. But if this subcommittee and other Members of Congress have to proceed with subpoenas in order to get testimony on sensitive matters that we have direct oversight over, it is a sad day for the Government.

Secretary MARSHALL. I agree. I think it is a sad day for the Government when uncorroborated information is released to the press, and it was during the early hearing of this that it did damage the reputation of the Department and undermined our ability to proceed with this investigation.

Chairman NUNN. Mr. Secretary, the people who made those allegations, it may be unfounded from your perspective, but they were under oath when they made them, and the man who made several of the allegations is the man who headed up the Department's investigation of the Teamsters fund.

Secretary MARSHALL. I think I can answer that.

Chairman NUNN. We will get into that, but it really is legitimate evidence. Just because you don't agree with it, doesn't mean it is necessarily unfounded. It is founded from the point of view of those who hold up their hand and swear to it at the risk of perjury and the people, individuals you are talking about are still in responsible positions in the Government, including responsible positions in the Justice Department and the Labor Department. So if they have perjured themselves, then, of course, that is another matter.

Secretary MARSHALL. They did not make those statements in executive session, though.

Chairman NUNN. That is right. That is right. Neither did we go into the allegations against certain individuals in open session.

Secretary MARSHALL. So the reason that we wanted the public session was to protect people who had already been attacked in that open session.

Chairman NUNN. We are not refusing public sessions. What we were trying to do, I repeat, is avoid going into sensitive matters in the public session until we determine whether there was sufficient evidence to do that. We have been forced to issue subpoenas and it is still a dilemma to me that you now recognize the very difficult job of protecting certain information in public session and what you really, I suppose, wanted us to do was to leave out everything damaging in the public session and freeze that out so we would not be able to have access to that in either public or open session. That is a beautiful strategy, it is a great

strategy. But we cannot permit that and we will not permit it as long as we have responsible jurisdiction over this oversight.

Secretary MARSHALL. That was not our intention. Our intention was to make it possible to lay both sides on the record publicly, if that is the way it is going to be done, and second, to not release information that would damage our ability to continue to protect the assets of that fund and to continue our litigation in that fund.

Chairman NUNN. Of course we have mutual aims along that line. Senator Percy?

Senator PERCY. I have nothing further to add.

Chairman NUNN. We will call our first witnesses.

Senator Cohen?

Senator COHEN. Mr. Chairman, I have a statement I would like to submit for the record.

Chairman NUNN. Without objection, it will be part of the record.

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you Mr. Chairman.

The subject of today's hearing—the Department of Labor's investigation into the Teamsters Central States Pension Fund—is an important and serious one. I commend Senator Nunn and Senator Percy for their interest and commitment in pursuing this oversight inquiry.

The testimony the subcommittee received during its public hearings last month and in its subsequent executive sessions, together with the material obtained by the staff, raise very serious questions regarding the conduct of the Department of Labor's investigation and of certain officials within the Department.

It is the Federal Government's responsibility to see that the interests of the beneficiaries for whom the pension fund was established are protected. It is also a Federal responsibility to insure that the fund is administered in compliance with the laws enacted by the Congress.

Equally important is the question we are addressing today—the integrity of the Department of Labor's internal efforts to insure that its investigation of the fund was pursued in the most thorough and the most competent manner; that any inadequacies, any abuses, any misconduct in such an effort were thoroughly investigated, and that appropriate action was taken to remedy any problems found.

Again, I commend the Senators for their interest in this matter, and I look forward to hearing the testimony of the witnesses who will be appearing today before the subcommittee.

Chairman NUNN. The first witnesses are Martin Steinberg, chief counsel, and Mr. LaVern Duffy, general counsel of the subcommittee. I will ask each of you to hold up your right hand.

Mr. DUFFY. I have already been sworn, Senator, in the course of these hearings.

Chairman NUNN. All right. Why don't we swear you again. It won't hurt anybody. I want to swear all the witnesses in.

Do each of you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. STEINBERG. I do.

Mr. DUFFY. I do.

**TESTIMONY OF MARTIN STEINBERG, CHIEF COUNSEL, AND
LAVERN DUFFY, GENERAL COUNSEL, PERMANENT SUBCOM-
MITTEE ON INVESTIGATIONS**

Chairman NUNN. Mr. Steinberg, I believe you have a statement here.

Would you first give your position for the subcommittee, and give us a brief background of what you have done before you became chief counsel?

Mr. STEINBERG. Mr. Chairman, my name is Martin Steinberg, I am chief counsel of the Permanent Subcommittee on Investigations. Prior to that, I was the Chief of the Buffalo strike force. Prior to that I was a Department of Justice attorney in Miami, Fla., for the Department of Justice.

Mr. Chairman, Mr. Duffy and I have a statement concerning the report which was prepared by the Department of Labor in 1979, concerning the internal inquiry by the Department of Labor about the Teamsters fund investigation. The official copies of this internal report were officially destroyed by the Department of Labor.

Mr. Chairman, 6 months after the GAO began its inquiry into the Department of Labor's handling of the Teamster fund investigation, the Department of Labor became concerned about the progress of its 5-year investigation into the Teamsters Central States Fund. An internal review was conducted to evaluate the effectiveness of that investigation. That review was conducted in February and March 1979, and in May 1979, a report was written. This report, supplemented by summaries of interviews and other documentation, is highly critical of the Labor Department's investigation of the Teamsters Central States Fund. The significant points and findings developed in the Department of Labor 23-page report and its scores of attachments are as follows: One, the special investigations staff, referred to as SIS, was directed to conduct an investigation into union benefit plans and then to litigate on the basis of these investigations. This Labor Department unit, SIS, was given the authority and responsibility for the Teamsters Central States investigation. Where criminal evidence was uncovered, SIS was supposed to refer its information to the Justice Department. According to the report, neither objective was totally achieved. The SIS mandate was narrowed early in its history. It did not litigate any cases, nor did it ever even approach the litigation stage.

As for investigations, the Solicitor's Office of the Department of Labor preempted the SIS jurisdiction, taking away its independence and making it a mere support operation of the Solicitor's Office.

As for criminal cases, SIS was instructed in no uncertain terms that the Department of Labor policy was to develop civil cases, not criminal cases. The gathering of information, indicating criminal behavior, was deemphasized.

Chairman NUNN. So we make it absolutely clear here, Mr. Steinberg, these are all points that were made in the Labor Department's own report?

Mr. STEINBERG. That is correct. This is a summary of their own report.

Chairman NUNN. This is the report we will refer to as the Kotch-Crino report?

Mr. STEINBERG. That is correct, Mr. Chairman. The report goes on to state that any information of a criminal nature that was sent to the Justice Department was referred in a haphazard way, with little or no regard for proper procedure. The second finding of the report was from the inception of the investigation, the Department of Labor hierarchy eroded and took away the authority and responsibility of SIS; third, that the Solicitor's Office wanted SIS under its control. That objective was achieved early in the investigation. But once control was obtained, the Solicitor's Office took little or no interest in SIS duties. No constructive guidance or management was offered. SIS was viewed as an investigative support arm for the Solicitor's Office. Beyond that, it had very little to do, morale declined, bureaucratic infighting grew, suspicion and hostility mounted. What SIS did do was often demeaning. Professionals complained, for example, of having to do substantial clerical work.

Another finding of the report was that the Labor Department failed to devote needed resources to the SIS effort. Senior Labor Department officials were occupied with other matters and failed to give sufficient attention to SIS and the Teamsters Central States investigations.

The report goes on to state the Department of Labor failed to pursue culpable third parties in the investigation. Because the Department wished to move ahead quickly in filing the lawsuit, it was decided to forgo third-party investigations.

Another finding was that because persons associated with the fund were not properly investigated in a timely fashion, civil and criminal potential was apparently lost.

The report goes on: Early in the investigation, the scope of the inquiry was severely limited and many areas of potential abuse detected in 1976 were not pursued, no new areas of investigation outside the Department of Labor's litigation were planned, initiated, or permitted. The Solicitor's Office dictated this investigative policy. Moreover, the report states that SIS was hampered by a lack of leadership, supervision, management, and administration. SIS lacked a cohesive management team in terms of cooperation, respect, and operational ability. It was a consensus at SIS and at the Solicitor's Office that the Acting Director from 1977 forward was not doing a capable job, but that the Department of Labor never appointed a permanent Director.

Another finding was the Solicitor's Office viewed itself as a lawyer in a lawyer-client relationship with SIS. It did not wish to get involved in a hard-fought investigation, litigation, nor was the Solicitor's Office willing to have a cooperative relationship with the investigator.

The Solicitor's Office did not devote enough time and resources to the Teamsters investigation. Moreover, the report states the policy of the Department of Labor was not to pursue criminal matters in this investigation. This policy was based on SIS restrictions, civil jurisdiction and to a lack of personnel. These 10 points, Mr. Chairman, summarized what we have termed the management deficiencies referred to in the 1979 report which is called the Kotch-Crino report, after its authors.

Mr. Chairman, the report and the attachments also contain serious allegations of potential violations of law and employee misconduct.

These allegations include sexual misconduct, obstruction of justice, and that certain Department of Labor employees associated with organized crime figures.

This information was never referred to the appropriate investigative agencies for further investigation.

It was never adequately investigated. It should be emphasized that these were mere allegations and have never been proved or disproved.

Chairman NUNN. You are not saying that there is hard evidence in this report that the allegations were absolutely without any doubt accurate and truthful?

Mr. STEINBERG. No. They are mere allegations. They have not been referred to the appropriate agencies. They have not been investigated to determine their truth or falsity.

Chairman NUNN. What you are saying is the report had serious allegations in it, and they simply have not been pursued?

Mr. STEINBERG. That is correct, Mr. Chairman.

[At this point, Senator Chiles entered the hearing room.]

Mr. STEINBERG. Mr. Chairman, it is this report and attachments which I have summarized which Department of Labor officials attempted to destroy and in fact apparently destroyed every copy they were aware of. The subcommittee staff requests that report with its attachments be received as a sealed exhibit.

We believe it should be sealed for the reasons I previously stated. These serious allegations could not be further detailed here because the Department of Labor did not determine in the past 16 months if they were true or false through an appropriate investigation or by referring these matters to the appropriate agency.

Mr. Chairman, I would like now to defer to Mr. Duffy concerning the destruction phase of this report.

Chairman NUNN. Would you give us your present position and brief background of what you have done?

Mr. DUFFY. Yes; Mr. Chairman.

My name is LaVern Duffy, general counsel with the committee, and I have been with the committee for approximately 28 years. I came in 1953. I have been, since my involvement in this investigation, working with Mr. Steinberg.

Chairman NUNN. You have been involved in these investigations for many years, have you not, since back with Senator McClellan?

Mr. DUFFY. More years than I would like to remember.

Mr. Chairman, the subcommittee first learned in early August 1980 that Mr. Kotch and Mr. Crino had conducted an internal Labor Department investigation and upon the completion of it, they had written their findings in report form. When I first learned about this I contacted by telephone John Kotch, and that was during the second week in August. I asked him about the report. Kotch confirmed that such report had been written. He said it had been prepared for Rocco "Rocky" DeMarco, Deputy Assistant Secretary for Labor Management Services Administration.

I asked Kotch to give me as much detail as he could about the report and what had happened to it. Kotch then contacted DeMarco. Kotch told me that DeMarco admitted having destroyed the report. Kotch quoted DeMarco as having said the report had served its purpose and

could be destroyed. I then arranged an interview with Kotch and a separate interview with Mr. DeMarco. Marty Steinberg, subcommittee chief counsel, and I interviewed Kotch on August 18. Robert Gallagher, the Solicitor's Office, also attended that interview. Kotch said that he and Mr. Crino were summoned to Washington to the office of DeMarco on February 4, 1979. Carrying out the investigation, Kotch said he and DeMarco were to pursue a number of objectives.

The objectives were, one, review the internal operations of SIS, review the relationship between SIS and the Solicitor's Office, review the Labor Department's referrals of criminal matters to the Department of Justice, review the workload of SIS and make findings and recommendations.

Mr. Kotch said DeMarco told Crino and him that they were to carry out this assignment in strict confidence. They were not to discuss it with anyone. Kotch said DeMarco informed them only one copy should be made of the interview and report. This one copy was to go to DeMarco. No file copies were to be kept. Kotch said they were instructed by DeMarco that all material that they had gathered should be locked up at all times. Kotch said in the interview with Steinberg and me that he did not know why this investigation was not carried out by the Labor Department's Inspector General.

Kotch also told us that he asked DeMarco about the IG question in his second meeting with him. He said DeMarco answered the question by saying simply that it should not be an IG investigation. Kotch said he was not told the ultimate purpose of the investigation and he said to this day he still does not know.

When the investigation was completed Kotch said he gave the report and attachments to DeMarco. Kotch said it was highly unusual that he be required to make only one copy of a report or a report of interview.

Concerning the fact that DeMarco destroyed the report and attachments Kotch said that, too, was highly unusual.

Kotch said DeMarco told him to prepare a briefing paper on the report. He did. He gave it to DeMarco. It was his only copy, Kotch said. Kotch said he and Crino briefed no one on the report.

On August 18, 1980, Rocco DeMarco was interviewed by Marty Steinberg, Joseph Block, the minority counsel of the subcommittee, and Mr. Robert Gallagher also attended that meeting. DeMarco said in February 1979 that he met with Under Secretary of Labor Robert J. Brown. DeMarco said Brown told him that Labor Secretary Marshall wanted someone to monitor the Department's investigation of the Teamsters Central States pension fund investigation.

Brown told DeMarco a management survey should be conducted. DeMarco said Kotch and Crino were selected to conduct this survey, but DeMarco said he could not remember who selected them or why.

DeMarco told us that in giving Kotch and Crino their directions the question was raised as to why this was not a matter for the Inspector General.

DeMarco said he took that question directly to Under Secretary Brown. DeMarco said Brown directed him not to make this a management review by the Inspector General. DeMarco suggested that it was Brown's decision, not his.

DeMarco referred to the findings of the Kotch-Crino investigation as a memorandum. DeMarco said he took the memorandum to Under Secretary Brown's office. Later, he said, he met in Brown's office with Brown, J. Vernon Ballard, the deputy administrator of the pension welfare benefit program, and Carin Ann Clauss, the Solicitor of Labor.

DeMarco said that at the meeting Clauss had her copy of the report. He said he did not know whom she got it from. DeMarco said he did not know if other copies of the report had been reproduced as well.

DeMarco said he could not remember what was discussed at the meeting with Brown, Ballard, and Clauss. But he did remember at the end of the meeting Clauss handed him her copy of the Kotch-Crino report. DeMarco said Clauss said to him, "Dispose of it," and added that she had no more need for it.

Upon these instructions from Clauss, DeMarco said he destroyed her copy. DeMarco said that later he met with Brown and that Brown returned to him the original of the Kotch-Crino report. DeMarco said he kept the original report and its attachments until the fall of 1979. At that time he gave the documents to Mr. William Hobgood, Assistant Secretary of Labor Management Relations for Services Administration.

In March 1980, DeMarco said, Hobgood returned the documents to him. DeMarco said he then had the Kotch-Crino report documents destroyed. He explained that he destroyed the documents because the report had served its purpose.

We asked him if he had ever destroyed official Labor Department documents before. He said he had not. We asked him how then did he justify destroying the Kotch-Crino report and attachments? DeMarco repeated that the documents had fulfilled their purposes. The report's recommendation to abolish SIS had been carried out, he said, making unnecessary further maintenance of the report.

DeMarco said that he did not make it a practice to destroy documentation when its recommendation for corrective action is carried out.

Such destruction of documentation, he said, had been ordered by him only in this instance.

Marty Steinberg asked DeMarco how the Labor Department could be expected to justify abolishing SIS to Congress if he had destroyed its reasons for doing so. To that question, DeMarco had no reply. He remained silent.

However, DeMarco did say that this was the very first time in his entire Government career when he had told investigators to prepare only one copy of their report of investigation and not to keep any file copies.

On August 18 and 19, 1980, when Mr. Steinberg and myself were attempting to find the Kotch-Crino report. Mr. Steinberg asked Robert Gallagher of the Solicitor's Office where Crino was and whether we could talk to him concerning the report. Gallagher said Crino could not be reached because his child was very ill, and Crino had taken off from work to attend to this.

We expressed our view that the two most logical people to have knowledge of the report would be the two preparers, Kotch and

Crino. Kotch had already denied on August 18 a copy of the report existed, and we wished to talk to Mr. Crino. Robert Gallagher told us that Crino would be out for some time and they could not get ahold of him. Gallagher assured us, however, that the Solicitor had checked every possible place in the Department of Labor and the report and attachments did not exist.

After the interview with Rocco DeMarco on August 19, we mentioned to Robert Gallagher that we were considering serving a subpoena for the report. Gallagher voiced strong objections, saying we would be embarrassing the Secretary of Labor. The subpoena was served on Robert Gallagher as a representative of the Department of Labor on August 20.

Now, on the following day, at about 1 p.m., on August 21, a Thursday, Robert Gallagher called me to say he had just received information indicating that a copy of what might be the Kotch-Crino report had turned up in Cleveland.

Gallagher said he would send John Kotch to Cleveland. In Cleveland, Kotch could look at the documents that were found and, if he identified them as the report he and Crino had written, he would bring the report back to Washington and it would be turned over to the subcommittee.

Gallagher said Kotch would leave for Cleveland the next afternoon, Friday, and would be back by Sunday. I told Mr. Gallagher that was unsatisfactory, that Kotch should go to Cleveland that day, Thursday, August 21, and return the report which was now under subpoena to us by Friday.

Gallagher said he did not think that was possible. But he said he would check with his superiors. Ten minutes later Gallagher called back to say Kotch would go to Cleveland that day and would try to have the report delivered to the subcommittee by Friday.

On Friday, Gallagher called the subcommittee again. But this time he talked to Chief Counsel Steinberg. Gallagher told him that he had, in fact, found what appeared to be a copy of the Kotch-Crino report in Pittsburgh. Steinberg told Gallagher that he was under the distinct impression that the previous day Gallagher had told Duffy that the report had been located in Cleveland and now he was telling us that the report was in Pittsburgh.

Gallagher stated to Steinberg that Crino, who was in Cleveland, could not be reached because his child was very ill, and therefore, the Department of Labor couldn't determine whether a copy of the report existed in Cleveland.

Chairman NUNN. Did you later ask Mr. Crino about his child being ill?

Mr. DUFFY. I will ask Mr. Steinberg. He can discuss that matter.

Mr. STEINBERG. Yes; we did, Senator.

Chairman NUNN. What was the answer? We have been told twice now in the brief testimony here Mr. Crino was unavailable because his child was ill. What did Mr. Crino answer when you asked him that question?

Mr. STEINBERG. He stated that during that period of time his child was not ill, at least that was not the reason he was not available, and that in fact he was available and was called at his home while he was on vacation by the Department of Labor and that in fact on August 25

and 26, he was actually in Washington, D.C., at the Department of Labor.

Chairman NUNN. So not only was the child not ill, but Mr. Crino was in town at that period of time?

Mr. STEINBERG. That is correct. Mr. Crino will be a witness today. Chairman NUNN. Go ahead.

Senator PERCY. Let me clarify what we subsequently found out. How recent was the child's illness? He has a child that was ill at one time?

Mr. STEINBERG. That is correct, Senator. The child had been ill during the time period Mr. Crino was assigned to Washington to prepare the Kotch-Crino report, as I understand it.

Chairman NUNN. Which was in 1979?

Mr. STEINBERG. That is correct.

Senator PERCY. That was a year ago the child was ill?

Mr. STEINBERG. That is correct. Mr. Crino will be a witness today.

Senator PERCY. From your understanding, then at the particular time that we have been told the child was ill, he was not ill.

Mr. STEINBERG. That is what he testified to in executive session. Senator PERCY. Thank you.

Mr. DUFFY. He further stated that Kotch had gone to Pittsburgh and looked in his files and found a copy of the report which we had subpoenaed. Steinberg reminded him that Kotch had told us on numerous occasions that he had not retained any copy of this report due to his instructions from his superiors, and Gallagher responded by saying something to the effect, well, maybe he forgot this one.

The report was delivered to the subcommittee staff offices late Friday afternoon, August 22.

On August 22, 1980, subcommittee investigators Raymond Maria and Lawton Stephens interviewed Robert J. Brown, the former Under Secretary of Labor.

Now an appointed official of the National Mediation Board, Brown said Eamon Kelly, a consultant to Secretary Marshall, oversaw the SIS in connection with the Teamsters Fund investigation. This assignment later was given to Frank Burkhardt, assistant secretary for Labor Management Services Administration. Burkhardt and his deputy, Jack Warshaw, reviewed for Brown the SIS Fund investigation, Brown said.

Brown was concerned about the progress of the investigation. Brown said the Solicitor's Office explained that the SIS effort largely was a civil litigation matter which would require months or years to cross-check and analyze large amounts of fund records and data.

Burkhardt and Warshaw left the Department early in 1979 and at this period, Brown said, both he and Secretary Marshall were still concerned about the progress of the fund investigation.

Rocco DeMarco replaced Warshaw as deputy assistant secretary for Labor Management Services Administration, and, Brown said, he directed DeMarco to "get on top of the fund program."

Brown could not remember, in his interview with Maria and Stephens, if he told DeMarco to submit his findings in report form.

Brown said DeMarco asked permission to bring in two or three field employees of Labor Management Services Administration to assist

him. Brown could not remember their names. But he authorized DeMarco to enlist the assistance of these employees.

About 3 or 4 weeks later, Brown said, DeMarco came to him with a written document, summarizing the findings of the review. Brown termed this document a "paper" and not a report because he believed it to be an administrative staff review.

Brown said he read the document and informed DeMarco that he did not think it was as professional as he had expected. Brown said he thought the document focused on personalities and recriminations, reflecting bitterness among SIS employees and strong antagonism between the personnel of the Labor Department Management Services Administration and the Solicitor's Office.

The squabbling aside, Brown said, the paper still documented confusion in the fund investigation. What had been intended had been a team concept, Brown said, and he felt now that to achieve progress in the inquiry the Assistant Secretary for Labor Management Services Administration, his deputy and the Solicitor would have to come up with a better way of handling the investigation of the fund. Brown felt these senior officials should become involved in a redefinition of the responsibilities and lines of authority within the fund investigation.

Brown said he told DeMarco that he would discuss the paper with Secretary Marshall. He said he also wanted the Solicitor, Carin Ann Clauss, to read it. Brown could not remember how many copies of the paper DeMarco brought to his office but he did recall specifically that a copy went to Clauss.

Brown said he believed this to be a sensitive document and told DeMarco not to circulate it. Brown did remember showing a copy to Robert Lagather, the assistant secretary for mine safety and the former deputy solicitor.

Brown met with Secretary Marshall and Clauss to discuss the paper. Brown said DeMarco may have been there, too. It was decided that a complete reorganization was called for, Brown said, adding that each participant at the meeting agreed that the document was of significant sensitivity so each returned his copy to DeMarco with the understanding that DeMarco would secure them.

Brown was asked if he or anyone else told DeMarco to destroy the documents. He said he did not remember if anyone had given that instruction.

On the other hand, Brown said, he was not prepared to contradict anyone who said that an order was given to destroy the documents. He said that if he had wanted to destroy them he would have torn them up at the meeting.

In addition, Brown said, he intended to have the new assistant secretary for Labor Management Services Administration see the document so it is unlikely he would have had it destroyed.

At his direction, Clauss drew up a reorganization plan which proposed to improve policy level involvement in the fund investigation, Brown said.

Brown said that because the fund effort was almost entirely a litigative matter it was proposed that most responsibility would be given to the Solicitor's Office.

Mr. Chairman, that completes my testimony on that matter. I would like, before I close, to present for the record copies of the staff interviews of Mr. Kotch, Mr. DeMarco, and Mr. Brown and ask that they be placed in the record, the public record of these hearings. Also I would like to place in the record copies of the staff memorandum relating to conversations between Department of Labor officials and the staff on the Kotch-Crino matter. I ask that these memorandums be sealed at this time and that they go through the proper review procedures that we have discussed prior.

Chairman NUNN. You have asked all of them to be sealed or just a portion of them?

Mr. DUFFY. I ask that all of the conversations that we had with the Department of Labor, with Mr. Gallagher, and others, be sealed at this time so we can review them further.

Chairman NUNN. Without objection, these will become part of our record as exhibits and appropriately numbered.

[The documents referred to were marked "Exhibit Nos. 13, 14, 15, and 16" for reference. Exhibit No. 13 is sealed and retained in the confidential files of the subcommittee. Exhibits 14, 15, and 16 follow:]

EXHIBIT No. 14

MEMORANDUM

August 22, 1980.

To: The file.

From: Raymond Maria.

Re: Interview of Robert J. Brown.

On August 22, 1980, Lawton E. Stephens and I identified ourselves as staff members of the U. S. Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs to Robert J. Brown and interviewed him concerning certain aspects of his former employment with the U. S. Department of Labor (DOL). Brown, who resides at 9311 Holly Oak Court, Bethesda, Maryland, voluntarily furnished the following information:

Brown presently is an appointed board member of the National Mediation Board, Washington, D.C. From March 17, 1977 to August 20, 1979, he was the Under Secretary of Labor, U. S. Department of Labor. For the prior ten years he was employed with the Employment and Training Administration of the Department of Labor. As Under Secretary he reported to the Secretary of Labor, E. Ray Marshall, and generally was responsible for supervising the various Assistant Secretaries' management of their respective Department of Labor programs.

After assuming the Under Secretary position, he learned of the existence of the Special Investigation Staff (SIS) which was under the supervision of the Assistant Secretary for Labor Management Services Administration (LMSA). He understood that SIS was organized pursuant to the Employee Retirement Income Security Act (ERISA) and was to investigate the Teamsters Central States Pension Fund with a two-fold purpose. The investigation was to identify abuses and pursue legally those committing abuses or violations with the Fund. The other purpose involved setting up a system of standards or conduct for the Fund to see that such abuses did not recur.

In Brown's capacity, he had almost no contact with individuals engaged in the line or day-to-day operation of SIS. When Brown first became Under Secretary, Secretary Marshall employed a consultant, Amon Kelly, to oversee the SIS activity and report to Marshall on SIS progress in the Fund investigation. When Frank Burkhardt became Assistant Secretary for LMSA, he assumed responsibility for the SIS activity.

Brown received quarterly reviews from all Assistant Secretaries on all programs. In such fashion, he was briefed on SIS's progress in the Fund investigation. SIS activity, however, was not discussed at each quarterly meeting. Both Burkhardt and Jack Warshaw, the Deputy Assistant Secretary for LMSA, reviewed for Brown the SIS Fund investigation.

Secretary Marshall and Brown often discussed the investigation of the Fund. It was their opinion that this was a high priority undertaking which should progress in a well-organized, expeditious manner. Brown and Secretary Marshall, however, shared an "administrative feeling" that the SIS investigation was not moving as fast as it should. In response to Brown's concerns about the SIS pace, the Department of Labor Solicitor's Office explained that the SIS effort largely was a civil litigation matter which would require months or years to cross-check and analyze voluminous amounts of Fund records and data.

In approximately January, 1979, Assistant Secretary Burkhardt left the Department of Labor. His departure quickly was followed by his deputy, Jack Warshaw, who retired suddenly. Vacancies at these policy level positions combined with a growing frustration with the difficulties of the long, drawn-out legal process, increased the Secretary's and Brown's concern about the overall progress in the Fund investigation.

With the departure of both Burkhardt and Warshaw, "Rocky" DeMarco became the Deputy Assistant Secretary for LMSA in Spring, 1979. He previously had been the Acting Inspector General for the Department of Labor.

Brown's concerns about the pace and progress of the SIS investigation of the Fund prompted him to seek a fresh sense of how things were going in what was a high priority project. He, therefore, asked DeMarco to "get on top of the Fund program," review it, and recommend changes if necessary. Brown could not recall if he instructed DeMarco to submit his findings in report form. He may have but just could not recall.

DeMarco returned to Brown and asked for permission to bring two or three LMSA employees to Washington to assist him with the review of SIS activity. DeMarco explained that these people formerly worked with him at LMSA and he had confidence in their abilities. Brown authorized DeMarco to use these employees, whose names Brown could not recall. Brown did not consider using people from the Inspector General's Office because he considered this review to be a management staff study with no evidence of wrongdoing.

Within three or four weeks, DeMarco completed the review of the SIS Fund investigation and produced a written document. Brown preferred to refer to this as a "paper," hesitating to call it a report because he believed it to be an administrative staff review.

De Marco presented this document to Brown, who read it immediately in DeMarco's presence. He recalled that this document consisted of approximately 15 to 20 pages and included summary information as well as results of interviews with SIS staff members. Brown could not recall if he instructed DeMarco to produce a specific number of copies of this "paper" or document prior to Brown's reading it.

Upon reading the review prepared for DeMarco, Brown's immediate reaction was that the document was not as professionally prepared as he had expected. In Brown's opinion, this document dealt too extensively with individual personalities and recriminations. It reflected bitterness among the SIS staff and strong antagonism between the LMSA people and the Solicitor's Office. Although it made inordinate reference to personalities, this "paper" documented the confusion that existed in terms of the responsibilities of LMSA and the Solicitor's Office in the Fund investigation. According to this review, LMSA and the Solicitor's Office were engaged in bitter competition rather than operating under a team concept. It was Brown's conclusion that there was a great need for "policy people," specifically the Assistant Secretary for LMSA, his deputy, and the Solicitor, to become involved in a redefinition of the responsibilities and lines of authority within the Fund investigation.

Brown told DeMarco that this review paper was something which he wanted to discuss with Secretary Marshall. He recalled telling DeMarco that he wanted the Solicitor, Carin Clauss, to read it also. Brown could not recall how many copies DeMarco had with him or later prepared but is positive that Clauss received a copy. Brown believed this to be a sensitive document dealing with individual personalities and instructed DeMarco to "hang onto it" and not circulate it. Brown recalled that he may have given his copy to Bob Lagather to read. Lagather was the Assistant Secretary for Mine Safety and formerly the Deputy Solicitor. Brown was interested in obtaining Lagather's in-put as to action to be taken as a result of this review.

Within a few days after reading DeMarco's review, Brown met with Secretary Marshall to discuss the review findings. Clauss attended this meeting,

and DeMarco also may have been there. Brown at this time was unsure of DeMarco's presence at that session. The participants discussed the findings which, in some instances, were less than complimentary of the Department of Labor Fund investigation and which reflected personality divisions and a lack of a cohesive organization within SIS. The review also contained inferences of technical failures and incompetence. It also may have commented on the General Accounting Office (GAO) review of the Department of Labor's Fund investigation, but Brown was unsure of this point.

After discussing these findings, it was the consensus that the current organization of the Fund investigation was not as effective as it should be and that the effort required a change. Essentially, it was believed that a complete reorganization was warranted. The participants at the meeting all agreed that the DeMarco review was a sensitive document and decided to collect all copies and give them to DeMarco to secure. Brown gave his copy to DeMarco after the meeting.

Brown positively recalled the decision to give the documents to DeMarco. He, however, could not recall if he or anyone else instructed DeMarco to destroy any or all of the documents.

Brown stated, however, that he could not contradict someone who might say that Brown ordered the documents destroyed. He emphasized, moreover, that he did not recall ordering such destruction. Brown believed that if he intended to destroy these documents, they would have been torn and discarded at the meeting. Although he cannot specifically recall a destruction order, Brown believed that such an order was unlikely because he wanted the incoming Assistant Secretary for LMSA to have the benefit of DeMarco's findings.

Brown could not ever recall ordering the destruction of documents, papers, or reports during his professional and government career.

After the meeting with Secretary Marshall, Clauss, DeMarco, Lagather, Al Zuck (Assistant Secretary for Administration), and Brown met several times to determine how they might effectively reorganize the Fund investigation. At Brown's direction, Clauss developed a reorganization plan which proposed to improve and escalate policy level involvement in the Fund investigation.

Because the Fund effort was almost entirely a litigative matter it was proposed that most responsibility would be given to the Solicitor's Office. LMSA was to be left with significantly less responsibility to pursue a limited number of areas which required investigation.

At about this juncture, Brown's appointment to the National Mediation Board was announced, and he left the Department of Labor.

On August 23, 1980, I, Raymond Maria, reviewed this memorandum of interview in entirety with Mr. Brown by telephone. After his corrections were incorporated, Mr. Brown stated that this memorandum was an accurate statement of his recollections.

EXHIBIT No. 15

MEMORANDUM

To: The file.

From: LaVern J. Duffy.

Re Interview of Rocco DeMarco.

On August 19, 1980, Marty Steinberg, Jerry Block,¹ and myself interviewed Rocco DeMarco, Deputy Assistant Secretary of Labor, Labor Management Services Administration (LMSA). Mr. DeMarco said he has held his present position since April 1, 1979. From October 1978 to April 1979, he was Acting Inspector General of the Department of Labor.

DeMarco said in February or March 1979, while he was Acting Inspector General, he met with Robert Brown, the Under Secretary of Labor. Brown said he had been asked by the Secretary of Labor to monitor the ongoing Labor Department investigation of the Teamsters Central States Fund investigation. DeMarco said Brown wanted him to conduct a management review. The review was to include the composition of the Special Investigations Staff (SIS) that

¹ Messrs. Steinberg and Block came into the interview after it was in progress about 10 minutes.

was conducting the investigation and determine what they were doing. He was told to look into the effectiveness of the relationship between the SIS staff, the Solicitor's Office and the Department of Justice. DeMarco said he was told not to look into the merits of the investigation.

DeMarco said he could not recall how John Kotch and Richard Crino were selected.

DeMarco could not recall any details of how Kotch and Crino were notified to come to Washington to meet with him. He didn't remember the date they met in his office. When they did meet, DeMarco told them they were to conduct a management survey that had been requested by Under Secretary Brown. He told them to look into what SIS was doing; the relationship between SIS, the Solicitor's Office and the Department of Justice. They were not to get into the merits of the investigation; they had a free reign.

DeMarco said when the question was raised by Kotch or Crino if this was to be an IG project, he told them no, it was under LMSA. Upon further questioning on the IG matter, after one of the early interviews brought up the issue, he went back to Brown and discussed it further. During that second meeting with Brown, it was decided by Brown it was not to be an IG project. DeMarco emphasized the decision was Brown's.

When the management review was completed, another meeting was held with Kotch and Crino, and it was decided that a memorandum would be prepared with findings and recommendations.

DeMarco's best recollection is that he received the memorandum in April 1979. He had the original. Although he insisted on calling it a memorandum and not a report, he admitted it contained all the original interviews.

DeMarco said the memorandum contained the conclusion the SIS team had great internal problems and that the acting director was incompetent. He said as far as the SIS investigation was concerned, it was confined to litigative support. It was recommended that the SIS be abolished and the Solicitor's Office take over for them.

DeMarco said he took the original memorandum to Under Secretary Brown's office. A short time later, he met with Jack Ballard and Solicitor of Labor Carin Ann Clauss. DeMarco recalls another person was present at the meeting but he could not recall who it was. Brown discussed the report, DeMarco said. DeMarco remembers at this meeting, Clauss had a copy of the report—not the original. Who made the copy for Clauss, DeMarco does not know. Nor does he know if other copies were made by Brown when the original was handed to him. DeMarco cannot recall what was said in this meeting about the report. Brown did say he would talk to Secretary of Labor Marshall about its contents. At the end of the meeting, Carin Clauss handed to DeMarco the copy she had. She said to DeMarco, when she handed it to him, "dispose of it," she had no more use of it. DeMarco destroyed this copy of the report at that time.

In a later meeting with Brown, Brown gave back to DeMarco the original memorandum with attachments.

DeMarco said he kept the original memorandum with attachments until the fall of 1979 and then gave it to William Hobgood, the Assistant Secretary of LMSA. In March 1980, Hobgood gave back the original with attachments to DeMarco. Around April 1980, DeMarco said he then destroyed it. He said it was destroyed about the time the SIS was abolished. When asked why he destroyed it, he said it had served its usefulness. Mr. Steinberg asked DeMarco if he had ever destroyed official Labor Department documents before. He said he had not. Mr. Steinberg asked him how he could justify destroying the report. He said again it had no more use; the recommendation in the report to disband the SIS had been carried out. Upon being asked, DeMarco stated that other reports, memoranda or even correspondence that had "no more use" had never been destroyed by him. Steinberg then asked him if an investigation was conducted by the Congress on SIS, and the Labor Department was asked why the SIS was abolished, would not the critical management review report of SIS that was destroyed be crucial in justifying the action taken by the Labor Department with regard to SIS? DeMarco had no answer or comment.

DeMarco stated, upon being questioned, that he never on any one occasion, except this one, has told investigators to prepare only one copy of a report and not to keep any file copies.

EXHIBIT No. 16

MEMORANDUM

To: The file.
 From: Marty Steinberg.
 Subject: Interview with John Kotch.

On August 18, 1980 LaVern Duffy and myself interviewed Mr. John Kotch concerning a report he and Richard Crino prepared in 1979 concerning the Labor Department's internal investigation of the Teamster Central States Fund. Mr. Kotch stated that in 1979 he was the Deputy Area Administrator in Pittsburgh, Pennsylvania. As of March, 1980 he was the Chief of Branch Investigations of LMSE of the Department of Labor. Mr. Kotch stated that in January 1979 he received a call from his supervisor in Philadelphia telling him that he would be placed on a special assignment in Washington to look into the SIS operation. Mr. Kotch states that he learned another individual, Mr. Richard Crino, who was the Deputy Area Administrator in Cleveland, had been assigned to this same project. Mr. Kotch stated that he didn't receive any other instructions concerning this matter until he reported to Rocky DeMarco on February 4, 1979 in Washington, D.C. He stated that he believed that Mr. DeMarco was in transition back to LSMA from a prior position as Acting Director of the Inspector General's Office. He stated that at this February meeting he, Crino, and DeMarco were the only persons present. He stated that DeMarco told him that they were to report only to him, DeMarco. Mr. Kotch stated that, although he couldn't remember all of the objectives of this inquiry, he does remember that Mr. DeMarco told him to:

- (1) Review the internal operation of SIS in terms of problems;
- (2) Review the relationship between SIS and the Solicitor's Office;
- (3) To review the DOL referrals of criminal matters to Department of Justice;
- (4) To review the current and future workload of SIS; and
- (5) To make recommendations and findings.

Kotch related that DeMarco told him that GAO was presently reviewing the DOL's Teamster Central States Fund Investigation. DeMarco told Kotch that the parameters of this "management review" would be to interview current employees of SIS and the Solicitor's Office. Kotch states that DeMarco told him that the review was to include present SIS operation and not the history of the SIS investigation. DeMarco told Kotch that Under Secretary Brown wanted this report.

Kotch states that DeMarco gave them some general background on the investigation and the lawsuit including various background memorandums. Mr. Kotch does not remember specifically who he was asked to interview, except he does remember that DeMarco requested him to interview:

- (1) Mr. Ballard, Deputy Administrator of PWBP.
- (2) Mr. Perkins, Acting Director of SIS.
- (3) Mr. Baker, Mr. Shevlin and Mr. Segal, employees of SIS.
- (4) Robert and Monica Gallagher (no relation) the Solicitor's Office.

Kotch states that Mr. DeMarco told them that their interviews should be handled in the strictest of confidence and they should not discuss this assignment with anyone. Kotch states that Mr. DeMarco told them to write up reports of interviews but they were to be given only to him, DeMarco. Also DeMarco instructed them not to keep file copies or working copies of any interviews or report that they prepared.

Kotch states that they were given two or three secretaries and assigned an office to work out of LMSE. They were instructed to put all papers in a locked-up file overnight.

Mr. Kotch stated he did not know why this matter was not given to the Inspector General considering the fact that the Inspector General has jurisdiction under the Inspector General Statute. He said he raised the question about this issue in a second meeting with DeMarco. It was thus resolved by DeMarco; it was not to be an Inspector General's investigation. DeMarco told Kotch that they were working for LSMA. Mr. Kotch stated that he did not interview employees that had been with the DOL prior to February 1979. Mr. Kotch stated that he did not remember if Mr. DeMarco requested him to ask DOL employees about the GAO inquiry.

Mr. Kotch states that he was never told the ultimate purpose of this inquiry; and, to this day he does not know the purpose of this inquiry. Mr. Kotch stated that since he gave his copy, the only copy of the report and interviews, to Mr. DeMarco; he has not seen those documents. Mr. Kotch stated the only findings he could remember were as follows:

- (1) The SIS investigation was extremely complex.
- (2) It was extremely difficult to follow the events of the investigation.
- (3) SIS was currently being mismanaged under its present direction (Kotch stated that they made no judgment about the prior operation of SIS).
- (4) That the relationship between SIS and the Solicitor's Office was not good, and the Solicitor's Office did not consult with SIS's staff concerning the lawsuit or investigation.
- (5) That SIS employees complained about the DOL operation, and that from his memory they discussed their frustration with the Solicitor's Office, the mismanagement of SIS and the lack of progress in the Teamster's Fund case. He was told cases were not being investigated. He mentioned the name of Siegel and Shevlin as being good investigators.
- (6) That they found the SIS staff to be doing work only in support of litigation, and that the Solicitor's Office seemed to be running the entire show.
- (7) Everything was completely disorganized.
- (8) That referrals had been made between DOL and Justice but that there was no formal method for referrals and they suggested a procedure for official referrals.

In this regard he stated that many SIS staffers were concerned about the lack of information given to DOJ. Kotch states that no effort was made to inquire of the DOJ concerning this matter.

Kotch stated that he could not remember all of the recommendations made; but, he does recall that he recommended that SIS be abolished and investigators be put under the Solicitor's Office. Mr. Kotch stated that SIS had inadequate staff and little, if any, training. Mr. Kotch stated that he did not review and was not asked to review the actions of the Solicitor's Office with respect to the Teamster's Fund investigation.

Mr. Kotch stated that he completed a final memorandum for Mr. DeMarco in late May 1979. He states that the memo was approximately 15-20 typed pages with all reports of interviews attached. As best as he can recall, it was entitled, "SIS Review" or "SIS Management Review". Mr. Kotch states that as he was told to do, he gave the only existing copy to Mr. DeMarco and kept no file copies. Kotch states that DeMarco asked him to prepare a brief paper (summary of the report) which he did and gave the only copy to Mr. DeMarco. Kotch stated that neither he nor Crino briefed anyone concerning the report.

Kotch stated that when he was recently asked about the report by Mr. Duffy, he called Mr. DeMarco to attempt to retain a copy to review. He stated that Mr. DeMarco told him that he had read the report and had given it to Secretary Brown, Solicitor Clauss and possibly Mr. Ballard. Mr. DeMarco told Kotch that after all copies had been returned to him, he destroyed them, stating, "The report had served its usefulness." Mr. Duffy asked Mr. Kotch if he had told anyone that "he could understand why the report was destroyed because it was so embarrassing" to the DOL. Mr. Kotch replied that he may have had a discussion with other people about the destruction of the report; and, although he doesn't remember his exact words, he does remember that he would have said the report was not very pleasant or complimentary concerning the DOL. Mr. Kotch stated that it was highly unusual to be required to make only one copy of a report or interview memorandums. Mr. Kotch stated that it is highly unusual to destroy a government report; and, if the decision had been his, he would not have destroyed the report. Mr. Duffy asked Mr. Kotch if, in fact, he had inquired of SIS staff as to what GAO was doing. Kotch replied that he may have asked SIS staff what GAO was interested in.

Mr. DUFFY. I wonder if I could add another point, Mr. Chairman. With respect to this report, we received information that one of the SIS employees that did not testify before our subcommittee, that he—I don't know the specific date—filed a freedom of information request for a copy of this report. I don't know the specific date. Maybe Mr. Steinberg recalls, but we can get that for the record. But they did not

turn up a copy of that document at that time. That was prior to our making an effort to obtain this report.

So there was a search made at that time within the Labor Department for this document. I thought I should make that a part of the record.

Chairman NUNN. Thank you. Mr. Duffy, you have been with the subcommittee how many years?

Mr. DUFFY. Mr. Chairman, I am going on my 28th year with the subcommittee. If I may, I would like to make a personal observation about this case. I have been involved in a large number of oversight investigations of the executive agencies, and this may very well be one of my last. But I want to say this: In all of my experience with this subcommittee, I have never seen such obstructionist tactics utilized by an executive agency against this subcommittee that was trying to carry out its oversight responsibility.

And I can recall exactly when it all started to happen. We were moving very well during the first week in August of this year on this investigation when we discovered information on this report, then it turned around completely.

We had to subpoena the document. We had to subpoena individuals to testify in executive session, which you have stated here is unprecedented. We had to threaten subpoenas to have witnesses from the Labor Department testify in public session on this matter. This issue was resolved in the 11th hour between the Secretary and this committee. I think it is shocking, and I think it is sad.

I would like to, if I may, make a personal comment. I want to personally pay tribute to you, Senator, for having the guts to go forward with this investigation. I don't know if there was, or was not, pressure on you not to go forward on this matter. Also, I want to congratulate the ranking minority member of this subcommittee, Senator Percy, for going forward with this case.

I think it took a lot of guts and tenacity. The same applies to the chief counsel as well. I think it is an important investigation, and should go forward. And I think we have conducted it in a very responsible way. That is all I have to say, Mr. Chairman.

Chairman NUNN. Thank you, Mr. Duffy.

Senator PERCY. Mr. Chairman, this subcommittee—I don't know how many years I have been on it, a long time—has conducted itself with Senator McClellan, Senator Sam Ervin, you Senator Nunn, Senator Jackson, in a totally bipartisan way. I made the observation to you and other committee members and the staff that all the way through this there were many, many different points when anyone who had a partisan feeling, "Oh, let's not get this in an election year," and so forth, could have delayed it, thrown sand in the gears and held it up.

But there was no question whatsoever as to what the duty and responsibility of this subcommittee was, and I think we have a duty and responsibility to our staff. These men and women who work with us are professionals. They take tremendous pride in their work. I know of no instance in the Congress or in the private sector where more people have put more time in, nights, Sundays, Saturdays. We could reach them any time, through the weekends, in the last few months

down here, including yesterday. There has been no partisanship and only an attempt to be utterly fair and just. But I share the frustration of the staff and minority in this regard.

Time after time after time we were stonewalled. Every effort was made to obstruct our duty and our obligation. It is therefore time that we put it right on the record, not allowing whitewash to go on in this kind of a case, let the chips fall where they may. I want to commend you, the majority and particularly our staff on both sides.

Chairman NUNN. I concur in that, Senator Percy, and again repeat this has been a bipartisan investigation. We have been given oversight under really two different administrations, both Republican and Democrat. I would say we never have had any partisan disagreement at all. It is the duty of this subcommittee. I trust we will not. I want to thank the minority staff for their total cooperation.

Senator COHEN. Let me just ask one question. Mr. Duffy, is it your opinion that the problems encountered in requesting that information be taken today or as part of these hearings in executive session is a part of a continuing plan of coverup or obstruction of justice? Is that what you are suggesting? Senator Nunn indicated before that we seem to be caught in a crossroad. On the one hand testimony is taken in executive session. When we decide to go public, there is a suggestion raised that if we take this matter in open session it might very well jeopardize litigation currently before the courts.

As Senator Nunn indicated, it puts us in an impossible situation. But you seem to indicate or intimate that this crossroad as such is part of an overall plan of delay or obstruction or hindrance of the investigation of this committee. Is that your personal judgment?

Mr. DUFFY. That is my judgment.

Senator PERCY. Mr. Steinberg?

Mr. STEINBERG. I concur.

Chairman NUNN. I want to make it clear for the record that there is certain information in this that deals with the litigation. The subcommittee has looked at those carefully. We are going to have a subcommittee meeting and discuss those. There are legitimate reasons for keeping certain of this information in sealed exhibits. Some of it is raw evidentiary matter that are allegations against individuals and we do not have hard proof on that.

This is not any kind of criminal proceeding here. So there are legitimate reasons to have a good bit of this information not aired in public.

But that was the very point we tried to make 5 weeks ago with the Labor Department, and were told explicitly that they would insist only on public hearings and that they would not furnish their employees to testimony in closed session and strangely enough, one of the letters I have already referred to Ms. Clauss at the same time said they would insist on public hearings and said in the same letter if these things came out in public hearings that it would be very damaging and unfair to individuals which I found to be an astounding inconsistency in the same letter.

There are legitimate reasons not to have all of this aired in public at this time, but the position of the Labor Department has made it not only difficult, but almost impossible for this subcommittee to handle this matter in accordance with its usual procedures and, frankly, it

makes it more difficult for us to handle it with total and complete fairness to all individuals involved. I certainly hope that we succeed in doing that, but there have been a number of obstacles here that have made that mission very difficult.

Senator PERCY. Mr. Chairman, one other thing. We have a responsibility in this particular overall committee to do everything we can to improve the efficiency and effectiveness and the competence of Government. It is Government operations which is our principal overall charter. Speaking for myself, I have seen a demonstrated incompetence in the Department that I think must be taken into account and certainly I want the Secretary to be on notice that I will try to reserve judgment until he has completed his testimony. I have seen a considerable amount of incompetence in this executive branch Department, about as much as I have seen in any department that I have had anything to do with. I think, therefore, the responsibility is now on the Department of Labor to demonstrate that it will in a forthright matter carry forward with this investigation, but do so with the degree of competence that should be expected of an executive branch of Government.

Chairman NUNN. I have a few questions for the witnesses. Does the Kotch-Crino report give any explanation as to whom was responsible in the hierarchy of the Labor Department for failing to properly monitor the operations of SIS? Mr. Steinberg?

Mr. STEINBERG. Yes, Senator. The report indicates that at the very early stage in the investigation the Solicitor's Office took over the responsibility for the operations of SIS.

Chairman NUNN. Does the Kotch-Crino report give any explanation why a permanent Director of SIS was not appointed after Lawrence Lippe resigned in 1977?

Mr. STEINBERG. No explanation was given.

Chairman NUNN. Was SIS set up only to investigate the Teamsters Central States Fund?

Mr. STEINBERG. As we understand it the SIS was set up to investigate all complex trust fund investigations, the type of which the Teamster investigation was one.

Chairman NUNN. So this was just one of several matters they were investigating?

Mr. STEINBERG. That is our understanding.

Chairman NUNN. Did the Kotch-Crino report—

Mr. STEINBERG. I might point out that apparently they never got beyond the Teamsters fund investigation.

Chairman NUNN. Did the Kotch-Crino report recommend the SIS be abolished?

Mr. STEINBERG. Yes. It did.

Chairman NUNN. Has that been done?

Mr. STEINBERG. Yes. It has.

Chairman NUNN. When was that recommendation made?

Mr. STEINBERG. The recommendation was made shortly after the report was finished on May 11, 1979 and I believe it was carried out in May of this year.

Chairman NUNN. One year later?

Mr. STEINBERG. I believe so, Senator.

Chairman NUNN. Was there any prior recommendation that we have along that line that SIS be abolished or is this the first recommendation we know about?

Mr. STEINBERG. No. Senator, in March and April 1978, approximately a year before the report was prepared a very similar if not the same recommendation was made to the Secretary to reorganize SIS.

Chairman NUNN. By who?

Mr. STEINBERG. It was made by Mr. Ballard and Mr. Burkhardt.

Chairman NUNN. When SIS was abolished in early 1980, what happened to its staff?

Mr. STEINBERG. According to the reports that we have been privy to, the SIS staff was absorbed into what is now called Special Litigating Section of the Solicitor's Office.

Chairman NUNN. How would you characterize—we have already been into that far enough, I think. What is the impact, Mr. Steinberg, of the failure of SIS to pursue third-party investigations that were stopped back in late 1976 and are now being investigated in the current civil suit under discovery?

Mr. STEINBERG. Mr. Duffy has probably been involved in many more investigations than I have, but from my standpoint I have been involved in a number of investigations, criminal and civil. There is no way to adequately trace moneys that are misappropriated from labor unions unless—labor union trust funds—unless you pursue third-party investigations.

Chairman NUNN. What do you mean by third-party investigations?

Mr. STEINBERG. Third-party investigations in this case apparently would have meant going anywhere besides the fund itself to get your information. In the very first instance, you have to question the integrity of the information received from the very entity that you suspected of wrongdoing. So for that reason alone you should have pursued a third-party investigation. But in addition to that, the other reasons were that you have to adequately trace the flow of the money as it left the fund.

Moreover, there is no legitimate way to pursue the culpable third parties; that is, those individuals who received the benefit of this money, the Glicks, the Malniks, the Shenkers without a third-party investigation. Of course, you can't adequately detect criminal violation and in my opinion you can't adequately prepare to be referred to any other appropriate agency without a third-party civil or criminal litigation without a third-party investigation.

Chairman NUNN. Then the people who allegedly have been involved with organized crime that over a period of time have been among the primary recipients of loans from this fund, would have been the ones investigated in the third-party investigations had they been carried out?

Mr. STEINBERG. That is correct. It is our understanding, Senator, that those exact parties have not been named in the Department of Labor's civil suit.

Chairman NUNN. They would have been the primary recipients of the loans. Is that right?

Mr. STEINBERG. The Labor Department's own records reflect that the majority of money misappropriated in the fund went to only six individuals or entities.

Chairman NUNN. That is what you mean by third-party investigations never being completed?

Mr. STEINBERG. That is correct.

Chairman NUNN. That is what the SIS people who testified here in our previous hearings meant when they said they were not permitted to go forward and complete those SIS investigations?

Mr. STEINBERG. That is correct. I believe Mr. Duffy could amplify.

Mr. DUFFY. I would like to add, Senator, that the GAO testified that fund investments totaled \$1.3 billion. Of that amount, \$902 million was real estate mortgages and collateral loans consisting of 50 loans made to 360 borrowers. Labor targeted 82 of the loans valued at \$502 million for review. Its analysis showed that about half of the 82 loans valued at \$375 million was made to six entities or persons. I think what we are trying to say—

Chairman NUNN. \$375 million would be what percentage of the whole?

Mr. DUFFY. That would be almost half; half of the assets. It seemed to me that would have been a fruitful area to pursue. I would like to add one other thing to what Mr. Steinberg said. We should remember that when Mr. Lippe and Mr. Seidel testified before this subcommittee that they intended to target 82 of these loans way back in November and December 1976 to do the third-party investigations. That did not go forward at that time.

It was stalled with some third-party investigations prior to the suit being filed in February 1978 or in the latter part of 1977. We had some testimony on that. But they were not completed.

What we are finding out now, Senator, the third-party investigations that they suggested be moved forward in 1976 are now being pursued in the civil suit. So we are talking about a lapse of time. We are talking about an audit trail that certainly is dimmed through the period of time if not dried up. We are talking about witnesses that may be dead. We are talking about witnesses' memories maybe have lapsed. So it seems to me in any complex financial investigation you have to pursue the leads quickly and timely, thoroughly. This was not done. They planned to do it in 1976. Now they want to do it now. And they are doing it now.

Chairman NUNN. Four years later?

Mr. DUFFY. Yes, sir. I think that is sad.

Chairman NUNN. Did the Labor Department ever fully occupy all the positions that were authorized by Congress for this investigation?

Mr. DUFFY. It did not and I think the total amount of staff personnel that they had at any one time was 28. I think they were authorized 45. Is that correct, Mr. Steinberg?

Mr. STEINBERG. That is correct.

Chairman NUNN. The maximum number they ever had?

Mr. DUFFY. Twenty-eight. I think GAO testified to that.

Chairman NUNN. At the maximum peak of staffing they had 28 when they were authorized 45?

Mr. DUFFY. That is correct.

Senator COHEN. Could I ask a question as to whether or not either of these two gentlemen feel it was a political decision made in October 1976, when the SIS scope of the investigation was narrowed at that time, that tended to coincide with the 1976 elections?

Mr. DUFFY. The decision coincided. I am not going to say there was any correlation.

Senator COHEN. Is there any evidence suggesting that?

Mr. DUFFY. We have had some testimony in the record on that matter. I think Mr. Seidel may have testified on that. That was one of the possible options.

Mr. STEINBERG. We have no evidence in the record that I believe, direct evidence, to prove there was any political decision. There were philosophical decisions by people higher in the Labor Department apparently in both administrations not to go forward with certain aspects of this investigation.

Chairman NUNN. I would say that all that I have seen indicates that a great number of the people making the decisions in this administration were also involved in the previous administration. I think generally speaking I don't think we have evidence of a partisan nature in this whole episode. I think many of the problems were already there, many of the problems weren't corrected and this is a continuing problem with the Labor Department that seems to perpetuate itself regardless of who occupies the White House and I must say in fairness to the Secretary, regardless of who the Secretary of Labor is in this case.

Senator PERCY. Mr. Chairman, just two quick questions relating first to the administrative subpoenas. Can you be as effective pursuing third parties through civil discovery as before when they had use of administrative subpoenas?

Mr. STEINBERG. Absolutely not, Senator. First of all, you are limited to the parties on the subject matter in the suit, which in this case may or may not limit them to the 15 named transactions in the civil suit filed in February 1978. Second of all, the evidence indicates that this very reason—refusal to serve the administrative subpoenas by the Solicitor's Office—was given time and time again to the investigators as a reason for not pursuing this third-party investigation.

There is no adequate way to investigate a matter through civil discovery in my opinion. Others may have a different opinion.

Senator PERCY. I would like one last question.

All during this period the Labor Department represented to us that a thorough, ongoing investigation was being carried on. Now, we discover that the recommendation was made to abolish the special investigative staff within the Department of Labor. And yet it took a year for that decision to be effective. About how many people worked on the special investigative staff—the SIS—30 or 40 total people?

Mr. STEINBERG. There were at the peak approximately between 28 and 30. They were authorized 45.

Senator PERCY. How many professionals did that include?

Mr. STEINBERG. I believe they had about 15 professionals.

Senator PERCY. During that 1-year period, from the time the recommendation was made to the Secretary's Office to the time that the SIS was abolished, what did those people do? In addition, did the Secre-

tary's Office have authority without reference to us to abolish the department?

Mr. STEINBERG. Senator, according to the Department of Labor's own employees, a substantial amount of time during the entire investigation, let alone the last year, was spent in menial tasks Xeroxing and filing and not spent investigating the fund.

Senator PERCY. So clerical work actually was being done by professional people who were supposed to be engaged in an investigation which we would have coordinated if it were not carried on by the Labor Department in a diligent way?

Mr. STEINBERG. That is the testimony we have received.

Senator PERCY. Thank you very much.

Senator COHEN. The mere fact that SIS was abolished is really not evidence that there was either misfeasance or malfeasance, per se. In fact, there could have been a legitimate reason to reorganize SIS. Is that not correct?

Mr. STEINBERG. That is correct. There could have been a legitimate reason to reorganize.

Senator COHEN. That particular action, the abolition of SIS itself, would not necessarily lead to any conclusion. What you are suggesting is that the culmination of factors which we have discovered since that time, raises it to a different level. Senator Percy said that he saw a pattern of, I am paraphrasing, incredible incompetence. The question is not only one of incompetence. It seems to me you have had laid before this committee something much sterner and harsher than professional incompetence. It is raised to a level of malfeasance, deliberate obstruction of justice, and the possible destruction of evidence that could be used in criminal prosecution. So it is not simply a matter of incompetence, but rather a question of at what point in time is it raised to that of malfeasance?

Can you tell us in your judgment where that shift occurs from simply being a case of too few people undertaking too much of an investigation, inadequate personnel, inadequate supervision, bureaucratic snafus, and competition between the Department of Labor and the Department of Justice? At what point in time does it shift from that to an almost deliberate attempt to frustrate, block, or nullify any serious and competent investigation of the nature of the misuse of those funds?

Mr. STEINBERG. Senator, that is a question that we have been wrestling with ever since we got into this investigation. It is very difficult to determine the motives in the people's minds who made the decisions and it is very difficult to draw the line between sheer incompetence and something else. And I believe that we should let the people who have made those decisions testify and make our decision after we hear their testimony.

Senator PERCY. Senator Cohen, I think the record will show that in addition to all of the other possible motives I asserted it was incompetence. This case really seems to sum up all the frustrations people have against Government. It is a classic case.

Chairman NUNN. Any other questions? Senator Chiles?

Senator CHILES. No.

[The complete statement of Mr. Duffy follows.]

PREPARED STATEMENT OF LAVERN J. DUFFY, GENERAL COUNSEL, SENATE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. Chairman, in June of 1978, the Subcommittee asked the General Accounting Office to examine the Labor Department's investigation of the Teamsters Central States Pension Fund. The General Accounting Office began such an examination. Another investigation was begun by the Labor Department itself as it examined its own internal operations in carrying out the Pension Fund inquiry. It is that internal investigation which is the focus of my testimony.

The Special Investigations Staff (SIS) was created in the Department of Labor in December of 1975. SIS was given the responsibility for carrying out investigations of employee benefits plans suspected of being in violation of the Employee Retirement Income Security Act (ERISA).

At its creation, SIS was organizationally within, and was expected to report to, the Labor Department's Pension Welfare Benefit Program. The official designated to oversee SIS was PWB Deputy Administrator J. Vernon Ballard.

SIS was unique as an investigative unit in that it had the dual duty to investigate alleged wrongdoing and then to litigate it as well. Reflective of this dual responsibility was the appointment of the first SIS Director, Lawrence Lippe, an attorney who was to supervise investigations and direct the preparation and litigation of civil cases.

Cases in which SIS developed evidence of criminal wrongdoing were to be referred to the Department of Justice for possible prosecution.

In exercising its investigative and litigative responsibilities, SIS was staffed by lawyers, auditors and investigators. There was also a clerical support staff.

Close cooperation between SIS and the Department of Justice was anticipated, indicating that there was an assumption in both Departments that evidence of criminal wrongdoing would be developed.

Accordingly, in December of 1975, officials of the Labor Department and the Justice Department agreed to a Memorandum of Understanding to insure cooperation between the two Departments.

However, as will be seen, hoped-for cooperation between SIS and Justice was not achieved.

Instances of alleged criminality were referred by SIS to the Justice Department on a haphazard basis and not according to established procedures.

SIS instead of playing a major role in the Teamsters Fund investigation merely became an investigative support arm of the Labor Department's Solicitor's Office.

The first assignment given SIS was to investigate the Teamsters Central States Pension Fund. SIS later investigated the Teamsters Central States Health and Welfare Fund as well.

Because of Congressional interest, the SIS inquiry into the pension fund attracted the attention of senior Labor Department officials.

The pension fund investigation had been going on for about four years when, in late 1978, Robert J. Brown, the Under Secretary of Labor, became concerned about it.

Brown was interviewed on this on August 22, 1980, by Subcommittee staff Investigator Raymond Maria.

It was Brown's opinion that the investigation of the fund had shown insufficient progress.

Under Secretary Brown decided an investigation was called for.

Brown wanted to know if the pension fund investigation was proceeding properly.

Brown gave this assignment to Rocco (Rocky) DeMarco, the Deputy Assistant Secretary for Labor Management Services Administration. DeMarco was in transition from his previous post of Acting Inspector General of the Department.

To conduct this investigation, DeMarco enlisted the assistance of two Labor Department officials from field offices. Both Deputy Area Administrators, they were John Kotch of Pittsburgh, Pennsylvania and Richard A. Crino of Cleveland.

Kotch and Crino began their investigation on February 26, 1979, and completed it two months later on April 23.

They reported on their findings in a memorandum of May 11, 1979, to DeMarco.

The memorandum is 23 pages long. It is typed single space on regular size paper.

The Subcommittee obtained from the Labor Department a copy of the memorandum through service of a subpoena.

Initially, when the Subcommittee requested this report prior to the service of a subpoena, the Labor Department informed the Subcommittee that all copies of the memorandum and attachments had been destroyed.

The attachments to the report are several reports of interviews conducted by Kotch and Crino.

The memorandum by Kotch and Crino is, for all practical purposes, a report of investigation. It will be referred to as the report in this presentation.

The report is critical of the manner in which the SIS investigation was managed.

It is the Subcommittee staff's wish to be allowed to summarize the report for the Subcommittee at this time.

The information in the report which is the most damaging to the Labor Department has to do with the mismanagement and inefficiency of the SIS special unit that was charged with the responsibility to investigate the Teamsters Central States Pension and Health and Welfare Fund.

The internal operations of SIS were in disarray.

Suspicion, hostility, incompetence and in-fighting were common.

The Solicitor's Office seemed to resent the existence of SIS and to oppose its mission, which was to investigate wrongdoing and to litigate in civil proceedings.

At every turn, the Solicitor's Office sought to prevent SIS from carrying out its mission.

Ultimately, the Solicitor's Office succeeded—and SIS was removed from most of its investigative function and all its litigative function.

SIS became an investigative support arm for the Solicitor's Office.

As a support organization for the Solicitor's Office, SIS was reduced not only in jurisdiction but in status.

The Solicitor's Office wanted SIS under its control. But once it had control, it gave SIS virtually no guidance or constructive direction. What SIS did receive from the Solicitor's Office was diminished and demeaning assignments.

In addition, the Labor Department itself, at the highest levels, seemed uncomfortable with SIS and its original mission and apparently made no effort to object while the Solicitor's Office narrowed its jurisdiction and neutralized its effectiveness.

The first Director of SIS, Lawrence Lippe, resigned in October of 1977.

Lippe was replaced by Norman Perkins, who was not an attorney but had been Chief Auditor of SIS.

Perkins was designated Acting Director and never was given the position on a permanent basis.

Kotch and Crino asked persons at SIS and the Solicitor's Office for an evaluation of Perkins' performance. It was the Consensus of opinion that Perkins did a poor job. The report said it was a commonly held view that Perkins should not be named permanent Director of SIS.

In his own defense, Perkins said he had too much administrative work to do, forcing him to neglect his investigators and auditors and their problems.

Perkins complained of a lack of qualified applicants for vacant positions in SIS.

He said the Solicitor's Office prevented him from doing the kind of investigations he thought needed to be done.

Perkins conceded he was not popular with his staff.

Perkins turned over considerable responsibility for investigation to his three team leaders, Ray Siegel, Robert Baker and Edward Shevlin.

Each of these men, Perkins said, was ineffective. Kotch and Crino concluded:

All three team leaders have very strained relationships with Perkins. This review disclosed no evidence of a cohesive management team in terms of cooperation, respect or operational ability.

The professional staff complained of having to do clerical tasks such as filing and photocopying and other clerical duties.

Perkins acknowledged that the investigative files for the pension fund were poorly managed.

Personnel problems were continually cited as undermining the effectiveness of SIS.

Kotch and Crino concluded their finding on the administration and management of SIS this way:

SIS is seriously hampered by lack of leadership and supervision, by mismanagement and by poor administration. Serious morale problems and person-

ality conflicts exist. Although personnel are generally competent, notable staff weaknesses and training deficiencies persist. There is no evidence of a cohesive management team in terms of cooperation, respect or operational ability. Future SIS effectiveness is doubtful.

When SIS was established in December of 1975, the unit was to do both investigative work and then prepare and litigate cases of civil violations of ERISA. Criminal cases were to be referred to the Justice Department.

When the first SIS Director, Lawrence Lippe, resigned in October of 1977, the two-pronged mandate—that of investigation and then litigation—was abandoned.

According to Kotch and Crino, with Lippe out and Norman Perkins in as Acting Director, SIS lost all litigation responsibilities and its investigative function was severely restricted.

Instead of being an independent investigative unit charged with the duty to look into allegations of benefit plan wrongdoing, SIS was now assigned the role of being an investigative arm of the Solicitor's Office.

Another situation that adversely impacted on the Department of Labor investigation of the Teamster Fund was the civil suit brought by the Department against the trustees of the Teamsters Central States Pension Fund.

In December of 1976, the Department of Labor had decided to move forward with the civil suit charging the Fund's board of trustees with fiduciary breaches that had resulted in financial losses, losses which the trustees were held to be liable for.

It was also decided at this time that SIS would assist the Solicitor's Office as it prepared the suit.

This decision to assign SIS exclusively to the Solicitor's Office ended the broad mandate originally assigned to SIS.

Kotch and Crino explained it this way:

Although the SIS early investigation reviewed a variety of possible issues, a policy decision by SIS leadership in October 1976 focused investigative efforts and resources solely on investment loans as the most potentially productive area. At that time considerable basic accounting had been completed; and areas such as trustee and administrative expenses and public relations costs although completed were disregarded to concentrate on investment loans.

SIS started preparation for this litigation in December 1976 and all SIS efforts since that time have dealt exclusively with investment loans and real estate transactions.

On February 1, 1978, in Federal District Court in Chicago, the Department filed its civil suit against the fund's former trustees.

The filing of this suit "effectively terminated all SIS investigation into the pension fund," the report said, adding: The function of SIS since that time (February 1, 1978) has been for the most part restricted to supporting this litigation.

The report said that from that point forward SIS made no further inquiry into other areas of suspected questionable conduct such as trustee and administrative expenses.

The report said earlier preliminary investigative results were never written up in a comprehensive report of investigation.

SIS suggestions for expanded investigation were turned down by the Solicitor's Office, Kotch and Crino said, explaining that it was the understanding of SIS that the Solicitor's Office wanted SIS to support the one major civil litigation suit and that was all it was supposed to do.

The Solicitor's Office never acknowledged having given such a directive to SIS. However, the Solicitor's Office did say it was unlikely that additional investigation or litigation would be begun.

In an interview with Kotch and Crino on March 22, 1979, Monica Gallagher, the Associate Solicitor, gave five reasons why no new investigations were probable.

Gallagher said, first, the pension fund was not cooperating with the government, making it necessary for the Labor Department to resort to subpoenas to obtain records, which the Department did not want to do since it would create a "messy" enforcement action.

Second, Gallagher said, additional investigation, coupled with the civil litigation, might be seen as harassment.

Third, she said, the statute of limitations might run out.

Fourth, Gallagher said, old trustees had resigned and some of their actions had occurred "in the fairly distant past."

And fifth, she said, additional investigation might adversely affect pending litigation.

The report said that other issues could be litigated but the present lawsuit had probably ruled out any possibility of bringing further action against the trustees who had already resigned.

It was the understanding of the Solicitor's Office, the report said, that Labor Secretary Ray Marshall and PWBP Deputy Administrator J. Vernon Ballard had decided that litigation support was to be the first priority of SIS.

The report said Marshall's and Ballard's decision had been given to SIS.

The report went on to say that the Solicitor's Office:

"* * * Acknowledged that in meeting with the SIS Acting Director (Norman Perkins) the impression may have been given that SIS should not conduct any new investigations."

The report added that, while Perkins wanted to investigate such new issues as employer contributions, several stock deals, purchases of certificates of deposit and certain actions by alleged organized crime figure, Alan Dorfman, it was the understanding of SIS that "its sole function is to support the litigation" and that "no new major areas of investigation are planned or will be initiated."

The report said the Solicitor's power over the SIS had been a source of controversy since 1976. The report indicated that Lippe and his deputy, Lester Seidel, were said to have resigned over this issue.

The report makes clear, however, that there was no controversy, no disputing, over the assertion that SIS was under the direction of the Solicitor's Office.

The Solicitor's Office denied that. The report countered the denial by pointing out that the Solicitor's Office decided the direction of the pension fund investigation by SIS and that in June of 1978 the Solicitor's Office had actually requested in writing that SIS be made subordinate to it. This formal request was turned down but the Solicitor's de facto authority over SIS remained.

SIS Director Perkins said the Solicitor's Office had assumed an "improper role" in overseeing SIS. The Solicitor's principal duty should be to serve as counsel to SIS, not to set policy and direct cases, he said.

Kotch and Crino concluded: SIS no longer operates as an independent entity. The relationship between the two organizations (SIS and the Solicitor's Office) is not close or effective despite some good personal working relationships. To date, SIS responsiveness is barely adequate and the SIS work product requires improvement.

Norman Perkins told Kotch and Crino that the relationship between SIS and the Solicitor's Office was not right, that the Solicitor was supposed to be a counsel to SIS, not its master.

A master relationship was precisely the kind of authority the Solicitor's Office had over SIS, according to the report. Kotch and Crino said everything SIS did had first of all to be approved by the Solicitor.

SIS felt this control to be an extreme handicap, the report said, adding: Written investigative plans are required and must have (the Solicitor's Office) approval before any action is initiated. Contacts, interviews and interagency cooperation also require such approval.

Conversely, it was not the view of the Solicitor's Office that it had this total control over SIS. For example, Monica Gallagher, the Associate Solicitor, told Kotch and Crino that her organization had placed no restrictions on SIS investigative activities, "except," she said, to the extent that investigation concerning any area of the litigation must be cleared.

There was a circular logic to Monica Gallagher's assertion as reflected in the report.

She was saying, in effect, that SIS could do what it thought best when working outside the civil lawsuit.

However, she made clear her view that it would be unwise for SIS to investigate anything beyond the pending civil litigation.

Monica Gallagher was saying, then, that SIS could carry out its own work independent of the Solicitor's Office but at the same time the Solicitor was restricting SIS to work in one area—pending civil litigation and all work in this area could be performed only with the approval of the Solicitor.

Monica Gallagher seemed to be oblivious of the widespread concern felt by SIS personnel that they were being precluded from carrying out their mission, that the Solicitor's Office had, in fact, reduced them to a very restricted task and then sought to demean them by suggesting they were not performing as satisfactorily as they could.

Kotch and Crino recalled her comments in that regard this way: In her (Gallagher's) opinion the relationship between PBSD (Solicitor's Office) and SIS is all right and working. She has no sense of institutional difficulty. With the exception of occasional discussions with Perkins, she is quite removed from the SIS operation. In fact, she has had only one meeting with SIS in the last six months. However, she is very up to date on all aspects of the TCS (Teamsters Central States) litigation. There is no reason for Perkins to feel PBSD is controlling him and the SIS operation. The Secretary of Labor has come to rely more heavily on PBSD because of the lack of effective SIS management. Therefore it is possible that it may be perceived that PBSD is controlling SIS. SIS management people are not as competent or independent as others could be which means that SIS must lean on PBSD to a greater extent.

Monica Gallagher told Kotch and Crino that the Solicitor's Office had a "lawyer-client" relationship with SIS, the Solicitor being the lawyer and SIS the client.

She said the lawyers should have sought more information from SIS but that they often did not because lawyers tend not to coordinate with the client as much as the client would like, "especially," the report said, "if the client is actively involved in the matter as is SIS."

Here is how Kotch and Crino reported Monica Gallagher's views on the need to improve the lawyer-client relationship between the Solicitor's Office and SIS:

Historically, DOL (Department of Labor) does not operate in terms of integrated teams of investigators and attorneys such as in other agencies like SEC and OCP Strike Forces. She would be delighted to experiment with a new model based on this concept but feels that DOL is not ready for such an experiment. For Strike Force work, guts and imagination are at a premium and legal theory less important. The investigator has a principal role as a fact finder in areas where case law is adequately developed. The reverse is true in terms of ERISA enforcement, which is less fact oriented and more dependent on legal theory at this stage. As a result, the client cannot usually contribute as much. This may well be the case with SIS in terms of the TCS litigation.

Beyond the need to improve the lawyer-client relationship, Monica Gallagher also pointed to the need to improve the level of personnel at SIS.

Kotch and Crino examined the SIS role in the Health and Welfare fund investigation.

Alan Dorfman, an alleged organized crime figure, was convicted in 1972 for accepting a kickback on a Teamsters pension fund loan. Dorfman now controlled the Amalgamated Insurance Agency.

Amalgamated had a contract with the Teamsters Central States Health and Welfare Fund to process claims.

SIS began an investigation of the Health and Welfare Fund in June of 1977. In August of 1977, it was learned that the fund planned to extend its contract with Amalgamated.

A civil lawsuit was initiated against the Health and Welfare Fund.

In addition, the Labor Department, requesting a temporary restraining order, lost an attempt to prevent the fund from negotiating a new contract with Amalgamated.

On November 6, 1978, the Health and Welfare Fund signed a three-year contract with Amalgamated.

The civil lawsuit requested the appointment of a temporary receiver for assessing claims processing and called upon each defendant to personally reimburse the fund for losses.

The Kotch-Crino report said SIS objected to the Health and Welfare litigation because it, like the pension fund suit, terminated its own investigation.

The report said SIS had conducted no active investigation of the welfare fund since October of 1978.

Again, as in the pension case, SIS had no duty in the welfare investigation except to support the Solicitor's Office, the report said.

In effect, then, SIS was pulled off the investigation before it actually got started, according to the report.

Kotch and Crino explained: The TCS welfare investigation has never really begun. The litigation pertains only to the Amalgamated contract and claims processing; and has effectively restricted any other investigation. SIS is currently determining the feasibility of an investigation into employee contributions and fraudulent claims. Timing and extent of litigation of pending motions before the court. No report of investigation has been prepared.

The Kotch-Crino report also dealt at some length with an agreement entered into by the Labor Department and the pension fund and made public in a Department press release issued on March 14, 1977. The release said that four more fund trustees had resigned and added that:

"* * * Upon the engagement of professional investment managers * * * the Department will terminate that portion of its investigation that relates to procedures of the fund respecting asset management."

On April 29, 1977, a second press release was put out by the Department. It said:

"* * * Upon completion of the agreement with the investment managers, the Department would end the portion of its investigation involving the procedures under which the fund managed its investments."

Then the Labor Department press release said:

"However, the Department said it would continue to investigate certain transactions related to the fund's past investments."

There was uncertainty and disagreement over what the Department actually meant.

According to the Kotch-Crino report, the Teamsters pension fund trustees understood the Labor Department to have agreed that the Department's fiduciary investigations would end once the fund's assets were taken over by independent managers.

Disagreeing, the Solicitor's Office interpreted the Department position to be that no SIS investigation had been ruled out by the agreement.

However, according to the report, SIS felt that the Department's action had precluded future investigations into subjects such as administrative and trustee expenses and "that SIS may investigate loans only as they related to the former trustees but not to the fund itself."

It didn't matter what the agreement stipulated because the decision as to what SIS would investigate in the future already had been made—by the Department itself when it took SIS out of its original investigative function and assigned it to be an investigative support arm in support of the pension fund lawsuit.

Kotch and Crino interviewed SIS Acting Director Norman Kerkins on March 5, 6 and 7, 1979.

The interview of Perkins provided insight into the operations of SIS and its relationship with the Solicitor's Office.

In the fall of 1976, Perkins said, he began to note increasing involvement of the Solicitor's Office in the SIS operation.

By the start of the new year, Perkins said, friction had grown between the Solicitor's Office and Lippe.

Hoping to reconcile this conflict, the Office of the Secretary of Labor appointed Robert Lagather to the pension fund investigation, having him oversee both SIS and the Solicitor's Office in connection with the pension fund inquiries, Perkins said.

By February of 1977, SIS was no longer able to conduct investigations according to its original mandate, Perkins said. Now, he said, SIS was only to work on litigation at the direction of the Solicitor.

"Project 9200" was one of the first projects SIS undertook for the Solicitor. Basically a clerical task that employed professionals, Project 9200 was a 60-day photocopying exercise in which SIS personnel working in Chicago reproduced Teamsters records around the clock.

While he had not been informed formally of its existence, Perkins did hear rumors and read newspaper articles indicating that the Labor Department had made an agreement with the fund whereby it was understood that if the trustees would resign and an independent firm brought in to manage the assets, the Department would limit its investigation to loans and would not examine the fund's internal operations.

Perkins' view was that such an agreement did exist and that its result was to free the fund from all investigation except imprudent loans and, in effect, gave the fund a clean bill of health.

Monica Gallagher of the Solicitor's Office presented Lippe with the names of 80 persons who were known to have knowledge of the pension fund.

Perkins said Monica Gallagher wanted SIS to obtain depositions from these 80 persons.

But, he said, she offered no guidance as to what sort of questions she wanted asked or what areas of inquiry she wanted covered.

Perkins said he and Lippe eliminated most of the names from the list.

In June of 1977, Lippe planned to expand the SIS effort to include an investigation of the Teamsters Central States Health and Welfare Fund.

In September of 1977, Perkins said, Lippe's deputy, Lester Seidel, resigned, complaining of interference from the Solicitor's Office.

Seidel felt the Solicitor's Office was undercutting SIS, Perkins said, adding that Lippe explained that he would be quitting too.

Perkins said Lippe told him he "couldn't run the show, I'm only a puppet."

In October of 1977, with Lippe and Seidel gone, Perkins was named Acting Director of SIS.

A "big stink" was caused by the Department's lawsuit filed against the fund on February 1, 1978, Perkins said, because the Justice Department's Criminal Division and the Internal Revenue Service had not been advised or consulted ahead of time.

Perkins said there was a breakdown in communication with the Criminal Division because the Solicitor's Office was unfamiliar with the Agreement of Understanding of December 1975 in which Justice and SIS had set up procedures for the exchange of information of a criminal nature.

The filing of the lawsuit precluded third party investigation, that stage in professional inquiry when investigators follow up on leads developed from the principal figures and documents in the case.

Perkins said the Department felt that third party investigation would take six to nine months to complete so rather than spend that much time on it the Department believed it preferable to file the suit and gather the third party information at a later date through the civil discovery process.

Perkins said that at a meeting with Secretary Marshall and others he was advised—he did not say by whom—not to tell anyone at SIS of the plan to file the civil lawsuit.

It was believed, he said, that no one other than himself at SIS could be trusted to keep this information confidential.

Perkins said he was never invited to attend meetings between the Solicitor's Office and the Justice Department regarding the fund.

Perkins stressed the fact that third party investigation is necessary to criminal inquiry but that the filing of the civil lawsuit in 1978 precluded that.

However, Perkins also revealed his opinion that ERISA required civil investigation, not criminal, and that it was Labor Department policy for SIS to do civil work only, not criminal. It should be pointed out that the report said that one of the priorities of the SIS investigation was to maximize the development of criminal actions. The report acknowledged that the criminal aspects were deemphasized.

Perkins acknowledged that in the course of the investigation the names of reported organized crime figures did surface in connection with the Teamsters fund. However, Perkins said, he did not refer this information to the Justice Department since no ERISA violations were apparent.

Perkins said that during his tenure as Acting Director SIS has never done criminal work "and had better not."

Perkins said the fund's attorneys may have outsmarted the Solicitor's Office by getting the Department to agree not to investigate the fund's administration in exchange for the resignation of the trustees.

Perkins said the Solicitor's Office controlled Department policy regarding the lawsuit and the Solicitor's Office controlled SIS—but, he said, no one, not even the Secretary of Labor, controlled the Solicitor's Office.

The Solicitor's Office blocked an effort by SIS to serve an all encompassing subpoena for Health and Welfare Fund records, Perkins said. Because of the Solicitor's objection, the subpoena was restricted to only certain records. It was understood that additional records would be subpoenaed as needed. However, the Solicitor's Office would not permit the service of any additional subpoenas relying on a provision of ERISA which prohibits examination of records more than once in a 12-month period, thereby requiring SIS to wait one year before obtaining additional documents, Perkins said.

In another instance, Perkins said, the Solicitor's Office drew up a subpoena for SIS to gain records from a firm that consulted for the fund. The firm kept some records at the home of its president, Perkins said. The Solicitor's Office had the subpoena served on the wife of the president of the firm. Perkins said a federal judge in Chicago ruled the subpoena invalid because the wife was not an officer of the firm.

When the Labor Department sought a temporary restraining order to prevent the Health and Welfare Fund from signing a new contract with Alan Dorfman's Amalgamated Insurance Agency, the Teamsters wanted to obtain a deposition from Secretary Marshall.

Marshall declined and, for reasons Perkins did not give, Perkins was selected to be deposed in Marshall's place. Perkins said he pointed out that he was not prepared to be deposed and that he did not have the necessary documents. But Perkins was made to do it anyhow. Here is how Kotch and Crino recalled Perkins' explanation of what happened next.

When he (Perkins) advised SOL (Solicitor's Office) that he was unprepared and had no access to records he was told not to worry that all that would be required would be the production of some records. At the deposition (in Chicago), the fund's attorney admonished Perkins, telling him that he was expected to be prepared and to have searched the required records. He stated that he was represented at this deposition by Monica Gallagher; and that Dave White of Justice was present as an observer. Perkins was deposed for two days. He alleged that at this deposition he was represented by such bad counsel that once the fund's attorney had to remind (Monica) Gallagher that she was Perkins' attorney. Even the Justice observer commented on the fact that Perkins was required to respond to questions which he should not have answered.

Perkins said his senior subordinates were, for the most part, very difficult to work with. Morale throughout SIS was not good. His three team leaders, Perkins said, were "weak."

In preparing their report of investigation, Kotch and Crino interviewed more than 14 persons who worked in SIS or with SIS. These interviews revealed that SIS was poorly managed and that there was little likelihood of SIS accomplishing a satisfactory work product.

Those interviewed included J. Vernon Ballard, Deputy Administrator, Pension Welfare Benefit Program; Monica Gallagher, Associate Solicitor; Robert Gallagher, Solicitor's Office attorney; Norman Perkins, Acting Director, SIS; Lloyd Ryan, Assistant to the SIS Director; Robert Baker, Ray Siegel and Edward F. Shevlin, all SIS team leaders; Thomas McCaughey, senior auditor, SIS; Kenneth Barnes, auditor, investigator, SIS; and John Helms, James E. Hucks, James W. Widdows, and Gerald Kandel, all auditors, SIS.

The Subcommittee staff outlined under categories the more serious charges about the manner in which the pension and welfare funds investigations were carried out.

Nearly everyone interviewed said SIS was mismanaged, that its leadership was inadequate and morale was low.

Eight persons said the civil lawsuit, filed in 1978, was poorly timed, caused a halt to other investigations and resulted in SIS being reduced to being an investigative arm of the Solicitor's Office.

Six persons said the Solicitor's Office was guilty of having poorly managed the fund investigation and of having allowed relations between itself and SIS to deteriorate.

Third party investigation, which would have allowed SIS to pursue leads developed early in the investigation, was stymied by the Solicitor's Office. This view was expressed by five persons.

Also five of the persons interviewed said from the start of the investigation of the fund, there was no clearly stated strategy as to how to proceed and what the objectives were.

Seven persons said the SIS team charged with investigating the health and welfare fund was misdirected and did very little.

Four of the SIS staff said SIS did very little auditing and investigation and too much filing.

Five said SIS committed to writing no reports of investigation.

Five persons said SIS was instructed by the Solicitor's Office not to pursue certain leads which had positive investigative potential.

Four persons said insufficient investigative travel was authorized and that there was a resulting inadequate amount of field investigation.

Four complained of a lack of cooperation by SIS with the Justice Department and a delay in referrals from SIS to Justice.

In early August of 1980, I received information that Kotch and Crino had conducted the investigation just described and that upon completion of it they had written up their findings in report form.

I contacted, by telephone, John Kotch during the second week in August. I asked him about the report.

Kotch confirmed that such a report had been written. He said it had been prepared for Rocco (Rocky) DeMarco, the Deputy Assistant Secretary for Labor Management Services Administration.

I asked Kotch to give me as many details as he could about the report and what had happened to it.

Kotch then contacted DeMarco. Kotch told me that DeMarco admitted having destroyed the report. Kotch quoted DeMarco as having said the report had served its purpose and could be destroyed.

I then arranged an interview with Kotch—and a separate interview with DeMarco.

Marty Steinberg, Subcommittee Chief Counsel, and I interviewed Kotch on August 18. Robert Gallagher of the Solicitor's Office also attended this interview.

Kotch said that he and Crino were summoned to Washington to the office of DeMarco on February 4, 1979. In carrying out the investigation, Kotch said, he and Crino were to pursue a number of objectives.

The objectives were to: (1) Review the internal operation of SIS; (2) review the relationship between SIS and the Solicitor's Office; (3) review the Labor Department referrals of criminal matters to the Justice Department; (4) review the workload of SIS; and (5) make findings and recommendations.

Kotch said DeMarco told Crino and him that they were to carry out this assignment in strict confidence. They were not to discuss it with anyone.

Kotch said DeMarco informed them only one copy should be made of their interviews and reports. This one copy was to go to DeMarco. No file copies were to be kept.

Kotch said they were instructed by DeMarco that all material they gathered should be locked up at all times.

Kotch said in the interview with Steinberg and me that he did not know why this investigation was not carried out by the Labor Department's Inspector General.

Kotch also told us that he asked DeMarco about the IG question in a second meeting with him. He said DeMarco answered the question by saying simply that it would not be an IG investigation.

Kotch said he was not told the ultimate purpose of the investigation and he said that to this day he still did not know.

When the investigation was completed, Kotch said, he gave the report and attachments to DeMarco. Kotch said it was highly unusual that he be required to make only one copy of a report or a report of interview.

Concerning the fact that DeMarco destroyed the report and attachments, Kotch said that too was highly unusual.

Kotch said DeMarco told him to prepare a briefing paper on the report. He did. He gave it to DeMarco. It was his only copy, Kotch said. Kotch said he and Crino briefed no one on the report.

On August 18, 1980, Rocco DeMarco was interviewed by Marty Steinberg, Joseph Block, the Minority Counsel of the Subcommittee, and me. Robert Gallagher of the Solicitor's Office was also present.

DeMarco said that in February of 1979 he met with Under Secretary of Labor Robert J. Brown. DeMarco said Brown told him that Labor Secretary Marshall wanted someone to monitor the Department's investigation of the Teamsters Central States Pension Fund investigation.

Brown told DeMarco a management survey should be conducted.

DeMarco said Kotch and Crino were selected to conduct this survey. But, DeMarco said, he could not remember who selected them or why.

DeMarco told us that in giving Kotch and Crino their directions the question was raised as to why this was not a matter for the Inspector General.

DeMarco said he took that question directly to Under Secretary Brown. DeMarco said Brown directed him not to make this a management review by the Inspector General. DeMarco suggested that it was Brown's decision, not his.

DeMarco referred to the findings of the Kotch-Crino investigation as a memorandum. DeMarco said he took the memorandum to Under Secretary Brown's office.

CONTINUED

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Later, he said, he met in Brown's office with Brown, J. Vernon Ballard, the Deputy Administrator of the Pension Welfare Benefit Program, and Carin Ann Clauss, the Solicitor of Labor.

DeMarco said that at the meeting Clauss had her own copy of the report. He said he did not know whom she got it from.

DeMarco said he did not know if other copies of the report had been reproduced as well.

DeMarco said he could not remember what was discussed at the meeting with Brown, Ballard and Clauss.

But he did remember that at the end of the meeting Clauss handed him her copy of the Kotch-Crino report. DeMarco said Clauss said to him, "Dispose of it," and added that she had no more need for it.

Upon these instructions from Clauss, DeMarco said, he destroyed her copy. DeMarco said that later he met with Brown and that Brown returned to him the original copy of the Kotch-Crino report.

DeMarco said he kept the original report and its attachments until the fall of 1979. At that time, he gave this documentation to William Hobgood, the Assistant Secretary of Labor for Labor Management Services Administration.

In March of 1980, DeMarco said, Hobgood returned the documents to him.

DeMarco said he then had the Kotch-Crino documents destroyed. He explained that he destroyed the documents because the report had served its purpose.

We asked him if he had ever destroyed official Labor Department documents before. He said he had not.

We asked him how then did he justify destroying the Kotch-Crino report and attachments? DeMarco repeated that the documents had fulfilled their purpose. The report's recommendation to abolish SIS had been carried out, he said, making unnecessary further maintenance of the report.

DeMarco said that he did not make it a practice to destroy documentation when its recommendation for corrective action is carried out. Such destruction of documentation, he said, had been ordered by him only in this instance.

Marty Steinberg asked DeMarco how the Labor Department could be expected to justify abolishing SIS to Congress if he had destroyed its reasons for doing so. To that question, DeMarco had no reply. He remained silent.

However, DeMarco did say that this was the very first time in his entire government career when he had hold investigators to prepare only one copy of their report of investigation and not to keep any file copies.

On August 18 and 19, 1980, when Mr. Steinberg and myself were attempting to find the Kotch-Crino report, Mr. Steinberg asked Robert Gallagher of the Solicitors Office where Crino was and whether we could talk to him concerning the report. Gallagher said Crino could not be reached because his child was very ill and Crino had taken off from work to attend to this. We expressed our view that the two most logical people to have knowledge of the report would be the two preparers, Kotch and Crino. Kotch had already denied on August 18 a copy of the report existed and we wished to talk to Mr. Crino. Robert Gallagher told us that Crino would be out for some time and they could not get a hold of him. Gallagher assured us, however, that the Solicitor had checked every possible place in the Department of Labor and the report and attachments did not exist.

After the interview with Rocco DeMarco on August 19, we mentioned to Robert Gallagher that we were considering serving a subpoena for the report. Gallagher voiced strong objections, saying it would be embarrassing to the Secretary of Labor. The subpoena was served on Robert Gallagher as a representative of the Department of Labor on August 20.

At about 1 p.m., on August 21, a Thursday, Robert Gallagher called me to say he had just received information indicating that a copy of what might be the Kotch-Crino report had turned up in Cleveland.

Gallagher said he could send John Kotch to Cleveland. In Cleveland, Kotch could look at the documents that were found and, if he identified them as the report he and Crino had written, he would bring the report back to Washington and it would be turned over to the Subcommittee.

Gallagher said Kotch would leave for Cleveland the next afternoon, Friday, and would be back by Sunday. I told Gallagher that was unsatisfactory, that Kotch should go to Cleveland that day, Thursday, August 21, and return the report which was now under subpoena to us by Friday.

Gallagher said he did not think that would be possible. But he said he would check with his superiors. Ten minutes later Gallagher called back to say Kotch would go to Cleveland that day and would try to have the report delivered to the Subcommittee by Friday.

On Friday, Gallagher called the Subcommittee again. But this time he talked to Chief Counsel Steinberg. Gallagher told him that he had, in fact, found what appeared to be a copy of the Kotch-Crino report in Pittsburgh. Steinberg told Gallagher that he was under the distinct impression that the previous day Gallagher had told Duffy that the report had been located in Cleveland and now he was telling us that the report was in Pittsburgh. Gallagher stated to Steinberg that Crino, who was in Cleveland, could not be reached because his child was very ill, and therefore, the Department of Labor couldn't determine whether a copy of the report existed in Cleveland. He further stated that Kotch had gone back to Pittsburgh and look in his files and found a copy of the report which we had subpoenaed. Steinberg reminded him that Kotch had told us on numerous occasions that he had not retained any copy of this report due to his instructions from his superiors, and Gallagher responded by saying something to the effect, well, maybe he forgot this one.

The report was delivered to the Subcommittee staff offices late Friday afternoon, August 22.

On August 22, 1980, Subcommittee investigators Raymond Maria and Lawton Stephens interviewed Robert J. Brown, the former Under Secretary of Labor.

Now an appointed member of the National Mediation Board, Brown said Amon Kelly, a consultant to Secretary Marshall, oversaw the SIS in connection with the Teamsters fund investigation. This assignment later was given to Frank Burkhardt, Assistant Secretary for Labor Management Services Administration. Burkhardt and his Deputy, Jack Warshaw, reviewed for Brown the SIS fund investigation, Brown said.

Brown was concerned about the progress of the investigation. Brown said the Solicitor's Office explained that the SIS effort largely was a civil litigation matter which would require months or years to cross-check and analyze large amounts of fund records and data.

Burkhardt and Warshaw left the Department early in 1979 and at this period, Brown said, both he and Secretary Marshall were still concerned about the progress of the fund investigation.

Rocco DeMarco replaced Warshaw as Deputy Assistant Secretary for Labor Management Services Administration and, Brown said, he directed DeMarco to "get on top of the fund program."

Brown could not remember, in his interview with Maria and Stephens, if he told DeMarco to submit his findings in report form.

Brown said DeMarco asked permission to bring in two or three field employees of Labor Management Services Administration to assist him. Brown could not remember their names. But he authorized DeMarco to enlist the assistance of these employees.

About three or four weeks later, Brown said, DeMarco came to him with a written document, summarizing the findings of the review. Brown termed this document a "paper" and not a report because he believed it to be an administrative staff review.

Brown said he read the document and informed DeMarco that he did not think it was as professional as he had expected. Brown said he thought the document focused on personalities and recriminations, reflecting bitterness among SIS employees and strong antagonism between the personnel of the Labor Department Management Services Administration and the Solicitor's Office.

The squabbling aside, Brown said, the "paper" still documented confusion in the fund investigation. What had been intended had been a team concept, Brown said, and he felt now that to achieve progress in the inquiry the Assistant Secretary for Labor Management Services Administration, his deputy and the Solicitor would have to come up with a better way of handling the investigation of the fund. Brown felt these senior officers should become involved in a redefinition of the responsibilities and lines of authority within the fund investigation.

Brown said he told DeMarco that he would discuss the "paper" with Secretary Marshall. He said he also wanted the Solicitor, Carin Ann Clauss, to read it.

Brown could not remember how many copies of the "paper" DeMarco brought to his office but he did recall specifically that a copy went to Clauss.

Brown said he believed this to be a sensitive document and told DeMarco not to circulate it. Brown did remember showing a copy to Robert Lagather, the Assistant Secretary for Mine Safety and the former Deputy Solicitor.

Brown met with Secretary Marshall and Clauss to discuss the paper. Brown said DeMarco may have been there too. It was decided that a complete reorganization was called for, Brown said, adding that each participant at the meeting agreed that the document was of significant sensitivity so each returned his copy to DeMarco with the understanding that DeMarco would secure them.

Brown was asked if he or anyone else told DeMarco to destroy the documents. He said he did not remember if anyone had given that instruction.

On the other hand, Brown said, he was not prepared to contradict anyone who said that an order was given to destroy the documents. He said that if he had wanted to destroy them he would have torn them up at the meeting.

In addition, Brown said, he intended to have the new Assistant Secretary for Labor Management Services Administration see the document so it is unlikely he would have had it destroyed.

At his direction, Clauss drew up a reorganization plan which proposed to improve policy level involvement in the fund investigation, Brown said.

Brown said that because the fund effort was almost entirely a litigative matter it was proposed that most responsibility would be given to the Solicitor's Office.

Finally, Mr. Chairman, I would like to point out that the Kotch-Crino report contains serious allegations which, if true, would constitute violations of law. There is no indication that these allegations were referred to the appropriate investigative agency for further investigation to determine if they were true or false.

Chairman NUNN. Our next witness will be Raymond Maria, who is an investigator for the U.S. Senate's Permanent Subcommittee on Investigations. Mr. Maria?

Will you please hold up your right hand. Do you swear the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF RAYMOND MARIA

Mr. MARIA. I do.

Chairman NUNN. Mr. Maria, would you give us your present position and briefly give us your background?

Mr. MARIA. Yes. I am an investigator with the staff of the Senate Permanent Subcommittee on Investigations and I have prior to that been with the Federal Bureau of Investigation as a special agent for approximately 11 years.

Chairman NUNN. Thank you. Mr. Maria, do you have a prepared statement? Do you want to proceed directly with the questions?

Mr. MARIA. I will proceed with the questions, Senator.

Chairman NUNN. Mr. Maria, did you conduct an investigation regarding the authority required for the Department of Labor to destroy Federal records such as the Kotch-Crino report?

Mr. MARIA. Yes, I did. I first made inquiry of Mr. George Scaboo, who was the Acting Assistant Archivist for the Federal Records Center and confirmed this all with a letter I presented under the signature of subcommittee Chief Counsel Steinberg.

I would like to introduce in the record a copy of this letter dated September 10, 1980, addressed to the Archivist of the United States. I would like to read a pertinent excerpt from it.

Chairman NUNN. The whole letter will be made a part of the record without objection, and appropriately numbered.

[The document referred to was marked "Exhibit No. 17," for reference and follows:]

EXHIBIT No. 17

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C., September 10, 1980.

ARCHIVIST OF THE UNITED STATES,
National Archives and Records Service,
Washington, D.C.

DEAR SIR: This letter is to confirm that verbal request this date of George Scaboo, Acting Assistant Archivist for Federal Records Centers, that the U.S. Senate Permanent Subcommittee on Investigations submit in writing its request for information concerning records destruction authorization granted to the U.S. Department of Labor (DOL), specifically that division known as Labor Management Services Administration (LMSA).

To acquaint you with our specific request, the Subcommittee wishes to learn under what authority LMSA destroys documents and records and how such authority is granted. More specifically we wish, to know if LMSA had authorization to legally dispose of a report which reviewed efficiency and effectiveness of DOL's management of a special four-year investigation. Our investigation has revealed that the report in question contained results of approximately 20 employee interviews, the bulk of which alleged mismanagement, professional misconduct, incompetence, and conflicts of interest. Also, included was a summary of findings and recommendations which served as the basis for eventual dissolution of the DOL unit.

The Subcommittee currently is engaged in public hearings and requests your response by Friday, September 12, 1980. If you will call Staff Investigator Raymond Maria at 224-3721, he personally will pick up your written response.

Your cooperation and assistance to this Subcommittee is most appreciated.

Sincerely,

MARTY STEINBERG,
Chief Counsel.

Mr. MARIA. If I may,

To acquaint you with our specific request, the subcommittee wishes to learn under what authority the Labor Management Services Administration destroys documents and records and how such authority is granted. More specifically, we wish to know if LMSA had authorization to legally dispose of a report which reviewed efficiency and effectiveness of the Department of Labor's management of a special 4-year investigation. Our investigation has revealed that the report in question contained results of approximately 20 employee interviews, the bulk of which alleged mismanagement, professional misconduct, incompetence and conflicts of interest.

Also included was a summary of findings and recommendations which served as the basis for eventual dissolution of a Department of Labor unit.

Chairman NUNN. That was the letter you wrote to whom?

Mr. MARIA. To the Archivist of the United States.

Chairman NUNN. What did you hear back?

Mr. MARIA. The response from John J. Landers, Acting Archivist of the United States, was by letter to this subcommittee dated September 12, 1980. Again, I would like to introduce a copy of this letter into the record.

Chairman NUNN. Without objection.

[The document referred to was marked "Exhibit No. 18," for reference, and follows:]

EXHIBIT No. 18

GENERAL SERVICES ADMINISTRATION,
NATIONAL ARCHIVES AND RECORDS SERVICE,
Washington, D.C., September 12, 1980.

MR. MARTY STEINBERG, Chief Counsel, Permanent Subcommittee on Investigations,
Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR MR. STEINBERG: This is in reply to your letter of September 10, 1980, concerning procedures that must be followed by Federal agencies in order to obtain legal authority to destroy records, and the specific circumstances relating to a report prepared by the Department of Labor, Labor Management Services Administration.

Chapter 33 of Title 44, United States Code, sets forth exclusive procedures for the disposal of records of agencies of the United States Government. Under this chapter, Federal records may not be destroyed unless such disposal is approved by the Archivist of the United States, as delegated by the Administrator of General Services (44 USC 3303). Procedures for obtaining the necessary approval are contained in chapter 101 of Title 41, Code of Federal Regulations. Under chapter 101, authorization for destruction of Federal records is obtained by (1) applying the General Records Schedules, issued by the General Services Administration to govern the disposal of certain types of records common to many or all Federal agencies, and (2) submitting disposal lists or schedules describing unique agency records on a Standard Form 115, Request for Records Disposition Authority, to the National Archives and Records Service. Each agency is required to develop schedules for all records in its custody.

Federal law further requires heads of Federal agencies to establish safeguards against the removal or loss of Federal records (44 USC 3105) and to notify the Administrator of General Services of any actual or threatened unlawful removal or destruction of records in their custody (44 USC 3106). Criminal penalties are provided for the unlawful removal or destruction of Federal records (18 USC 2071).

The Labor-Management Services Administration presently has no authority to destroy the type of report described in your letter, nor have they or the Department of Labor submitted a request for such authority. In addition, the Department of Labor has not reported the disposal of the record in question as required by 41 USC 3106.

We have enclosed copies of the pertinent laws and regulations for your information.

Sincerely,

JOHN J. LANDERS
(Acting Archivist of the United States.)

Chairman NUNN. Does the letter indicate that there is a criminal statute on this matter? Is that what the Archivist says?

Mr. MARIA. Yes, Senator.

Chairman NUNN. Would you summarize this particular statute?

Mr. MARIA. Yes. Briefly, section 2071, title 18, subsection (b), subsection 16, states that:

Whoever having custody of any record, paper, document or other thing filed or deposited in any public office of the United States willfully and unlawfully conceals or removes or destroys the same shall be fined not more than \$2,000 or imprisoned not more than 3 years, or both, and shall forfeit his office and shall be disqualified from holding any office under the United States.

Senator, I would like to introduce a copy of this statute into the record.

Chairman NUNN. Without objection, that will be part of the record. [The document referred to was marked "Exhibit No. 19," for reference, and may be found in the files of the subcommittee.]

Chairman NUNN. Senator Percy, any questions?

Senator PERCY. No questions.

Senator COHEN. No questions.

Chairman NUNN. Thank you, Mr. Maria.

Our next witness is Secretary Marshall. If you would bring those with you, Mr. Secretary, that may testify, I would like to swear everybody in at once. Then you can introduce them.

If each of you expects to testify, please hold up your right hand.

Introduce each person for the record here, Mr. Secretary, or you may identify yourselves and then we will take the oath.

Mr. HOBGOOD. William Hobgood, Assistant Secretary of Labor.

Mr. CRINO. Richard Crino, Deputy Secretary.

Ms. CLAUSS. Carin Clauss, Solicitor of Labor.

Mr. KOTCH. John Kotch, Chief Investigator of Audits.

Ms. GALLAGHER. Monica Gallagher, Associate Solicitor.

Mr. DEMARCO. Rocco DeMarco, formerly Deputy Assistant Secretary of Labor.

Mr. GALLAGHER. Robert Gallagher, attorney, Office of Solicitor.

Chairman NUNN. Do you swear the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF SECRETARY RAY MARSHALL, U.S. DEPARTMENT OF LABOR; ACCOMPANIED BY WILLIAM HOBGOOD, ASSISTANT SECRETARY OF LABOR; RICHARD CRINO, DEPUTY AREA ADMINISTRATOR, LMSA; CARIN CLAUSS, SOLICITOR OF LABOR; JOHN KOTCH, CHIEF OF INVESTIGATIONS, AND AUDITS, LMSA; MONICA GALLAGHER, ASSOCIATE SOLICITOR; ROCCO DEMARCO, FORMER DEPUTY ASSISTANT SECRETARY OF LABOR; AND ROBERT GALLAGHER, ATTORNEY, OFFICE OF THE SOLICITOR

Secretary MARSHALL. I do.

Mr. HOBGOOD. I do.

Mr. CRINO. I do.

Ms. CLAUSS. I do.

Mr. KOTCH. I do.

Ms. GALLAGHER. I do.

Mr. DEMARCO. I do.

Mr. GALLAGHER. I do.

Chairman NUNN. We don't have enough chairs there. I will ask the staff to make sure there are enough chairs in the back there. Mr. Secretary, we felt that was essential in light of all the developments we have had that this information be laid out particularly since you chose to go ahead with your statements on the destruction of this Kotch-Crino report, and now we hope to be able to avoid having to interrupt your testimony for the purpose of laying the adequate foundation on that. So if you would like to proceed, we will let you go right ahead.

Secretary MARSHALL. All right. Thank you, Mr. Chairman, members of the subcommittee. Let me submit one copy of my testimony for the record, if I may.

Then I have a shorter version that I would like to present here orally.

Chairman NUNN. All right. We will be glad to do that.

[The statement follows.]

STATEMENT OF RAY MARSHALL, SECRETARY OF LABOR

Mr. Chairman, Members of the Subcommittee: I appreciate the opportunity to testify today.

I regret that I was not able to testify at the earlier session of these hearings. As you know, I had a long standing commitment out of the country at that time. It is also unfortunate that we were unable to appear in public session on September 16 as originally agreed. Because of my inability to testify earlier, serious but unfounded charges made before this Subcommittee have thus far gone unchallenged. These charges concern me greatly and I am here today to respond to them.

I must state at the outset that some of the members of this Subcommittee have made it clear at many times and in many ways, including through their statements at the earlier sessions of these hearings, that they simply do not agree with the way we at the Labor Department perceive our enforcement responsibilities under ERISA and other labor laws. I am aware that virtually nothing I say can change these long-held biases against our work, although I am always happy to try.

But I do resent the charge that these hearings were made necessary because the Department did not fulfill my pledge to keep the Congress fully informed of our activities regarding the Teamsters Central States Pension Fund. Since I was confirmed as Secretary of Labor, I have made numerous personal trips to Capitol Hill to discuss and explain our activities regarding the Central States Funds. I am also aware that my staff has spent countless hours briefing the staff of this Subcommittee and of other Congressional committees. We will continue to do so. We understand the Congress' natural interest in keeping abreast of our activities, especially on an investigation of this nature. But hearings which are conducted in a highly adversary manner and which begin and end with only preordained conclusion do not seem a useful way for us to communicate with the Congress.

In June 1978, at the request of this Subcommittee, the General Accounting Office began a lengthy investigation into the Department's handling of the investigation of the Central States Pension Fund. The GAO inquiry employed five or six persons and has been in progress for nearly two and one half years. The GAO personnel have had unrestricted access to all employees and files of the Department relating to the Central States matters.

Comptroller General Staats appeared before the Subcommittee on August 25 to present a summary of GAO's findings. The GAO testimony included criticism of some fundamental policy decisions made by myself and other current Department of Labor officials, as well as officials of the previous administration, regarding the handling of the Central States investigation. We believe that the GAO criticisms are based on a number of misconceptions which I will address today. We disagree strongly with those criticisms but regard them as responsibly made.

The Subcommittee staff has also eagerly sought out and presented testimony of persons who were formerly employed in the Central States investigation. The testimony of these witnesses has not been confined to responsible criticism. In addition to the testimony of these witnesses that they disagreed with high level policy decisions, the Subcommittee has elicited from these witnesses statements which are factually inaccurate and distorted and attacks on the competence and character of able, dedicated employees.

It is difficult for me to understand what legitimate interest of this committee has been served by eliciting such testimony. Disgruntled former staff level employees have been allowed to spread on the public record their opinions, sometimes admittedly formed on the basis of no evidence whatever, that the decisions of their superiors, with which they disregard, must have been motivated by political or even criminal considerations. If the Subcommittee staff had sought to test the reliability of this testimony in advance, I am confident that the course of these hearings would have been much different. As it is, reckless allegations have already been made publicly and it is probably impossible to completely undo the damage that has been done.

These irresponsible allegations have already had a chilling and demoralizing effect on our employees. That effect combined with this Subcommittee's release and threatened release of investigation and litigation documents—documents which any court in the country would find to be confidential and protected—pose

a serious threat to the Department's investigation and lawsuits relating to this Fund and are counterproductive to the goals of both the Department and this Subcommittee to fully enforce ERISA for the protection of the participants and beneficiaries of this Fund.

Before addressing the specific issues raised in previous testimony, I would like to respond to two general assertions which have been made throughout these hearings. The first is the assertion that the Department of Labor is incapable of vigorously enforcing the statutes within its responsibility against labor unions. Frankly, I am tired of having to respond to this stale charge which is amply refuted by the record of this administration. I also cannot help noting that the GAO, despite its other criticisms, carefully refrained from supporting this assertion and disclosed not the slightest evidence which would support it.

There apparently is an assumption that the Department of Labor is institutionally unable to prosecute union officials because we are either controlled by or too close to unions. There is no evidence to support this assumption during my term as Secretary of Labor. It is true that I work closely with unions in carrying out the mandate of the Labor Department—to foster and advance the welfare of American wage earners. But we also work with many other groups—state and local-elected officials, women's groups, employer groups, community based organizations and representatives of minority groups. Our mandate—despite innuendos from people who understand very little about the activities of the Department—extends to all workers not just to union members. Indeed, most of the Department's budget is devoted to employment and training and protective labor programs which are provided to workers who probably are not members of unions.

However, as the President's chief advisor on labor matters, I am responsible for the development of industrial relations policy and I do believe very strongly in the basic purposes of our labor policy—as embodied in the National Labor Relations and other Acts—to make it possible for workers to decide for themselves whether or not they wish to organize and bargain collectively through representatives of their own choosing. I also regard a free labor movement as an essential institution in a free and democratic society.

It does not follow, as commonly asserted by some members of Congress that I only represent union members or that I will not vigorously carry out my responsibilities under the law. Indeed, because I believe so strongly in the need for free and democratic trade unions I believe very strongly that it is essential to eliminate any abuses by union leaders that would weaken this important institution. By the same token, however, I also understand the need to avoid unfair and unfounded attacks on unions that also weaken the labor movement.

Let's look at the specifics of our efforts to eliminate union abuses during the last 3½ years. For example, investigations of unions opened by the Office of Labor Management Standards Enforcement have increased from approximately 812 in 1976 to more than 1330 in the first eleven months of this fiscal year. Criminal investigations opened under the LMRDA and through our organized crime program have increased by a similar margin from 409 in 1976 to 615 in 1979 with a projected total above that number for this year. With respect to our activities under ERISA, during the first eleven months of fiscal year 1980 union affiliated plans were involved in approximately 22% of all investigations concluded, approximately 50% of all investigative matters referred to the Solicitor for consideration for litigation, and approximately 50% of all cases with respect to which litigation has been filed. I do not think that anyone can look at this record and claim that we are soft on unions.

Second, these hearings have proceeded on the basis of a foregone conclusion that the Department's efforts relating to the Central States Pension Fund have been a failure and that the only question worth discussing is why the Department has failed. I find this judgment incredible. In fact, the Department has achieved a stunning success, a success which is all the more impressive against the perspective of twenty years of efforts by this Subcommittee and the federal government to reform the Central States fund.

Since the 1950's, this Subcommittee, in various hearings and public statements, has expressed its concern about abuses in the Teamsters Central States Pension Fund. Over the last twenty years, many government agencies have directed substantial efforts to reforming the Fund and ridding its operation of known and suspected abuses. The convictions of Dave Beck and Jimmy Hoffa and other persons associated with the Fund were properly hailed as great achievements

in this continuing effort. However, as this Subcommittee well knows, at the time that ERISA was passed in 1974, those convictions had done nothing to safeguard the Pension Fund and protect the retirement incomes of over half a million participants and beneficiaries. On the other hand, in the 3½ years of this administration, the Labor Department has achieved a far greater success in its efforts than all of the previous efforts combined. All of the former trustees have been removed, without resort to lengthy litigation which might have taken many years to reach the same result. These former trustees have been sued by the Department to recover for the plan, and for its participants and beneficiaries, millions of dollars of misspent funds. All of the Fund's investments, some two and one half billion dollars, have been placed under independent asset management, assuring that there is no interference from unscrupulous individuals inside or outside the Teamster hierarchy to endanger the assets of the Fund.

The Department has carefully watched this arrangement. Independent asset management is working. The trustees have not succeeded in interfering with these asset managers. On several occasions, when the trustees seemed to test our commitment to support the independence of the managers, we have responded firmly and effectively. It is curious that our critics give great weight to various moves to remove these assets from the control by independent money managers where we have placed them, but almost no weight to the fact that we have successfully blocked all such moves. And we are continuing our investigation of the Fund, our current efforts being focused on the actions of the new trustees, to determine whether they are carrying out their fiduciary responsibilities in a manner consistent with the requirements of the law. To this end, we are presently investigating on site at the Fund's offices in Chicago. Both the investigation and the litigation have been given the highest priority at the Labor Department. We do not claim that our efforts have always proceeded without difficulty and by no means do we believe that our task is finished. However, there can be no doubt that our efforts have turned this Fund around and we are proud of that.

The GAO testimony at least indirectly criticized fundamental policy decisions made or implemented after I became Secretary of Labor. Chief among these decisions was the decision to focus the Department's investigation on preparation for civil litigation while seeking a nonlitigative resolution of the asset management procedure phase of the investigation.

I understand that it has been suggested during these hearings that the Department's efforts began to falter when this administration took over in January 1977. I do not intend to defend against these suggestions by engaging in partisan attacks on the prior administration. However, I do believe that it would be useful for me to review the situation which I saw when I assumed office in January 1977.

At that time, the Special Investigations Staff (SIS) had been conducting the Department's investigation for more than one year. After a broad initial review of Fund operations, the SIS had decided to concentrate its efforts on the management of the Pension Fund's assets, an area which vastly overshadowed other possible avenues of investigation in scope and in potential for the discovery of fiduciary abuses. After consultation with the Department of Justice, the SIS had agreed to an arrangement for the voluntary production of records by the Pension Fund without resort to administrative subpoenas. Certain arrangements for coordination with the Department of Justice and the Internal Revenue Service had been made. Following the IRS's revocation of the Fund's tax-exempt status, SIS had begun discussions with Fund officials which had resulted in the resignations of twelve of the sixteen Fund trustees and which had proceeded to discussions of establishing written asset management procedures for the Fund trustees to follow.

Despite these somewhat encouraging beginnings, I was immediately made aware at my confirmation hearings and on numerous subsequent occasions that there were significant problems in the SIS and that the Central States investigation required my full attention and highest personal priority. I shared the concern then being voiced by many members of Congress that more than a year after the Department had begun its investigation of the Central States fund, the trustees still exercised full control over the immense Fund assets which they had apparently mismanaged in the past. Immediately after taking office, I brought to Washington Eamon Kelly, on leave from the Ford Foundation, to serve as my special assistant and to take day to day control of the Department's actions on this matter. Based on briefings by Mr. Kelly and other top staff, I soon concluded that if the SIS was permitted to continue on the course it had chosen, it would

be many years before even the asset management investigation was completed. And even these projections were dependent on the investigation acquiring a firm scope and direction, which it was apparent did not then fully exist. Because of the potentially limitless scope of the investigation, it was clear to me that we needed to establish clear priorities. I therefore concurred in decisions which had been reached late in 1976 that the investigative effort should be more closely geared toward preparing for possible enforcement action by the Department.

It was also the judgment of my advisors, including the SIS and our regular legal staff, that, while our investigation was far from over, there was evidence to support a civil suit for removal of the trustees and reformation of their asset management procedures. However, I was concerned then—and time and further experience have only confirmed my judgment—that civil litigation would prove to be a long and arduous endeavor. There was also the usual uncertainty of the ultimate outcome of complicated litigation. In addition, I had to take into account the fact that the trustees might be permitted to continue to control the assets until the litigation was finally resolved. I, therefore, made the judgment that a more expeditious solution was desirable if it could be achieved without sacrificing our objectives.

In February 1977, I met with Attorney General Bell and Secretary of the Treasury Blumenthal and other officials of their agencies and we discussed the available alternatives, many of which had been previously discussed among the agencies. After full discussion with the other agency heads, we all agreed that the government would present a set of unified government demands to the trustees. As I have previously testified, these demands included the resignations of the four holdover trustees and a requirement that the trustees either reconstitute their board to include a majority of neutral trustees or appoint independent professional investment managers. Bearing in mind that none of the available reform measures would guarantee the integrity of the Fund forever, I believed then and I believe now that the imposition of independent investment managers was the best available alternative for the protection of the participants and beneficiaries of the Fund.

I understand that one prior witness at these hearings has testified that we could easily have obtained a consent decree under which the Fund trustees would retain control over the assets but would operate under agreed-upon procedures. I do not believe that anything, much less any major concession, was ever easily obtained from this Fund. Moreover, the other cabinet officers and I agreed not to adopt any proposal which would have left the existing Fund trustees in control regardless of what procedures they might follow.

The negotiations between the government and the Fund were protracted and difficult and, at several points, they broke off entirely. Throughout the period of these negotiations our attorneys, assisted by investigators from the SIS, worked to prepare to bring a suit, should we have to do so, for removal of the trustees. Staff worked long hours and were frequently assigned and reassigned to work on new issues. Segments of the investigation were necessarily delayed as a result of our concentration of resources to prepare for litigation. Some of your prior witnesses, who disagreed with or did not understand our priorities, have tried to read sinister motives into these reassignments and changes in investigative plans. Had their views been adopted, however, the Fund would likely not have enjoyed the three years of independent asset management which have already occurred.

Fortunately, litigation for removal of the trustees was not necessary. In March 1977, an agreement was reached. The holdover trustees would resign, and the Fund would install independent professional investment managers. The GAO and others, taking up the role of Monday morning quarterbacks, now find fault with the form and substance of this agreement. I find these suggestions to be overly simple and unrealistic. In my judgment, the reforms we obtained included substantially all of the relief that we might have obtained in litigation. We obtained it quickly, while conserving our resources to begin our investigation of the Central States Health and Welfare Fund and to bring suit against the former Pension Fund trustees to recover losses suffered by the Fund.

The GAO has also found fault with the facts that the Department did not enter into a written agreement with the Fund trustees setting forth the reforms which had been bargained for. It is somewhat difficult to understand this criticism since all of the reforms on which we agreed have, in fact, been accomplished. The fact that we decided to achieve our objectives without litigation, if pos-

sible, made a written agreement with the Fund itself unnecessary; but this hardly meant that there would be no enforceable agreement to preserve the independent asset management arrangement. Rather, as we made clear in our earliest Congressional testimony and as was subsequently accomplished, the agreement to install independent asset managers was embodied in contracts between the Fund and the asset managers themselves. These contracts are enforceable. Under the contracts the managers cannot be removed without my concurrence.

The GAO and other witnesses also made reference to rumors of a "phantom agreement" in which the Department allegedly promised the former trustees of the Fund that we would not sue them for their past conduct. There is no "phantom agreement." The very first time we were asked about such an agreement, we testified unequivocally that no such agreement had been made. It is not surprising that the Fund trustees for reasons of their own would claim that such an agreement had been made. What is surprising is that anyone else would give credence to these claims. There exists no evidence to support the suggestion of such an agreement. In fact, as you are well aware, we did subsequently file suit against the former trustees. Each time the question returns, I assert flatly that this rumor has no foundation. I hope eventually that the rumor will be successfully laid to rest.

I believe the experience of the past three years has confirmed the wisdom of the decision I made in early 1977 to reach an agreement without litigation as to the Fund's asset management. The Pension Fund's investment assets have been insulated from any improper use, the Fund's investment portfolio has been shifted from a high concentration in questionable real estate loans to investments in stock and other securities; the rate of return on Fund assets and the Fund's investment income have doubled.

Following the resignations of the hold over trustees and transfer of the asset management responsibility, our priorities were turned to the marshaling and evaluation of evidence to determine whether a suit against the former trustees for restitution of the losses they had caused the plan was appropriate; and to the investigation of the Health and Welfare Fund.

The task of assessing the evidence to determine whether there was support for such a suit was assigned to the attorneys from our Solicitor's Office, assisted by the SIS. We assigned this task to the people I believed could do the job and do it right. In some instances SIS staff, attorneys from the Solicitor's Office, or both followed through on previously prepared plans for the investigation of transactions that might be included in such a suit; investigations of less promising transactions were deferred; and the theretofore narrow focus of the investigative effort was redirected.

On February 1, 1978 the Department did file suit against the former trustees of the Fund seeking restitution and indemnification for losses to the Fund resulting from the trustees' unlawful conduct. We expect, after trial, to obtain a judgment in the millions of dollars, judgment which will probably exceed the amounts which are recoverable from the combined assets of the defendants and their insurance.

The assertion has been made in these hearings that our decision to proceed with civil litigation had the effect of foreshortening SIS plans for extensive third party investigation and prevented the Department from acquiring important information. During my first months in the Department, we realized that the focus of our investigative efforts would have to switch to searching for information from so-called third party sources as opposed to analysis of the records of the Fund. Some of this work was accomplished through the use of administrative subpoenas. However, we did not view investigation as an end in itself but, rather, as a means to help us achieve our goals primary among which was then and is now to protect the plan's assets and to bring about restitution by the Fund's former fiduciaries. We were not willing—and we would have been reckless to do so—to endanger our ability to bring timely litigation in order to carry out a virtually endless investigation. Once the litigation was filed, we have conducted considerable investigative activity through voluntary means and through civil discovery. We do not believe that we have lost any information. Rather, faced with the immense area of the Fund's asset management practices, we have targeted our investigative efforts where they are most likely to meet with success and to lead to some monetary recovery for the Fund.

The GAO and others have also asserted that a shortcoming of the Department's investigation was in not committing more investigative effort to issues other than the asset management practices of the old trustees such as trustee expenses and other administrative expenses; and that the Department's inquiries into these areas in our current investigation of the Fund shows that the issues should have been investigated before. These criticisms evidence a lack of understanding of ERISA's focus on the actions and personal liability of individual fiduciaries. When the old trustees resigned their positions with the Fund, they no longer posed a threat to any Fund assets and were no longer subject to removal or other injunctive relief. In light of the magnitude of the claims which we expected to assert and have now asserted against them in our pending case, it was clear that it would not be an effective use of our resources to pursue the former trustees for potential claims for payment of excessive administrative expenses which are dwarfed by the claims regarding asset management. Our current investigation is concerned with the actions of the new trustees and does not include review of any acts which might have been included in our earlier investigation.

I would like to address also the state of the coordination between the Department of Labor, the Department of Justice and the Internal Revenue Service. Since I have been in office, the Department has fully met its obligations to coordinate its ERISA enforcement efforts with the Department of Justice and IRS. I personally have discussed these matters at the cabinet level and I know of extensive staff level dialogue.

A review of the allegations regarding this Department's lack of cooperation with the Department of Justice shows the allegations to be largely a restatement of some employees' disagreement with our policy decision, which had been fully coordinated with the Attorney General, to move quickly to protect the assets of the Fund through litigation if necessary. Former SIS employees have alleged that this decision resulted in the curtailment of their plans to conduct certain investigative activities, thus depriving the Department of Justice of the possible fruits of that investigation.

I have said it before and I will say it again that our primary responsibility under ERISA is to safeguard the assets set aside for participants and beneficiaries of employee benefit plans. There is no doubt that some investigators or attorneys within the Department of Justice would have preferred that our plans for investigation were extended or modified for the purpose of gathering information which might be useful to them. However, the objective of the Department of Labor is to investigate possible violations of ERISA; if these investigations generate possible criminal cases as well, they are referred to the Department of Justice. It is not the objective of the Department of Labor to use its ERISA investigative authority to investigate violations of the criminal code, and we believe that we would be on dubious legal grounds if we attempted to do so.

As I said earlier, much of the planned investigation was not abandoned, but has been or will be accomplished later, through voluntary means, or through discovery in litigation. In every case, there has been free flow of all appropriate information to the Department of Justice. In addition, the Department of Justice has always had the authority and the resources to gather any information it required, including 87 investigators provided by the Department of Labor through the Office of the Inspector General. In fact, in certain instances, the Department of Justice has requested the Department of Labor to delay certain investigative activities.

The second aspect of the criticism of our cooperation with the Department of Justice is our alleged failure to provide the Justice Department with information warranting consideration for criminal prosecution. That allegation is also flatly untrue, and I would be surprised if this Subcommittee would accept the unfounded allegations of individuals who can point to no evidence which would substantiate those charges. Not only have we provided the Department of Justice with all such information, but we have provided tens of thousands of pages of documents which have been requested or which might be helpful to their investigations. There are some types of information which have been gathered in our investigations, the disclosure of which is controlled by law, orders or regulations such as the Internal Revenue Code, protective orders, and certain privileges recognized by the courts. For these reasons, disclosure to the Department of Justice of information which may fall within such a category is made under controlled conditions and after approval by a responsible official. However, with respect to this or any other type of information which warrants consideration by the Depart-

ment of Justice, the Department has assured and will continue to assure that the Department of Justice gets that information.

The statistics cited by the GAO regarding referral of information by the Department of Labor do not accurately reflect the magnitude of our efforts to provide the Department of Justice with information. You cannot measure our continuing efforts by counting the number of formal referral memos found in our files. Within the past four years, we have provided the Department of Justice with information relating to more than 80 Pension Fund transactions, in addition to voluminous information relating to other aspects of the Fund's operations.

In relationships between any two organizations the size of the Department of Labor and the Department of Justice, particularly where each has highly motivated investigators and attorneys who believe that their particular jobs are most important, it is inevitable that there will be problems of communication, assignment of priorities and occasional misunderstandings. However, as the Justice Department testified before the Oversight Subcommittee of the House Ways and Means Committee in March of this year, coordination between our organizations is good and any problems which existed in the past appear to have been substantially remedied. With the exception of some confusion regarding advance notice of the filing of our civil suit, which I testified about to this Subcommittee in 1978, I am aware of no complaints by an official of the Justice Department about our coordination efforts on this case. I think it is completely unwarranted to criticize our coordination efforts without soliciting the views of appropriate Department of Justice officials.

I understand that there has been some criticism during the hearings of the IRS's decision in mid-1976 to revoke the tax-exempt status of the Fund. I was surprised to learn that I had been criticized personally for failure to "protest" this decision and that it had been asserted that my lack of protest was inconsistent with my testimony to this Subcommittee in July of 1977 that we were coordinating with the IRS. I stand ready to admit my own mistakes but I am unwilling to plead guilty to failing to protest the IRS action since it occurred six months before I became Secretary of Labor.

I do not think there can be any serious charge of lack of coordination on this case between our agencies during the administration. Both this Department and the IRS have repeatedly advised other Committees and Subcommittees of our efforts. Our current investigation is fully coordinated with that of the IRS.

The GAO has criticized the Department's post-litigation monitoring of the Fund placing particular emphasis on the so-called B & A account. As you may know, I advised this Subcommittee in July 1977 that the Department would monitor the trustees' handling of the funds in this account, and we have done so.

At the outset, the B&A account amounted to about \$70 million. From the monthly reports of the Fund's asset manager and our knowledge of the flow of contribution income to the Fund, we have been able to estimate the approximate size of the B&A account. Our rough estimates have been confirmed by information obtained from the IRS, from the asset manager and from confidential sources. In addition, the Fund's annual report and information provided by the Fund to the House Ways and Means Subcommittee on Oversight show that this account has been invested in certificates of deposit and prime commercial paper. All of this information has also been verified by our current on-site review of Fund records.

We also disagree with the apparent GAO suggestion that the Department was less than vigilant in connection with a proposed settlement in the case of *M & R v. Fitzsimmons*, a case brought by the owners of the Dunes Hotel in Las Vegas to compel the Fund to make a \$40 million loan which would have been a prohibited transaction under ERISA. The Department took the initiative to intervene in that case as a defendant in 1976. At a final pre-trial conference in that case, the Fund trustees, without the apparent foreknowledge of their own attorneys in the case, made an attempt to settle the suit by making a new loan to the Dunes of some \$90 million which presumably would have come from the B&A account. Because the Department had become a party to the case, in part for the very purpose of protecting the fund, we were in a position to object vigorously as soon as the settlement proposal was laid bare. An examination of the transcript in this case will disclose that the Department strenuously objected to the settlement proposal and that it was at the Department's sug-

gestion that the Court determined that any settlement proposal would have to be approved by the Department and by the Fund's asset manager.

It is difficult to imagine what more the Department could have done in the case, and we invite the Subcommittee to review the transcripts of the court hearings to see how vigorously and successfully we opposed that proposed settlement. After a lengthy trial in which the Department played a major role, the Court issued its opinion declaring the loan commitment to be unlawful. Not incidentally, this case set significant precedent regarding the broad scope of ERISA's fiduciary provisions.

As the official charged with responsibility for enforcing ERISA it is my job to determine how the Department's investigative resources are best utilized to protect the interests of the participants and beneficiaries of this and thousands of other employee benefit plans. The Department's decisions as to how the B&A account or other aspects of the administration of this Fund should be monitored, have been effective and we believe have minimized to the maximum practical extent the risks to the assets of this Fund.

Finally, the GAO concluded that it "questions" whether we have achieved lasting reforms in the operation of the Fund. Institutions change and people change, and I cannot assure you that every reform we have achieved will be lasting. I have discussed with you the considerations which motivated our decisions. None of the alternatives which have been identified—and no government agency—can guarantee a permanent reform of this Fund. In my judgment, the arrangements for the management of the Fund's assets now in place were the most effective, available alternative to assure prompt and effective protection of Fund assets. As we have already demonstrated, the asset management agreements between the Fund and the asset managers, my authority under those agreements to veto the termination of an asset manager, and my enforcement authority under ERISA, provide adequate tools to insure the continued protection of Fund assets throughout the period of the agreements. Like the GAO, I have no certainty whether the reforms we instituted will be lasting. What I can assure you is that we have put a halt to the practices of the past and that we will be vigilant in the future.

Before concluding, I would like to address two incidents which have received substantial attention for this Subcommittee. The first involves the National Bank of Georgia. Considerable media attention from these hearings focused on a charge that Department officials had, for political reasons, limited an investigation of the Pension Fund's relationship with the National Bank of Georgia. I have reviewed the facts relating to these charges and I confess that I will take some pleasure in demonstrating to you just how silly these charges are. First, I understand that this subcommittee elicited testimony from a witness—who admitted that he had neither first-hand knowledge nor any evidence—his opinion that the Pension Fund's relationship with this bank may have arisen from some desire on the part of the Central States trustees to obtain influence with the future Carter administration. The facts, as we know them, are as follows: In March of 1976, the Fund placed some 200 million dollars under the management of six banks located in various areas of the country. This was not, as one previous witness suggested, a program of loans from the Fund to the banks. Rather, the banks acted as managers for the monies entrusted to them and were instructed to make investments by buying securities for the Pension Fund's portfolio. The arrangement with the National Bank of Georgia was negotiated beginning in late November 1975. It would have taken a very farsighted Fund trustee in November 1975—before President Carter had won a single primary election and while he was virtually unknown to much of the country—to attempt to secure influence in his future administration. In fact, there never has been the slightest evidence that the relationship was anything other than a normal asset management relationship.

The information which was received by the Department in late August of 1977 was that the investment performance of the National Bank of Georgia was below that of the other banks. Lawrence Lippe, the then-Director of SIS, requested information voluntarily from the Fund and was refused. He then sought to subpoena from the Fund information regarding the investment program. The Office of the Solicitor declined to approve the subpoena. Among the considerations for not issuing the subpoena were that other investigative techniques had not been attempted, that the need for an investigation did not appear pressing—given that at least three other governmental agencies including the

Department of Justice were then investigating the National Bank of Georgia—and that the information received by the Department did not clearly suggest any fiduciary violations. Since the Fund had already indicated that it would resist the subpoena, we were not eager to give the trustees any excuse to delay the final closing of the asset management contracts with the Equitable Life Assurance Society, a closing which was then set for September 30 and which was actually accomplished on October 3.

For those reasons, a decision was made that no harm was likely to result from a delay in issuing a subpoena. The memorandum from the Solicitor's Office which the Subcommittee has available, makes very clear that Mr. Lippe was free to pursue the investigation through any means other than issuance of a subpoena to the Fund, including obtaining information from the bank and other agencies. Mr. Lippe left the Department shortly thereafter. The matter was later reviewed in light of the available information and the investigation by other government agencies.

When Equitable took over the asset management, the previous bank program was disbanded, and the Funds relationship with the National Bank of Georgia and two other banks was severed in late 1977. Therefore, a decision was made that no investigation by the Department was warranted. The decision had nothing to do with political considerations; rather, it reflected the judgment of responsible Department officials as to how the Department could best spend its time and effort.

Considerable reference was also made at the previous hearings to an internal Department memorandum which referred to five, instead of six, banks in the securities investment program of the Fund. The clear innuendo, was that my staff had consciously omitted mention of the National Bank of Georgia. Great alarm was expressed that I was being willfully misled. The facts are considerably less dramatic.

Of the original six banks which began in the program in early 1976, one bank—Equibank located in Pittsburgh—dropped out of the program in September 1976. Thus, for most of the program's twenty-month existence, there were, in fact, only five participating banks. This fact should certainly have been known to the witnesses whose testimony cast this aura of suspicion, and in any event could easily have been verified with us or through other sources before such reckless use was made of our memorandum at the hearing.

The final subject which I would like to discuss involves an internal management review which the Department conducted regarding the Special Investigations Staff. It is apparent from the testimony of GAO and from other evidence gathered by the Subcommittee that the SIS organization that I inherited from my predecessor was not without its problems. In addition, the shift in strategy of our Central States enforcement effort caused by my decision to move quickly to protect the assets of the Fund through litigation if necessary imposed a heavy burden on the SIS staff. Our new priorities required long hours of overtime and frequent reassignment to high priority tasks with short deadlines. The shift in strategy to litigation also resulted in a shift of the primary function of the SIS from a free-ranging investigation to a litigation support function, with resulting changes in work procedures and reporting relationships. Most of the SIS employees responded well to this challenge. A few employees did not respond as well and their reactions spread distrust and dissension among the staff. We had initially hoped to resolve the SIS management problems by changes at the top level of the SIS structure. In early 1979, then Under Secretary Brown told me that serious problems still existed. My instructions to him were to find out what the problems were and to fix them.

Two of the Department's best field managers were assigned to conduct a confidential management review of the SIS in early 1979. They were commissioned to interview SIS employees and other employees within the Department to identify management problems and to recommend solutions. They did their job well and prepared a thorough review. This review confirmed many of the suspected problems and resulted in a recommendation for the complete restructuring of the Department's Central States enforcement efforts. I was briefed on the management review and decided that the substance of those recommendations should be implemented. And we have done exactly that. Effective on May 5 of this year, the SIS was disbanded as an organizational entity. The Special Litigation Staff has been organized and a new investigative unit has been established within the Chicago Area Office of the Labor-Management Services Admin-

istration to carry on all future investigative activity regarding these Funds. We believe that this approach will allow us to maintain continuity in our litigation effort and at the same time expand it as now is needed. Most of the reliable investigative staff which has worked thus far on our cases will stay with the litigation. At the same time, our on-site investigative staff will be free to work solely on new investigation.

There has been a great deal of loose talk, apparently emanating from the Subcommittee staff, that the Department has attempted to cover up some of the information found in the management review. The review included information divulged by employees in confidence, including both frank evaluations and petty and malicious allegations made by some employees about others. Department officials believed that the allegations were largely incredible or irrelevant except as a reflection of the personnel problems within SIS which we sought to change and have changed. In order to minimize the dissemination of this information within the Department, only a limited number of copies of the review were made for top officials. Once the review had served its purpose and its recommendations had been carried out, the official coordinating the review discarded his copies. There was, however, no highly dramatic or willful destruction of documents. When asked, the writers of the review located their file copies, and we were able to provide the materials to the Subcommittee. We were stunned, however, when the Subcommittee threatened to publicly release the review and its underlying materials; necessarily the release of this review would include considerable information which would be extremely destructive of working relationships among our staff, defamatory of some of our employees, and completely destructive of our future ability to obtain the cooperation and candor necessary to identify any future management problems. I cannot believe that the release of this information would serve any legitimate interest of the Subcommittee, and I trust that the members will agree with me. The significance of this management review is simply that it demonstrates how the Department acted responsibly in identifying and solving its internal management problems.

In conclusion, I would like to reiterate that we are proud of our handling of this investigation and of our litigation. It is easy to criticize any number of aspects in a large organization, and to second-guess management decisions. We are no different. Problems of management and personnel are my problems, and I am committed to resolving them. We ask that we be judged only by our results and on that basis we believe that any fairminded observer would commend our efforts, as many have done.

If the members of this Subcommittee have questions, I and the appropriate members of my staff are here to answer them.

Chairman NUNN. We will give you whatever time you need. You have every right to be heard on these points.

Secretary MARSHALL. Thanks, Mr. Chairman. I appreciate the opportunity to testify today.

I regret that I was not able to testify earlier. Because of that inability, serious but unfounded charges made before this subcommittee have thus far gone unchallenged. I must state at the outset that some members of this subcommittee often have made it clear, most recently through their statements at the earlier sessions of these hearings, that they simply do not agree with the way we at the Labor Department perceive our enforcement responsibilities under ERISA and other labor laws. I am aware from past experiences that virtually nothing I can say can change these long-held biases against our work, although I am happy to try.

But I do resent the charge that these hearings were made necessary because the Department did not fulfill my pledge to keep the Congress fully informed of our activities regarding the Teamsters Central States Pension Fund. Since I was confirmed as Secretary of Labor, I have on numerous occasions explained our activities regarding the Central States fund.

My staff also has spent countless hours briefing the staff of this subcommittee and of other congressional committees. We will continue to do so. We understand the Congress natural interest in keeping abreast of our activities, especially in an investigation of this nature. But highly adversarial proceedings which begin and end with preconceived conclusions do not seem a useful way to us to communicate with the Congress.

In June 1978, at the request of this subcommittee, the General Accounting Office began a lengthy investigation into the Department's handling of the investigation of the Central States pension fund.

The GAO inquiry employed five or six persons over nearly 2½ years. The GAO personnel had unrestricted access to all employees and files of the Department relating to the Central States matters.

Comptroller General Staats, in presenting GAO's findings to the subcommittee on August 25, included criticism of fundamental policy decisions by present and former Department of Labor officials and me. We believe that the GAO's criticisms are based on a number of misconceptions which I will address today.

We disagree strongly with those criticisms but regard them as responsibly made. The subcommittee staff has also sought out and presented testimony of persons formerly employed in the Central States investigation. The testimony of these witnesses has not been confined to responsible criticism.

In addition to testimony that these witnesses disagreed with high-level policy decisions, the subcommittee elicited statements which are factually inaccurate and distorted and attacked the competence and character of able, dedicated employees.

Chairman NUNN. Mr. Secretary, on that point, this includes the testimony of Lawrence Lippe, who formerly headed up the entire investigation?

Secretary MARSHALL. That is right. And I will answer his comments.

Chairman NUNN. Yes.

Secretary MARSHALL. It is difficult for me to understand what legitimate interest of this subcommittee has been served by eliciting such testimony. Disgruntled former staff level employees have been allowed to spread on the public record their opinions, sometimes admittedly formed on the basis of no evidence whatever, that the decisions of their superiors with which they disagreed must have been motivated by political or even criminal considerations. If the subcommittee staff had sought to test the reliability of this testimony in advance, I am confident that the course of these hearings would have been much different. As it is, reckless allegations have already been made publicly and it is probably impossible to completely undo the damage that has been done.

Chairman NUNN. Mr. Secretary, I must interject at that point that you talk about former employees. The Kotch-Crino report is full of allegations by present employees who are still involved in the overall investigation. We are going to make all—

Secretary MARSHALL. They are no longer involved in the SIS because it doesn't exist.

Chairman NUNN. Well, not SIS as such, but still involved in the overall investigation.

Secretary MARSHALL. That was, of course, the reason that we had that document made. We knew we inherited a problem in SIS, a serious management problem. Some of the people are no longer there and others have been reassigned. And it was an effort to solve that serious problem which we inherited in the SIS to start with. Some of those people who were most disgruntled are the ones who testified here without—

Chairman NUNN. Certainly there were disgruntled employees, but the point I wanted to make is there still are, and those employees, several of them, have made continuing allegations which are in the Kotch-Crino report.

Secretary MARSHALL. That is right. I think it is important to try to get all of that out. I think one of the problems you find is that many lower level employees who have been interviewed and who have testified had inadequate knowledge of the policy decisions that were made and, therefore, they made simple inferences which I can easily answer and intent to.

Chairman NUNN. I certainly would agree that there is a difference of opinion with the Department of Labor and the people investigating this on certain policy questions, no doubt about that.

Secretary MARSHALL. Yes. Now, these irresponsible allegations have already had a chilling and demoralizing effect on our employees. That effect, combined with the subcommittee's release and threatened release of investigation and litigation documents, documents which any court in the country would find to be confidential and protected, pose a serious threat to the Department's investigation and lawsuits relating to this fund and are counterproductive to the goals of both the Department and this subcommittee to fully enforce ERISA for the protection of the fund's participants and beneficiaries.

Senator PERCY. Mr. Secretary, because that is one of the most serious charges I have heard in over a decade on this subcommittee, I would like you to give us the evidence. You refer to the subcommittee's release of documents. The subcommittee consists of members, Senators and staff, minority and majority. Which member ever released any material that you are alleging was released?

Secretary MARSHALL. Part of the Kotch-Crino report was read into the record earlier. I will ask Solicitor Clauss to respond to that.

Ms. CLAUSS. This refers to documents during the prior August hearings which were read in part into the record, although admittedly the committee made every effort to exercise its judgment in determining what should be put under seal and what should be read in the record.

Senator PERCY. Do you know who read that into the record?

Ms. CLAUSS. I have the testimony here.

Chairman NUNN. What documents were they? Describe them.

Ms. CLAUSS. These were internal memorandums discussing strategy of various types. I have staff here that could certainly answer that question.

Chairman NUNN. We would like to know which ones those were.

Secretary MARSHALL. We will provide you a list of those.

Chairman NUNN. You don't know any of them?

Senator PERCY. You don't know? This is a very serious charge.

Secretary MARSHALL. I know the threatened release better than I do the release.

Chairman NUNN. What was the threatened release?

Secretary MARSHALL. You threatened to release the Kotch Crino report. That was one of your options.

Chairman NUNN. I told you, Mr. Secretary, you were putting us in a position whereby we had the option of either subpoenaing the witnesses or going into public session and airing matters which should not be aired in public session. I told you that we did not want to do that, but if we could not in any way get these witnesses to testify in private session, there was no way that we could protect this information in public session. That was during the period of time where your Labor Department's Solicitor was not allowing, and you were not allowing, us to interview. I did not tell you we were going to do that. I said that was one of the options we had if you persisted in refusing to allow the Labor Department people to cooperate with the oversight responsibilities of this committee.

Secretary MARSHALL. We always were ready to allow those people to testify. What we said was we would not order them to without proper safeguards, because the information had already been made public and because we were afraid that—

Chairman NUNN. Well, tell us about what information had already been made public.

Secretary MARSHALL. Well, the testimony in the—

Chairman NUNN. You mean the GAO report? You don't think we should have made that public?

Secretary MARSHALL. Not the GAO report. The testimony of people who made reckless charges against members of the Department that could not be countered.

Chairman NUNN. What documents?

Secretary MARSHALL. The privileged documents that were read into the record included a January 17 memorandum that discussed the Department's litigation strategy in the *Marshall v. Fitzsimmons* case and portions of a November 1979 memorandum that discussed the Department's plans for further investigation of the Central States pension fund.

Chairman NUNN. Who read those into the record?

Secretary MARSHALL. I don't recall. I wasn't here, but I have read the transcript and there are portions of them read into the record.

Chairman NUNN. Did you notify us that those were privileged documents?

Mr. GALLAGHER. I believe we did in conversations before the August hearings.

Chairman NUNN. I would like to get exactly what those documents were.

Senator PERCY. Does your counsel recall that we were told those were privileged documents?

Mr. STEINBERG. Our agreement with the Labor Department was to seal the actual document until after the hearing so they could make a determination that they wanted to object to having the actual document published in the public record. We informed them from the very beginning that we would refer to matters in those documents

in questioning the Labor Department witnesses which is what we did. We tried to be careful not to refer to matters that would harm their potential litigation.

Mr. GALLAGHER. I specifically objected to that being read in the record.

Chairman NUNN. I must just add here, and I repeat, Mr. Secretary, there probably will be things and have been things that come out in the course of these hearings that with a normal, reasonable, and prudent degree of cooperation between the Labor Department and this subcommittee this could have been avoided.

You have placed us in an almost impossible position: upon the one hand insisting on public sessions, not allowing your own people to come over and testify without a subpoena and, at the same time, saying there is a tremendous amount of this information that should not be made public. That is your choice. That has been your course of action and you bear the primary responsibility for what may flow from that.

We will do our best to fulfill our duty, but you have put us in the position where that is almost impossible.

Secretary MARSHALL. Let me say, obviously we have a different perspective of this, Mr. Chairman. The initiating process that led to all of this difficulty was the fact that these charges were made public by former employees of this Department originally. That was not an executive session—that is one of the reasons—while I was in Japan. I got the report of that and the charges that had been made, and it went all over the world without being subjected to criticism. I might also say that the statements that you and Senator Percy made also went around the world. That was a public statement. That was not—

Chairman NUNN. That was not any allegation except the overall question about the Labor Department's competency. I repeat it again today. I have serious questions about it.

Secretary MARSHALL. You don't have proof of it though. What we need to do is try to get out the proof. It seems to me what you have said here is that we bungled this investigation, and the only question is, was it because of the incompetence or was it because of our institutional inability to deal with the problem?

We already, by your opening statements, by the kind of testimony you elicited from former employees of the Department—

Chairman NUNN. People who have been in the investigation—

Secretary MARSHALL [continuing]. Have been, are proven as guilty and not a chance—

Chairman NUNN. I have not concluded that. I certainly have not used the word "guilty" because that has criminal connotations. I have made no criminal charges here, have been very careful about that. I do think the prima facie case between the GAO and Kotch-Crino report has been made. That case can be rebutted by your testimony. That is part of what we are here for today.

Secretary MARSHALL. I think I can easily do that.

Chairman NUNN. I want to cite one other thing. I told you before you left for Japan there were serious charges that were going to be made, and I asked you please to have someone who could respond to those charges. I told you they were serious. You chose not to be here,

not only chose not to be here but not to have anybody who could speak in your absence. That again is your decision, and the gap here in time is completely your responsibility.

Secretary MARSHALL. Let me also say that is the case. I could not be here earlier but when you told me that, I had my Executive Assistant and the Under Secretary review the whole matter and they said neither in the GAO report or anything else are there matters which should cause us grave concern. And, therefore, I went on to Japan on that assumption. But when these charges came out, that we had blocked investigations for political purposes, and that was a matter of public record, then I decided—and allegations had been made about the motives of employees in the Labor Department—I considered then that it was important for us to come back and see that we had an adequate way to present the evidence all at the same time to try to counteract those allegations.

That is a serious charge which, if it is a political charge, it extends to me. And the GAO made charges that are very easily answered about the way we conducted that investigation.

Chairman NUNN. We will get to that in a minute. I don't want to belabor this point.

Mr. Secretary, the subcommittee has a duty to make sure that witnesses who appear before our subcommittee have adequate background themselves to be able to testify on certain matters within their competence. We did that with the people who testified, including the man who headed up the investigation and several of the supervisors.

We do not certify what every witness says is accurate or complete, and we do not put our stamp of approval on those matters that are testified to. We wait until the hearings are over, and then we take a look and we have a report that is issued. We are not certifying that everything you say this morning is going to be something we would agree with. We don't agree necessarily with everything a witness may say. We have the duty to put information out to the Senate and to the subcommittee and to the general public from the people who have been involved in this investigation. It is abhorrent. We think we have fulfilled that.

Secretary MARSHALL. It seems to me that the problem was in the kinds of people who were selected to testify first and therefore what kind of bias was injected into the whole proceeding by that process. I think the testimony of those people could easily have been checked against the record, but I will proceed if you will let me, and I will lay that out.

Chairman NUNN. We will let you. I might add the people we chose to testify were the same people the Labor Department chose to head up one of the most important investigations in the Labor Department's history.

Secretary MARSHALL. I didn't choose them to head it up.

Chairman NUNN. I didn't say you did. I said the Labor Department did.

Secretary MARSHALL. Much of what you see here is an effort by me and people I appointed to try to improve the management of that operation which is the reason that that internal management report was made to start with. We did inherit the problem and that is one of

the reasons that we proceeded to take the investigation out of the hands of the people who were causing—that we didn't have confidence in. And I thought at first I could do it simply by removing the people at the top and putting in new management. It turned out that that didn't work either.

So, we had a continuing problem, but that didn't interfere with the investigation off the Central States pension plan. I put other people in charge of that, brought them in, put them in charge of it, and we continued to carry out our objectives. I think the thing we have to keep in mind is: have we done what we set about to do? All of this internal stuff about personal animosity and rumors and innuendoes hasn't got anything to do with the basic purpose of this.

Chairman NUNN. Have you done what you set out to do, but that is the second question. The first question is: did you set out to do what the Congress and the American people had the right to expect under ERISA? That is another question.

Secretary MARSHALL. What we were entrusted to do under the law, under ERISA, and I think the answer to that is yes.

Before addressing the specific issues raised in this previous testimony, I would like to respond to two assertions made throughout these hearings: the first that the Department of Labor—

Senator PERCY. Mr. Secretary, so we don't lose track of my original question, I still come to the conclusion that we gave you adequate opportunity. I have not seen any evidence from you or your colleagues that any release or threatened release of documents, investigation and litigation documents, and I will use your words, posed a serious threat to the Department's investigation and losses relating to this fund.

Secretary MARSHALL. We will spell that out. I think, if all of this information which was raw evidence, had been released as Senator Nunn pointed out to me, he had the option to do and was one of the options in this case—

Chairman NUNN. That we might be forced to do.

Secretary MARSHALL [continuing]. That would have seriously damaged our ability to carry out our responsibilities under the law.

Senator PERCY. You said release of this material?

Secretary MARSHALL. Yes.

Senator PERCY. I haven't seen any of the material that was released; certainly your list damaged your efforts.

Secretary MARSHALL. I will let the people who have seen that evidence spell it out.

Senator PERCY. We are at a little bit of a disadvantage here. This is one of the inherent natures of keeping matters confidential, but there are certain things, that do not do a great deal of credit, lawsuits that will not be made public at this time. But I hope you yourself with all the problems you have had in this investigation, including complete reorganization, are not trying to lay the foundation for blaming any future failures of this lawsuit, if they do occur, on this subcommittee.

Secretary MARSHALL. No; I don't believe that the lawsuit will fail. I think we will succeed with that. It is a strong suit. We have gotten strong information that we are developing. We have got a lot of competent and dedicated people in the Labor Department, in spite of your belief that they are largely incompetent, that are working very hard on this case.

Chairman NUNN. I did not say that, Mr. Secretary.

Secretary MARSHALL. I am glad because it seems to me the implication is that either they are incompetent or that we are incompetent to undertake this investigation.

Chairman NUNN. I just say there have been serious problems and there has been a prima facie case made that there are very serious problems in the Labor Department in this investigation. We are going to; I will await final judgment on that.

Secretary MARSHALL. I don't deny that we had serious problems. What I do deny is we haven't worked hard to try to correct them and that we haven't made substantial progress in both correcting the internal management problems as well as proceeding very effectively with this case.

Chairman NUNN. I hope we will agree with that when we get through with this hearing.

Secretary MARSHALL. Let me respond to two other things because they keep coming up in my testimony here.

I don't know really what it means to say that the Department is institutionally incapable of vigorously carrying out its responsibilities under the statute to prosecute labor unions. I have responded repeatedly to that kind of charge, and I think it is amply refuted by the record of this administration.

I also know that the GAO, despite its other criticisms, carefully refrained from supporting this assertion and disclosed not the slightest evidence which would support it. There apparently is an assumption that the Department of Labor is institutionally unable to prosecute union officials because we are either controlled by or too close to unions.

There is no evidence to support this assumption during my term as Secretary of Labor. It is true that we work closely with unions in carrying out the mandate of the Labor Department, to foster and advance the welfare of American wage earners. But we also work with many other groups, State and local elected officials, women's groups, community-based organizations, and representatives of minority groups. Our mandate, despite innuendoes from people who understand very little about the activities of the Department, extends to all workers, not just to union members.

Indeed, most of the Department's budget is devoted to employment and training and protective labor programs which have helped the workers who are not members of unions. However, as the President's chief adviser on labor matters, I am responsible for the development of industrial relations policy, and I do believe very strongly in the basic purposes of our labor policy as embodied in the National Labor Relations Act and other acts to make it possible for workers to decide for themselves whether or not they wish to organize and bargain collectively through representatives of their own choosing.

I also regard a free labor movement as an essential institution in a free and democratic society.

It does not follow, as commonly asserted by some Members of Congress, that I only represent union members or that I will not vigorously carry out my responsibilities under the law. Indeed, because I believe so strongly in the need for free and democratic trade unions I

believe very strongly that it is essential to eliminate any abuses by union leaders that would weaken this important institution. By the same token, however, I also understand the need to avoid unfair and unfounded attacks on unions that also weaken the labor movement.

Let's look at the specifics of our efforts to eliminate union abuses during the last 3½ years. For example, investigations of unions opened by the Office of Labor-Management Standards Enforcement have increased from approximately 812 in 1976 to more than 1,330 in the first 11 months of this fiscal year. Criminal investigations opened under the LMRDA and through our organized crime programs have increased by a similar margin—from 409 in 1976 to 615 in 1979 with a projected total above that number for this year. With respect to our activities under ERISA, during the first 11 months of fiscal year 1980 union affiliated plans were involved in approximately 22 percent of all investigations concluded, and approximately 50 percent of all investigative matters referred to the Solicitor for consideration for litigation. Approximately 50 percent of all cases with respect to which litigation has been filed involved union affiliated plans. I do not think that anyone can look at this record and claim that we are soft on unions.

Second, these hearings have proceeded on the basis of a forgone conclusion that the Department's efforts relating to the Central States pension fund have been a failure and that the only question worth discussing is why the Department has failed. I find this judgment incredible. In fact, the Department has achieved a stunning success, a success which is all the more impressive against the perspective of 20 years of efforts by a variety of agencies to reform this fund.

Senator PERCY. Instead of the percentages upward, could we have the number of cases either supplied now or for the record?

Secretary MARSHALL. Yes. We can supply that.

Senator PERCY. Does anyone have an estimate of how many cases we're actually talking about?

Secretary MARSHALL. We can give you those numbers.

Senator PERCY. No idea how many cases?

Secretary MARSHALL. 1,370; 1,300 cases in 1980, investigations in 1980.

Senator PERCY. Investigations?

Secretary MARSHALL. That is right.

Senator PERCY. Actual cases; how many?

Secretary MARSHALL. In fact these are numbers, Senator, at the beginning of my testimony: 812 in 1976 to 1,330 in the first 11 months. That is not a percentage. That is an absolute number. Criminal investigations opened 409 in 1976, 615 in 1979 and probably it will be about that total this year.

Chairman NUNN. Does this include the Inspector General's statistics?

Secretary MARSHALL. Yes. It does.

Since the fifties this subcommittee in various hearings and public statements has expressed its concern about abuses in the Teamsters Central State Pension Fund. Over the last 20 years, many Government agencies have directed substantial efforts to reforming the fund and ridding its operation of known and suspected abuses.

The convictions of Dave Beck and Jimmy Hoffa and other persons associated with the fund were properly hailed as great achievements in this continuing effort. However, as this subcommittee well knows, at the time that ERISA was passed in 1974, those convictions had done nothing to safeguard the pension fund and protect the retirement incomes of over half a million participants and beneficiaries. On the other hand, during this administration, the Labor Department has achieved a far greater success in its efforts than all of the previous efforts combined. All of the former trustees have been removed, without resort to lengthy litigation which might have taken many years to reach the same result. These former trustees have been sued by the Department to recover for the plan, and for its participants and beneficiaries, millions of dollars of misspent funds. All of the fund's investments, some \$2½ billion, have been placed under independent asset management, assuring that there is no interference from unscrupulous individuals inside or outside the Teamster hierarchy to endanger the assets of the fund.

The Department has carefully watched this arrangement. Independent asset management is working. The trustees have not succeeded in interfering with these asset managers. On several occasions, when the trustees seemed to test our commitment to support the independence of the managers, we have responded firmly and effectively. It is curious to me that our critics give great weight to various moves to remove these assets from the control by independent money managers where we have placed them, but almost no weight to the fact that we have successfully blocked all such moves.

We are continuing our investigation of the fund, our current efforts being focused on the actions of the new trustees, to determine whether they are carrying out their fiduciary responsibilities in a manner consistent with the requirements of the law. To this end, we are presently investigating on site at the fund's offices in Chicago. Both the investigation and the litigation have been given the highest priority at the Labor Department. We do not claim that our efforts have always proceeded without difficulty and by no means do we believe that our task is finished. However, there can be no doubt that our efforts have turned this fund around and we are proud of that.

The GAO testimony at least indirectly criticized fundamental policy decisions made or implemented after I became Secretary of Labor. Chief among these decisions was the decision to focus the Department's investigation on preparation for civil litigation while seeking a nonlitigative resolution of the asset management procedure phase of the investigation.

I understand that it has been suggested during these hearings that the Department's efforts began to falter when this administration took over in January 1977. I do not intend to defend against these suggestions by engaging in partisan attacks on the prior administration. However, it would be useful for me to review the situation which I saw when I assumed office in January 1977.

At that time, the Special Investigations Staff—SIS—had been conducting an investigation for more than 1 year. After a broad initial review of fund operations, the SIS had decided to concentrate its efforts on the management of the pension fund's assets, an area which

vastly overshadowed other possible avenues of investigation in scope and in potential for the discovery of fiduciary abuses. After consultation with the Department of Justice, the SIS had agreed to an arrangement for the voluntary production of records by the pension fund without resort to administrative subpoenas. Certain arrangements for coordination with the Department of Justice and the Internal Revenue Service had been made. Following the IRS' revocation of the fund's tax-exempt status, SIS had begun discussions with fund officials which had resulted in the resignations of 12 of the 16 fund trustees and which had proceeded to discussions of establishing written asset management procedures for the fund trustees to follow.

Despite these encouraging beginnings I was informed during my confirmation hearings, and on numerous subsequent occasions, that there were significant problems in the SIS. I promised to give the Central States investigation my full attention. I was concerned that more than a year after the investigation had begun the trustees still exercised full control over the fund's assets which they apparently had mismanaged in the past. Immediately after taking office, I brought in Eamon Kelly on leave from the Ford Foundation to serve as my special assistant and to take day-to-day control of this matter. Based on briefings by Mr. Kelly and other top staff, I soon concluded that, if the SIS was permitted to continue on the course it had chosen, it would be many years before even the asset management investigation was completed and even these projections depended on the investigation acquiring a firm scope and direction which apparently did not then fully exist.

Senator COHEN. How does that conclusion differ from the Kotch-Crino report, a report you appear to minimize the importance of. I think you characterized it as sort of disgruntled employees at the lower level who didn't understand the policy considerations involved?

I listened to your testimony. I get the conclusion that they reached—

Secretary MARSHALL. The report had not even been made here yet. There is no—

Senator COHEN. But their findings are precisely what you have just said.

Secretary MARSHALL. Except, of course, the question of their findings had some factual errors about other people. There is no difference—

Senator COHEN. They came to the same conclusion.

Secretary MARSHALL. They came to the same conclusion. I think the important thing is the conclusion.

Senator COHEN. I want to make it a point that you seem to denigrate the value of listening to disgruntled employees who have no perception of the larger scope of the Labor Department's investigation and yet you come to the same conclusion.

Secretary MARSHALL. No, absolutely not. One of the reasons that I wanted the Under Secretary to undertake an assessment of the situation in the SIS was that I was concerned that there were disgruntled employees and that there were problems and that we needed to find out—

Senator COHEN. Mr. Kotch and Crino were disgruntled employees?

Secretary MARSHALL. No; they were not. They were asked to undertake the investigation but what we realized is that there was something wrong there.

Senator COHEN. Perhaps I am misinformed, but I received the impression that somehow this committee was acting irresponsibly in relying upon the material found in the Kotch-Crino report.

Secretary MARSHALL. No; not at all. I think that the conclusions about it, I acted on them. And that is the reason we had it made. The thing that does cause difficulty is some of the irrelevant comments that are made about personalities within that report, things that could be very damaging because, as you know, if you are going to get candid opinions from people you will have great difficulty doing it if that shows up on the front pages of the newspaper, especially when those charges are completely unverified and therefore could make it very difficult for us to undertake similar investigations if we ever had to do it again.

Chairman NUNN. We haven't gotten into those yet. This morning we had the summary. The thing I think we have to all keep in mind here, I believe, Mr. Secretary, you would agree that what you are talking about on page 11 of your testimony is when you came into the office and what you found there.

Secretary MARSHALL. That is right.

Chairman NUNN. The Kotch-Crino report was not done until when?

Secretary MARSHALL. Later.

Chairman NUNN. 1979, 2 years hence.

Secretary MARSHALL. You are right.

Chairman NUNN. SIS was abolished in 1980.

Secretary MARSHALL. It was a continuing problem. Even though it wasn't abolished until that time, it was effectively taken over at a much earlier date by the Under Secretary working with the Assistant Secretary for LMSA and the Solicitor's Office to coordinate the activities.

The basic question, of course, was that. Of course this was brought out at my confirmation hearings. The problem is within the SIS and the nature of that investigation, the fact that the trustees still controlled the fund and that it had not been put in independent hands of any kind or that the same people who were accused of being guilty of mismanagement were still there. That was the situation that we found.

But based on briefings by Mr. Kelly and other staff, I soon concluded that if SIS was permitted to continue on the course it had chosen it would be many years before even asset management investigation was completed and even these projections depended on the investigation arguing a firm scope and direction which apparently did not then fully exist. Because of the investigation's potentially unlimited scope, clearly priority had to be established if we were going to use our resources efficiently.

I concurred in decisions reached late in 1976 that the investigative effort should be directed more toward preparing for possible enforcement action by the Department.

I was advised that there was evidence to support a civil suit for removal of the trustees and reformation of their asset management procedures. However, I was concerned then—and time and further

experience have only confirmed my judgment—that civil litigation would prove to be a long, uncertain, and arduous matter.

I also was concerned that the trustees who had been accused of fiduciary violations might continue to control the assets until the litigation was finally resolved. I therefore decided on a more expeditious solution which could be achieved without sacrificing our basic objectives.

In February 1977, my staff and I discussed available alternatives with Attorney General Bell and Secretary of the Treasury Blumenthal and other officials of their agencies. We all agreed to proceed with a unified Government—a set of Government demands to the trustees, including the resignations of the four hold-over trustees and a requirement that the trustees either reconstitute their board to include a majority of neutral trustees or appoint independent professional investment managers.

Bearing in mind that none of the available reform measures would guarantee the integrity of the fund forever. I concluded that the imposition of investment managers was the best available alternative for the protection of the fund's participants and beneficiaries.

I understand that a former witness testified that we could easily have obtained a consent decree under which the fund trustees would retain control over the assets but would operate under the agreed-upon procedures. I do not believe that anything, much less any major concession, was ever easily obtained from this fund. Moreover, the other Cabinet officers and I agree not to adopt any proposal which would have left the existing fund trustees in control, regardless of what procedures they might follow.

The negotiations between the Government and the fund were protracted and difficult and at several points they broke off entirely.

While these negotiations were underway our attorneys assisted by SIS investigators worked to prepare to bring suit should we have to do so to remove the trustees. Staff worked long hours and were frequently assigned and reassigned. Segments of the investigation were necessarily delayed as we concentrated resources on preparing for this litigation. Some witnesses who disagreed with or did not understand our priorities have tried to read sinister motives into these reassignments and changes in investigative plans. Had their views been adopted, however, the fund would likely not have enjoyed the 3 years of independent asset management.

Fortunately, litigation for removal of the trustees was not necessary. In March 1977 it was agreed that the holdover trustees would resign and that the fund would install independent investment managers. The GAO and others, taking up the role of Monday morning quarterbacks, now find fault with the form and substance of this agreement.

I find these suggestions to be overly simplistic and unrealistic.

In my judgment, the reforms we obtained included substantially all of the relief that we might have obtained in litigation. We obtained it quickly while conserving our resources to begin our investigations of the Central States Health and Welfare Fund and to bring suit to recover losses against the former pension fund trustees.

The GAO has also criticized the Department for not entering into a written agreement with the fund trustees setting forth the reforms which had been bargained for. It is somewhat difficult to understand

this criticism, since all of the reforms on which we agree have in fact been accomplished.

The fact that we decided to achieve objectives without litigation, if possible, made a written agreement with the fund itself unnecessary. But this hardly meant that there would be no enforceable agreement to preserve independent asset management. Rather, the agreement to install independent asset managers was embodied in contracts between the fund and the asset managers themselves.

These contracts are enforceable. Under the contracts the managers cannot be removed without my concurrence. The GAO and other witnesses also made reference to rumors of a phantom agreement in which the Department allegedly promised the former trustees of the fund that we would not sue them for their past conduct. There is no phantom agreement. It is not surprising that some of the fund trustees would claim that such an agreement had been made. What is surprising is that anyone else would give credence to those claims.

Senator COHEN. Mr. Secretary, could I ask a question? You say that no written agreement is required since all the objectives have been achieved. But if you don't know what the objectives are, if the members of this committee don't know, or GAO doesn't know, or some supervisor or some overseeing body has no idea what the objectives were, how would you be able to supervise and carry out the job without some sort of written documentation, other than a declaration saying these were our objectives?

Secretary MARSHALL. We made those objectives very clear, have done so several times to this committee, as well as to the oversight committee of the House Ways and Means Committee.

Senator COHEN. What was the objection to the writing?

Secretary MARSHALL. Well, the basic objection to us entering into a written agreement with the trustees themselves was that it could make the Government liable for their action for possible violations of responsibility. We didn't want those trustees to be our trustees and I didn't want to subject the Government to that liability. I think the way we arranged it made it enforceable. That is our basic objective, to get the assets in the hands of independent money managers.

Senator COHEN. I am not sure I understand what you are saying. You are saying that as long as you have an oral understanding, then the enforceability only runs one way, against the trustees, but it does not run against the Government?

If you commit the same oral understanding to writing, you are thereby subjecting the Government to liability? Is that your understanding?

Secretary MARSHALL. Some people thought we ought to take over as trustees ourselves or appoint those trustees.

Chairman NUNN. That is a different question than Senator Cohen is asking. He is asking why the agreement wasn't in writing.

Secretary MARSHALL. Well, our understanding with the trustees was in writing. We put it in writing and released it. It simply did not have the form of a contract between us and them.

The basic contract is between the independent money managers, which we wanted them to select, and the fund itself. That is the proper contractual relationship that should exist.

Chairman NUNN. Senator Cohen, I just want to say I think that is a very pertinent question. Although the secretary was going to get into policy questions, we hope to have the secretary back tomorrow for a thorough airing of policy questions, all of these things we need to get your full views on. Of course, that is one of the key questions.

Secretary MARSHALL. Anyway, that is the—

Chairman NUNN. I don't want to interrupt you anymore. But the phantom agreement did not originate with GAO. When you say you don't understand how anybody could suspect how one had been made, all of these allegations, as you well know, came from the Labor Department.

Secretary MARSHALL. Yes.

Chairman NUNN. Your people were talking about phantom agreements, and still are. We didn't come up with that word.

Secretary MARSHALL. As I say, the thing—I don't think you came up with it. I know it has been there because I have been trying to deal with it now for all of these years. The surprising thing to me is since we have sued the people, that we are supposed to have had some phantom agreement with, how can somebody still believe there is a phantom agreement after we have sued them?

Chairman NUNN. The allegation was not that you won't sue them, but, rather, that the old trustees would not have criminal exposure.

Secretary MARSHALL. They have criminal exposure.

Chairman NUNN. Not if nobody investigates them.

Secretary MARSHALL. They are being investigated. Nothing we did precluded any investigation, criminal or otherwise of those old trustees.

Chairman NUNN. That is right. I would agree with that. The only thing that would preclude it is nobody vigorously pursuing it and the statute running.

Secretary MARSHALL. Well, there exists no evidence to support the suggestion of such an agreement. In fact, as you are well aware, we did subsequently file suit against these former trustees.

I believe the experience of the past 3 years has confirmed the wisdom of my 1977 decision to reach an asset management agreement without litigation. The pension fund's investment assets have been insulated from any improper use. The fund's investment portfolio has been shifted from a high concentration in questionable real estate loans to investment in stock and securities. The rate of return on fund assets and the fund's investment income have doubled during this time.

[At this point Senators Nunn and Cohen withdrew from the hearing room.]

Secretary MARSHALL. After we had the assets placed in the hands of independent managers, our priorities turned to preparation for a suit against the former trustees for restitution of the losses they had caused the plan and to the investigation of the health and welfare plan. The task of assessing the evidence to determine whether there was support for such a suit was assigned to our Solicitor's Office, assisted by the SIS.

We assigned this task to the people I believed were best able to do the job. In some instances, SIS staff, attorneys from the Solicitor's

Office, or both, followed through on previously prepared plans to investigate transactions that might be included in such a suit. Investigations of less promising transactions were deferred.

On February 1, 1978, the Department filed suit against the former trustees, seeking restitution and indemnification for losses resulting from the trustees' unlawful conduct. We expect after trial to obtain a judgment in the millions of dollars, a judgment which probably will exceed the combined recoverable assets of the defendants and their insurance.

The assertion has been made in these hearings that our decision to proceed with civil litigation foreshortened SIS plans for extensive third-party investigation and prevented the Department from acquiring more information.

During my first months in the Department, we realized that investigative efforts would have to switch to searching for third-party sources as opposed to analysis of the fund's records. It has been suggested that these records didn't provide much useful information. But when you have a fund of that size, if they are the records upon which the fund itself makes decisions, it is obviously a very important source of information.

Now, some of this work was accomplished through the use of administrative subpoenas. However, we did not view the investigation as an end in itself, but, rather, as a means to help us achieve our goals, especially the protection of the plan's assets and the restitution by the fund's former fiduciaries. We were not willing, and we would have been reckless to do so, to engage in endless investigations that would have endangered our ability to bring timely litigation.

Once the litigation was filed, we have conducted considerable investigative activity through voluntary means and through civil discovery. We do not believe that we have lost any information. Rather, faced with the immense scope of the fund's asset management practices, we have targeted our investigative efforts where they are most likely to produce results and to lead to monetary recovery for the fund.

The GAO and others have criticized the Department's investigation for not committing more investigative effort to issues such as trustee and other administrative expenses and have stated that the Department's current investigation into these areas shows that these matters should have been investigated before.

These criticisms evidence a lack of understanding of ERISA's focus on the actions and personal liability of individual fiduciaries. When the old trustees resigned, they no longer posed a threat to any fund assets and, also, were no longer subject to removal or other injunctive relief. In light of the magnitude of the claims which we asserted against them in our pending case, it was clear that it would not have been an effective use of our resources to pursue the former trustees for relatively small potential claims for excessive administrative and trustee expenses.

[At this point Senator Chiles withdrew from the hearing room.] Secretary MARSHALL. Our current investigation is concerned with actions of the new trustees and does not include review of any acts which might have been included in our earlier investigation.

I also would like to address coordination between the Departments of Labor and Justice and the Internal Revenue Service. Since I have

been in office, the Department has fully coordinated its ERISA enforcement efforts with the Department of Justice and IRS.

I personally have discussed these matters at the Cabinet level and I know of extensive staff level dialog.

A review of the criticisms of this Department's cooperation with the Department of Justice shows the allegations to be largely a restatement of some employees' disagreement with our policy decisions, which we fully coordinated with the Attorney General, to move quickly to protect the assets of the fund through litigation, if necessary. Former SIS employees have alleged that this decision resulted in the curtailment of certain investigations, thus depriving the Department of Justice of the possible fruits of those investigations.

I have said repeatedly, and I say it again, that our primary responsibility under ERISA is to safeguard the assets for the plan's participants and beneficiaries. There is no doubt that some investigators or attorneys within the Department of Justice would have preferred that our investigations be modified to produce more information which might be useful to them.

However, the Department of Labor's primary responsibility is to investigate possible violations of ERISA. If these investigations generate possible criminal cases as well, they are referred to the Department of Justice. It is not the primary objective of the Department of Labor to use its ERISA authority to investigate violations of the criminal code. And we believe we would be on dubious legal grounds if we attempted to do so.

As I said earlier, much of the planned investigation was not abandoned, but has been, or will be accomplished later through voluntary means, or through discovery in litigation.

In every case, there has been free flow of all appropriate information to the Department of Justice. In addition, the Department of Justice has always had the authority and the resources to gather any information it required, including 87 investigators provided by the Department of Labor, through the Office of the Inspector General.

The second criticism of our cooperation with Justice is our alleged failure to provide that Department with information for criminal prosecution. That allegation is also flatly untrue, and I would be surprised if this subcommittee would accept the unfounded allegations of individuals who can point to no evidence to substantiate these charges.

Not only have we provided the Department of Justice with all such information, but we have provided tens of thousands of pages of documents which have been requested, or which might be helpful to their investigations.

The disclosure of some information is controlled by law, orders or regulations such as the Internal Revenue Code, protective orders and certain privileges recognized by the courts, and therefore disclosure to Justice of information in this category is made under controlled conditions and after approval by responsible officials.

However, the Department has assured, and will continue to assure, that the Department of Justice gets this information. The statistics cited by the GAO regarding referral of information by the Department of Labor are misleading. You cannot measure our continuing efforts by counting the number of formal referral memos found in our

files. Within the past 4 years, we have provided the Department of Justice with information relating to more than 80 pension fund transactions, in addition to voluminous information on other aspects of the fund's operations.

In relationships between any two organizations the size of the Department of Labor and Justice, particularly where each has highly motivated people who believe that their particular jobs are most important, it is inevitable that there will be problems of communications, assignment of priorities and occasional misunderstandings. However, as the Justice Department testified before the oversight committee of the House Ways and Means Committee in March of this year, coordination between our organizations is good and any problems which existed in the past appear to have been substantially remedied.

There was some confusion regarding advance notice of the filing of our civil suit which I testified about to this committee in 1978. But I am aware of no complaints by the Justice Department about our coordination efforts in this case since that time.

I think it is completely unwarranted to criticize our coordination efforts without soliciting the views of appropriate Department of Justice officials.

Senator PERCY. Mr. Secretary, I regret there is a vote coming up. We will suspend operations then for 3 or 4 minutes. If you would like to take a quick break.

Secretary MARSHALL. All right. Thank you.

[Brief recess.]

[Member present at time of recess: Senator Percy.]

[Members present at reconvening: Senators Nunn and Cohen.]

Chairman NUNN. The subcommittee will come to order.

We regret the interruption, but that is one of the hazards of these hearings. We may be interrupted frequently. We will try to keep the hearings going as much as possible.

Mr. Secretary, I don't know where you left off.

Secretary MARSHALL. I was explaining the coordination between the Department of Labor and the Department of Justice which had come in for some criticism. My comment was that I think that we have coordinated very carefully and I think the Justice Department people have testified to that. There was some confusion regarding the advance notice of our filing of our civil suit. I explained that earlier.

The Justice Department knew we were going to file a suit and we had been keeping them informed all along, and there were people in there, within the Justice Department, who didn't know about the suit. But we had attempted to notify them to that effect. There has been some complaint about that. But I don't know of any complaint since that time about coordination between the Departments of Justice and Labor. In fact, I think that we do have regular meetings to discuss the coordination of this and other matters in the Department.

I understand there has also been some criticism during the hearings on IRS' decision in mid-1976 to revoke the fund's tax-exempt status. I was surprised to learn that I had been criticized personally for failure to protest that decision, which was alleged to be inconsistent with my testimony to this subcommittee in July of 1977 that we were coordinating with IRS. But I obviously could not have protested to

the IRS action since it occurred 6 months before I became Secretary of Labor.

Chairman NUNN. I certainly would agree with you on that. I don't know when that allegation was made, but I am glad you corrected it.

Secretary MARSHALL. I do not think that there can be any serious charge of lack of coordination between our agencies during this administration.

The GAO has criticized the Department's postlitigation monitoring of the funds, especially of the so-called B. & A. account. As you may know, I advised this subcommittee in July of 1977 that the Department would monitor this account, and we have done so.

At the outset, the B. & A. account amounted to about \$70 million. From the monthly reports of the fund's asset manager and our knowledge of contributions to the fund, we have been able to estimate the approximate size of the B. & A. account. Our rough estimates have been confirmed by information from the IRS, the asset manager, and confidential sources.

In addition, the fund's annual report and information that the fund provided to the House Ways and Means Committee on Oversight shows that this account has been invested in certificates of deposit and prime commercial paper. All of this information has also been confirmed by our current onsite review of fund records.

We also disagree with the apparent GAO suggestion that the Department was less than vigilant in connection with the *M&R v. Fitzsimmons* case, brought by the owner of the Dunes Hotel in Las Vegas to compel the fund to make a \$40 million loan which would have been a prohibited transaction under ERISA.

The Department had intervened in that case in 1976. At a final pre-trial conference, the fund trustees, without the apparent foreknowledge of their own attorneys, made an attempt to settle the suit by making a new loan to the tune of some \$90 million, which presumably would have come from the B. & A. account. Because of the Department's intervention, we were able to object vigorously, as soon as the settlement proposal was laid bare.

The transcript in this case discloses that the Department strenuously objected to the settlement proposal and that it was at the Department's suggestion that the Court determined that any settlement proposal would have to be approved by the Department and by the fund's independent asset manager.

Because of the Department's action, this case set significant precedent regarding the broad scope of ERISA's fiduciary provisions.

As the official responsible for enforcing ERISA, it is my job to determine how to best utilize resources to protect the interest of plan participants and beneficiaries.

Chairman NUNN. Mr. Secretary, just on that one, wasn't that action taken by the Labor Department, the action you described as vigorous action, under Mr. Lippe's jurisdiction when he was there?

Secretary MARSHALL. The person who was actually in the courtroom is here.

Mr. GALLAGHER. I don't believe it was, Senator. I believe our intervention in that case was in December of 1976—this was while Mr. Lippe was there.

Secretary MARSHALL. The subsequent action was when?

Mr. GALLAGHER. The episode referred to in the courtroom was in 1979, I believe. That was during—well, after Mr. Lippe had left.

Chairman NUNN. He was there for part of it, but not all of it.

Secretary MARSHALL. That is correct.

Chairman NUNN. Thank you.

Secretary MARSHALL. In other words, the original intervention started in 1976, but the action to block the transaction was in 1979. And Ms. Gallagher was there in the courtroom representing the Department when that happened.

The Department's decision as to how the B. & A. account or other aspects of this fund should be monitored have been effective and we believe have minimized to the maximum practical extent the risk to the assets of this fund.

Finally, the GAO questions whether we have achieved lasting reforms in the operation of the fund. Institutions change, people change, and I cannot assure you that every reform we have achieved will be lasting. None of the alternatives which have been identified, and no Government agency, can guarantee a permanent reform of this fund.

In my judgment, the arrangements for the management of the fund's assets now in place were the most effective available alternative to assure prompt and effective protection of the fund assets.

As we have already demonstrated, the asset management agreements between the fund and the asset managers, my authority under those agreements to veto the termination of an asset manager and my enforcement authority under ERISA provide adequate tools for the continued protection of fund assets throughout the period of the agreement.

Like the GAO, I have no certainty these reforms will be lasting but I can assure you that we have put a halt to the practices of the past and that we will be vigilant in the future.

I would like to conclude my remarks by addressing two incidents which have received substantial attention from this subcommittee. The first involves the National Bank of Georgia. Considerable media attention from these hearings focused on the charge that the Department officials had for political reasons limited an investigation of the pension fund relationship with the National Bank of Georgia.

I have reviewed the facts related to these charges and take some pleasure in demonstrating just how silly they are. First, I understand that this subcommittee elicited testimony from a witness who admitted that he had neither firsthand knowledge nor any evidence that the pension fund's relationship with the bank may have arisen from the trustee's desire to obtain influence with the future Carter administration. The facts, as we know them, are as follows:

In March 1976, the fund placed some \$200 million under the management of six banks around the country. These were not, as one witness suggested, loans from the fund to the banks. Rather, the banks acted as money managers and were instructed to buy securities for the pension fund portfolio.

Negotiations with the National Bank of Georgia began in late November 1975. It would have taken a very far-sighted fund trustee

in November 1975, before President Carter had won a single primary election and while he was virtually unknown to much of the country, to attempt to secure influence in his future administration. In fact, there has never been the slightest evidence that this was anything other than a normal asset management relationship.

The Department received information in late August 1977 that the investment performance of the National Bank of Georgia was below that of other banks.

Lawrence Lippe, the then Director of SIS, requested information voluntarily from the fund and was refused. He then sought to subpoena information from the fund. The Office of the Solicitor declined to approve the subpoena because, among other things, other investigative avenues had not been attempted, the need for an investigation did not appear pressing, given that at least three other Government agencies, including the Department of Justice, were then investigating the National Bank of Georgia, and the Department's information did not clearly suggest any fiduciary violations.

Since the fund had indicated it would resist the subpoena, we were not eager to give the trustees any excuse to delay the final closing of the asset management contracts with Equitable Life Assurance Society, a closing which was set for September 30, and was actually accomplished on October 3.

For these reasons, a decision was made that no harm was likely from a delay in issuing the subpoena. The memorandum from the Solicitor's Office, which the subcommittee has, makes very clear that Mr. Lippe was free to pursue the investigation through any means other than the issuance of a subpoena to the fund, including obtaining information from the bank and other agencies.

Mr. Lippe left the Department shortly thereafter. The matter was later reviewed in light of the available information and the investigation by other Government agencies.

When Equitable took over the asset management, the previous bank program was discontinued. The fund's relationship with the National Bank of Georgia and two other banks was severed in late 1977.

[At this point Senator Percy entered the hearing room.]

Secretary MARSHALL. Therefore, a decision was made that no investigation by the Department was warranted. The decision had nothing to do with political considerations; rather, it reflected the judgment of responsible Department officials as to how the Department could best spend its time and effort.

Considerable reference has been made to an internal Department memorandum which referred to five instead of six banks in the securities investment program of the fund. The clear innuendo was that my staff had consciously omitted mention of the National Bank of Georgia. Great alarm was expressed that I was being willfully misled. The facts are considerably less dramatic. Of the original six banks which began the program in early 1976, one bank, Equibank located in Pittsburgh, dropped out of the program in September 1976.

Thus, for most of the program's existence there were in fact only five participating banks. This fact should certainly have been known to

the witnesses whose testimony cast this aura of suspicion and in any event could have easily been verified before such reckless use was made of our memorandum at the hearing.

Finally, I would like to discuss the internal management review of the Special Investigations Staff conducted by the Department which has received considerable attention by this subcommittee. It is apparent from all the evidence that the SIS organization I inherited was not without its problems.

In addition, the shift of strategy caused by my decision to move quickly to protect the fund's assets through litigation, if necessary, imposed a heavy burden on the SIS staff. Our new priorities required long hours of overtime and frequent reassignment to high priority tasks with short deadlines.

The shift to litigation also resulted in a shift of the primary function of the SIS from a free ranging investigation to a litigation support function, necessitating changes in work procedures and reporting relationships.

Most SIS employees responded well to this challenge. A few did not, and their reactions spread distrust and dissension among the staff. We had initially hoped to resolve SIS management problems by changes at the top.

In early 1979, when Under Secretary Brown told me the serious problems still existed, I instructed him to find out what the problems were and fix them.

Two of the Department's best field managers were therefore assigned to conduct a confidential management review of the SIS. They were commissioned to interview SIS and other employees within the Department, to identify management problems, and to recommend solutions.

They did their job well and prepared a thorough review. This review confirmed many of the suspected problems and resulted in a recommendation which I accepted for the complete restructuring of the Department's Central States enforcement effort, and we have done exactly that.

Effective on May 1, this year, the SIS was disbanded as an organizational entity. A special litigation staff has been organized and a new investigative unit has been established within the Chicago area office of the Labor Management Services Administration to carry on all future Central States investigative activities.

We believe that this approach will allow us to maintain litigation continuity while expanding it as needed. Most of the experienced and reliable investigative staff will stay with the litigation. At the same time, our onsite investigative staff will be free to work solely on new investigations.

There has been a great deal of loose talk apparently emanating from the subcommittee staff that the Department has attempted to cover up some of the information found in the management review. The review included information divulged by employees in confidence, including both frank evaluations and petty and malicious allegations made by some employees about others.

Department officials believed that the allegations were largely incredible or irrelevant, except as a reflection of the personnel problems within SIS, which we sought to change and have changed.

In order to minimize the dissemination of this information within the Department, only a limited number of copies of the review were made available to top officials. Once the review had served its purpose and the recommendation had been carried out, the official coordinating the review discarded his copies. There was, however, no highly dramatic or willful destruction of documents.

Chairman NUNN. Mr. Secretary, how do you define the word highly dramatic or willful destruction?

Secretary MARSHALL. We didn't all get together and say let's tear up these documents.

Chairman NUNN. How, in fact, were they destroyed?

Secretary MARSHALL. I don't really know. That is not something I know about. I know the documents are not destroyed because you have a copy of it.

Chairman NUNN. How do you know it wasn't willful destruction?

Secretary MARSHALL. I don't think—because the documents were maintained—the documents were not destroyed.

Chairman NUNN. In spite of all the efforts of those in charge to destroy them—

Secretary MARSHALL. I am in charge of the Labor Department and I gave no order for that document to be destroyed. I think if the subcommittee had come to me to say let's get the document instead of going to people who didn't know about it, that we would have found out if the document existed and produced it.

Chairman NUNN. You mean that in spite of the fact your own Inspector General's Office had asked for it and couldn't get it?

Secretary MARSHALL. The Inspector General's Office didn't even exist when the decision was made—

Chairman NUNN. After this they asked for it and couldn't get it. We will have testimony on that.

Secretary MARSHALL. I think that will be clarified. I will let Solicitor Clauss respond.

Chairman NUNN. How can you say there was no willful destruction, at the same time say you don't know how it was destroyed?

Secretary MARSHALL. All the documents weren't destroyed. They were preserved. Mr. Hobgood was given a copy when he came into office after that process was done. There were documents in the files of the investigators.

Chairman NUNN. His copy was destroyed after he had it.

Secretary MARSHALL. All the documents weren't destroyed.

Chairman NUNN. No, that is right, but it was in spite of all, not because of efforts by high officials in the Labor Department.

Secretary MARSHALL. I think that did come out in the testimony. Mr. Brown has testified. We have heard that, I don't think—he doesn't remember whether he ordered any kind of destruction but what he did say was that if he had intended to destroy them all, he would have done it at the meeting where they were given back to people, which seems to me to make a lot of sense and the fact that they were not destroyed indicates that he certainly was not trying to destroy all the copies of the document and the fact that Mr. Hobgood was a given copy when he came on later.

Chairman NUNN. So you didn't intend for these to be destroyed?

Secretary MARSHALL. No.

Chairman NUNN. You are not justifying the destruction?

Secretary MARSHALL. That is right.

Ms. CLAUSS. I think we should clarify that. First, with respect to the Inspector General's Special Assistant, Mr. Repp, he states in the affidavit that he asked two attorneys in my office with whom I had never discussed the report, he did not ask me or the Under Secretary or any responsible official in the Department, nor did he ask the two persons—the two employees who prepared the report.

So there was no attempt to keep it from the Inspector General. We were unaware that the Inspector General was seeking any information.

Chairman NUNN. How about the freedom of information request that was made by one of your own employees?

Ms. CLAUSS. No freedom of information request was ever submitted to me as appeal officer or to any official.

Chairman NUNN. Where do those go normally?

Ms. CLAUSS. I don't know where Mr. Helms made the statement of freedom of information request. They should go to the—

Chairman NUNN. Where normally?

Ms. CLAUSS [continuing]. Should go to the office in LMSA in charge of the freedom of information matters and if it is not divulged, it would be appealed.

Chairman NUNN. Would they normally go to you?

Ms. CLAUSS. No. They come to me on appeal. If a document is not produced—

Chairman NUNN. Why would anybody appeal it if the answer was "no such document"?

Ms. CLAUSS. All I am saying is there is no statement that I am aware of that an inquiry was made of a responsible Government official for that data. In fact, what I was told was that this person asked "some girl." I don't know who that "some girl" is.

Chairman NUNN. How about when we asked for it and we were told it didn't exist?

Ms. CLAUSS. I believe Mr. Gallagher is here. He can say what—you did not ask Mr. Marshall or myself.

Chairman NUNN. I see. We have to ask the Secretary of Labor for everything even though he may be in Japan.

Ms. CLAUSS. I believe when your committee asked for it. Mr. Gallagher is here. I will certainly let him state what he said. What I have been told he said was he would do his best to try to locate the copy of the report if such a report existed. But why don't we let Mr. Gallagher respond for the record.

Chairman NUNN. Let me ask you one other question. Did you tell Mr. DeMarco "dispose of it," or any words that are similar to that after you gave him your copy back?

Ms. CLAUSS. The report was embargoed from the beginning. They were to be very limited copies. I was given a copy by the Under Secretary, who asked me to share my copy with Mr. Lagather.

The reason for the embargo was nothing sinister, but simply that this was a very frank personnel evaluation report, a report I hardly recognized from Mr. Steinberg's description because what we were given was a 23-page report. It did not contain these various statements made by employees.

Chairman NUNN. Those were interviews attached to the report?

Ms. CLAUSS. No; they were not attached to the report.

Chairman NUNN. Did you or did you not tell Mr. DeMarco to dispose of the copy after you gave it back to him?

Ms. CLAUSS. I did not use the word "dispose."

Chairman NUNN. What did you say?

Ms. CLAUSS. But what we did—

Chairman NUNN. What did you say to him?

Ms. CLAUSS. I am trying to say—

Chairman NUNN. All right.

Ms. CLAUSS. Mr. Brown and myself turned in our copies of the report to Mr. DeMarco with the clear understanding that they would not be left lying around so that they could be read. I don't think we gave any instructions one way or the other.

I personally do not find it shocking that Mr. DeMarco, when he was through with it, did not keep copies because he certainly understood that we did not want copies left lying around so that they could be read.

Chairman NUNN. In other words, you deny telling Mr. DeMarco to get rid of the report or destroy the report or dispose of the report, or anything to that effect? You deny here that you ever told him that?

Ms. CLAUSS. I have no recollection.

Chairman NUNN. You deny—

Ms. CLAUSS. We certainly turned over our reports to him for the purpose, with the express intention that they not be left lying around.

Chairman NUNN. If they are not left lying around, does that mean put in the safe in a confidential manner or take them out and "deep-six" them, as you have heard the term?

Ms. CLAUSS. To be very honest with you, I gave it no thought. What I am trying to suggest is that neither Mr. Brown nor myself would have felt that Mr. DeMarco did anything wrong if he had said to us, "Now that you have implemented the reorganization, I threw away the report."

Chairman NUNN. In other words, you would condone Mr. DeMarco's action in throwing away or destroying the report if he did that; is that right?

Ms. CLAUSS. In discarding the copies of the report; yes.

Chairman NUNN. Mr. Secretary, you would not; is that right?

Secretary MARSHALL. I wasn't involved in the discussions, did not read the report.

Chairman NUNN. You just answered the question a minute ago when you said you would not condone that—

Secretary MARSHALL. What I said is there was so far as I know, there was no highly dramatic meeting to say let's destroy the report.

Chairman NUNN. I think the transcript will speak for itself. We can get it back. I thought—let me pose the question to you again. You have already answered it once. Do you believe it was proper for that report to have been destroyed if it was destroyed?

Secretary MARSHALL. Well, since I haven't seen the report, don't know, it would be hard for me to say that.

Chairman NUNN. You haven't seen the report yet?

Secretary MARSHALL. No; I have had people to read it whose confidence I trust and summarize it for me. I have not had a chance to read it.

Chairman NUNN. Your top lawyer in the Labor Department is testifying before this committee under oath that she sees no wrong with the destruction of that report.

Ms. CLAUSS. Senator Nunn—

Chairman NUNN. Do you destroy reports in the Labor Department frequently? Is this a matter of course of habit?

Ms. CLAUSS. Let me try to put this in some perspective if I can. There was at this time an extensive investigation by the GAO. It had been in progress for 6 months. It was going to be in progress for many months. Every single employee in the Department that was involved in the Central States had been asked by us to fully cooperate in that investigation.

We were aware that all of these people had been interviewed extensively, all of our books and records were opened to GAO. In the course of this, the Under Secretary wanted to do not an indepth investigation into the conduct of the Central States activity, which was what GAO was doing, but wanted to look at the personnel problems and also to make a decision of what should be done with the SIS staff, after Mr. Lippe had left, it had been turned back under the administration of the pension and welfare benefits program.

Mr. Burkhardt had exercised some control over it. He had left. Mr. Ballard was then exercising control over it, and a decision had to be made as to whether it should be left as an independent unit, whether it should be cranked into some agency, whether a new director should be hired, what should be done. So what was the purpose of this 11-week inquiry. There was also a lot of personality conflicts and suggestions that the staff as constituted could not work together.

Chairman NUNN. There were also allegations of potential criminal activity.

Ms. CLAUSS. Let me first state what was in the report and what we all saw, then we can talk about what was in the interview statements.

Chairman NUNN. You never saw the interview?

Ms. CLAUSS. No.

Chairman NUNN. When is the first time you saw the interview?

Ms. CLAUSS. After I talked to you on the telephone.

Chairman NUNN. In recent weeks?

Ms. CLAUSS. Yes.

Chairman NUNN. Mr. Secretary, you have never seen those interviews?

Secretary MARSHALL. No.

Chairman NUNN. You have never read the Kotch-Crino report?

Secretary MARSHALL. No.

Ms. CLAUSS. The Under Secretary and I both read the Kotch-Crino report, as did Assistant Secretary Lagather, and I volunteered to discuss those matters at your convenience. We were very familiar with the Under Secretary's purpose in asking for this report. It was not to look into any allegations of wrongdoing. It was to make a management decision as to where to place SIS and under whose leadership to put SIS and to try to deal with the personality frictions that were impeding the investigation.

Chairman NUNN. The fact it was not a criminal inquiry is what you are saying?

Ms. CLAUSS. Absolutely not. It was a personnel evaluation.

Chairman NUNN. What if, hypothetically, they had said they suspected John Doe in the Department of murdering someone? Would you have felt that that was something that should have been further investigated?

Ms. CLAUSS. Well, obviously if there was any credible allegation of wrongdoing, one typically refers that to the Department of Justice. The Kotch-Crino report, the 23-page report that we looked at, which contains the recommendations of Mr. Kotch and Mr. Crino, did not suggest that there were credible allegations of criminal wrongdoing. There was some casual—

Chairman NUNN. Before you are referring to the Justice Department. It cannot be your own Inspector General's Office. You don't just refer allegations unless there is substantial concrete evidence?

Ms. CLAUSS. At the time of this internal audit, the Inspector General's Office was just being set up at the Department. Ms. Knowles had been selected but had not been confirmed. Today, of course, we use the Inspector General's Office to make those kinds of personnel assessments.

Chairman NUNN. Your Inspector General's Office was effective October 1978. You did have an Inspector General's Office at the time you had this Kotch-Crino report; is that right?

Ms. CLAUSS. We had a predecessor organization called the special—I have forgotten the name of it.

Secretary MARSHALL. Office of Special Investigations.

Chairman NUNN. Is that the equivalent of an inspector general?

Secretary MARSHALL. No. It is an organization I set up.

Chairman NUNN. When was your Inspector General's Office set up?

Ms. CLAUSS. I am not—I can get it for the record. But we believe that Ms. Knowles was confirmed sometime in May.

Chairman NUNN. Wasn't Mr. DeMarco himself Acting Inspector General?

Ms. CLAUSS. He was the head of the Office of Special Investigations, and during the transition acted as Acting Inspector General.

Chairman NUNN. Ms. Clauss, did you hear the testimony previously from Mr. Maria, on our staff, relating to the laws of the United States regarding destruction of official governmental report?

Ms. CLAUSS. I did. I am not sure what an official government report is.

Chairman NUNN. I don't know whether the word official was used in the statute, but nevertheless what does the statute say?

Mr. STEINBERG. It just refers to government documents.

Chairman NUNN. Is this the first time you ever heard of this law?

Ms. CLAUSS. No. I am familiar with that law.

Chairman NUNN. You don't consider this report to be under that law?

Ms. CLAUSS. I would not have thought so at the time; no.

Chairman NUNN. Do you now look back on it?

Ms. CLAUSS. It seems to me that this was—I am not talking about any files, nor am I aware of any instructions to destroy any files. I am talking about a report that was prepared for the Under Secretary,

that he asked be prepared in confidence and not be circulated because he did not want people to see what their colleagues had said about each other because we were going to try—

Chairman NUNN. Do you have any place you can keep things in the Department of Labor without destroying them that are confidential?

Ms. CLAUSS. Typically, Senator, we do not keep, in fact I think there are some restrictions in the Privacy Act, I know there are some restrictions in the Privacy Act, we do not keep evaluations of personnel that are not placed in their official personnel files with the full opportunity to rebut.

Chairman NUNN. Even if there are allegations of improper conduct and activity that never are investigated?

Ms. CLAUSS. What I would like to separate if we can is what is in the Kotch-Crino report and what were the interview statements.

Chairman NUNN. Presumably somebody read the interview statements did they not?

Ms. CLAUSS. I can't answer that question. I can only tell you—

Chairman NUNN. You did not?

Ms. CLAUSS. That I never saw them, didn't read them.

Senator COHEN. Could you clarify something? I gather from your testimony that you distinguish between a report and a file. Does not a report become part of a file?

Ms. CLAUSS. What I am trying to say is that under the Privacy Act if you have a supervisor who makes a critical evaluation of an employee, this happens all the time, submits it to you for adverse action based on poor performance, you either give that employee an opportunity to rebut that and to go through a formal grievance process with all opportunity for due process or you do not keep that document.

I mean that document cannot be kept as a private, secret personnel file and not be made public to the employee about—

Chairman NUNN. Are you saying the Labor Department is in a habit of taking reports, in writing, from investigators in the Labor Department?

Ms. CLAUSS. No.

Chairman NUNN. Containing allegations against employees and neither investigating them nor keeping them but rather going out and destroying them?

Ms. CLAUSS. Senator, you are putting words in my mouth.

Chairman NUNN. I know I am. I am asking—

Ms. CLAUSS. What I said was, when the Department conducts through a supervisor or other specialist, a personnel evaluation of the quality of someone's performance, for whatever reason, it can be done for all different kinds of reasons, that either you show that material to the person being evaluated or you do not put it in some kind of official file, that can be retrieved by other persons. You either make it part of their personnel file or you do not keep it around.

Chairman NUNN. You destroy it, in other words?

Ms. CLAUSS. That is right; that is right.

Chairman NUNN. You destroy it even though it is never investigated, the employee is never confronted with it?

Ms. CLAUSS. You are talking about a personnel evaluation report. I am trying to separate that from allegations of wrongdoing.

Chairman NUNN. All right.

Ms. CLAUSS. Which were contained in the interview statements.

Chairman NUNN. But the whole report, you are saying you didn't read those interviews. The report itself was destroyed. That report itself did not deal with these raw allegations. Why was it destroyed?

Ms. CLAUSS. Because what the report did deal with were statements by people who had to work with each other, I think by someone's best friend, I think he is a terrible manager, by someone I think he is moronic, I think he is stupid, and things of that sort, that we thought would be destructive of the relationships of the staff involved.

So for that reason, both the Under Secretary and I did not want this report circulated and, as far as I know, there were only two or three copies that were available to the top staff or read by top staff and by that I mean the Secretary, myself, the Assistant Secretary for management, Mr. Zuck, and Mr. Lagather.

Chairman NUNN. But your testimony is you do not challenge the statement of Mr. DeMarco or anyone else that you may have given the impression in some words the report should have been destroyed?

Ms. CLAUSS. Well, what I am trying to do is not say that that is what I requested, but I am trying to say I see nothing wrong with the destruction, discarding of the report.

I don't think Mr. Brown and I had any particular concern what happened to the report as long as it wasn't left in a place where it could be seen by the staff.

So it could have been locked in the safe but I don't want to give the impression that we suggested to Mr. DeMarco that he should in fact preserve the report. He apparently did have that impression with at least one copy because he did have a report to give to the new Assistant Secretary when he came on board.

Chairman NUNN. Which was later destroyed?

Ms. CLAUSS. Which, when Mr. Hobgood put it in his in box, Mr. DeMarco states he threw it out.

Senator COHEN. I just had a question. I think you just indicated that the Secretary didn't want this report to be disseminated, but the Secretary hadn't even read the report.

Secretary MARSHALL. Under Secretary.

Senator COHEN. What is of concern to me is that, Mr. Secretary, in your statement on page 33, you say once the review had served its purpose, and its recommendations had been carried out, the official coordinating the review discarded his copies.

It sounds like a routine discarding of something that is not terribly important, when in fact it is a terribly important investigation. Not only was this committee interested in it but also the GAO was expressing great interest in it. It may not have been tantamount to a calculated destruction or the burning of the tapes on the White House lawn, that kind of equivalent destruction of evidence, but it certainly can't be characterized as routine; since having carried out its purpose, the official coordinating of the review, simply to discard the copies.

Ms. CLAUSS. I think that that is exactly the way Mr. DeMarco viewed it. I am not aware that he made any efforts to track down copies or that he instructed the two people that worked with him on it not to cooperate with any legitimate inquiry. That is why I said we had to put it in the context of when this review took place. We were all

well aware the GAO audit was in progress. In fact, when you read the interview statements, these people all told Mr. Crino and Mr. Kotch that they had talked at length with GAO. One person advised him that he provided a 150-page statement to GAO.

So no one in a position of responsibility thought at the time or thinks now that we were in the possession of some unique evidence, that there was anything we were getting that wasn't pursued in greater depth and conveyed in greater detail to other persons who were looking into the investigation, although some of these statements came out in the course of the personnel evaluation. The purpose of the inquiry and the purpose of the report was the personnel evaluation and the management decision. If in the context of that you wanted to explain why the people hated each other and gave whatever reason it was, that was not considered some new revealing data.

All that information I think anyone would have assumed had already been given to the GAO and to the Senate subcommittee, which was also talking to these various people.

[At this point, Senator Nunn withdrew from the hearing room.]

Senator COHEN. Frankly, I looked through the report and with one or two exceptions, there is very little reference to specific individuals as far as their competence or incompetence. It is certainly not so volatile as to warrant destruction.

Ms. CLAUSS. That is—

Senator COHEN. Let me finish. I can appreciate the fact that when you have any kind of personnel evaluation, you don't want it circulating throughout your office. I don't want mine circulating. If I call for the administrative assistant to give me an evaluation of what my employees are doing, I certainly don't want 10 copies xeroxed and sent around the office for them to see how they are being evaluated.

By the same token, I can't imagine on a subject of this importance not to even put a copy or two under the control of the Secretary of Labor or the Under Secretary of Labor, to be put in their files, maybe even for possible future action concerning the retention or the dismissal of those employees.

I would think that any manager would want to have some record of an evaluator's appraisal of the competence or the lack of it of any of those employees. So, on the one hand, I appreciate the need to limit its distribution, but not to destroy it. I don't understand that.

Before you answer, Senator Chiles, would you continue here since we have a vote on?

Ms. CLAUSS. I would be happy to save my answer.

Senator COHEN. Would you direct your response to Senator Chiles.

[At this point, Senator Cohen withdrew from the hearing room.]

Ms. CLAUSS. Certainly. I think that it would be much too dramatic to suggest that this document was circulated with an eyes-only stamp on it. There simply was no conscious instruction on anybody's part to destroy the document. What I am trying to suggest is that it is the kind of document that I am not personally shocked to find out was thrown away, because it was not intended to be used for any purpose other than to help us make a recommendation to the Secretary as to whether SIS should be continued and, if so, in what form it should be continued. We were well aware of the indepth

investigation going on. This was not intended to interfere with that or to be a replacement for it.

In fact, I think there is clear evidence that it was not some secret, sneaky thing is that the first thing we had our two investigators do was to go introduce themselves to GAO, explain that they had been asked to do that by the Under Secretary, and then go about doing it.

It is just that since the crux of the report is the bad relationship between the various people, not their incompetence—I mean, although there are nasty statements, the Kotch-Crino report does not conclude that these people are incompetent or that they weren't hard working. What it concludes is that there was no overall direction, that priorities were confused, that there was a great deal of misunderstanding about what the Solicitor's Office did, what was done to support their litigation, what the SIS should be doing, and what should be done about new investigations. And it was to clarify that kind of confusion and make sure that we didn't sacrifice either objective, the continuing investigation or the litigation, that we engaged in the reorganization.

And I certainly do not criticize or condemn any judgment by Mr. DeMarco who conducted that review to decide when it was done that there was no need to keep his copies of the report. But there certainly is no suggestion that he went around to everyone who had been interviewed or talked to and said, "Do you have a copy of anything, and, if so, let me have it and let me destroy it." It just wasn't that kind of response.

Senator CHILES [presiding]. I think maybe at this time, Mr. Secretary, we could let you finish your statement. I was really not in as much on this line of questioning. By that time I think Senator Nunn might be back. I think he probably wants to pursue the questioning some with you.

Secretary MARSHALL. All right, Senator. Let me continue. I will restate the comment, there was no highly dramatic or willful destruction of documents. When asked, the writers of the review located their file copies and we provided the materials to this subcommittee.

We were stunned, however, when the subcommittee threatened to publicly release these materials. This release would have included considerable information which would be extremely destructive of working relationships among our staff, defamatory of some of our employees, and completely destructive of our future ability to obtain the cooperation and candor necessary to identify any further management problems.

I cannot believe that the release of this information would serve any legislative interest of the subcommittee.

Senator CHILES. Mr. Secretary, just on that one point, I have not pursued this as close because I have not been able to spend the time that Senator Percy and Senator Nunn have spent on it, but I for one was stunned that the subcommittee might be left with the alternative of nothing to do but to release the report because we were denied the opportunity to question any of the employees in connection with the report in a closed session but told that all of those employees would only testify at an open session.

And so obviously at the open session you would not have a chance to go in and assess these charges some of which were highly inflam-

matory. They include personalities, all of the things you said, raw data that no one has had an opportunity to check. I can tell you the subcommittee was stunned, or I as a member of the subcommittee was stunned, that we were facing that kind of alternative, that we were not going to be able to listen to these people in a closed session and determine what information should be put out.

Secretary MARSHALL. I believe the subcommittee did listen to people in closed session, executive session.

Senator CHILES. Only after we subpoenaed them, Mr. Secretary, and only after we said we are holding this report.

Secretary MARSHALL. And only after there had been a public session in which charges were made against the Department.

Senator CHILES. The report surfaced after the public session. So there wasn't any—

Secretary MARSHALL. Well, I think that it was discussed at the public session, if I am not mistaken, and therefore, it already existed at the time of that public session and was mentioned there.

Let me clarify for the record, Mr. Chairman, that the main reason that I became concerned about this matter was that after these allegations had been made public and after it had come to my attention that the press had copies of the report, and that this kind of information was laid out in the public testimony to begin with was spread around the country—I had people who were blaming me around the country for things that my predecessor did that came out during that hearing. The question I think was that it was highly biased, the way the thing started. And the way the statements were made was a question of not whether the Labor Department was guilty. The only question is, why? Was it incompetence or was it because of our institutional inability to get at these problems?

Since I am very proud of what we have done in protecting these funds as well as the investigation, and to have that kind of information come out, and because I was concerned that the employees of the Department be given adequate protection and due process—

Senator CHILES. I think the subcommittee had that same concern. That is why when you use the language that you are stunned that the subcommittee would threaten to release the report, I want you to know we were very stunned for the Labor Department to take the position that they would only allow these people to come testify in an open session. They wouldn't allow them to testify in a closed session where the subcommittee would have an opportunity to determine what should be released or not released.

Secretary MARSHALL. What we did, when we reviewed all the documents, we felt that there was nothing more damaging that was likely to come out than had already come out.

Therefore, we had nothing to lose from an open session.

Senator CHILES. The report hadn't been released. You said you were stunned to find out the report might be released. So you certainly had that to lose.

Secretary MARSHALL. Right.

Ms. CLAUSS. Senator, let me just state that we always made our employees available to this committee and we called them together and said that they should feel free to come up. Indeed, we were aware that

the committee was interviewing our employees long before the hearing. We did nothing to discourage that. We simply said, "if you want counsel, we feel you are entitled to counsel. But you are absolutely free to go up without counsel." The issue came down that those employees preferred not to go up without some kind of representation or without the Secretary's presence, and whether we would order them to go up. That was the point at which we drew the line, that we did not want to order these employees to appear without the policymakers whose decisions they were attempting to implement and without counsel.

And I think over the course of many letters and telephone discussions, we worked out a procedure that was satisfactory, where these people did appear after subpoena, and were represented by counsel.

Senator CHILES. Those procedures were only worked out after the subpoenas were issued. The employees, and I again was not there for all of the employees, or all of their testimony, but I was there for the testimony of a number of them and time after time I heard them say that they would have volunteered except when they realized that would be against the Department of Labor policy or what the Department of Labor wanted, that they decided that they would rather be subpoenaed. What we are saying is in the entire history of this subcommittee, which has been going on for some years, we have never had to subpoena employees of any agency before. So it is the first time that has ever happened.

Ms. CLAUSS. I can only tell you that the Secretary and I did what we could to make it clear to people that we encouraged them to come up here. If they didn't get that message, then we can only say that that is unfortunate. But certainly that was the message we were attempting to deliver.

Senator CHILES. Well, I guess some of them can speak for themselves, or they did at the time. Of course, maybe it is not fair to ask them to speak for themselves now.

Did you get a chance to finish your statement?

Secretary MARSHALL. I am just about finished. Let me conclude that statement by saying I cannot believe that the release of this information would serve any legitimate interest of the subcommittee. I trust the members would say so, too.

Senator CHILES. Yes. You set up that strawman many times. We decided we are not going to release it, that is correct.

Secretary MARSHALL. The significance of this management review simply demonstrates that the Department acted responsibly in identifying and solving its internal management problems. Let me say, Senator, I didn't set that up. This committee decided how significant that report was going to be. Now we used it for our own internal management purposes. We saw nothing sinister about not wanting it to be widely circulated.

But we also believed that nothing would be gained by making these highly personal comments public.

[At this point, Senator Nunn entered the hearing room.]

Secretary MARSHALL. Now, in conclusion, I think it is terribly important for us to keep this business in perspective and to think about what the main purpose of our investigation is. I would like to reiterate that we are proud of our handling of this investigation and our litigation.

tion. It is easy to criticize any number of activities in a large organization and to second-guess management decisions. Problems of management and personnel are my problems and I am committed to resolving them. We ask that we be judged only by our results, and on that basis we believe any fair-minded observer would commend our efforts, as many people have done, to protect the assets of those funds and to bring suits against people who have violated their fiduciary responsibilities.

That concludes my statement, Mr. Chairman, and I and the appropriate member of my staff are here to answer your questions.

Chairman NUNN. [presiding]. Thank you very much, Mr. Secretary. Again, I regret we have to come in and out. I have read your whole statement, of course. I think I got most of it.

[At this point, Senator Cohen entered the hearing room.]

Chairman NUNN. Mr. Secretary, before we begin, let me give the general intention of the subcommittee, and we would be glad to hear your views on this. I have a series of questions that are rather narrow, relating to this whole question of the report that I would like to get into now because we are going to have some further witnesses on that this afternoon. It would be my intention probably today about 30 minutes on that, to break at 10, and then to begin back at 2, and I would not get into policy questions. We have a good many policy questions. I know you want to amplify some of your views and would certainly welcome the opportunity to go into more detail on that.

It would be our intention to get into that tomorrow and ask you questions on the policy line tomorrow morning.

Secretary MARSHALL. All right.

Chairman NUNN. Do you leave any observations you want to make about that?

Secretary MARSHALL. No. I think that is fine.

Chairman NUNN. So we will continue until we finish this particular line of questioning. Then we will take a break for 1 hour, depending on what time it is. Other witnesses may want to just schedule accordingly. No other witnesses will be called this morning.

Mr. Secretary, I understand from your previous question that you answered that you have not personally read the Kotch-Crino report. Is that correct?

Secretary MARSHALL. No. I have seen a summary of it and I have had my executive assistant and the Under Secretary read it and give me their assessment of it.

Chairman NUNN. You haven't read the attachments to that report, the interviews attached to that report?

Secretary MARSHALL. No, I have not.

Chairman NUNN. Don't you think the serious allegations contained in that report deserves your personal attention?

Secretary MARSHALL. Well, the only time I heard about the report and the allegations that were in it was recently when we got involved in the discussions for this subcommittee.

Chairman NUNN. You hadn't heard about the report at all before?

Secretary MARSHALL. No. I hadn't heard about the report. The only thing I heard about it was the recommendations for what we do to restructure this staff, which was its main purpose. They did say there

were some irrelevant personal kinds of things when they discussed it with me that I need not be concerned about. That was the end. The main thrust was, the question I put to Bob Brown to start with was what should we do about the personnel problems in the SIS? We got that information mainly to give us guidance about that. Initially, we knew we had a lot of problems because during my confirmation, the confirmation committee raised those. I set about to try to change the top-level management in the SIS as well as for the whole investigation in order to correct that. And then it came to my attention later that in spite of our changes at the top, that we still had some problems. So then I said to Bob Brown, well, investigate it, find out what the problems are.

If we have personnel problems, let's move people, change them. If they can't work together, let's get a group that can work together and get the job done. And that was the origin of that report. It came back and said well, this is the recommendation we are making to you. There is a lot of other things in the report that are irrelevant.

Therefore, you need not concern yourself with that. But this is what we believe we ought to do on the basis of their assessment of the evidence.

Chairman NUNN. Senator Cohen?

Senator COHEN. I just had a question. Mr. Secretary, you indicated to the chairman that you were given a verbal summary of the contents of the report, but that it contained some irrelevant personal matters you didn't need to concern yourself with. I know on page 34 of your statement you said, "Problems of management and personnel are my problems and I am committed to resolving this."

Secretary MARSHALL. But personal matters are not. Personnel matters are.

Senator COHEN. How do you distinguish between personnel and the personal bickering taking place in a large or small office?

Secretary MARSHALL. What we felt was if we restructured that organization and some people moved out, that we would deal with those personal problems, and we did.

Ms. CLAUSS. Let me state too, if I may, that there was no allegation of serious misconduct in the 23-page report that we read and briefed the Secretary on, that it was strictly a management recommendation, and although there were statements about who thought who was a good manager or good administrator or good investigator and who were the incompetent people and who in the views of Mr. Crino and Mr. Kotch should be removed as not being able to get along, there was nothing of a wrongdoing or embarrassing nature. It was just that we didn't think it necessary to discuss with the Secretary who had difficulty getting along with whom.

Chairman NUNN. But you knew about those allegations in the interviews, did you not?

Ms. CLAUSS. No; I did not know about any allegations in the interviews. I didn't know that anyone had seen the interviews. I never saw any interviews.

Chairman NUNN. How did the Secretary know there were personal matters in there that were irrelevant if you don't know about the interviews?

Ms. CLAUSS. There were personal matters in the 23-page Kotch-Crino report that were irrelevant to the management recommendations being made.

Chairman NUNN. You didn't know anything about the interviews at all—

Ms. CLAUSS. That is correct.

Chairman NUNN [continuing]. Yourself. Until this hearing came up in recent weeks?

Ms. CLAUSS. That is correct.

Chairman NUNN. Did Mr. Gallagher know? Did anybody in your office know?

Mr. GALLAGHER. As I told the subcommittee staff this week, I had never seen either the report or the interviews until I obtained them from Mr. Kotch at the request of the subcommittee.

Chairman NUNN. Did anybody in the Solicitor's Office know about the interviews or about the serious allegations contained in those interviews, Ms. Clauss?

Ms. CLAUSS. No one in the Solicitor's Office knew about the interviews or the allegations contained in the interviews. I mean obviously we knew that they had interviewed people in order to make the report, but we were unaware of—I was unaware of whether written interview notes were made. If so, where they were, or what happened to them.

Chairman NUNN. That would include—Mr. Gallagher has already spoken for himself. Ms. Monica Gallagher, did you read the report or the interviews or both?

Ms. GALLAGHER. I never saw the report and I never saw any of the interviews until recent weeks when the issue was presented by the subcommittee.

Chairman NUNN. Do you know of anyone in the Solicitor's Office that did see those interviews?

Ms. GALLAGHER. I do not.

Chairman NUNN. Do you know of anybody in the Solicitor's Office who was briefed as to the nature of the allegations in those interviews?

Ms. CLAUSS. If you are asking me, Senator; no.

Ms. GALLAGHER. No; I don't.

Chairman NUNN. None of you know.

Ms. CLAUSS. Although now that I have read the interviews, let me say, as I said to the Attorney General in transmitting the report, I think that the allegations that I did not know about were ones which were on their face silly and totally unsubstantiated.

Mr. DeMarco was just reminding me of what I am getting to. There are also allegations in those interview statements that although they weren't presented to me as having come from the report, I was familiar with them. Those allegations had been brought to my attention by the Justice Department or by Mr. DeMarco and those allegations we did look into. Those are the allegations referred to in my letter to you over the weekend.

Chairman NUNN. Are those the allegations that were also in the Kotch-Crino report?

Ms. CLAUSS. It turns out they were in the interviews in the Kotch-Crino report, yes.

Secretary MARSHALL. But not in the report itself.

Ms. CLAUSS. Made by the same person. Not in the report itself. But I did have knowledge that that individual was making those allegations, and Mr. Gallagher on my staff was instrumental in working with the Justice Department to track down the truth or falsity of those allegations.

So yes, there were statements made. I was also aware of the controversy involving the National Bank of Georgia which is referred to in the interview statements. So I don't mean to suggest that none of those allegations has ever surfaced and been discussed at the departmental level.

Chairman NUNN. I believe Mr. Gallagher has informed the subcommittee in executive session that those particular allegations, that the extent of his investigation was simply to ask the person that was charged with certain misconduct whether that was true or not. Isn't that the nature of your investigation and the extent of it, Mr. Gallagher?

Mr. GALLAGHER. That was what I told the subcommittee. I have since found a memorandum passed along to the subcommittee I think on Friday that shows I did in fact meet with the Justice Department lawyer who made the allegations and the people in the Labor Department who were concerned with those allegations and with both of those people present attempted to resolve the allegations.

Chairman NUNN. But that was on only one specific part of the allegation, not the broader allegation?

Mr. GALLAGHER. That was on the part that was of most concern to me because it was the part that was of concern to the Justice Department.

[At this point, Senator Percy entered the hearing room.]

Chairman NUNN. The people we have talked to, the people that you say you met with then, they both say that as far as they are concerned the issue is still unresolved.

Senator COHEN. I am a little bit unclear as to what the response has been. There is a song which goes something like, "I wish I didn't know now what I didn't know then." Yours seems to be the converse of that, that you are glad you know now what you didn't know then because your conclusion would be the same, that the material was irrelevant and not necessary to bring to the attention of the Secretary. If you have a judgment that is made by a number of people as to the quality and the competence of the leadership within a particular investigative unit, don't you think that goes beyond simply being a minor irrelevant personnel matter and that it ought to be brought to the attention of the Secretary?

Ms. CLAUSS. We certainly did take that to the attention of the Secretary.

Senator COHEN. He was fully aware of the contents of the report then, the Kotch-Crino report, not only as to the substantive changes which were recommended but also as to the allegations concerning competence or incompetence?

Ms. CLAUSS. We briefed the Secretary in some detail about the problems of the SIS and where it was important for him to know about the personnel problems where they involved his top staff, we briefed him as to those.

Senator COHEN. So as to the allegations and the conclusions reached in this report—it is not a 500-page document but rather a 23-page report.

Ms. CLAUSS. I have read it, Senator.

Senator COHEN. It was not a great deal of effort to apprise the Secretary fully as to all that is contained in here? You can summarize this also with respect to the personnel judgments that were made?

Ms. CLAUSS. Yes.

Senator COHEN. So it is fair to say that all of this material was brought to the attention of the Secretary?

Ms. CLAUSS. I feel that we apprised the Secretary of all the pertinent material of this report.

Senator COHEN. What part was impertinent?

Ms. CLAUSS. It would be impossible for me to remember whether I said that a particular employee said that another particular employee—I mean—

Senator COHEN. We are not talking about lower echelon personnel.

Ms. CLAUSS. I understand. But I cannot tell you now after a year to what extent we told him what was on every page. I can only tell you that we gave him, I think, a full characterization of the report, a full understanding of what the problems were—

[At this point Senator Percy entered the hearing room.]

Ms. CLAUSS [continuing]. And the kind of changes that were recommended. We didn't read the report verbatim to him.

Secretary MARSHALL. But we made the changes. I think that is the important thing that is important to emphasize the relevance of this, as I understand it, is what effect did all of this have to do with the Central States investigation.

Chairman NUNN. I think it is also relevant whether people who made serious allegations against their fellow workers, whether they themselves felt that these allegations had ever been investigated by people in charge of the Labor Department. If you were an employee being interviewed by someone officially representing the Secretary of Labor and you made serious allegations about people in the Department and then you later found that not only were these allegations not investigated by anyone, but they were treated as "silly," still considered that way, and were not treated seriously enough to even retain the report but rather the report itself and the interviews were officially destroyed, what does this do to the morale of the Labor Department?

Secretary MARSHALL. The interviews were not officially destroyed.

Chairman NUNN. It is my understanding they were.

Secretary MARSHALL. Were they? The interviews are there.

Ms. CLAUSS. I have now seen the interviews. I assume they weren't destroyed.

Senator CHILES. We have now seen the report and the report was destroyed, too.

Secretary MARSHALL. So it wasn't destroyed.

Chairman NUNN. No; it wasn't because Mr. Crino or Mr. Kotch happened to keep their own notes on the matter and their own record. But there was an official attempt to destroy.

Senator COHEN. Could I ask one follow-up question to the issue I raised? You said you still haven't read the report?

Secretary MARSHALL. No.

Senator COHEN. You knew you were coming to testify before this committee. You have talked on several occasions with the chairman. I just find it difficult to believe. If I were going to be called to testify under oath before a congressional committee on a document that was circulated within my department, I would think one of the first things I would do is to read the document because there may be some members of the committee who want to go over this line by line and it would be helpful for you to be prepared to rebut.

Secretary MARSHALL. The people who are responsible for it are here, people who have read it are here and my role in it is as I have said it was. I have to rely on them. I am familiar generally with the content of the document. But there are a lot of documents involved here in this hearing.

Senator COHEN. You are coming to testify—

Secretary MARSHALL. I didn't realize. If I had realized I would spend a lot of time talking about that document and its content, I might have.

Senator COHEN. Wasn't that the purpose?

Secretary MARSHALL. The purpose of the hearings, my being here was to lay out our policy with respect to this investigation and answer the charges.

Chairman NUNN. Mr. Secretary, I have talked to you at least three times in which I have always said these were very serious charges in the Kotch-Crino report and in one of the cases I suggested directly to you that you read the report. That has been 3 weeks ago.

Secretary MARSHALL. You also told me it didn't have anything to do with policy.

Chairman NUNN. I asked you not to go into that this morning so we could stick to that, but you chose not to do that.

We are adjusting to that.

Secretary MARSHALL. So far as the main thrust of why I am here, my understanding of it is to lay out what our policies have been with respect to this investigation, to talk about things that I was responsible for, which was to set the basic objective, to protect the assets of that fund and then to go after recovery for restitution of funds, and that we have. Then, to answer the charges that somehow we bungled this, either because we are soft on unions, and institutionally incapable of going after it, or that it is simply because of incompetence. That is the reason I laid that evidence out.

Chairman NUNN. Just talking about the assault on unions, I think we ought to make it clear that the people we are trying to protect and the people you also are hopefully trying to protect are unions.

Secretary MARSHALL. That is right.

Senator PERCY. Union members?

Chairman NUNN. Unions and union members.

Secretary MARSHALL. That is the reason I am surprised by the assertion that I have heard a number of times that some people wish I would be Secretary of all of the workers and not just union members.

Chairman NUNN. I have never said that.

Secretary MARSHALL. I don't know what it means to say we are institutionally incapable of going after unions.

Chairman NUNN. You have laid it out pretty well this morning, Mr. Secretary, that until you came along and straightened all of this out, that it wasn't institutionally capable.

Secretary MARSHALL. I don't think it is institutionally incapable. In the first place, ERISA was very young. The act was passed in 1974. It takes you some time to get underway with it. They got underway in 1975. I think they did some good things and they had some good people. But as in any new activity when you are pulling together a staff that you don't know, from a variety of places, you have to let it evolve. You have to let the process evolve. That is the reason that I thought it was so important to establish some priority, and that the priority No. 1 ought to be that we make these funds secure, that we are talking about \$2½ billion worth of funds; and that there are workers who expect to retire. If those funds are abused, they will never be able to retire. We wanted to do that before we did anything else because there are all kinds of examples of where other actions were taken and the funds were depicted, while those actions were underway. Therefore, the highest priority that we had was to protect the assets. We did that. And those assets have been secured.

The return on the assets is increased, they are in the hands of independent money managers. Our second priority was to simultaneously prepare for and bring suit to recover the funds from people who had violated their fiduciary responsibilities under ERISA. And we did that. And it took a lot, as anything else, if you do not have some priorities and if you don't use your resources effectively, then you will always be out chasing after things that are unrelated to your basic priority. If people don't understand that, they will say, well, you didn't investigate the Bank of Georgia, and the reason they wouldn't investigate the National Bank of Georgia was for political reasons. But it is important to interpret that allegation to lay out what we have done, what our policies were, and why that was not relevant to what we were trying to get done.

This other thing was in the ongoing effort to improve the management of the SIS. We had an investigation done, an investigation that you don't want to be widely disseminated. That had served its purpose in terms of giving us information for restructuring.

Chairman NUNN. Are you then agreeing, Mr. Secretary, that this should have been destroyed or it was proper to destroy it? Do you want to change on that?

Secretary MARSHALL. I didn't say one way or the other.

Chairman NUNN. You are in charge of the Labor Department. Should it or should it not have been destroyed?

Secretary MARSHALL. It should not have been circulated. I don't see anything wrong, after listening to Carin Clauss' explanation, for it being destroyed.

Chairman NUNN. Even though it is against the law?

Secretary MARSHALL. If it is against the law, I wouldn't do it, obviously, but I would never order it done without checking the law, as I always do.

Chairman NUNN. So we can count on this Solicitor's Office and this Labor Department under your direction feeling that they have the right to destroy the internal reports involving the very heart of the investigations.

Secretary MARSHALL. Not the heart. What is the heart of the investigation?

Chairman NUNN. SIS was the heart of it.

Secretary MARSHALL. It was not the heart of it. That work was already over. The heart of it now is the litigative activity.

Chairman NUNN. That was completed when the Kotch-Crino report—

Secretary MARSHALL. Yes, it was.

Chairman NUNN. You mean SIS was already completed at that time?

Secretary MARSHALL. The trustees had been removed. The suit had been filed when all of that took place. Am I not correct on that?

Ms. CLAUSS. Also, this was not, this is what I was trying to say before, was not an investigation, as was the GAO investigation into the conduct of how people had done the job. This was a management evaluation for a limited purpose.

Chairman NUNN. I am just amazed that we have the Secretary of Labor and the head of the Solicitor's Office sitting here telling us they see nothing wrong with the destruction of official Government reports.

Secretary MARSHALL. It was not an official Government report, it was an internal memorandum.

Senator PERCY. Was it done unofficially?

Secretary MARSHALL. The question is whether all such documents are official. Before I actually ordered it to be destroyed, I would have checked the law. But it was clear that first the raw material is still there. The interviews themselves were there. The report could have been reconstructed.

Chairman NUNN. You are basically saying that SIS at the time of this was not the heart of this. That means the investigation was really over in 1978, wasn't it?

Secretary MARSHALL. No. We had redirected it to a litigative support function and not to the original purpose.

Let me also say this had nothing to do with the large number of people who were working in the SIS who were going on their way. We were concerned about the leadership and structure of it. And that process never stopped, in spite of all of these things and we prepared for the litigation, we filed the lawsuit, we are proceeding now with a different phase of the investigation and have reconstituted.

Senator PERCY. Mr. Secretary, we will hear later today from a GAO witness. Are you aware of the fact that when GAO learned that there had been an internal study they requested such a report? Are you aware of the fact that they were either told that no such report still existed or that no such study had been made? I don't recall which it was, but I will wait for the testimony this afternoon. But one of those two instances occurred. Are you aware of that?

Secretary MARSHALL. No. I don't know what GAO was or wasn't told. I do know somebody talked—

Senator PERCY. You do know GAO came in?

Secretary MARSHALL. Yes. They talked to the same people we talked to. In fact we know in fact they did. We know that they had five or six people there for over a year and a half whereas this quick study that we did was not that thorough. We didn't go to great detail as we

would in an official investigation to get the same information from as many different sources as possible.

Senator PERCY. Were you aware that GAO was unsuccessful in its efforts to get a copy of your internal report?

Secretary MARSHALL. No. What I have heard is that they talked to the same people. Let me see.

Ms. CLAUSS. I was not aware that GAO was interested in the report until after I read their testimony. GAO didn't just find out about this investigation. They were told up front that a management evaluation was going to be done and its purpose, and who was doing it. Yet no request was ever made to the officials asking could they be apprised of the report.

Senator PERCY. No request was ever made to anyone in the Department of Labor to see that report?

Ms. CLAUSS. To the Secretary or to me, or to the Under Secretary, or to the Assistant Secretary.

Senator PERCY. Were you ever aware that the request was made at some level within the Department?

Ms. CLAUSS. We were not aware that any request had been made until we read the testimony of the August hearings.

Chairman NUNN. How do you communicate over there? How do things flow up the line?

Ms. CLAUSS. When I want something, I contact the responsible official. I don't start off with, or I would start off with the people that I knew did the investigation, did the evaluation, had the courtesy to go over and introduce themselves to the GAO investigators. I don't think it is a good way to find material to ask secretaries or staff people or people who were never involved in the investigation or the report of the evaluation.

Senator COHEN. Mr. Chairman, could I just ask a question?

Mr. Secretary, you have indicated this report, the so-called Kotch-Crino report, was, No. 1, cursory in nature. It was not an indepth official investigation, but rather a cursory overview of the nature of the problems that you had. No. 2, it seems to me the conclusion is that it was obsolete upon its birth, if you say all the things were accomplished at that time in May 1979—

Secretary MARSHALL. No. That is not what I said.

Senator COHEN. So therefore, the only things left were irrelevant personnel matters.

Secretary MARSHALL. No. That is not what I said. The objectives that we achieved in the first phase of the SIS investigation which, namely, was to get those trustees removed, get the funds in independent management hands and then to prepare for the lawsuit. But there were continuing problems and our question was now that we have finished that phase of it, what should we do with this outfit, what should we do with SIS? Should we leave it like it is, which had a lot of problems associated with it, since we are going to be engaged in different phases of this Central States matter; namely, now getting ready for the litigation, and investigating the health and welfare fund, and also the actions of the new trustees.

Senator COHEN. So No. 1, it was cursory, but it wasn't obsolete?

Secretary MARSHALL. It wasn't obsolete. It told us what we needed to know.

Senator COHEN. Since it wasn't obsolete and since all of the issues raised in the report had not been fully addressed and the recommendations had not been achieved, and certainly there was no need for the report to self-destruct at that point, or for it to be discarded by Labor officials. Since there was information contained in that report that would be used for future action, it seems to me you can't say in one part of your statement that since all of these issues were addressed, the official in charge simply discarded the report.

Secretary MARSHALL. What I am saying is that there was nothing in that report that would help us with the future action after we reorganized.

Senator COHEN. So as of its birth—

Secretary MARSHALL. No. As of the time—

Senator COHEN. May 1979 is when the report was completed, was it not? As of that time, you had accomplished all of the objectives or only part of the objectives?

Secretary MARSHALL. All of the objectives that we set about to accomplish. We had enough information to know that we needed to reorganize SIS.

Senator COHEN. There were matters in that report that dealt with the need to reorganize personnel, change personnel; were there not?

Secretary MARSHALL. They were changed. That is right.

Senator COHEN. Based upon that report?

Secretary MARSHALL. That is right.

Senator COHEN. So the information contained in the report was still necessary.

Secretary MARSHALL. Was acted upon.

Ms. CLAUSS. But the report, as I understand it from Mr. DeMarco, was not thrown out until many, many months later, long after Mr. Hobgood had arrived, had read the report. It was long after the meetings had been held with Mr. Hobgood, myself and Mr. Zuck on the reorganization, after we had drawn up the job descriptions.

Senator COHEN. In terms of time, approximately when was that, then?

Ms. CLAUSS. When did you come onboard?

Mr. HOBGOOD. August 1979.

Ms. CLAUSS. Six months after that. Apparently, I am not the person who discarded it, but apparently sometime around February 1980.

Senator COHEN. February 1980.

Chairman NUNN. We will develop that with Mr. DeMarco later this afternoon.

Mr. Secretary, I am going to hand you memos dated March 15, and April 4, 1978, which requested your attention to restructure the Special Investigations Staff and just see if you have read those memoranda or are familiar with them.

[At this point Senator Percy withdrew from the hearing room.]
Secretary MARSHALL. This is to Assistant Secretary Burkhardt and not me. I don't think—I might have had this summarized for me, but I wouldn't routinely get a copy of this.

Chairman NUNN. I think one of those papers in there. The essence of this, I don't think you have to read it all, is basically memoranda which clearly recommend the total restructuring of SIS back in 1978.

Secretary MARSHALL. That is right.

Chairman NUNN. Those recommendations preceded the Kotch-Crino report, didn't it?

Secretary MARSHALL. That is right.

Chairman NUNN. But generally came to the similar conclusions relating to the ineffectiveness of SIS?

Secretary MARSHALL. That is right. This was done by Mr. Burkhardt while he was still Assistant Secretary.

Chairman NUNN. Why did it take 2 years after? I understand you originally abolished SIS. Why did it take 2 years after that and a year after Kotch-Crino before those were taken?

Secretary MARSHALL. Partly because we were trying to work out the changes. I testified earlier about making changes at the top, rather than completely reconstituting the organization and after getting the Kotch-Crino report and getting another recommendation from Under Secretary Brown, we did it. But we were trying all the way through this to make effective use of the SIS, and therefore did not act on this original recommendation. I thought that initially you could make some changes at the top and that that might do it. I could put the Under Secretary more completely in charge and let him—made this a special responsibility for the Under Secretary and asked him to move in and watch it very carefully because of dissension that existed between the SIS and other agencies in the Department and therefore, since the Under Secretary was over all those agencies internally, then he could more effectively do that. It was not until I got a recommendation from him later on the basis of the Kotch-Crino report that we decided to go ahead and make the change.

Chairman NUNN. Why did you wait until 1979, 6 months after the GAO began its study of the Teamsters investigation to initiate the Kotch-Crino report?

Secretary MARSHALL. Partly because that is when it was brought to my attention that we still had serious problems and that is when I told Bob Brown to find out what they were.

He came to me and said that we still have problems there, after he had started monitoring it very closely and said, "I think we need to take additional action to straighten it out," and therefore I gave him the instruction to analyze it, and give me a recommendation.

Chairman NUNN. Mr. Secretary, when was the first time it came to your attention that a Department of Labor employee had destroyed the report?

Secretary MARSHALL. After we started this hearing.

Chairman NUNN. These hearings? Up until then you did not?

Secretary MARSHALL. That is correct.

Chairman NUNN. Ms. Clauss, when is the first time you heard about that?

Ms. CLAUSS. After these hearings.

Chairman NUNN. Mr. Gallagher, when is the first time you heard about the attempt to destroy the report or get rid of the report?

Ms. CLAUSS. You might want to object to the characterization, the attempt to destroy or get rid of it. Let me just try one more time. You talk about an official file or investigation, if we had commissioned an official investigation, obviously that investigation doesn't get thrown out. We have investigation files. We keep them in accordance with the rules. We send them to the Archives after 5 years, every 10 years we review them with the Archives, to destroy them and so on.

Chairman NUNN. When you suspect real problems, you do the investigation unofficially?

Ms. CLAUSS. No. No. This is not substantially different than my calling in my deputy and saying I really wonder if we have got the best organization that we could have in the office, would you look into it. I don't know when he is going to talk to people, if he talks to people, when he is going to prepare handwritten notes or shorthand notes or no notes at all, but at some point I am going to get a decision package, recommending certain changes.

Then I am going to implement those changes and I dare say that throughout Government there is not great concern to what happens to those packages that lead to personnel and management reorganizations of a minor kind. That simply wasn't thought of as an official investigation.

It has only gotten this character because of the nature of some of the allegations that were made in the statements. But it wasn't intended to elicit any information of wrongdoing, it wasn't intended to go into the adequacy of the Central States investigation. It wasn't intended, it was not intended to be a substitute for the GAO study.

So I think that you are taking something that at the time was done in a rather routine way to come up with some final recommendations. Mr. Burkhardt wrote his paper without talking to anybody. That is the context in which we all looked at this document and made our decisions.

Chairman NUNN. Mr. Gallagher, again, would you tell us when is the first time you knew that this report had either been discarded or done away with or whatever—

Mr. GALLAGHER. Senator, I never knew it existed until some time shortly before the committee's first hearings in August.

Chairman NUNN. Ms. Monica Gallagher, would you tell us the first time you knew it had been?

Ms. GALLAGHER. I can't say I knew anything about the report. I would have been under the impression there was a document created and that the document was thrown away. That has been my impression as long as I have known anything about it. I never saw such a document.

Chairman NUNN. Thank you. I hope we could get through before the next vote. But it looks like we will have to break for 7, 8, 10 minutes. I would hope, Mr. Secretary, we could complete this line of questioning within 20 to 25 minutes at least. We will take a brief recess.

[Brief recess.]

[Members of the subcommittee present at the time of recess: Senator Nunn.]

[At this point, Senator Nunn entered the hearing room.]

Chairman NUNN. The subcommittee will come to order.

Mr. Secretary, we have covered most of the material. I am just closing out my questioning, other Members may have other questions, again with the statement on page 33 you made, there was however no highly dramatic or willful destruction of the documents. Is that still your position?

Secretary MARSHALL. Yes. I think that is right. In the first place, as I emphasized, there was some effort to get rid of copies of it, but raw material was still in the files of the investigators. There is no doubt that we didn't want that information circulated around because of the concern of our people that it would embarrass people and make it difficult for us to undertake such investigations before as much as I understand the nature of what happened there.

Chairman NUNN. Even though you haven't read it, you don't know how it was destroyed, that is your statement?

Secretary MARSHALL. What I say is that I have confidence in the people who have—I haven't looked at all of those interviews but I have had someone read them and tell me, are there things there that we ought to be concerned about and should I therefore get into it. I have—

Chairman NUNN. I know you do. Who did you ask that question to?

Secretary MARSHALL. Under Secretary, as well as my executive assistant.

Chairman NUNN. They both—did you ask them whether it needed any further investigation?

Secretary MARSHALL. That is right. They said no, they think it had been taken care of and that there were personal things in there that would cause somebody some trouble. As I understand it, it is in the hands of the Attorney General.

Chairman NUNN. That is right. It got in there after we started this investigation.

Secretary MARSHALL. So I guess the final judgment about whether they were right or wrong depended on whether the Attorney General finds anything there.

Chairman NUNN. I wouldn't agree with that, Mr. Secretary. The judgment is not whether they were right or wrong, or the allegations were correct or incorrect, the judgment is whether they should have been turned over to someone including the Attorney General or possibly your own Inspector General before this investigation started by this subcommittee.

Secretary MARSHALL. I am confident, I have great confidence in my Solicitor, my Under Secretary and executive assistant, and the people who are handling it and that they would not mislead me in it and that they made the judgment initially about whether the document needed to be acted upon. It seems to me in light of all the facts I don't see that they did anything that was improper.

Chairman NUNN. So we can look forward to continuing the Labor Department destruction of reports.

Secretary MARSHALL. No, you won't because from now on, I think that the problem that you face is knowing what a report is. I take notes all the time. Is that a report?

Chairman NUNN. This was something that you had two of your top people, according to your own testimony, come in from the field and

undertake a highly important matter to determine whether you were going to abolish the whole department that had been handling the Teamster pension fund. You don't consider that anything more than written notes?

Secretary MARSHALL. They were their notes by those people not on that whole matter but on the personnel aspects of the problem.

Chairman NUNN. Everything was destroyed, attempted to be destroyed.

Secretary MARSHALL. Wasn't destroyed. The notes of the investigators were not destroyed. Their file copies were not destroyed.

Chairman NUNN. They tried to.

Secretary MARSHALL. I don't have any evidence of that.

Chairman NUNN. If you haven't, you haven't followed the whole process of these hearings if you don't have any evidence.

Secretary MARSHALL. I will let the facts speak for themselves.

Chairman NUNN. You see nothing wrong with anything the Labor Department has done in this matter of doing away with the Kotch-Crino report?

Secretary MARSHALL. Not doing away with those copies, no, because I think in the days of Xerox machines, it is not a good idea to have a lot of copies around especially if the file copies are there and if the investigators can reconstitute them.

Chairman NUNN. The file copies weren't there.

Secretary MARSHALL. Where did you get it?

Ms. CLAUSS. The investigators did have copies. I think there is a dispute, Senator, as to what efforts were made to destroy these reports.

Chairman NUNN. You all don't realize, I can't believe we are sitting here after we have been going through this for 4 weeks, and you two do not realize that we were told there were no documents anywhere on this; and that the General Accounting Office was told they couldn't get any copy of this and your own Inspector General was told and you are saying here it was in the file all along and we had to issue a subpoena for the first time in the history of the subcommittee against a Government department to get it and you still are treating it in this category. It is hard to follow.

Ms. CLAUSS. We have been told by Mr. Gallagher that he assured Mr. Steinberg that he would go back to the Department and ask all the appropriate people and find out where that report was and if it existed, the committee would have it.

Chairman NUNN. Mr. Steinberg, you have been under oath. Tell us what happened on this one more time and we will go to another witness.

Mr. STEINBERG. Notes of both Mr. Duffy and myself are in the record as exhibits but we were told by Mr. Gallagher, Mr. Kotch, Mr. DeMarco on numerous occasions that no copies of this report or the attachments existed, that they all had been destroyed.

Mr. GALLAGHER. I believe that is incorrect, Mr. Steinberg. Your notes must reflect that I said to you that if you would like me to, I would go back to the Labor Department and make every appropriate inquiry to determine whether or not that report exists and that is exactly what I did.

Mr. STEINBERG. Mr. Gallagher, my notes reflect that you pleaded with the subcommittee not to issue a subpoena because you told the

subcommittee that you had made and the Department of Labor had made every diligent effort to find this document and it did not exist.

Mr. GALLAGHER. That is simply not correct. I told you that I had never seen the document but that if the subcommittee wanted it, I would make every appropriate inquiry to determine whether or not it existed.

Chairman NUNN. You never reported to this subcommittee that the document didn't exist?

Mr. GALLAGHER. No, sir, Senator. I had no knowledge whether or not it existed. I had never seen it until I made all the appropriate inquiries that I promised Mr. Steinberg I would make and Mr. Kotch found a copy of the report and brought it in. That was the first time I saw it or had any knowledge of whether or not it existed.

Ms. CLAUSS. Senator, for the record, this is one of our objections to the way this hearing, proceeding has been conducted, that if an official request had been made—you know, the other day Mr. Block called me on the phone which I think is appropriate. He should call me; asked me for some documents, I was in the position to order the Secretary's files to be searched, ordered by files to be searched, to order everybody's files to be searched when an inquiry is made. For us to be held responsible because the people down the line don't know something, I think is totally unjustified.

Chairman NUNN. We had better look at the whole Inspector General's operation over there and the relationship with the Labor Department then because they are going to testify that they tried to get a copy of this report and they couldn't get it. If you don't have better communication than that in anything other than the top couple of positions in the Labor Department, the whole department has got problems. You have a massive communication problem.

Ms. CLAUSS. I read Mr. Repp's affidavit. Mr. Repp claims, that the Inspector General said she would look into this during the confirmation hearings, that he asked two attorneys who had not conducted the inquiry and who had no knowledge of it and they said they had no knowledge of it.

Chairman NUNN. The Inspector General asked.

Ms. CLAUSS. A staff person chooses to ask people other than the people who would know or be in a position to find out.

Mr. STEINBERG. Ms. Clauss, two individuals, the representative from the Inspector General asked, were Bob Gallagher and Monica Gallagher in your office who had been interviewed by Mr. Kotch and Mr. Crino and who knew or should have known that a report existed.

Mr. GALLAGHER. Mr. Steinberg, I told them exactly what I told you, that I had never been seen that report, that I knew that the investigation had been conducted, I assumed there was a report, I had never seen it and I had no idea whether it existed.

Chairman NUNN. You didn't ask Ms. Clauss about it then?

Mr. GALLAGHER. Mr. Repp made no further inquiry. If he said, "Will you find out if there is such a report," I certainly would have done that, but he expressed no further interest.

Chairman NUNN. What did he ask you?

Mr. GALLAGHER. I don't recall exactly what he said. The substance of what he said apparently was, "Do you have the report or have you seen the report?" My answer was "No."

Chairman NUNN. You mean if you didn't have it in your hip pocket, you said no, that is the end of it?

Mr. GALLAGHER. I had never seen it. I didn't know it existed.

Chairman NUNN. The only duty you have to respond to the Inspector General, you don't have any duty to ask your superior?

Mr. GALLAGHER. It was an informal interview. He didn't make any request that we produce the document. I assumed he would ask the people who would know if there was a document.

Mr. CLAUSS. I think that is the problem.

Chairman NUNN. It is a problem if somebody—your own Inspector General asks somebody working right under you to get a document, then does nothing further.

Ms. CLAUSS. No. He didn't ask me to get the document. There is a big difference between casually asking someone do you know whether something exists and saying will you find out. I am not going to talk to anybody else. I am now going to turn this job over to you. There is no way that my grade 15 attorney knows that the Inspector General's grade 15 investigator isn't going to pursue something but is instead doing nothing. All he had to do was ask my grade 15 attorney to pursue it and it would have been pursued. But to draw some sinister inference from that I think is totally unwarranted.

Chairman NUNN. I am not sure sinister—

Ms. CLAUSS. There are appropriate procedures for getting information from agencies.

Chairman NUNN. How should the Inspector General get something from your office?

Mr. GALLAGHER. Monica Gallagher reminds me that Mr. Repp did ask me to get many documents for him on that occasion and that we did get them but he did not apparently ask us to get that document.

Chairman NUNN. I think we will pursue this to its ultimate with these witnesses.

Mr. Secretary, do you have anything else you want to say at this point?

Secretary MARSHALL. No.

Chairman NUNN. We will come back on the policy questions tomorrow.

Secretary MARSHALL. Good. I do think it is important to keep the perspective and that is the flow of our investigation, our constant improvement in the operation of that activity, what we did to protect those assets. I am quite ready to defend the policy that we had because I think it was appropriate. I think in retrospect it was absolutely correct. We have put those assets in the hands of independent money managers. The asset composition has shifted away from risky real estate assets toward greater diversity in the funds, the return and the income of the workers' pension fund has gone up and we have filed suit for restitution and we are looking at the new trustees. It seems to me that that is our main responsibility under ERISA.

It is true that we had some problems in the SIS. We inherited those. Those were clear, made clear to me at my confirmation hearings. We have been constantly improving the management of that operation and we have done it. And that was simply one episode in that long process of trying to get the management of the Central

States investigation where it is now. It seems to me that is the thing that is really relevant about all of these activities and that is the reason I said I am proud of what we have done. It is not perfect. It will continue to improve. But we have carried out our basic objective.

Chairman NUNN. Thank you, Mr. Secretary.

At this stage, let me ask if Ray Kowalski is here because I previously said we wouldn't have any other witnesses before 2 o'clock. Is Mr. Kowalski here? If you are here, we would like to go ahead, we didn't think it was going to take this long, to get your testimony and that of the Assistant Inspector General and then we will take a break.

Mr. Secretary, we appreciate your being here and your other assistants and we will see you again tomorrow.

Secretary MARSHALL. Thank you.

Chairman NUNN. We will also ask, is Mr. Repp here? Mr. Repp, we will take your testimony before we break if that is satisfactory.

Mr. REPP. Fine.

Chairman NUNN. Mr. Kowalski, have you already been sworn?

Mr. KOWALSKI. Yes, sir.

TESTIMONY OF RAY KOWALSKI, U.S. GENERAL ACCOUNTING OFFICE—Resumed

Chairman NUNN. You recognize you are under oath now?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Give us your name and occupation again for the record.

Mr. KOWALSKI. Raymond J. Kowalski, I am supervisory auditor with the Human Resources Division of the General Accounting Office.

Chairman NUNN. At the request of the Permanent Subcommittee on Investigations, did the GAO undertake an oversight inquiry into the Department of Labor's handling of the Teamsters fund investigation?

Mr. KOWALSKI. Yes.

Chairman NUNN. When did this begin?

Mr. KOWALSKI. Approximately June 1978.

Chairman NUNN. On August 25, 1980, did the Comptroller General of the United States release a statement concerning GAO's findings with respect to the Teamsters fund?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. How long have you personally been involved in this inquiry?

Mr. KOWALSKI. Since the start of the investigation.

Chairman NUNN. What is your official position in this investigation?

Mr. KOWALSKI. GAO operates under a team concept and I am team leader on the job which means I am totally responsible for conducting the review.

Chairman NUNN. I am going to ask the staff to hand you a report done by Mr. Kotch and Mr. Crino of the Department of Labor dated May 11, 1979, the attachments to the report.

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. When was the first time you saw that report?

Mr. KOWALSKI. On the date of the hearings, August 25.

Chairman NUNN. 25th of 1980?

Mr. KOWALSKI. 1980.

Chairman NUNN. Has the Labor Department ever given you access to this report during the investigation?

Mr. KOWALSKI. No, sir.

Chairman NUNN. When you are doing a review concerning any program of any agency, what is your initial responsibility as far as obtaining any internal reports relating to the same subject matter?

Mr. KOWALSKI. That is one of our principal responsibilities. Before we start a review, we check on the management control of an agency, which includes their internal audit, or internal review reports of the type of the Kotch-Crino report. We do this to find out what they are doing or have done so that we don't duplicate their work, plus what they might have come up with in the way of management problems and deficiencies, and what recommendations they might have suggested and what they have done to implement those recommendations.

Chairman NUNN. Did you ask anyone in the Department of Labor for access to those kind of reports?

Mr. KOWALSKI. Yes, sir. At the beginning of our investigation, we checked with the LMSA people and the—at that time, I don't think they had the Inspector General's Office, but the Office of Audit—whether they had performed any reviews on the Teamsters fund. We were told no.

Chairman NUNN. Who told you that?

Mr. KOWALSKI. I can't remember. This was before the Crino-Kotch report. That was our normal procedure. Then later on, I guess it was around March or April of 1980, I had heard that somebody had applied under the Freedom of Information Act for a copy of the Crino-Kotch report. And, contrary to what Solicitor Clauss testified to this morning, we did follow the procedure of talking to the appropriate people. Our procedure with Labor is that if we want a copy of something, you go through the Inspector General's Office. I called our liaison and asked if she heard whether a report had been prepared and could we have a copy. She told me she hadn't and she didn't have any information on the report; she indicated I should talk to Rocky DeMarco. So I called Rocky DeMarco and he told me the report did not exist. So I think I went to the proper person, Rocky DeMarco, since he had requested the report be prepared.

Chairman NUNN. You went to the person who requested that the report be prepared?

Mr. KOWALSKI. Exactly, sir.

Chairman NUNN. Did he say the report never existed or just did not any longer exist?

Mr. KOWALSKI. I don't remember his exact words, but I think it was to the effect that the report did not exist. I didn't pursue the matter any further.

Chairman NUNN. You didn't go to the Secretary of Labor?

Mr. KOWALSKI. No.

Chairman NUNN. And say, "Is Mr. DeMarco misleading us," or anything of that nature? Do you go to the top, when a person in the re-

sponsible position gives you that kind of answer? Do you feel that you need to go behind that and then go up a ladder, all the way to the top?

Mr. KOWALSKI. No. He was the Deputy Assistant Secretary and he had the report prepared. If he said a report did not exist, I had to believe him.

Chairman NUNN. Would this report assist you in performing your inquiry at the request of our subcommittee?

Mr. KOWALSKI. Yes, sir. It sure would have?

Chairman NUNN. Are you presently using the Kotch-Crino report in assisting the House of Representatives?

Mr. KOWALSKI. Yes.

Chairman NUNN. Which committee?

Mr. KOWALSKI. Subcommittee on Oversight, House Committee on Ways and Means. We are responding to questions from the chairman in regard to some statements made by the Secretary at March 1980 hearings and his subsequent response to the subcommittee.

Chairman NUNN. Is the Kotch-Crino report consistent with GAO's findings?

Mr. KOWALSKI. Yes, sir. Not all of them, but quite a few.

Chairman NUNN. Which findings in the Kotch-Crino report support the GAO's findings?

Mr. KOWALSKI. Those dealing with the SIS, the lack of adequate staff, the lack of training for the staff, the ineffective coordination, and the dispute between the Solicitor's Office and the SIS people. There was a particular document in the material that I thought was very interesting. It had to do with a dispute between Labor and Justice regarding some internal documents. I guess it got to the point where Justice was going to subpoena the records from Labor. I thought that very peculiar since they had a memorandum of understanding—under which they were supposed to be coordinating. Also, I had been told by people in Labor that, yes, coordination is perfect.

Chairman NUNN. So we have heard about all of this smooth coordination with the Justice Department, you ran into it, what was it a document that indicated it or the Kotch-Crino indicated it?

Mr. KOWALSKI. It was a document in the supporting documents. It was a memorandum by the Solicitor's Office which I never came across in our review of the files.

Chairman NUNN. In the review of what?

Mr. KOWALSKI. The Solicitor's files.

Chairman NUNN. You never came across that?

Mr. KOWALSKI. No.

Chairman NUNN. There was a memorandum in the Solicitor's Office contained in the Kotch-Crino report and it said the Justice Department was threatening to subpoena certain records of the Labor Department?

Mr. KOWALSKI. That is correct.

Chairman NUNN. That was it? The Kotch-Crino report?

Mr. KOWALSKI. Exactly. To me that would indicate there are some problems in the coordination.

Chairman NUNN. I would agree. Would access to this report have actually accelerated your effort?

Mr. KOWALSKI. Yes, sir, it would have. The report discusses a lot of recommendations concerning SIS and what to do with SIS. These

would have a significant bearing on what we would have proposed Labor do to modify or correct the problems at SIS. We are, and will have to consider the recommendations in the Crino-Kotch report and what actions Labor has to take and needs to take on SIS.

I have been sitting here listening to the testimony by Labor officials and the Secretary that the objective of the Kotch-Crino report had been accomplished. Yet, a memo in the report states there are 19 recommendations, I count 19, and I don't believe all of the recommendations have been implemented. I question whether they have been accomplished.

Chairman NUNN. So basically, generally speaking, the criticisms you made of the Labor Department, most of them were corroborated in the Kotch-Crino report?

Mr. KOWALSKI. Yes, especially in connection with our review of the SIS activities. It didn't get into the negotiations with the fund. That was a separate issue, but our finding on the SIS handling of the investigation; yes.

Chairman NUNN. You have read the Kotch-Crino report?

Mr. KOWALSKI. Yes.

Chairman NUNN. Now that we have turned it over to you. Did you hear the summary given by the staff this morning?

Mr. KOWALSKI. Yes.

Chairman NUNN. Do you generally agree with that summary?

Mr. KOWALSKI. Yes, sir.

Chairman NUNN. Did the information in the Kotch-Crino report update some of the original GAO findings?

Mr. KOWALSKI. Updated, confirmed, and would have amplified some of them. Some of the comments by the people were very enlightening. We contend that Labor would have been able to do some of the things they initiated had they filled all SIS positions. That is substantiated by the statement by, I believe, the Acting Director. He says the lack of staff seriously hampered their investigation. To me, that supported our finding, that they could have completed all of the investigation or most of the investigation and the third-party investigation if they had the staff.

Chairman NUNN. How long have you worked with GAO?

Mr. KOWALSKI. Twenty-eight years.

Chairman NUNN. Is GAO—in the normal course of investigations of the nature you are conducting with the Labor Department, are you normally granted access to reports in those departments?

Mr. KOWALSKI. Yes.

Chairman NUNN. Similar to the Kotch-Crino report?

Mr. KOWALSKI. I don't think I have ever been denied a document or report in my 10 years at Labor.

Chairman NUNN. You have been working at Labor for 10 years?

Mr. KOWALSKI. Yes.

Chairman NUNN. For GAO?

Mr. KOWALSKI. For GAO.

Chairman NUNN. Have you ever run across destruction of a document of this nature in your experience?

Mr. KOWALSKI. No. It is the first knowledge I ever had of a document being destroyed, especially an internal management report. De-

spite the testimony this morning, I think it was a very significant report. As I said before, we are using it in a reply to the House Oversight Committee. One of the questions stated, "Well, there are a lot of documents over at Labor; but can you give us something summarizing the problems?" What has been happening in the investigation? The report certainly would have summarized the problems.

Chairman NUNN. You heard Solicitor Clauss and also the Secretary of Labor testify just a few moments ago that they saw nothing wrong with the destruction of that report; the attempt at destruction of that report or the attempted disposal of that report. Do you agree with that assessment?

Mr. KOWALSKI. No, sir, I couldn't believe it. Really, it is amazing that they would destroy a document like that especially since they said, "Well, we have taken action on this document." So they must have considered it an important document. Yet, supposedly they said they implement all of the objectives when they really haven't, in my opinion.

Chairman NUNN. Now that you know the official policy of the Labor Department regarding that report and other similar reports relating to preserving it or disposing of it, how do you view your job in the investigation of the Department of Labor for the General Accounting Office and for the Congress of the United States?

Mr. KOWALSKI. It might make it a little more difficult because you will never be sure that you are getting all of the documents. Some of them might have been destroyed.

Chairman NUNN. One of the points that the Kotch-Crino report seems to confirm is the lack of third-party investigation by the Department of Labor. Is that correct?

Mr. KOWALSKI. That is true.

Chairman NUNN. That was also one of your criticisms?

Mr. KOWALSKI. That is right.

Chairman NUNN. We know that third-party borrowers in questionable transactions of the fund such as Glick, Malnik, Shenker, have not been charged by the Department of Labor in its February 1978 civil lawsuit. How can the Department of Labor effectively pursue these third parties who obtain so much of the funds' money without an adequate third-party investigation?

Mr. KOWALSKI. I don't think they can as Mr. Steinberg testified this morning. I don't think they can do a complete and effective investigation.

Chairman NUNN. They are not part of the civil lawsuit trying to recover these moneys, are they?

Mr. KOWALSKI. That is correct. I understand there is a motion that the lawsuit be limited to 15 loans. If it is limited to 15 loans, then how do you cover the supposedly suspected organized crime figures? How are you going to investigate them?

Chairman NUNN. That is a good question. Suppose there is a verdict against the trustees, most of the money went elsewhere, presumably. Where is the money to recover for the parties that are being protected allegedly?

Mr. KOWALSKI. That is true, sir.

Chairman NUNN. If the money went to the third parties, no investigation of the third parties, no lawsuit against the third parties, you get a verdict, what good is the verdict if there are no assets?

Mr. KOWALSKI. You won't be able to recover the losses.

Chairman NUNN. Unless the trustees happen to be independently wealthy. Is that right?

Mr. KOWALSKI. That is true, sir.

Chairman NUNN. Thank you very much, Mr. Kowalski. We appreciate your continued cooperation.

Our next and final witness before a break will be Mr. Sheldon Repp, Inspector General of Documents, U.S. Department of Labor.

Mr. Repp, are you going to have anyone testify with respect to the Inspector General's Office? Do you want to introduce your associate? She is welcome to sit up here.

Mr. REPP. This is Ms. Horowitz from the Inspector General's Office.

Ms. HOROWITZ. I am counsel to the Inspector General at the Labor Department.

Chairman NUNN. You are welcome to sit here even though you aren't going to testify if you would like.

Do you swear the testimony you will give will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. REPP. I do.

**TESTIMONY OF SHELDON REPP, INSPECTOR GENERAL'S OFFICE,
U.S. DEPARTMENT OF LABOR**

Chairman NUNN. Give us your name, please.

Mr. REPP. My name is Sheldon Repp.

Chairman NUNN. Your present position?

Mr. REPP. I am Special Assistant to the Inspector General of the U.S. Department of Labor.

Chairman NUNN. Who is the Inspector General?

Mr. REPP. The Acting Inspector General and Deputy Inspector General at the current time is Ronald Goldstock.

Chairman NUNN. How long have you been with the Inspector General's Office in the Department of Labor?

Mr. REPP. I have been officially employed in that position since June 2, 1979. I was unofficially working part time with the Inspector General's Office prior to that time while I was an employee of the Department of Health, Education, and Welfare.

Chairman NUNN. With respect to an internal inquiry that was being performed by the Department of Labor concerning the Teamsters Central States Pension Fund, did you have occasion to ask various persons in the Department of Labor about this report?

Mr. REPP. I did.

Chairman NUNN. Have you prepared an affidavit on this?

Mr. REPP. Yes; I have.

Chairman NUNN. Would you like to read that affidavit or would you prefer to give it again in your own words?

Mr. REPP. I would prefer to read it.

Chairman NUNN. All right, sir.

Mr. REPP. Reading from my affidavit, I, Sheldon Repp, freely and voluntarily make the following statement to Marty Steinberg and Ray Worsham, who have identified themselves as members of the staff of the United States Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs.

My name is Sheldon Repp. My position is Special Assistant to the Inspector General of the Department of Labor. I began my duties June 2, 1979, with the Inspector General's Office. I was unofficially with the Inspector General's Office since April of 1979.

In May 1979, at the confirmation hearings of Marjorie Knowles, former Inspector General, Department of Labor, Senator Chiles queried her concerning the Teamsters Central States investigation being performed by the Department of Labor. Ms. Knowles was unfamiliar with the results of that investigation and requested me to check into the matter.

In the summer of 1979, I contacted Mr. Richard Ross of the Department of Labor and asked Mr. Ross about his knowledge of the Teamsters Central States investigation. Mr. Ross stated that two individuals, a Mr. Kotch and a Mr. Crino of LMSA, had been asked by Rocco De Marco to review the Central States investigation and the SIS Task Force. Mr. Ross stated that Mr. DeMarco had been asked by the Secretary to perform this inquiry. Mr. Ross told me that he would attempt to obtain a copy of the report and give it to me for background purposes. Mr. Ross also told me that the GAO was doing an inquiry concerning the Department of Labor's handling of the Teamsters Central States investigation.

Chairman NUNN. Excuse me. What was Mr. Ross' position?

Mr. REPP. Mr. Ross was an employee at that time, which we have subsequently pinpointed to August of 1979, of the Office of the Inspector General. Prior to June of 1979, he was Acting Deputy Inspector General, and in August of 1979, he was a supervisory criminal investigator.

Chairman NUNN. So he had been Acting Deputy Assistant—

Mr. REPP. Acting Deputy Inspector General under Mr. DeMarco, who was Acting Inspector General.

Chairman NUNN. So he worked under Mr. DeMarco?

Mr. REPP. That is correct.

Later, Mr. Ross called me back and told me that he had talked with someone—I don't recall his identifying the source—and was told that there was a verbal report which had been given and that the notes concerning this report were destroyed. I didn't pursue the matter further at that time as I was involved in setting up the Inspector General's Office and other related matters.

In December 1979 or January 1980, I began to do a limited survey concerning the Department of Labor's Central States investigation and the SIS team. The reason I did this at that time was because the Inspector General's Office had been advised that the SIS task force was going to be reorganized and there was a possibility that some of the Central States personnel would be assigned to the Inspector General's Office. I talked to a few people about the Central States investigation, including Larry Lippe, Monica Gallagher, Bob Gallagher, and Ed Shevlin. Mr. Shevlin told me that he had been interviewed by Mr. Kotch and Mr. Crino and that they had done a review of the Cen-

tral States investigation and suggested I get in touch with them. Upon being asked, Mr. Shevlin stated he had never seen any report which resulted from the Kotch-Crino inquiry. I asked both Monica Gallagher and Robert Gallagher about the Kotch-Crino report. They both stated that they had never seen a written document and also that they did not know if there was a written report. The conclusion I reached after talking to them was that there was no formal report. No one I talked to voluntarily told me that a formal report existed, or had existed.

I reported back to Ms. Knowles concerning the status of what I had discovered. Prior to September 12, 1980, no one ever told me, or to my knowledge anyone else in the Inspector General's Office, the results of the Kotch-Crino report or any allegations contained in the report. To my knowledge, the Kotch-Crino report and the allegations in it have never been referred to the Inspector General's Office.

I have been shown a copy of the Kotch-Crino report, dated May 11, 1979, by Mr. Steinberg and I can positively state I have never before seen that report nor am I aware of the report being referred to the Inspector General's Office.

I have also been shown copies of various interviews which I have not read but, from the face of the documents, I am not familiar with them as documents ever being referred to the Inspector General's Office.

I have been informed briefly by Mr. Steinberg of some potential criminal allegations contained in the reports of interviews done by Mr. Kotch and Mr. Crino. I am not aware of the referral of these allegations to the Inspector General's Office.

I have read the foregoing statement, and to the best of my knowledge and belief, it is true and correct.

I signed this on September 16. I might add that subsequent to my signing this affidavit, Mr. Bob Gallagher did refer a couple of matters relating to this area to the Office of the Inspector General. I am not aware if they are allegations that came from the Kotch-Crino report or not, but to that extent, it may qualify what I said in the affidavit.

Chairman NUNN. That was after we had shown you the Kotch-Crino report?

Mr. REPP. That is correct. It was after I signed the affidavit.

Chairman NUNN. Mr. Repp, what is your understanding of the duties of the Inspector General's Office relating to allegations by one employee against another in the Labor Department finding their way into reports?

Mr. REPP. I can only state what the Inspector General's Act states and that is that among the duties of the Inspector General as stated in Public Law 95-452 is the duty and responsibility to provide direction for, and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment.

Chairman NUNN. In April and May 1979, who was responsible for the Inspector General's Office?

Mr. REPP. Ms. Knowles, the former Inspector General who was sworn in as Inspector General on May 18, 1979.

Chairman NUNN. Who was before that date?

Mr. REPP. Prior to that date Mr. DeMarco was Acting Inspector General. I must say, though that at that time and for a period of, for some time prior to that, I am not exactly sure for how long—Mr. De-

Marco was also working at the Labor Management Services Administration as Deputy Assistant Secretary and thus was wearing two hats.

Chairman NUNN. Mr. DeMarco himself was Acting Inspector General before Ms. Knowles took over?

Mr. REPP. That is correct.

Chairman NUNN. I would like the staff to read into the record the result of the interview with Mr. Richard Ross.

Mr. STEINBERG [reading].

On September 9, 1980, I spoke with Dick Ross, who is now in the CETA program, Department of Labor, Atlanta, Ga. Mr. Ross used to work for the Office of the Inspector General, Department of Labor.

I asked Mr. Ross if he remembered a report being prepared for Rocco DeMarco by Mr. Kotch and Mr. Crino, and if he remembered anyone from the Inspector General's Office inquiring of him about this report. Mr. Ross stated that Marjorie Knowles was unofficially on board in approximately February 1979 awaiting confirmation. Ross stated that Ms. Knowles officially came on board in May or June 1979 at which time he was relieved of his duties in the Inspector General's Office.

Ross states that he remembers such a report being done for Mr. DeMarco by Mr. Kotch and Mr. Crino. Ross states that Mr. DeMarco kept this report and the results thereof very secure, and Ross had never seen the report and does not know the results.

Ross states that he knows Messrs. Kotch and Crino personally and the only thing they would say to him about the report was that they were working for Rocky DeMarco, reported directly to him and this was outside the chain of the Inspector General's Office.

Mr. Ross says he has a recollection—although he could not swear to it—that after he left the Inspector General's Office, someone—perhaps Shelly Repp—called him to ask him about the status of this report. He states that he may have checked on the status of the report with Rocco DeMarco and he may, in fact, have reported to Mr. Repp that the report no longer existed. Ross states that he cannot absolutely say this with certainty, but that that is his best recollection.

Ross states that if in fact he would have tried to determine the existence of this report, the only person he could have talked to would have been Rocco DeMarco.

Mr. Ross states that to his knowledge, neither the report nor the results of the report were ever transmitted to the Inspector General's Office while he was there.

Mr. Ross further states that when Rocco DeMarco moved to LMSA in January or February 1979 and prior to Marjorie Knowles' confirmation in approximately May 1979, Ross was trying to run the day-to-day activities of the Inspector General's Office and would have been aware if the report or the results thereof had been referred to the Inspector General's Office.

When Mr. Ross was asked about the Department of Labor's handling of the Teamster Fund investigation, he stated that he knew from the very inception that it was being mishandled.

On September 12, 1980, I again contacted Mr. Dick Ross. He stated that he had reviewed his calendar and that on August 8, 1979, he met with Inspector General Knowles and Mr. Repp of the Inspector General's Office. On the next day, August 9, 1979, his calendar reflects that he reported to Mr. Repp regarding the Central States investigation. He states that the only person he could have received the information from in order to report back to Mr. Repp was Mr. DeMarco.

Chairman NUNN. Did Mr. DeMarco, subsequent to your contact with Mr. Ross, ever give you a copy of the Kotch-Crino material or refer the matter to the Inspector General's Office?

Mr. REPP. The Kotch-Crino report has to my knowledge never been referred to the Office of the Inspector General.

Chairman NUNN. The same for those interviews attached to it?

Mr. REPP. As described to me by Mr. Steinberg, none of the interviews nor allegations contained in them have been referred to the Inspector General's Office to my knowledge.

Chairman NUNN. But you are saying in the recent days there have been a couple of matters?

Mr. REPP. There have been two matters referred by Bob Gallagher to us within the last 2 weeks.

Chairman NUNN. Those could be the same matters referred to in the Kotch-Crino report? You are not sure?

Mr. REPP. As described to me, what was referred to me was not among the allegations that were described to me by Mr. Steinberg. However, nonetheless, the allegations referred to the Inspector General's Office could have come from the Kotch-Crino report or the backup investigation, backup interviews.

[Additional information furnished by Mr. Repp follows:]

U.S. DEPARTMENT OF LABOR,
INSPECTOR GENERAL,
December 10, 1980.

Mr. MARTY STEINBERG,
Chief Counsel,
Permanent Subcommittee on Investigations,
Russell Senate Office Building,
U.S. Senate, Washington, D.C.

DEAR MR. STEINBERG: This is in response to your letter of November 13 regarding a subject discussed in my testimony on September 29 and in my follow-up letter to you of October 15. At these times, I stated that Robert Gallagher referred two matters to the Office of the Inspector General for review. Mr. Gallagher, in his referral, stated that these matters were mentioned in the interview notes of Richard Crino, and explained to him in more detail by Mr. Crino. After reviewing his referral once again, I do not believe that either of these allegations were among the allegations from the backup material to the "Kotch-Crino Report" which you summarized for me on September 12.

Please contact me if you have any further questions.

Sincerely,

SHELDON REPP,
Special Assistant to the Inspector General.

Chairman NUNN. Mr. Repp, what is the jurisdiction of the Department of Labor's Inspector General's Office in matters concerning program inquiries, internal investigations, or agency integrity?

Mr. REPP. As I stated before the authority for the Inspector General comes from Public Law 95-452 which sets forth in section 4 the duties and responsibilities of the Inspector General's Office. To repeat, one of those duties and responsibilities is to provide policy direction for, and to conduct, supervise, and coordinate, audits and investigations relating to the programs and operations of such establishment.

Chairman NUNN. Is the Inspector General's Office a separate and distinct entity in the Department of Labor set up so that it can perform internal investigations free from agency influence or pressure? Is that your understanding?

Mr. REPP. The independence of the Office of the Inspector General is established by statute, which states, and I am quoting from section 3 of the act:

The Inspector General shall be appointed without regard to political affiliation and shall not report to nor be subject to supervision by any other official of such establishment other than the head of the establishment and the immediate deputy. Neither the head of the establishment nor the officer next in rank below such a head shall prevent or prohibit the Inspector General from initiating, carrying out or completing any audit or investigation or from using any subpoena during the course of any audit or investigation.

Chairman NUNN. Is the Inspector General charged with reporting to Congress on a semiannual basis concerning any significant problems and any programs being performed by the Department of Labor?

Mr. REPP. Yes. The reporting requirements of the Office of the Inspector General are provided in section 5 of the act which in essence provides for semiannual reports which shall summarize, among other things, significant problems, abuses and deficiencies relating to the administration of programs and operations of such establishment disclosed by the Office of the Inspector General's activities, and shall contain recommendations for corrective action.

Chairman NUNN. Does the Inspector General's Act give the Inspector General's Office access to all records and reports which relate to agency programs and operations?

Mr. REPP. Section 6 of the Inspector General Act of 1978 provides that the Inspector General, in carrying out the provisions of the act, is authorized to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the agency which relate to the programs and operations with respect to which that Inspector General has responsibility under the act.

Chairman NUNN. As you interpret that act and as you, to the extent you know about the Kotch-Crino report, and the overall nature of it, do you think that that report and the attachments to it were included or should be interpreted as included within the purview of the Inspector General's Office under this statute?

Mr. REPP. The act does not—

Chairman NUNN. In other words, do you think you should have had access to that report under the law?

Mr. REPP. The act does not limit the access of the Office of the Inspector General to the Department's documents. I would say that if the report did exist, the act provides that we would have access to it if we requested it.

Chairman NUNN. Do you consider that you requested it?

Mr. REPP. As Mr. Gallagher—well, let me say that what I was conducting was a background review in order to fully bring up the Inspector General at that time to a level of knowledge where she could deal with issues that might arise concerning the Teamsters' investigation. Pursuant to that charge, I learned that there had been some work done by Mr. Kotch and Mr. Crino. I asked Mr. Ross to check into it, he said he would get me a copy of the report. I then learned based on what Mr. Ross told me that the Kotch-Crino report had never existed.

[At this point, Senator Percy entered the hearing room.]

Mr. REPP. Subsequent discussions I had with Bob and Monica Gallagher and others, in which I did ask about the Kotch Crino report, were merely made to confirm what I had previously been informed by Mr. Ross.

Chairman NUNN. The question is do you consider that you ever made known your desire for that report to the people in the Solicitor's Office or to the people who you had a reasonable expectation could have given you that access?

Mr. REPP. The Office of the Inspector General did not make a formal request of the Office of the Solicitor for the report. Had we known that the report did exist, that there was a report, we would have considered,

I mean the Inspector General would have considered whether or not to assert our access under section 7 of the act.

Chairman NUNN. So you never did make that decision whether to make a formal request for it because you were told it didn't exist?

Mr. REPP. I was operating, based on what I had been told, under the premise that there was no report.

Chairman NUNN. In the future if you have suspicions that certain reports exist and you want one, based on what you know now, how would you go about getting it? You heard the testimony. What would you advise the Inspector General on how he should go about getting a report from anyone in the Labor Department if he heard that it existed? Would you go right to the top?

Mr. REPP. Based on what I have heard here, I would recommend that in cases where a formal request is contemplated, that we make it to the responsible officials in the Department.

Chairman NUNN. Who is that?

Mr. REPP. I think it would depend on the particular nature of the particular request.

Chairman NUNN. Who would it have been in this case?

Mr. REPP. In this case, it appears that the request should have been made of the Under Secretary.

Chairman NUNN. Of the Under Secretary?

Mr. REPP. He was the one that had the report at one time. Or of the Solicitor. They both had copies of the report.

Chairman NUNN. Do you have any apprehensions that the Inspector General of the Labor Department may have been operating over there without having access to a lot of information because you haven't pinpointed the right person to ask?

Mr. REPP. I am aware of no circumstance in which we have been denied a report. To my knowledge, there is no case in which we have asked for a report and have not been given it. I am not aware of any case where we have asked for a report and was told that it didn't exist when in fact someone else in the Department had possession of it—outside of what I am testifying about today.

Chairman NUNN. I suppose what I am asking is what is the view of the Inspector General's Office, or to the extent that you have a view personally, what is your view of a report being destroyed like this by people in the Department of Labor? Do you condone the destruction of this report?

Mr. REPP. As has been testified to this morning, this is an area in which there are statutes that govern. For that reason, I believe that a detailed review would have to be made based on whatever the facts are. I am reluctant and in fact I do not think it appropriate because I am in a staff position, to offer my personal opinion on the matter.

Chairman NUNN. Do you think we need to have any more laws on the matter? Do you think the laws are adequate? We have the Secretary of Labor and the head of the Solicitor's Office saying there is nothing wrong with destroying this report. Do you think we need to pass a new law? Do you think the laws are adequate?

Mr. REPP. I guess I am aware that there is a law. I am not familiar with its contents and I cannot tell you, or venture an opinion, on whether or not it is sufficient.

Chairman NUNN. Have you ever run across another report in the Department of Labor that has been destroyed?

Mr. REPP. To my knowledge, we have never been informed that another report has been destroyed.

Chairman NUNN. You haven't run across it?

Mr. REPP. I never have.

Chairman NUNN. Does the Inspector General have the authority and responsibility to investigate employee complaints?

Mr. REPP. Section 7 of the Inspector General Act governs on this point. That section provides that the Inspector General may receive and investigate complaints or information from any employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules or regulations or mismanagement, gross waste of funds, abuse of authority or substantial and specific danger to the public health and safety.

Chairman NUNN. So I suppose the answer is yes.

Mr. REPP. The Inspector General's Office does have authority to investigate employee complaints, yes.

Chairman NUNN. Based on what you heard here today, do you think the Inspector General's Office should initiate an inquiry into the destruction of this report?

Mr. REPP. That is something that I will raise with the Acting Inspector General.

Chairman NUNN. What is your personal view on it?

Mr. REPP. Before I venture a personal view, I would like to read the statute that governs. I think that would have to be looked at first before any recommendations could be made.

Chairman NUNN. Mr. Steinberg, I believe you had a conversation with Marjorie Knowles, former Inspector General, Department of Labor. Do you want to relate that to the committee.

Mr. STEINBERG. Mr. Repp, maybe you can tell us how long Ms. Knowles served as the Inspector General.

Mr. REPP. Ms. Knowles served as Inspector General from May 18, 1979 until May 2, 1980.

Mr. STEINBERG. Prior to May 18, was she at the Department of Labor in an unofficial capacity?

Mr. REPP. Ms. Knowles, like myself, was serving part-time at the Department of Labor for some period prior to May 18 in order to familiarize herself with the staff and the issues that they were working on and to prepare for her confirmation hearings.

Mr. STEINBERG. Thank you.

On September 8, 1980, I telephoned Marjorie Knowles at her home. Mrs. Knowles was the former Inspector General of the Department of Labor. I asked her if she had ever initiated an inquiry concerning the status of the Central States Pension Fund or the operation of SIS, a Labor Department operation set up to handle Teamsters Pension Fund. Mrs. Knowles acknowledged that she gave a brief assignment to an individual named Shelly Repp to look into the matter. I asked Mrs. Knowles whether, as a result of that, she had ever heard of a report being done for Mr. DeMarco by a Mr. Kotch or a Mr. Crino. Mrs. Knowles stated that she had heard of the inquiry being done under Mr. DeMarco and had heard of the Kotch-Crino report.

I asked Mrs. Knowles if she had ever seen the report or whether the report or the matters contained therein had ever been referred to the Inspector General's Office. Mrs. Knowles stated that she had never seen the report nor were any of the charges in the report, as far as she knows, ever referred to the Inspector General's Office. I specifically informed her that the report contained charges of misconduct. Mrs. Knowles replied that she is unaware of any such charges being referred to her office.

Chairman NUNN. Thank you very much, Mr. Repp.

Senator Percy, do you have any questions?

Senator PERCY. No; I have no questions of this witness.

Chairman NUNN. I appreciate both of you being here.

At this point we have a decision to make. Senator Percy has returned and we could have three more witnesses, Mr. Crino, Mr. Kotch, and Mr. DeMarco this afternoon. We hope to have all of them this afternoon. I see Mr. Crino is here. Is Mr. Kotch here? Gentlemen, do you want to take a break? You have been here most of the morning. We can take a 30-minute break, if you like. If you are prepared, we could go ahead with the testimony. You have been here a long time. You would just as soon continue?

Mr. DeMarco?

Mr. DeMARCO. No problem.

Chairman NUNN. Fine. We will continue.

Our next witnesses will be Mr. Crino and Mr. Kotch.

Would each of you hold up your right hand? We swear in all of the witnesses before the subcommittee. Do you swear the testimony you will give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CRINO. I do.

Mr. KOTCH. I do.

TESTIMONY OF RICHARD CRINO, LABOR MANAGEMENT SERVICES ADMINISTRATION, U.S. DEPARTMENT OF LABOR; AND JOHN KOTCH, LABOR MANAGEMENT SERVICES ADMINISTRATION, U.S. DEPARTMENT OF LABOR

Chairman NUNN. We will go ahead. Senator Percy will be back in just a moment.

Were you interviewed by Mr. Duffy and Mr. Steinberg on August 18, 1980, with respect to your participation in the preparation of the report in conjunction with Mr. Crino, to be done for Mr. Rocco DeMarco?

Mr. KOTCH. Yes.

Chairman NUNN. Give us your position at the time this report was done if you would answer also your position now, Mr. Kotch?

Mr. KOTCH. At the time of the report, I was the deputy area administrator in our Pittsburgh office. Currently I am Chief of the Branch of Investigations and Audit in the LMSA.

Chairman NUNN. Did you state in your interview that you were called to Washington on February 4, 1979, to meet Mr. DeMarco, to discuss an internal inquiry into SIS and the Teamsters fund investigation?

Mr. KOTCH. What was the date of that again?

Chairman NUNN. February 4, 1979.

Mr. KOTCH. I don't recall the specific date. It was in February.

Chairman NUNN. Were you and Mr. Crino the only two persons at this February meeting with Mr. DeMarco?

Mr. KOTCH. Yes.

Chairman NUNN. Did Mr. DeMarco explain to you what type of inquiry you and Mr. Crino were to perform?

Mr. KOTCH. We discussed it, yes.

Chairman NUNN. Did Mr. DeMarco tell you that you and Mr. Crino were to report to him?

Mr. KOTCH. Yes.

Chairman NUNN. Did Mr. DeMarco tell you Under Secretary Brown wanted the report?

[At this point Senator Percy entered the hearing room.]

Mr. KOTCH. I am not sure he told us that initially, but that was eventually made clear. It was Mr. Brown.

Chairman NUNN. Did Mr. DeMarco tell you that your interview should be handled in the strictest of confidence and you and Mr. Crino were not to discuss the assignment with anyone else?

Mr. KOTCH. Correct.

Chairman NUNN. Did Mr. DeMarco tell you to write up reports of interviews but only give those reports to him?

Mr. KOTCH. Yes.

Chairman NUNN. Did Mr. DeMarco instruct you not to keep file copies or working copies of any interviews or reports prepared?

Mr. KOTCH. He didn't directly tell us that.

Chairman NUNN. Did he indirectly tell you that?

Mr. KOTCH. He made it very clear that we were to turn in one copy.

Chairman NUNN. Did he say anything about the copies you would keep yourself?

Mr. KOTCH. He never mentioned personal copies.

Chairman NUNN. Never mentioned that?

Mr. KOTCH. No.

Chairman NUNN. Did Mr. DeMarco explain to you whether or not this was the Inspector General's inquiry?

Mr. KOTCH. At the beginning, Mr. DeMarco was, as my memory serves, he was the Acting Inspector General when we first started. During the conduct of our review, he switched hats, as someone referred to earlier, and became the Acting Deputy Assistant Secretary.

Chairman NUNN. Did you know which hat he was wearing in directing this particular inquiry?

Mr. KOTCH. Originally, I thought he was wearing the hat of the Inspector General and then subsequently, I am not sure how long, 2 weeks perhaps or 1 week into the review, it was made clear that he was wearing the LMSA hat.

Chairman NUNN. Mr. Kotch, in your interview, you remember being interviewed by Mr. Steinberg on August 22, 1980?

Mr. KOTCH. Yes.

Chairman NUNN. About that date?

Mr. KOTCH. Yes.

Chairman NUNN. Mr. Steinberg here?

Mr. KOTCH. Right.

Chairman NUNN. Was anyone else there?

Mr. KOTCH. Mr. Duffy. And Mr. Gallagher from the Solicitor's office.

Chairman NUNN. Mr. Bob Gallagher, who is sitting here?

Mr. KOTCH. That's right.

Chairman NUNN. Do you recall telling them that Mr. DeMarco instructed you not to keep file copies or working copies of any interviews or reports they prepared?

Mr. KOTCH. He did instruct us not to—I don't know quite what you mean by a "file copy." To me a file copy is a regular distribution. There was to be no distribution. Maybe we have the wrong words here.

Chairman NUNN. You tell us in your own words.

Mr. KOTCH. He made it very clear to me and to Mr. Crino that we were to turn in one copy of the report and only one copy, there would be no copies to anyone else.

Chairman NUNN. You were not to keep copies?

Mr. KOTCH. He never mentioned my personal copy.

Chairman NUNN. Never mentioned your personal copy?

Mr. KOTCH. No, sir.

Chairman NUNN. Never mentioned working copy?

Mr. KOTCH. No.

Chairman NUNN. Did Mr. DeMarco tell you to write up reports of interviews but only to give those reports of interviews to him?

Mr. KOTCH. Yes, sir.

Chairman NUNN. Did Mr. DeMarco instruct you or tell you whether or not this was an Inspector General's inquiry?

Mr. KOTCH. As I mentioned originally, I was under the impression that it was the Office of the Inspector General, and that subsequently changed and he told us it was an LMSA function.

Chairman NUNN. Was that at the first meeting or later on?

Mr. KOTCH. That he changed?

Chairman NUNN. Did he change or did you just have an understanding?

Mr. KOTCH. No; originally it was an Inspector General function.

Chairman NUNN. So he told you to begin with that it was an Inspector General's function?

Mr. KOTCH. Yes.

Chairman NUNN. He specifically said that to you?

Mr. KOTCH. Yes. I was a little unclear in the interview. I had to call. I talked to Mr. Crino. I remember we reported to the Inspector General's Office rather than the LMSA Office.

Chairman NUNN. At that first meeting, you recall his saying it was an Inspector General's function?

Mr. KOTCH. That was my impression.

Chairman NUNN. When did that change and how did it change?

Mr. KOTCH. I can't recall specifically how it was changed or who changed it.

It seems to me that it was 1 or 2 weeks into the review that we were having some discussions with Mr. DeMarco and apparently the topic had been raised as to who we were working for. At that point, Mr. DeMarco, Mr. Crino, and I, perhaps someone else—I can't recall—visited

Mr. Brown, Under Secretary Brown. And he told us that it was going to be an LMSA function.

I don't recall the time.

Chairman NUNN. Mr. Brown did?

Mr. KOTCH. Yes. The best I can recall.

Chairman NUNN. Did they tell you why it would be in LMSA?

Mr. KOTCH. No, sir.

Chairman NUNN. Did you ask?

Mr. KOTCH. No.

Chairman NUNN. Did Mr. DeMarco tell you the ultimate purpose of the inquiry?

Mr. KOTCH. I wasn't sure he told me the ultimate purpose. He tried to explain to us what our role was, what our function was.

Senator PERCY. Could you expand to the extent that you possibly can on exactly what was told to you as to the scope and the purpose of the investigation?

[At this point Senator Cohen entered the hearing room.]

Mr. KOTCH. As I recall, it originally was somewhat unclear as to what the scope was and I recall Mr. Crino and I joined the discussion, trying to narrow the scope of it, trying to better understand it. This occurred in discussions subsequently with Mr. DeMarco and Mr. Brown after which we, I think, were all in agreement that the scope was the four purposes we outlined in our report.

Senator PERCY. The real purpose was what?

Mr. KOTCH. There were four purposes we outlined in the report. We narrowed it down to those. This is what our functions were, those four purposes.

Senator PERCY. Were all of your instructions verbal?

Mr. KOTCH. Yes.

Senator PERCY. How long did the initial meeting run in which you were given the assignment and discussed the scope of it?

Mr. KOTCH. The initial meeting I would estimate lasted an hour. Then there were, as I said, subsequent meetings as we tried to better define—Mr. Crino and I, I think, were uncertain as to the exact nature of what we were supposed to do.

Senator PERCY. Is that the usual procedure followed for a study of this kind, verbal instructions?

Mr. KOTCH. I had never really done a study like this. I didn't find it unusual, though.

Senator PERCY. You didn't?

Mr. KOTCH. No.

Chairman NUNN. Did you tell Mr. Steinberg or Mr. Duffy at that interview that you gave the only copy you had of the report and attached interviews to Mr. DeMarco upon finishing the report in May 1979?

Mr. KOTCH. Yes, I told them that.

Chairman NUNN. That you had not seen the document since then?

Mr. KOTCH. Right.

Chairman NUNN. Did you tell Mr. Duffy and Mr. Steinberg that upon instructions, Mr. DeMarco, you gave the only existing copy of the report and attachments to Mr. DeMarco and kept no file copies?

Mr. KOTCH. Kept no file copies. I was incorrect as it turned out. I did have a personal copy.

Chairman NUNN. You distinguish between a personal copy and a file copy?

Mr. KOTCH. Yes.

Chairman NUNN. You kept no file copy?

Mr. KOTCH. I call a file copy a distribution copy, and with a normal report, we would have several.

Chairman NUNN. Did they ask you for any copy?

Mr. KOTCH. Yes; I was incorrect. Subsequent to the interview, I became concerned that they seemed to think that I should have something. I called Mr. Crino subsequently, discussed it. It was the first opportunity I had to discuss it with him and we reviewed in depth some of the events.

In particular he mentioned that he recalled my sending some documents to him. I had stayed on after the report was written to clean up some things. He recalled that he had had some envelopes in his office. He wasn't sure what he had or what he didn't have.

He also brought to my attention a meeting we had had, 1 or 2 weeks, probably 2 weeks after we had turned the report in in Pittsburgh. We had gotten a request from Mr. DeMarco to turn in an implementation plan after we had gone home.

At this point I became concerned that I did have documents. I called that evening my supervisor in Pittsburgh. He verified that there were some documents left up there.

Chairman NUNN. So your first interview with Mr. Steinberg, Mr. Duffy, you told them you didn't have any copies?

Mr. KOTCH. Right.

Chairman NUNN. Later you found out, remembered after you talked to Mr. Crino that you did have a copy?

Mr. KOTCH. I had some documents. I wasn't sure exactly what I had.

Chairman NUNN. In your Pittsburgh office?

Mr. KOTCH. Right.

Chairman NUNN. Is that where you are home based?

Mr. KOTCH. At the time I was there. Since then, I transferred to Washington last March 1980. Inbetween I was on some other assignments.

Chairman NUNN. Did you tell Mr. Duffy and Mr. Steinberg that when Mr. Duffy had recently asked about the reports, you had called Mr. DeMarco in an attempt to obtain a copy of the report to review?

Mr. KOTCH. Yes.

Chairman NUNN. To get hold of a copy to review?

Mr. KOTCH. Yes.

Chairman NUNN. Did you further tell Mr. Steinberg and Mr. Duffy that Mr. DeMarco told you he had read the report and had given it to Secretary Brown, Solicitor Clauss, and possibly Mr. Ballard?

Mr. KOTCH. Yes.

Chairman NUNN. Did you tell Mr. Duffy and Mr. Steinberg that Mr. DeMarco told you that after all the copies had returned to him he destroyed them, stating "the report had served its usefulness"?

Mr. KOTCH. I am not sure if he told me there were copies or a copy. But that is either a copy of the report or copies. But that is the gist of it.

Chairman NUNN. That he destroyed it?

Mr. KOTCH. I was thinking there was only one copy.

Chairman NUNN. The impression you got was whatever he had had been destroyed?

Mr. KOTCH. Right.

Chairman NUNN. Did you state to Mr. Duffy and Mr. Steinberg that in discussions with other Department of Labor employees you personally stated, "You can understand why the report was destroyed because it was so embarrassing to the Department of Labor," or words to that effect?

Mr. KOTCH. I couldn't recall that specific statement, but I didn't deny saying it. I think that is what I told Mr. Steinberg.

Chairman NUNN. Is that still true?

Mr. KOTCH. That is still true.

Chairman NUNN. And you still understand why it was destroyed?

Mr. KOTCH. I have heard all of the comments today.

Chairman NUNN. Even before today, you understood and said to someone you understood why it was destroyed?

Mr. KOTCH. I understood in the sense that I could understand because of the personal nature of some of the interviews, particularly.

Chairman NUNN. And the fact it was embarrassing to the Department of Labor?

Mr. KOTCH. Some of those interviews were—I would call them embarrassing to the personal extent.

Chairman NUNN. How about the Department? That is what your quote was, that it was: "I understand why the report was destroyed; because it was so embarrassing to the Department of Labor."

Anyway, that was your view at that time?

Mr. KOTCH. I don't recall saying that, but I can't deny saying that.

Chairman NUNN. Is it highly unusual to be required by the superior to make only one copy of a report or memorandum of interview?

Mr. KOTCH. It is unusual. Is it highly unusual? I don't know.

In a normal work, we made more than one copy of all files.

Chairman NUNN. Have you ever been told to make only one copy of a report or memorandum of interview before that you recall?

Mr. KOTCH. No. I don't recall ever being told that.

Chairman NUNN. How long have you been at the Labor Department?

Mr. KOTCH. 1968.

Chairman NUNN. You have been there 12 years and it is the first time you had ever been asked that?

Mr. KOTCH. Yes.

Chairman NUNN. Have you ever been asked to destroy a Government report before?

Mr. KOTCH. No.

Chairman NUNN. Did you consider this to be a report? What did you consider it to be? You wrote it.

Mr. KOTCH. It was to be in a memorandum form. And it was a memorandum, a memorandum report, or memorandum, discussing of course our findings.

Chairman NUNN. The findings of your investigation. So it was either a memorandum or a report giving your findings of the investigation?

Mr. KOTCH. Mr. DeMarco termed it a management review, not an investigation.

Chairman NUNN. How would you characterize it?

Mr. KOTCH. It was not an investigation in the sense of looking at specific allegations, it would be hard to characterize it.

Chairman NUNN. You considered it to be a pretty important assignment; didn't you?

Mr. KOTCH. Yes.

Chairman NUNN. How long did you work on it?

Mr. KOTCH. At the end of February to May, May 11 I think the report is dated. Then, of course, we did as I mentioned, we had some other followup work which I had forgotten about, the implementation plan which Mr. Crino and I did in Pittsburgh.

I think we spent a day working on that. That was about 2 weeks after the report, approximately.

Chairman NUNN. Do you still consider that report to have been an important piece of work by you and by Mr. Crino?

Mr. KOTCH. I think it is important; yes, sir.

Chairman NUNN. Did you tell Mr. Duffy and Mr. Steinberg that if the decision had been yours, you would not have destroyed the report?

Mr. KOTCH. Yes. It was my personal opinion.

Chairman NUNN. Do you still have that view?

Mr. KOTCH. Yes.

Chairman NUNN. So, basically, when you first talked to Mr. Duffy and Mr. Steinberg you did not recall having a copy of that report?

Mr. KOTCH. I was not sure and I could not recall specifically having it.

Chairman NUNN. Later you talked to Mr. Crino and in the course of that conversation you recollected that in the Pittsburgh—

Mr. KOTCH. I would have had to have it based on the implementation plan.

Chairman NUNN. You weren't trying to intentionally mislead him?

Mr. KOTCH. No.

Chairman NUNN. Later on, once you found out you did have a copy, what did you do with it?

Mr. KOTCH. I eventually found out that the Department had been subpoenaed. I called Mr. Duffy, told him that there were some materials up in Pittsburgh and that he immediately said that he requested that I go up and get them, which I did that evening, came back the next morning and turned them over to our Solicitor's people.

Chairman NUNN. To whom?

Mr. KOTCH. Mr. Gallagher in particular.

Chairman NUNN. How long was it between the time you found out you really had a copy when you conversed with Mr. Crino and the time you actually called Mr. Duffy and let him know? Do you remember whether it was a matter of hours, weeks, or days?

Mr. KOTCH. I think it was a matter of 2 days.

Chairman NUNN. In the meantime, you found out there had been a subpoena issued?

Mr. KOTCH. Right. Mr. DeMarco called in the morning or afternoon. I hadn't returned the one call, but eventually returned it. I went down to his office and he told me there had been a subpoena at which time I mentioned to him there is information in Pittsburgh.

Senator COHEN. Could I ask a question?

Chairman NUNN. Certainly.
 Senator COHEN. Mr. Kotch, is it fair to say that the purpose of your memorandum was to identify real and potential problem areas and to make some recommendations as to operational improvements?

Mr. KOTCH. Yes.
 Senator COHEN. Is that the way it should be characterized?
 Mr. KOTCH. Identify problem areas and make recommendations; correct.

Senator COHEN. Both real and potential or future problem areas?
 Mr. KOTCH. Right.
 Senator COHEN. You said that you had a fairly narrow scope of investigation. You were here this morning when there were some statements made about personnel problems, matters that were somewhat irrelevant to the needs of the Secretary to review that document. Do you recall that?

Mr. KOTCH. Yes.
 Senator COHEN. Were the comments contained in the report of you and Mr. Crino pertaining to the supervision, the administration, the personnel, the morale, and the overall effectiveness of SIS relevant and important, and an important part of this memorandum?

Mr. KOTCH. I think they were a major part.
 Senator COHEN. As a matter of fact, those very categories were one of the specific areas that you were required or requested to address in your investigation; correct?

Mr. KOTCH. One of the four areas.
 Senator COHEN. So that your comments and observations about whatever personality clashes, whatever competence or lack of competence, whatever morale or lack of morale existed, all were inherently important to the substance of your investigation?

Mr. KOTCH. We thought that those comments responded to our, one of our four major purposes.

Senator COHEN. As a matter of fact, in the 23-page document that you submitted to Mr. DeMarco, you sanitized it somewhat, did you not? You culled out a lot of what might be unnecessary or irrelevant or unsubstantiated comments? You didn't include those in your 23-page report.

You may have had them in your written notes and other memorandums that you kept, but you certainly didn't include those in the 23-page report.

Mr. KOTCH. We tried to look at all of the interviews and make some analytical judgment and waded through some of the rhetoric and analyzed and summarized the best we could what all the interviews in total meant.

Senator COHEN. You also engaged in some sort of value judgment, did you not, in terms of weighting or weighing specific types of complaints by some of the individuals you talked to? You didn't take every carping criticism and put it on the same scale as some of the more serious ones as far as overall competence or effectiveness? You engaged in some subjective evaluation process?

Mr. KOTCH. I think quite a bit of subjective evaluation.
 Senator COHEN. As a matter of fact, one of the reasons you probably were called upon to conduct the investigation is because of your experi-

ence in the Department itself, some 12 years; and you were called upon to make those kinds of evaluations in conducting this internal investigation, weren't you? Is that a fair statement?

Mr. KOTCH. Yes.
 Senator COHEN. Your superiors generally relied upon your judgment and Mr. Crino's.

Mr. KOTCH. The report is totally Mr. Crino's and mine.
 Senator COHEN. What I am saying is that your judgment is relied upon by your superiors in terms of your being in a position, based upon your years of experience in the Department of Labor, to cull out some of the irrelevant, unnecessary, or scurrilous types of remarks that one could expect to encounter in any bureaucracy. So what you have with the 23-page report is really a distillation and also sort of a summary of your own judgment as to the nature of the problems then facing SIS?

Mr. KOTCH. It is totally our own judgment and opinion after conducting the interviews and reviewing documents, it is totally our own judgment.

Senator COHEN. Is it fair to say that the matters you addressed in reference to personnel, competence or lack of it, morale or lack of it, all were relevant? Highly relevant, frankly, to the report itself, were they not? There were four categories, and these matters make up one category or one-fourth of the report, correct?

Mr. KOTCH. That was one-fourth of the report.
 Senator COHEN. Thank you. That is all I have.
 Chairman NUNN. Mr. Kotch, if you could remain, we have a good many questions to ask Mr. Crino.

Mr. KOTCH. Fine.
 Chairman NUNN. We may have others for you today. You have been sitting here a long time. If you need to take a break, let us know. We will be glad to do that.

Mr. Crino, you have heard Mr. Kotch's testimony about the way this investigation began and so forth. Do you have any different recollection on any of these points than him, or do you generally agree?

Mr. CRINO. I agree with what he said.
 Chairman NUNN. Was it also your understanding from the beginning that this was an Inspector General's investigation?

Mr. CRINO. That's correct. As a matter of fact, we were given, they started to give us credentials for the Inspector General's Office. They took our pictures and then some policy decision took place and that was canceled.

Chairman NUNN. Are you aware that the report required the Inspector General to report to the Congress twice each year?

Mr. CRINO. I have heard that.
 Chairman NUNN. LMSA doesn't have a similar requirement, does it?

Mr. CRINO. Not to my knowledge.
 Chairman NUNN. Did anybody ever mention that this might be a reason? Did you ever think this might be a reason it was LMSA rather than the Inspector General?

Mr. CRINO. I never thought it.
 Chairman NUNN. Mr. DeMarco never mentioned that to you?

Mr. CRINO. No, sir.

Chairman NUNN. But he in effect was wearing both hats at that time?

Mr. CRINO. That's correct. No. I am not so sure that is correct. When we first started I think Mr. DeMarco was acting Inspector General. I think Mr. Warshaw was sitting as Deputy Assistant Secretary, because he retired just about that time. I went to his retirement function while I was there on that project.

Chairman NUNN. Does this mean Mr. DeMarco wasn't wearing two hats when this was initiated?

Mr. CRINO. If he hadn't been wearing two hats, it might have been only a matter of a week or 10 days.

Chairman NUNN. During the week of August 18, 1980, did you learn that this subcommittee was interested in a report that you and Mr. Kotch had prepared for the Department of Labor?

Mr. CRINO. That's correct.

Chairman NUNN. When did you first become aware that the subcommittee was interested in that report?

Mr. CRINO. It was on a Wednesday, probably August 20, if that is a Wednesday. I received a telephone call from Kenneth Bazar, who was my regional administrator. He advised me that the committee was looking for the report.

Chairman NUNN. Did Mr. Kotch talk to you during the week of September 18, 1980?

Mr. CRINO. September?

Chairman NUNN. During the week—yes, September. Or perhaps it was August. When did you talk to Mr. Kotch about this?

Mr. CRINO. I talked to Mr. Kotch probably the same day that I first learned about the committee looking for this paper, or maybe the next day.

Chairman NUNN. It would have been during the week of August.

Mr. CRINO. That's correct.

Chairman NUNN. Did he tell you that he had already informed the subcommittee there were no copies of the report in existence?

Mr. CRINO. He made a statement there were no copies of the report.

Chairman NUNN. He said that to you?

Mr. CRINO. Yes, sir.

Chairman NUNN. Did he also tell you that the Labor Department had told the subcommittee that the report, all the attachments and copies had been destroyed?

Mr. CRINO. I don't know whether Mr. Kotch told me that or Mr. Bazar told me that. Those are the only two I talked to during that period of time. But I was informed that the original report that was submitted either disappeared or was destroyed. I don't remember how it was described.

Chairman NUNN. Did you give any response to either one of them at that time?

Mr. CRINO. I was surprised.

Chairman NUNN. Surprised?

Mr. CRINO. That it was not available.

Chairman NUNN. You had never known it had been destroyed?

Mr. CRINO. No.

Chairman NUNN. Until the hearing of the week of August 18?

Mr. CRINO. I didn't know anyone was interested in it. I completely forgot even about the project because it happened 18 months before.

Senator COHEN. Why were you surprised?

Mr. CRINO. I considered it to be an important document. I was surprised it wasn't available.

Chairman NUNN. When were you called to Washington; during the period of August 25 or August 26, 1980?

Mr. CRINO. I was. If I can take a minute, I would like to explain something which I think needs to be explained.

Chairman NUNN. Go ahead.

Mr. CRINO. In my testimony in executive session, Mr. Steinberg put to me a question about being unable to respond to the committee because of illness in my family, and that again was brought out this morning. I really didn't understand the question when it was put to me in executive session. Our family experienced a major illness but that situation has stabilized.

In the light of the question as it was put to me, I understood it to mean a reference to my daughter's illness and the reason it came to mind is because when I received a copy of the report from Mr. Kotch, he put a personal note on that which dealt with my daughter's illness, which I felt was a very generous statement and I really didn't think it was the business of the committee.

However, we left it among my papers and I think it is available for examination. What I responded to when I was first notified by the committee, when I was first notified by Mr. Bazar, was a statement that I want you to come down here Friday morning and I think this was late Thursday. I think it was Thursday when he made the request to me. I told him, I said I can't come tomorrow. I said I have a son who has a lacerated foot that has become infected and I have a 2 o'clock Friday appointment with him.

In my recollection since I testified in executive session, I now realize that my response to Ken Bazar was misinterpreted and when it came back to the committee, it came back far more serious than what the situation was.

I don't want the committee to end up with the understanding that either the Department or I for that matter was trying to avoid appearance before the committee on the basis of illness.

Chairman NUNN. We didn't have the impression that you were.

Let me ask you another question on that point. Was this matter resolved in one day? Could you have come early the next week?

Mr. CRINO. That's correct. My son's foot was taken care of on Friday, the stitches were taken out; I reported here Monday morning.

Chairman NUNN. You were in Washington during this general timeframe?

Mr. CRINO. I came the following Monday, which is the 25th or 26th of August.

Chairman NUNN. Mr. Crino, did you offer to appear voluntarily before the subcommittee in executive session? Were you willing to appear?

Mr. CRINO. When Mr. Maria first contacted me, he asked me would I be willing to appear before the committee, and I said yes I would, but I would have to talk to my agency first.

Chairman NUNN. When you talked to your agency, who did you talk to?

Mr. CRINO. I believe I discussed it with Mr. Fred Haas, Director of Field Operations. I couldn't reach Ken Bazar.

Chairman NUNN. Did anyone above you give you any directions about whether to appear or not, or what the preference of the Department was on a voluntary basis?

Mr. CRINO. No. I had a number of discussions with Fred Haas, and with Mr. Norm Goldberg of the Solicitor's Office. Almost all of my discussions on appearing before the committee were with Mr. Goldberg and he made it very clear to me that the choice was mine.

Chairman NUNN. Leave it up to you?

Mr. CRINO. Leave it up to me, yes.

Chairman NUNN. In the executive session you stated in answer to a question by Mr. Steinberg:

I was advised that the Secretary had strong feelings and I believe the term was "strong views" about one of his employees appearing in executive session. But the Secretary did not have any objection to appearing in a public session. He would probably bring whatever witnesses the committee wanted with him to that public session. That influenced my decision to await the subpoena.

Is that right?

Mr. CRINO. That's right.

Chairman NUNN. So you were aware that the Department didn't want you to appear in an executive session?

Mr. CRINO. In an executive session.

Chairman NUNN. That did have something to do with your requiring a subpoena to appear; is that right?

Mr. CRINO. That's correct.

Chairman NUNN. Who gave you that impression from the Department?

Mr. CRINO. I believe that came from Mr. Goldberg.

Senator COHEN. Was that instruction oral or in writing?

Mr. CRINO. By telephone.

Senator COHEN. You received a call from Mr. Goldberg?

Mr. CRINO. Yes.

Chairman NUNN. When were you in Washington during this period after August 18?

Mr. CRINO. I was here from Monday until Wednesday. I think it would have been the 25th or 28th or the 26th or 29th.

Chairman NUNN. Mr. Crino, when was the first time you brought up to anyone, including Mr. Kotch, that there might be a copy of this report available?

Mr. CRINO. When Mr. Kotch first stated that he didn't think there were any copies of the report.

Chairman NUNN. What did you respond?

Mr. CRINO. I told him there must be because you and I met in Pittsburgh and we wrote an implementation plan. I reminded him that he had to write a briefing paper. We could not possibly have done that unless we had a work copy of the report.

Chairman NUNN. Did you recall where the report was?

Mr. CRINO. No; I remember that I had sealed, two sealed envelopes in my office. I was, of course, on annual leave at the time the contact

was made with me and I told him that I would assume if I did have a copy of the report, it was in one of those two envelopes.

Chairman NUNN. Did anyone in DOL, including Mr. DeMarco, know that you had retained your own work copy of the report, as well as the interviews?

Mr. CRINO. The only one who would know was John Kotch.

Chairman NUNN. Nobody else would have known that was available?

Mr. CRINO. Not to my knowledge.

Chairman NUNN. Mr. DeMarco wouldn't have known?

Mr. CRINO. To my knowledge, he would not have; no.

Chairman NUNN. Hypothetically, if someone in the Department were to have destroyed all the originals and all the copies except the one you retained, they would not have had any way of knowing one was available?

Mr. CRINO. Not unless they asked me.

Chairman NUNN. They didn't ask you until recently when the subcommittee issued a subpoena?

Mr. CRINO. When I got the call, yes, telling me they were looking for the report.

Senator PERCY. I want to be sure I understand your reply to the question. Were you at any time before that asked if you had a copy of the report, or knew if there were copies of the report?

Mr. CRINO. Not before I was called on annual leave in the middle of August 1980. The issue was forgotten as far as I was concerned.

Chairman NUNN. I think at this stage I need to take about a 5-minute break, if we could. I need to confer on another matter with Senator Cohen and Senator Percy.

We will take a 5-minute break and be back here forthwith.

[Members of the subcommittee present at the time of recess: Senators Nunn, Cohen, and Percy.]

[Brief recess.]

[Members of the subcommittee present at time of reconvening after a brief recess: Senators Nunn, Percy, and Cohen.]

Senator PERCY. We will resume the hearing.

Mr. Crino, to continue the discussion and questioning we had before—

Mr. CRINO. Senator, could I make two amendments to the record of my previous testimony? Very brief.

One, I would not like to leave the committee with the impression that Mr. Kotch and I are the only people to keep a work copy of a report. This is more or less standard procedure among investigators at least in my experience. So the fact that at least in my own experience I retained a copy of this report was not anything unusual in this specific circumstance.

Chairman NUNN. And you didn't intend for it to be the only copy because nobody told you everything else was to be destroyed?

It was not your intention to keep the only copy because you didn't know the other copies and original were going to be destroyed?

Mr. CRINO. I just kept my copy because it is my practice to do so. I think other investigators do the same thing.

Senator PERCY. Do you both confirm that it is customary practice on an investigation to keep a copy of your work?

Mr. CRINO. To my knowledge, it is customary practice to keep an essential report, any report. And the other issue I would also like to make clear on the record is that I was clearly advised by the Solicitor's Office that the choice of whether or not to appear before the committee was voluntary on my part.

Senator PERCY. And it is voluntary?

Mr. CRINO. That is correct.

Senator PERCY. You were subpoenaed, however?

Mr. CRINO. That is correct.

I weighed the factors presented to me and I made my own decision about declining the voluntary requests of the committee.

Senator PERCY. Were you told at any time not to appear?

Mr. CRINO. No; I was never advised by anybody or instructed by anybody not to appear. I want the record to be made clear that the decision was mine.

Senator COHEN. You are talking about today?

Mr. CRINO. No; I am talking about the appearance at the executive session.

Senator COHEN. I thought you said earlier that you in fact received a phone call from Mr. Goldberg, who said that the Secretary would not be too happy to have any of the people involved appear in executive session. At that time you made the decision to wait and be subpoenaed, based upon that particular instruction. That was not exactly voluntary.

Mr. CRINO. Mr. Goldberg in advising me, made very clear it was a matter of my own conscience whether I would appear before the committee. Then he laid out to me the options available to me and I selected my own option.

Chairman NUNN. Did he tell you in fact that the agency would prefer you decline to appear?

Mr. CRINO. He told me that in view of the Secretary's strong—the Secretary had strong views about his employees appearing in executive session, and that the Secretary would appear in a public session and bring anybody with him voluntarily. That was part of his conversation to me.

Senator COHEN. Let me ask you, Mr. Crino, you mean to say you got a call telling you that the Secretary had strong objection to any of the employees appearing in executive session and then the same person said it is up to you what you wanted to do. Is there really any choice for you at that point?

Mr. CRINO. Senator, the word was strong views, not objection.

Senator COHEN. Tell me what that means to you. There are code words which are well established, and when he says that the Secretary has strong objections, what does that mean to you?

Mr. CRINO. I think he is laying out the Secretary's opinion as to whether or not I should appear.

Senator COHEN. He is laying out your options for you, isn't he?

Mr. CRINO. Well, no. He laid them out for me for my consideration, to make my own decision. He let me know what the Secretary's opinion was, and I made my decision based upon the facts presented to me.

Senator COHEN. Why did you base your decision upon those facts? What led you to believe that you ought to be subpoenaed before this committee rather than appear voluntarily in that executive session?

Mr. CRINO. I am sorry, I don't understand.

Senator PERCY. What led you to the conclusion that you should await a subpoena rather than appear voluntarily before this committee?

Mr. CRINO. I was honoring the Secretary's views.

Senator PERCY. Was your travel with the report and attachments to the Department of Labor Headquarters a direct result of the subpoena for the report that this subcommittee issued in August 1980?

Mr. CRINO. I am not sure that I knew they had a subpoena for the records until I got down here. I told them I had the envelopes. We reached an agreement that I would bring them down here and my understanding is they wanted it Friday morning, because of my son's injured foot I could not get here until Monday. I don't remember that they told me we have a subpoena and you have to appear here Monday morning with the records.

Senator PERCY. From your best recollection, did anyone in the Department of Labor tell you that the Department of Labor had informed the subcommittee staff that it had searched every place that the report could conceivably be and that no copy of this report or the attachment existed?

Mr. CRINO. I don't think anybody went into that kind of detail with me. They just told me they didn't have the report. I think I got that information either from Mr. Kotch or Mr. Bazar.

Senator PERCY. To your knowledge, were the only two copies of the report and attachments in existence at the time the subcommittee inquired, yours and Mr. Kotch's?

Mr. CRINO. I didn't know about Mr. Kotch's. I knew about mine. I thought I had one.

Senator PERCY. To the best of your knowledge, then, the only copy in existence was the one that you had?

Mr. CRINO. After learning that they didn't have the one down here, I thought that I had one in my file.

Senator PERCY. To the best of your knowledge, did anyone in the Department of Labor know that you and Mr. Kotch had retained copies of the report and the attachments?

Mr. CRINO. No.

Senator PERCY. It has been stated that the original copy was given to Mr. DeMarco. Did anyone else in the Department of Labor, such as Monica Gallagher, request a copy of the report or a copy of her own individual interview?

Mr. CRINO. I believe in the interview with Monica Gallagher she asked for a copy of the report of investigation, the review and I told her she would have to talk to DeMarco about that.

Senator PERCY. When did she ask for this?

Mr. CRINO. During the course of her interview, she asked, I think, for her copy of her report of interview, which I told her I would give her.

Senator PERCY. Do you know whether she did receive a copy?

Mr. CRINO. I have to admit I don't think she ever got a copy of either one. I know she didn't get a copy of the report from us, I don't

think she got a copy of the report of the interview either. At least I didn't give it to her.

Senator PERCY. Were you ever photographed with the expectations of receiving Inspector General credentials?

Mr. CRINO. Yes.

Senator PERCY. Did you ever receive Inspector General credentials?

Mr. CRINO. No.

Senator PERCY. Do you know why?

Mr. CRINO. I don't know. Some policy decision changed the focus.

Senator PERCY. From your conversations with Mr. DeMarco and Mr. Brown, is it fair to state that the Labor Department hierarchy was concerned about the status of the Central States investigation?

Mr. CRINO. I think so; yes.

Senator PERCY. What did they say that led you to believe that they were concerned?

Mr. CRINO. I think in the meeting with Mr. Brown he mentioned, among other things, that we wanted to be able to have some idea what our operation was because GAO was downstairs. He was interested in having some response to whatever GAO would comment.

Senator PERCY. When you were called at home during the week of August 18, 1980, was that the first indication you had that no official copy of your report and attachments were in existence?

Mr. CRINO. Yes, sir.

Senator PERCY. Did you yourself, by the way, have any knowledge of the GAO investigation? Did you talk at any time to any of your colleagues in the Department of Labor about it, or with any of the GAO people?

Mr. CRINO. Yes; Mr. Kotch and I went down and introduced ourselves to Mr. Kowalski and two other individuals. It was a courtesy visit during which we told them what we thought our parameters were, and they told us what theirs were.

Senator PERCY. Were they aware from you that you were performing an analysis and were requested to make a report about the investigation?

Mr. CRINO. I don't know whether we really told them we were making a report but we told them what we were doing and what we understood our objectives to be at that time.

Senator PERCY. Would you feel it logical to assume that they could have surmised that you would be making a report?

Mr. CRINO. Yes, sir.

Senator PERCY. Did they ever at any time ask you if you intended to make a report?

Mr. CRINO. Not that I can recall.

Senator PERCY. Verbally or in writing?

Mr. CRINO. No; I don't think we ever reached that point in the conversation.

Senator PERCY. Did anyone in the Department of Labor ever tell you why the official copies of the report had been destroyed?

Mr. CRINO. No.

Senator PERCY. If the decision had been yours to make, is it accurate to state that you would not have destroyed this report or any materials that were attendant to the report?

Mr. CRINO. I retained my copy of it. No; I would not destroy a document such as that.

Senator PERCY. Would you expand on why you would not?

Mr. CRINO. I considered it to be an important enough project and significant document.

Senator PERCY. Were you shocked to learn that the report allegedly had been destroyed?

Mr. CRINO. I don't know whether shocked is too strong. I was surprised.

Senator PERCY. And did you make any inquiries as to why it had been ordered to be destroyed?

Mr. CRINO. No, sir.

Senator PERCY. Did you make any assumptions in your own mind as to why it might have been destroyed?

Mr. CRINO. No.

Senator PERCY. When did you first learn that the Department of Labor had responded negatively to the Freedom of Information Act request for the report?

Mr. CRINO. I never knew that there was a Freedom of Information request until I got down here.

Senator PERCY. Had anyone at the Department of Labor contacted you to determine where or not you had a copy of this report or the interviews to enable the Department of Labor to answer the Freedom of Information Act request?

Mr. CRINO. No, sir.

Senator PERCY. Senator Cohen, any time that you would like to pick up, I would be happy to yield to you.

Isn't that because the officials of the Department of Labor did not know you and Mr. Kotch had retained copies of the report and attachments?

Mr. CRINO. Would you repeat the question?

Senator PERCY. I will go back to the previous question, then.

Had anyone in the Department of Labor contacted you to determine whether or not you had a copy of this report or the interviews to enable the Department of Labor to answer the Freedom of Information Act? As I understand it, you did not even know of the request?

Mr. CRINO. That is correct.

Senator PERCY. The next question is: Perhaps the linkage between the two would be that the officials at the Department of Labor did not know that you and Mr. Kotch had retained copies of the report and attachments?

In other words, if this is standard practice for investigators to make reports, would you have believed that they would or would not have surmised that you would have retained a copy of the report that you had made?

Mr. CRINO. I would think it would all depend on the individual who is doing the surmising. Somebody with the experience of Mr. DeMarco would understand that the investigator generally keeps a copy of what he writes.

Senator PERCY. Inasmuch as you have both testified it is standard procedure for investigators making a study of this kind to retain their own personal copy of the report that they had made, wouldn't you

assume that when the responsible Labor Department officials were asked by the Comptroller General of the United States and his representatives and by this particular subcommittee with clear jurisdiction in this area, that they should have gone back to you to find out if you kept a copy in accordance with the standard procedure for all such investigations and investigators before declaring that all copies had been destroyed?

Mr. CRINO. I thought, Senator, that is what they had done when they came to me in the middle of August.

Senator PERCY. I am sorry, I didn't hear you.

Mr. CRINO. That is what I thought they had done when they came to me in the middle of August, that they were really making inquiry of one of the coauthors of the report, do you have a copy of it? I think the Department did that.

Senator PERCY. Yet, why then would the GAO and this subcommittee be told no copies of the report existed?

Mr. CRINO. I can't answer that.

Senator PERCY. Did anyone in the Department of Labor tell you that the Inspector General's Office of the Department of Labor had requested this report?

Mr. CRINO. I never heard that until the gentleman testified here this afternoon.

Senator PERCY. Are the reports of interviews attached to the Kotch-Crino report accurate reflections of what those persons interviewed stated to you at the time they were interviewed?

Mr. CRINO. I feel they are accurate; yes.

Senator PERCY. Did employees of SIS inform you that a so-called phantom agreement at the Department of Labor made with the Teamsters trustees prevented them from further investigation in a meaningful manner?

Mr. CRINO. Yes.

Senator PERCY. In your handwritten notes, you refer to two alternatives in the pension fund investigation. One is to abandon any future investigation and to have SIS solely support the filed litigation.

The second alternative was to challenge the fund's understanding of the phantom agreement and investigative areas outside of the loans contained in the litigation. I take it from that that you found the fund's attorneys to have had the same opinion that SIS staff members had about the phantom agreement. Is that correct?

Mr. CRINO. I don't really know, Senator, whether I am qualified to discuss that matter. That is probably the Secretary of Labor's responsibility. I can't recall even who—are those my notes, the two alternatives there? Are they attributed to somebody or are they my thinking?

Senator PERCY. Mr. Steinberg, does this question relate to the notes in the deposition of Mr. Crino?

Mr. STEINBERG. Yes. In connection with that situation we asked Mr. Crino, "Not only the members of SIS concerned that there was a phantom agreement, but apparently the fund's attorneys were basing a large amount of their objection on the so-called phantom agreement." Mr. Crino responded "that is correct."

Senator PERCY. Does that refresh your memory.

Mr. CRINO. To some extent. I think the report that John and I wrote covers that issue, but it covers it to the extent that there is a discrepancy

in the two news releases issued by the Department of Labor on whatever the agreement was to, I believe it is, appoint the assets manager.

And as a result of that interpretation, the Department of Labor interprets it one way and the fund, it is my understanding interpreted it that no further investigation would be conducted if this agreement was reached.

Chairman NUNN. I was just going to say, of course that is one of the GAO's reasons for criticizing the lack of a written agreement. That way you would know what each party had agreed to. But you are saying that the Labor Department interpreted it one way and the pension fund trustees interpreted it another way.

Mr. CRINO. If I recall, among my papers, John and I had obtained a copy of a letter from Assistant Secretary Burkhardt to the fund in which he tried to correct this misinterpretation.

Senator PERCY. Even Resolution 242 and 332 of the United Nations were committed to writing. It is hard enough when you don't have it in writing. Does your report reflect the fact that as of the time the report was filed the Labor Department has chosen a second alternative and SIS has virtually abandoned any future investigation and was solely a litigative support unit of the Solicitor's Office?

The second alternative is the challenge of the funds' understanding of the phantom agreement and investigation areas outside of the loans contained in the litigation.

Mr. CRINO. I will have to have your question again.

Senator PERCY. I will go back to the question. Does your report reflect the fact that as of the time the report was filed the Labor Department has chosen the second alternative and SIS has virtually abandoned any future investigation and is solely a litigative support unit of the Solicitor's Office?

Mr. CRINO. That is generally what they were doing when we conducted the investigation. They were supporting the litigation. I think the situation has changed to some extent. There is an investigative unit up there now.

Chairman NUNN. Let me ask a followup question right here on this phantom agreement. What was the opinion held by SIS staff members and the Acting Director about the so-called phantom agreement when you and Mr. Kotch made your report.

Mr. CRINO. If I remember correctly, I think what they thought was it hampered the investigation.

Chairman NUNN. They thought there was such an agreement?

Mr. CRINO. Well, they said that they had heard rumors that there was such an agreement.

Chairman NUNN. They felt whatever it was, hampered their investigation?

Mr. CRINO. That is correct. Yes.

Chairman NUNN. So this was the Acting Director of SIS at that time in charge of the investigative part of the pension trust fund investigation?

Mr. CRINO. If Mr. Perkins said that. I can't testify right here that he actually did say that. If I reported it, he said it.

Chairman NUNN. Do you find that something of great concern? Is it a matter of great significance or is it a matter of small significance? It seems to me when you have the man heading up the investigation

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for the Labor Department that thinks there is a phantom agreement, that is a pretty serious thing, particularly in light of the Secretary of Labor's testimony there absolutely was no such agreement ever.

Mr. CRINO. I think that was certainly an area that should have been clarified for Mr. Perkins.

Chairman NUNN. It would be hard to operate otherwise, would it not?

Mr. CRINO. That is correct.

Senator PERCY. Mr. Crino, at one point in time after receiving certain allegations, did you split your project into two distinct parts, the first being the management review of the Teamster fund investigation and the second being an investigation into various allegations into misconduct and allegations involving criminal misconduct amounting to interference with the investigative process?

Mr. CRINO. That is correct.

Senator PERCY. Did you finish the first part of this inquiry; that is, the management review of SIS and the Teamster fund investigation?

Mr. CRINO. Yes; we did.

Senator PERCY. Did you finish the investigation of the other outstanding allegations involving criminal misconduct amounting to interference with the investigative process?

Mr. CRINO. No; we did not.

Senator PERCY. Had you separated out from your report, the memorandum of interviews, those documents and interviews relating to the second portion of the allegations of misconduct?

Mr. CRINO. Yes; we did.

Senator PERCY. Who did you give this separate and distinct investigation to; that is, who did you give the information you had gathered and the actual documents to in the Department of Labor?

Mr. CRINO. I don't know we gave it to anybody. I think John and I retained it. I think it was part of my records that I turned over to the committee.

Chairman NUNN. And you never did give these allegations of misconduct to anyone in the Department of Labor?

Mr. CRINO. We furnished the allegations in formal report of interview form to Mr. DeMarco.

Chairman NUNN. Mr. DeMarco got everything you had as far as allegations of possible misconduct or interference with the investigation?

Mr. CRINO. Yes; everything.

Chairman NUNN. Mr. DeMarco got it all?

Mr. CRINO. That is correct.

Chairman NUNN. I think that is what Senator Percy was asking.

Mr. CRINO. The question I was responding to was the actual documents that pertained to it. We segregated them in our files.

Senator PERCY. When you left Washington, did you intend to complete that portion of the investigation?

Mr. CRINO. Well, yes and no. Before we left Washington, we pretty much had an agreement that the allegations of interference were weak and that we would not conduct—

Senator PERCY. Had you in fact arranged for interviews with various clerical workers concerning that portion of the investigation and then had to cancel those interviews at the last moment?

Chairman NUNN. Excuse me just a minute. Mr. Crino, in the executive session, Mr. Steinberg asked you, "What did you do with these allegations." And you replied, "When I left Chicago, we had intended to come back and to complete that portion of the investigation."

We are talking about this same interference matter that Senator Percy just talked about. Do you recall saying that to Mr. Steinberg?

Mr. CRINO. When I left Washington?

Chairman NUNN. When you left Chicago. Maybe it was Washington. Yes; Washington. The transcript may be wrong in that.

Mr. CRINO. There was an attorney up in Chicago who I had intended to interview on these specific charges. In that answer to your question, Senator, I had some feeling that I would be called back to do this; yes.

Chairman NUNN. Then you had not made a final determination on this matter when you left?

Mr. CRINO. I thought it was pretty much settled when I left here, but I still had a feeling somebody may resurrect it and I may have to come back and do it.

Chairman NUNN. Had you completed an investigation on it or just brought up the charge?

Mr. CRINO. No investigation on it.

Chairman NUNN. You did no investigation on it?

Mr. CRINO. No, sir. We made a few informal inquiries along the line because we went back to individuals to add to this special investigative file. We would cover certain issues we were interested in.

Chairman NUNN. As I understand it, in executive session you said:

We had intended to do the investigation. One of the things I had scheduled for my own activity was to interview an attorney who had been with the Solicitor's Office and who had now been working at a bank in Chicago. His last name escapes me.

Do you recall saying that?

Mr. CRINO. Yes. That is what I was referring to when I said I might be called back to do it. I think John and I had agreed since my regional office was in Chicago, I might interview this man while I was up there.

Senator COHEN. Mr. Chairman, could I ask one question at this time? Mr. Crino and Mr. Kotch, have you had any occasion to talk to any of your superiors between the time you appeared before the subcommittee in executive session and your appearance here today about this particular matter?

Mr. CRINO. My superiors?

Senator COHEN. Yes.

Mr. CRINO. The only one I think I discussed it with was the Justice attorney that represented me in the executive session and the Solicitor's Office, Senator, yesterday.

Senator COHEN. What was the nature of the conversation with the Solicitor's Office?

Mr. CRINO. Generally what issues were covered in the executive session.

Senator COHEN. Did you review what you had testified to in executive session with the Solicitor?

Mr. CRINO. We reviewed the subject matter to that extent, yes.

Senator COHEN. Did you go over some of the questions you were asked and the general areas that you anticipated would be included in today's hearing?

Mr. CRINO. Yes. But I had had a conference with the Solicitor's Office before I first appeared in executive session and they had suggested a number of points they thought the committee was interested in. In our conference Sunday, I told him that they were pretty much on the mark as to what the committee was asking. To that extent, that was what we discussed.

Chairman NUNN. Mr. Steinberg, do you have a couple questions here?

Mr. STEINBERG. Mr. Crino, is it fair to state at numerous occasions in your executive session testimony you told the subcommittee that you and Mr. Kotch intended to come back to Washington to complete that investigation because you had not completed it in Washington; that is, that portion of the investigation dealing with criminal misconduct?

Mr. CRINO. Yes. That is what I said in the executive session, and I am trying to clarify that today. Even though we almost had a decision that they were not going to followup these allegations, I still had a feeling I might be called back to do it.

Mr. STEINBERG. You had a decision from other people; is that correct?

Mr. CRINO. Pardon me?

Mr. STEINBERG. That decision was made by other people in the Department of Labor?

Mr. CRINO. The decision not to conduct the investigation?

Mr. STEINBERG. That is correct.

Mr. CRINO. Well, I had discussed it with both DeMarco and with Bob Gallagher right before I left after submitting the report. And we then had more information on these interference charges, and their evaluation was that it didn't seem that we ought to do it.

Mr. STEINBERG. Is that what you told the subcommittee in executive session?

Mr. CRINO. I think so. Am I not correct?

Mr. STEINBERG. You want my opinion?

Mr. CRINO. Well, if the statement says otherwise, I would like to know.

Mr. STEINBERG. I think we will go into that. Had you in fact in the time you were in Washington set up interviews with various clerical workers concerning that portion of the investigation dealing with criminal misconduct but canceled them at the last moment?

Mr. CRINO. That I don't remember. We may have. We had two girls, I think, to interview. Judy was one. I don't remember whether we ever interviewed her.

Mr. STEINBERG. But you had set up those interviews; is that correct?

Mr. CRINO. We may have. That was 18 months ago. I can't remember.

Mr. STEINBERG. The question in executive session:

Question. Did you make plans to interview those two young ladies?

Answer. Yes.

Question. Did you interview them?

Answer. No.

Question. Why not?

Answer. Never got around to it.

Does that refresh your recollection?

Mr. CRINO. I guess that is correct; yes.

Mr. STEINBERG. According to a letter you received, isn't it a fact that Mr. Ballard and Mr. Gallagher had directed you and Mr. Kotch to conduct this separate investigation and resolve these issues?

Mr. CRINO. I don't think we got a letter, Mr. Steinberg. I think we got a memorandum of some kind—I think it was Gallagher's memorandum to Ballard—and then we received directions from Mr. Ballard to include that in our investigation. That was toward the closing third of the period that we conducted the investigation.

Mr. STEINBERG. But you did get directions from Mr. Ballard and Mr. Gallagher in whatever form that you were to conduct this investigation?

Mr. CRINO. That is correct; yes. That is when we started in our attempts to—we were going back to certain individuals. We would ask certain questions so we could add to that file we were maintaining.

Mr. STEINBERG. Were any of these matters, to your knowledge, ever referred to the Inspector General's Office?

Mr. CRINO. Everything we found we referred to the Inspector—we referred to Mr. DeMarco.

Chairman NUNN. You thought you were referring it to the Inspector General's Office, or did you—

Mr. CRINO. That is correct. Mr. DeMarco, in my mind, was wearing both hats at that time. He was the Deputy Assistant Secretary. He was running LMSA. He was also the Acting Inspector General.

Chairman NUNN. Now that you find the Inspector General's Office has testified that none of these matters ever came to their attention and still have not, how do you react to that?

Mr. CRINO. During the course of the testimony by the representative from the Inspector General's Office, I can recall in one instance when I waited to see Mr. DeMarco to report to him such allegations when Mr. DeMarco told me that "I want you to direct that information to Dick Ross."

And I waited—I don't recall whether Mr. Kotch was with me at the time—but I remember waiting to talk to Dick Ross, who was then the Deputy Inspector General, or whatever his title was at that time.

Senator PERCY. Mr. Crino, you indicated that you felt Mr. DeMarco was acting in this capacity as Inspector General. Isn't it fair for you to assume that this is the very kind of analysis and study and general investigation that the Inspector General should be carrying on?

Mr. CRINO. That is correct.

Senator PERCY. Therefore, you assumed that he was carrying it on in that capacity?

Mr. CRINO. That is why—

Senator PERCY. And had every reason to believe it was done that way. This committee set up the Inspectors General for most of these departments. That is what we had in mind, to try to do far more internally within the Department so that the oversight responsibilities of the Congress would not be so all embracing. It was your reasonable assumption that that was being done on behalf of the Inspector General. Isn't that correct?

Mr. CRINO. Well, it was made very clear to us after the first—

Senator PERCY. And in his capacity as the Acting Inspector General?

Mr. CRINO. At least in my mind, whatever I discussed with Mr. DeMarco, I was reporting to the Inspector General's Office, with the exception of the one time that I can recall he referred me to Dick Ross.

Chairman NUNN. Let me interject at this point.

Mr. DeMarco, we had intended to hear you today. We are going to be a while longer on this particular matter. We are going to have to be on the floor later on this afternoon. I have talked to the other members of the subcommittee. You have been here all day. We have been here all day. It would be my intention to wait and call you the first thing tomorrow morning.

I want to let you know. You are welcome to stay, but you are also welcome to be excused for the rest of the day if you prefer. I wish I could have let you know that sooner, but we did not know we would be taking this long.

We will start at 9:30 tomorrow morning; 9:30 in the morning, Mr. DeMarco. It will be our intention to lead off with you.

Mr. STEINBERG. Mr. Crino, you just stated that you gave the report to what you felt at the time was the Acting Inspector General of the Department of Labor. At one point in time, isn't it accurate to state that Mr. DeMarco told you you were doing this project outside of the Inspector General's Office for LMSA?

Mr. CRINO. They made very clear to us about the first week into the investigation that it was an LMSA investigation.

Mr. STEINBERG. And not an Inspector General's investigation?

Mr. CRINO. Not an Inspector General investigation. As a matter of fact, I think our reports of interview with various individuals will indicate we made that very clear to people we talked to, because they were under the impression this was an Inspector General's review.

Mr. STEINBERG. Mr. Crino, according to your handwritten notes which you have seen before involved in your report, dated March 27, 1979, they state, and I will rephrase them, "Per Ballard. Request of review to resolve charges through Horowitz by Bob Gallagher on criminal misconduct and management interference with the investigative process made by the Department of Justice."

Then, on the same page on the top, you have a notation that reads, "This lead not completed. Per DeMarco and Gallagher decision." Is that correct?

Mr. CRINO. That is correct.

Mr. STEINBERG. Would this indicate to you that as of March 27, 1979, Mr. DeMarco and Mr. Gallagher made a decision that in effect did not allow you and Mr. Kotch to complete the investigation of the allegations of misconduct?

Mr. CRINO. No. Mr. Steinberg, that date has no relationship to the comment on the decision in the corner. That March 27th date would have referred to Ballard's instruction. The decision that is referred to in the note would have been very near the end of the investigation, probably the first week of May.

[At this point Senators Nunn and Percy withdrew from the hearing room.]

Mr. STEINBERG. Mr. Crino, I am going to read from your executive session testimony when I ask you what does the note mean. Mr. Crino:

This note is a note to myself to remind me we still have this investigation to conduct. And this date would indicate to me that that is the date that Bob Gallagher must have sent this memorandum to Mr. Ballard.

Mr. CRINO. That is correct.

Mr. STEINBERG. Is that the memo you were referring to which informed you that you are not to complete the investigation?

Mr. CRINO. No. It is a memorandum that says he received this information from Mr. Horowitz in the Justice Department about interference.

[At this point Senator Nunn entered the hearing room.]

Mr. CRINO. I think the record will—the documents that you have in your possession will reflect that it happened just about the end of March.

Mr. STEINBERG. When did Mr. Gallagher and Mr. DeMarco tell you not to complete the investigation?

Mr. CRINO. As I remember the decision, the decision was reached not to pursue that issue at that time just about the time we were ready to submit the report because I was assembling my papers. I left the room where Mr. Kotch and I were working and I walked down to Mr. Gallagher's office.

Mr. STEINBERG. In addition to this allegation concerning the criminal misconduct that you and Mr. Kotch were supposed to resolve but apparently did not, were there other matters of employee misconduct that you assumed would be referred to the Inspector General's Office?

Mr. CRINO. Yes; there were.

Mr. STEINBERG. Do you know whether they were?

Mr. CRINO. Everything we received was referred to Mr. DeMarco.

Mr. STEINBERG. You don't know what he did with them?

Mr. CRINO. No; I don't.

Mr. STEINBERG. Is it fair to state at the time you left Washington there were many unresolved issues relating to this issue?

Mr. CRINO. The issues of interference?

Mr. STEINBERG. Yes.

Mr. CRINO. Yes; they were unresolved. I wouldn't say there were many, but what was there was unresolved.

Mr. STEINBERG. I beg your pardon?

Mr. CRINO. I wouldn't describe it as many issues of interference. But the answer is in the affirmative.

Mr. STEINBERG. This issue was not resolved?

Mr. CRINO. That is correct.

Mr. STEINBERG. In fact, have you been presented with Labor Department records, reconciliation sheets that indicated that some aspects of this charge of interference with the investigative process may in fact be accurate?

Mr. CRINO. I am not so sure I understand that question.

Mr. STEINBERG. That is, weren't you provided with documents from SIS that revealed to you that some aspects of this charge of interference with the investigative process may in fact be accurate?

Mr. CRINO. That we had picked up some documents toward the end of the investigation which indicated that in their review of papers certain documents were missing. Yes; I think those are mimeograph sheets, if that is what you are referring to.

Mr. STEINBERG. Yes, sir.

When you left Washington, did you advise Mr. DeMarco and Mr. Gallagher that there was a portion of your investigation including these charges of misconduct that you had not completed?

Mr. CRINO. Mr. Steinberg—

Chairman NUNN. Repeat the question.

Mr. STEINBERG. Did you advise Mr. DeMarco and Mr. Gallagher at the time you left Washington there was a portion of your investigation including these charges of misconduct that had not been completed?

Mr. CRINO. Yes. Both were aware of that; yes.

Mr. STEINBERG. You stated Mr. Gallagher and Mr. DeMarco made a decision not to go forward with this investigation. Was Mr. Gallagher aware of all of the contents of your findings on your interviews concerning the allegations of misconduct?

Mr. CRINO. I think he was.

Mr. STEINBERG. Mr. Crino, I would like to read from your executive session testimony:

Mr. DUFFY. Was Mr. Gallagher aware of all the contents of your findings on these interviews?

Mr. CRINO. No; we did not brief Mr. Gallagher as to what we were finding. He was part of our review and when we went to him, we went for a specific answer.

So, the question was did you advise Mr. Gallagher specifically of these allegations?

Mr. CRINO. About the interference?

Mr. STEINBERG. Yes.

Mr. CRINO. Yes; otherwise we never would have been able to get a decision.

Mr. STEINBERG. Did Mr. Perkins, the Acting Director of SIS, admit to you that at least one of the allegations concerning the interference with the investigative process may be accurate?

Mr. CRINO. He acknowledged that there was a possibility that one was correct, that it was inadvertent.

Mr. STEINBERG. Was one of the problems frequently raised by employees you interviewed the extent of control which the Solicitor's Office had over the Teamsters Central States investigation?

Mr. CRINO. Yes.

Mr. STEINBERG. Do your notes in your report reflect Mr. Lanoff had to disqualify himself because of his prior relationship with the Teamsters and therefore the overall responsibility for the Teamsters case fell to his Deputy, Mr. Ballard, who was too busy to devote the time to SIS, and therefore the proper amount of attention, manpower, resources and other items were not given to the Teamsters fund investigation?

Mr. CRINO. Yes.

Mr. STEINBERG. Was it your opinion that once the litigation was filed that the Department of Labor may have felt the pressure was off and therefore the Teamsters investigation was left to drift, so to speak, and that is they never corrected these serious problems with leadership and direction?

Mr. CRINO. That is my personal opinion, yes.

Mr. STEINBERG. As an experienced investigator, did you determine that the lack of a third-party investigation was critical to the failure to adequately complete the Teamsters fund investigation?

Mr. CRINO. That is correct. John and I were somewhat surprised that there weren't third parties being conducted.

Mr. STEINBERG. Where you have a complex financial transaction, isn't it critical to trace the money to its final conclusion?

Mr. CRINO. Yes.

Mr. STEINBERG. In this particular case, the Teamster case, where there were people who obtained the money from the fund: Malniks, Shenkers, and Glicks, isn't it even more important to do a third-party investigation of people like that who obtained money from the fund?

Mr. CRINO. You are asking me a hypothetical case. John and I did not go into the investigation, but if you are asking about investigative practices, the answer is yes.

Mr. STEINBERG. Did you make a finding in your report that since December 14, 1976, SIS had been involved in litigation support only and no other investigating responsibility?

Mr. CRINO. I think that is correct. They began to prepare for litigation about that time if I am not mistaken.

Mr. STEINBERG. Does that mean from that time forward SIS was not permitted to pursue other investigations or to extend the original investigation?

Mr. CRINO. That is what the witnesses had testified to.

Mr. STEINBERG. Did it surprise you to learn that according to Mr. Perkins, who had been Acting Director of SIS for over 18 months at the time you interviewed him, that he had personally no knowledge as to why the Teamster trustees had resigned?

Mr. CRINO. I don't even know how to answer that. I don't think I heard that before.

Mr. STEINBERG. In your executive session testimony,

Question. Did it surprise you to find out as you have in your notes from Mr. Perkins that he says he had no knowledge of why the trustees resigned, and he refers again to this so-called agreement.

Answer. Yes.

Question. Did that disturb you at all?

Answer. It impressed me as being a little evasive.

Question. Because I thought he should have known something about that.

Does that refresh your recollection?

Mr. CRINO. I don't remember that at all. If it is in my testimony, it must also be in the notes of my interview with Mr. Perkins.

Mr. STEINBERG. Yes; it is.

Chairman NUNN. You were looking at those notes, in fairness, during the course of that executive session. I think you had several times referred to your notes and made reference to them.

Mr. CRINO. Yes. Mr. Steinberg was pointing things out to me.

Mr. STEINBERG. Did some of the employees you interviewed state to you that at one point in time Ms. Gallagher prepared a list of 80-some people that she would like to be deposed on a quick, high visibility basis, people like former Attorney General Richard Kleindienst, and so forth?

Mr. CRINO. Yes. I don't know about Kleindienst but I think the number was something like that.

Mr. STEINBERG. Did the employees who attended that meeting tell you that their perception of her comments was to obtain a quick show to please Congress?

Mr. CRINO. Yes; I think they said that.

Mr. STEINBERG. Considering the fact that SIS had previously proposed 60-some-odd third-party subpoenas and depositions in cases where substantial work had already been done and at a later date Ms. Gallagher came up with these 80 new names to be quickly deposed with little or no investigation, shouldn't this have been an important management decision reflected in the report; that is, shouldn't your report have reflected the advice that SIS was getting from the Solicitor's Office in this respect?

Mr. CRINO. I think that is contained in Perkins' report of interview, where he talked about that, but his position was I think he was trying to point out to us that the Solicitor's Office really didn't know or wasn't qualified to direct the investigation and we didn't feel that that was pertinent—that the issue should be included in this review because it was submitted, I am sure, in the report of interview with Perkins.

Mr. STEINBERG. But it wasn't referred to in the body of your report?

Mr. CRINO. No.

Mr. STEINBERG. Did Mr. Perkins tell you that according to the instructions he received in a meeting with the Secretary Mr. Perkins was ordered not to tell anybody on his staff anything about the filing of the civil lawsuit, including an instruction not to relay that information to the Department of Justice?

Mr. CRINO. I could remember his saying he had a conference with the Secretary of Labor from which he came away with the understanding that he was to keep this confidential, but he said we asked him the reason why and he said because some of the members of the staff couldn't be trusted.

Mr. STEINBERG. Couldn't be trusted?

Mr. CRINO. Couldn't be trusted, as I remember his comment.

Mr. STEINBERG. Do I think he meant couldn't be trusted to keep it from the Teamsters or couldn't be trusted to keep it from the Department of Justice or who?

Mr. CRINO. I would think just so that it would be kept from being publicized. I don't know that it referred to anybody in specific.

Mr. STEINBERG. Did Mr. Perkins tell you that many areas that had received preliminary work and had potential for fiduciary violations such as abuses of trustees expenses, administrative expenses, advertising expenses, et cetera, those had not been fully investigated?

Mr. CRINO. I believe he said that those were covered and much of the accounting work was done on that but they had been sidetracked when they decided to focus the resources of SIS on the investment loans.

Mr. STEINBERG. That is they had uncovered what appeared to be fiduciary breaches but they had abandoned those areas?

Mr. CRINO. I don't know what they uncovered, Mr. Steinberg. I think the discussion rested on the fact that those areas were under investigation and much of the investigator accounting work on them

had been completed. But they had been set aside as a result of the policy decision to focus on the investment loans.

Mr. STEINBERG. One of the areas Mr. Perkins referred to was double dipping, taking two expense payments for the same exact expense. Is that correct?

Mr. CRINO. That is correct.

Mr. STEINBERG. As you well know from your prior experience, double dipping would not only be a fiduciary violation, that is a civil violation, but it is potential criminal violation. Is that correct?

Mr. CRINO. Yes.

Mr. STEINBERG. Do you know whether any of these matters were ever referred to any other agency?

Mr. CRINO. I don't know whether they were referred to any other agency.

Mr. STEINBERG. Mr. Crino, in your executive session, I asked you do you know whether any of those matters were ever referred anywhere, and you answered to my knowledge they were not. Is that correct?

Mr. CRINO. I repeat my answer. To my knowledge, I don't know whether they were.

Mr. STEINBERG. To your knowledge, have those other potential areas of criminal misconduct, the trustee expenses, administrative expenses, and so forth, have they been referred to the appropriate Federal agency?

Mr. CRINO. I don't know that either. They were not reduced to writing. One of the things that Mr. Kotch and I found was that no report of investigation was ever written on what the team had done. And therefore whether or not they were referred, I can't say. They didn't keep records of their referrals. Much of the referrals that were made were made verbally in the joint meetings with the Department of Justice.

Chairman NUNN. So if the people who had done the referring left, there is no record to indicate to someone else where they left off, they wouldn't know what had been done.

Mr. CRINO. That is correct.

Chairman NUNN. Do you find that to say the least poor management?

Mr. CRINO. It was very surprising to Mr. Kotch and to me that nothing had been reduced to writing. We came to the conclusion that this made Mr. Perkins an almost indispensable man because he is probably the only man down there who knows much about what had been done.

Chairman NUNN. Mr. Perkins is?

Mr. CRINO. In my opinion.

Chairman NUNN. He is still down there?

Mr. CRINO. Yes. He was the last time I saw him.

Mr. STEINBERG. With regard to the executive session testimony in response to a question of mine. "So far as you know, all of those allegations have never been referred anywhere? Answer: To my knowledge they have not been referred."

Is that to the best of your knowledge your answer?

Mr. CRINO. That would be my answer; yes. We could not find, Mr. Steinberg, anything which would indicate what actually was referred to the Department of Justice.

Mr. STEINBERG. Is it your habit as an investigator, especially in an important investigation to prepare a report of the investigation before any litigation is entered into either civil or criminal?

Mr. CRINO. Almost always; yes.

Mr. STEINBERG. Do you find it unusual that no report of investigation exists?

Mr. CRINO. We found it unusual that there is nothing reduced to writing so somebody can go back and pick it up since this thing is extending over the years as it has.

Chairman NUNN. Your investigation took place after Mr. Lippe had resigned. Is that right?

Mr. CRINO. Yes.

Chairman NUNN. After these former employees left that were referred to, Mr. Ryan and Mr. Shevlin; Mr. Lippe was no longer in charge when your investigation took place?

Mr. CRINO. No; he wasn't.

Chairman NUNN. This is the new group, whoever they were, that were there when you were there?

Mr. CRINO. Mr. Perkins was Acting Director for 18 months I think when we conducted this review.

Mr. STEINBERG. Did Labor Department employees, including Mr. Perkins, express concern that the Solicitor's Office was controlling the entire ERISA enforcement program?

Mr. CRINO. I think that is Mr. Perkins' statement. He extended it beyond SIS to all the PWBP.

Mr. STEINBERG. In your notes, I am sure you may have remembered this because we talked about it, you have on a page marked priorities in the project, under criteria for loan examination, one of those criteria lists association with OCP. That means organized crime persons.

Is there any way of determining that without doing a third party investigation?

Mr. CRINO. Not unless you recognize the names.

Mr. STEINBERG. Did Mr. Perkins tell you that there were a number of organized crime figures whose names had come up in the investigation but that if he didn't determine there was an ERISA violation, he would not refer that matter to the Department of Justice?

Mr. CRINO. I believe he said that; yes.

Mr. STEINBERG. Were you surprised at that?

Mr. CRINO. Yes; I was. I think what he, again this is just from my memory, I think what he said was if there were no losses they did not refer them.

Chairman NUNN. If there were no losses?

Mr. CRINO. No losses in the loan; that they did not make the referral.

Chairman NUNN. Even if there was evidence of criminal matters?

Mr. CRINO. I assume there was no evidence of criminal matter. Just the fact that the name appeared—

Chairman NUNN. There is an organized crime figure name but no loss on the loan.

Mr. CRINO. He did not bother to refer it.

Chairman NUNN. So if the real estate value had gone up, for instance, and there had been a 20-percent theft from a particular loan or

kickback or embezzlement, or whatever, but the values of the property went up enough so that the collateral covered the loan and if an organized crime figure was named since there was no loss, it would not be referred?

Mr. CRINO. I couldn't answer on how Mr. Perkins would come to his conclusion that there was no loss. Therefore, he would not refer it.

Chairman NUNN. His statement was if there is no loss, there is no report?

Mr. CRINO. If there is no loss, or as Mr. Steinberg said, no ERISA violation, he told us he would not refer the matter.

Mr. STEINBERG. Considering your wealth of experience, doesn't it surprise you that when the head of an investigating team such as this comes upon the fact that organized crime figures are involved in a financial transaction of the Teamsters Fund, he doesn't at least refer that to the Department of Justice so they can investigate to see whether there was a kickback, payoff, or some improper conduct?

Mr. CRINO. Surprising that it wasn't done.

Mr. STEINBERG. On a page of your notes in your report, there is an item listed, "GAO report reply." Were you doing a study to enable the Department of Labor to reply to the GAO inquiry?

Mr. CRINO. No. The only time I remember that, I think that was part of the comments by Under Secretary Brown. He listed the objectives of what he wanted us to do when we went back, when John and I went back to DeMarco for clarification of our objectives.

Mr. DeMarco arranged a meeting with Mr. Brown and he listed four or five objectives. I think that was probably the last.

Mr. STEINBERG. Did Mr. Brown state to you, We Want to have a handle on the situation. We know that the GAO is going to give us a report on how they feel the investigation was managed and we want to have our own position so that we can reply to it, or words to that effect?

Mr. CRINO. It sounds like something.

Mr. STEINBERG. Beg your pardon?

Mr. CRINO. That sounds like something he said; yes.

Mr. STEINBERG. Was SIS ever fully staffed enough to work on the Teamster Fund inquiry?

Mr. CRINO. I don't think they were ever fully staffed. I don't know whether or not they were adequately staffed to do the job.

Mr. STEINBERG. Do you know if their role was not only to conduct the Teamsters inquiry but to conduct other inquiries of complicated trust fund thefts, embezzlements, conversions?

Mr. CRINO. Yes. Special Investigations Section, to my understanding, was set up to handle large complex trusts.

Mr. STEINBERG. But it was never fully staffed?

Mr. CRINO. Not to my knowledge; no.

Mr. STEINBERG. Is it your opinion that the Administrator of BWBP and the Solicitor's Office allowed the investigation to drift and did not give it proper time and attention that it should have been given?

Mr. CRINO. That is my personal opinion; yes.

Mr. STEINBERG. Since Mr. Lippe left in 1977, up through the date of your report, in May 1979, isn't it a fact that the slot of the director of the investigation and the Chief Investigator for the investigation had never been filled?

Mr. CRINO. I thought the Chief Investigator position had been canceled or abolished but you are correct, they had never filled the Acting Director's job. Mr. Perkins, I believe, was just Chief Auditor when they handed him that assignment.

Chairman NUNN. What assignment? Assignment of being Acting Director?

Mr. CRINO. Yes, sir.

Chairman NUNN. Let me ask you again. What would happen based on your investigation at the time of your report, had something happened to Mr. Perkins, what would have been the state of that investigation?

Mr. CRINO. I would assume that at the time we did the investigation that much of what they had to do or what they planned to do was something that Mr. Robert Gallagher would have been personally involved in and he probably could have stepped in.

Chairman NUNN. What areas would have been known only to Mr. Perkins?

Mr. CRINO. Everything prior to the litigation, what they had done, where records were, so on. I think Mr. Perkins has got that information in his head.

Mr. STEINBERG. Did anyone in the Department of Labor, including the Solicitor's Office ever tell you that the Department of Labor was not permitted to pursue or investigate third parties such as Mr. Glick, Mr. Malnik, Mr. Shenker, and others?

Mr. CRINO. Some of the members of the SIS staff made that comment, that they were not permitted to do third parties. I don't remember in relation to the loans that you talk about.

Mr. STEINBERG. In other words, it was the impression of the people who were doing the investigating that they weren't permitted to investigate those third parties?

Mr. CRINO. That is right, that the information could be obtained through the discovery process.

Mr. STEINBERG. Do you know why they came to that conclusion?

Mr. CRINO. I can't answer that.

Chairman NUNN. Mr. Kotch, do you have any comments?

Mr. KOTCH. None.

Chairman NUNN. Is there anything that Mr. Crino testified to that you see in a little different way?

Mr. KOTCH. Not at all. He remembers certain details I don't recall.

Chairman NUNN. Do you have the same impression about Mr. Perkins making himself an indispensable man by not writing down anything, making any reports or referrals, so forth?

Mr. KOTCH. I don't know if he was indispensable. It would have been very difficult to go back and reconstruct, I think, everything that had been done.

Mr. CRINO. Senator, I don't think I said he made himself indispensable. I think it ended up that way. I don't think it was intentional.

Chairman NUNN. No, I did not mean to imply that. It was a lack of recordkeeping and a lack of any kind of tracing.

Mr. CRINO. Lack of report writing, the fact that they didn't reduce it to writing.

Chairman NUNN. Have you ever seen that before in any investigation, major investigation, that kind of lack of recordkeeping?

Mr. CRINO. I never saw an investigation of this magnitude before. Chairman NUNN. Have you ever seen this kind of lack of recordkeeping in one of less magnitude?

Mr. CRINO. No.

Chairman NUNN. In that respect, is it the worst you have ever seen in terms of recordkeeping?

Mr. CRINO. I couldn't answer that. I don't know. We did not look at the files, the investigative files of SIS. It was not our objective.

Chairman NUNN. You are speaking here not having things written down. That is what I am asking you about. You said Mr. Perkins was the only one who knew these things and there weren't any records of them. You must have looked into them at some extent.

Mr. CRINO. We got them from the interviews. We asked people did you make a record of these things?

Chairman NUNN. Based on your interviews—

Mr. CRINO. And we asked for a report of investigation. They could not produce one.

Chairman NUNN. What I am asking you is have you ever seen that before in any other investigation?

Mr. CRINO. No.

Chairman NUNN. In that respect, would you categorize this as being deficient in that respect?

Mr. CRINO. Yes; in my opinion.

Mr. BLOCK. Mr. Kotch, do you share Mr. Crino's observations on the importance of third-party investigations particularly in this kind of investigation?

Mr. KOTCH. Yes.

Mr. BLOCK. That is all I have, Mr. Chairman.

Chairman NUNN. Tomorrow morning we will meet at 9:30 in room 1002, and we will start with Mr. DeMarco.

Mr. Kotch, Mr. Crino, we appreciate very much your being here. Mr. Gallagher, Ms. Gallagher, we appreciate your being here. Mr. DeMarco, we will see you in the morning.

I have some exhibits that will go into the record at this point, without objection.

[The documents referred to were marked "Exhibit Nos. 20 and 21" for reference. Exhibit 20 may be found in the files of the subcommittee and exhibit 21 is sealed and will be retained in the confidential files of the subcommittee.]

[Whereupon, at 4:15 p.m., the subcommittee recessed, to reconvene at 9:30 a.m., Tuesday, September 30, 1980.]

[Members of the subcommittee present at time of recess: Senator Nunn.]

OVERSIGHT OF LABOR DEPARTMENT'S INVESTIGATION OF TEAMSTERS CENTRAL STATES PENSION FUND

TUESDAY, SEPTEMBER 30, 1980

**U. S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.**

The subcommittee met at 9:40 a.m., pursuant to recess, in room 1202, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Honorable Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Lawton Chiles, Democrat, Florida; Senator Charles H. Percy, Republican, Illinois; and Senator William S. Cohen, Republican, Maine.

Members of the professional staff present: Marty Steinberg, chief counsel; LaVern J. Duffy, general counsel; W. P. Goodwin, Jr., staff director; William Colombell, Jack Key, and Raymond Maria, investigators; Myra Crase, chief clerk; Mary Robertson, assistant chief clerk; Joseph G. Block, chief counsel to the minority; Charles Berk, general counsel to the minority; Howard Shapiro, investigator to the minority.

[Members of the subcommittee present at the time of convening: Senators Nunn, Chiles, Percy and Cohen.]

Chairman NUNN. The subcommittee will come to order.

Mr. DeMarco, have you been sworn?

Mr. DeMARCO. Yes; I have.

Chairman NUNN. Have all the other parties at the table been sworn?

Mr. ECCLES. I don't think I have, Senator.

Chairman NUNN. Will you be testifying?

Mr. ECCLES. It is possible.

Chairman NUNN. We will swear you in then. Do you swear the testimony you will give before the subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. ECCLES. I do.

Chairman NUNN. Could you give your name for the record so we will have that?

Mr. ECCLES. My name is Robert Eccles. I am an attorney with the Labor Department.

Chairman NUNN. Let's see if we can have the panel from Mr. Gallagher's side—from what I call the left, but to your right—identify yourselves and your positions for the record?

Mr. GALLAGHER. Robert Gallagher, attorney, Office of the Solicitor.
Chairman NUNN. Ms. Gallagher, you have been sworn?

Ms. GALLAGHER. Yes.

Chairman NUNN. Mr. Gallagher?

Mr. GALLAGHER. Yes; I have.

Chairman NUNN. You understand you are still under oath?

Mr. GALLAGHER. I understand.

Ms. GALLAGHER. Monica Gallagher, associate solicitor, Labor Department.

Chairman NUNN. You have been sworn?

Ms. GALLAGHER. Yes.

Chairman NUNN. You understand you are still under oath?

Ms. GALLAGHER. Yes.

Mr. HOBGOOD. William Hobgood, Assistant Secretary of Labor.

Chairman NUNN. Mr. Hobgood, you have been sworn?

Mr. HOBGOOD. Yes.

Chairman NUNN. You understand you are still under oath?

Mr. HOBGOOD. Yes.

Mr. DeMARCO. Rocco DeMarco, former Labor Department employee.

Chairman NUNN. Mr. DeMarco, you have been sworn?

Mr. DeMARCO. Yes.

Chairman NUNN. You understand you are still under oath?

Mr. DeMARCO. Yes.

Chairman NUNN. Thank you.

Mr. ECCLES. Robert Eccles, attorney with the Labor Department.

Ms. CLAUSS. Carin Clauss, solicitor, of Labor.

Chairman NUNN. Ms. Clauss, you have been sworn?

Ms. CLAUSS. Yes.

Chairman NUNN. Thank you.

**TESTIMONY OF RAY MARSHALL, SECRETARY OF LABOR;
ROBERT GALLAGHER, ATTORNEY, OFFICE OF THE SOLICITOR;
MONICA GALLAGHER, ASSOCIATE SOLICITOR, LABOR
DEPARTMENT; WILLIAM HOBGOOD, ASSISTANT SECRETARY
OF LABOR; ROCCO DeMARCO, FORMER LABOR DEPARTMENT
EMPLOYEE; CARIN CLAUSS, SOLICITOR OF LABOR—RESUMED;
AND ROBERT ECCLES, ATTORNEY, DEPARTMENT OF LABOR**

Chairman NUNN. Mr. DeMarco, give us your full name for the record, please, sir?

Mr. DeMARCO. Rocco, R-o-c-c-o, Charles DeMarco, D-e-M-a-r-c-o.

Chairman NUNN. You were an employee of the Department of Labor. Is that correct?

Mr. DeMARCO. I was an employee until August 29 of this year.

Chairman NUNN. August 29 of this year, and then you retired?

Mr. DeMARCO. Yes.

Chairman NUNN. What is your present occupation?

Mr. DeMARCO. I have no occupation.

Chairman NUNN. How long have you been with the Labor Department?

Mr. DeMARCO. At least 20 years, at the Labor Department—20-plus.
Chairman NUNN. Is this retirement something you planned a long time ago?

Mr. DeMARCO. I have been planning it this year; yes. I met the age requirement this year.

Chairman NUNN. When the Office of the Inspector General of the Department of Labor was established, were you appointed as Inspector General until the position was filled?

Mr. DeMARCO. I was the Director of the Office of Special Investigations and by statute that organization was absorbed into the office which presently is the Office of the Inspector General. And sometime after the IG statute was passed, I was the Acting Inspector General.

Chairman NUNN. When was that IG statute passed? When did you move—what was the name of that office?

Mr. DeMARCO. Office of Special Investigations.

Chairman NUNN. When were you appointed to that position?

Mr. DeMARCO. Approximately January 1978.

Chairman NUNN. January 1978, and how long did you occupy that position before the IG statute was passed?

Mr. DeMARCO. I think it was passed in October 1978.

Chairman NUNN. For about 9 months, then?

Mr. DeMARCO. Yes.

Chairman NUNN. Then after that passed, did you then become Acting Inspector General?

Mr. DeMARCO. Yes.

Chairman NUNN. How long were you Acting Inspector General?

Mr. DeMARCO. Until my appointment came through as the Deputy Assistant Secretary of Labor, I believe the first week of April 1979.

Chairman NUNN. So, really you were in the position of either head of the Office of Special Investigations or the Acting Inspector General from the time period January 1978 until April 1979?

Mr. DeMARCO. Yes. For 1 month prior to my appointment, I held the dual position of Acting Deputy Assistant Secretary of Labor and Acting Inspector General.

Chairman NUNN. Basically once the IG statute passed, did your duties change in a substantial way or was that more of just a flowing responsibility from your former position as head of the Special Investigations Unit?

Mr. DeMARCO. Head of the Special Investigations devoted its mission to audits and investigations of the grant programs of the Department. The only change that took place was that the Secretary, during the summer of 1979, changed responsibility within the Department for the activity on the Justice Department strike force and that took place, I think, effective October 1, 1978. So the mission was substantially the same as the original OSI mission with the addition of the establishment of jurisdiction over the strike forces.

Chairman NUNN. Were you subsequently transferred to LMSA as a Deputy Assistant Secretary?

Mr. DeMARCO. I first went over in the acting capacity during the month of March 1979 and the appointment came through in the first part of April.

Chairman NUNN. In January or February 1979, did Under Secretary Brown tell you to conduct a review of the Teamsters Central States investigation and the effectiveness of SIS?

Mr. DEMARCO. Partially, that statement is true. He did not ask me to conduct an investigation of the Teamster investigation. It was strictly limited to the Special Investigation Staff. I think it is "investigative section," it was called at that time.

Chairman NUNN. Known as SIS?

Mr. DEMARCO. SIS. Yes.

Chairman NUNN. When that occurred—was it January or February 1979?

Do you recall?

Mr. DEMARCO. I cannot recall.

Chairman NUNN. Do you recall your position at that time? What was your position in January or February 1979?

Mr. DEMARCO. I was still in the IG's Office.

Chairman NUNN. You were Acting IG?

Mr. DEMARCO. Yes.

Chairman NUNN. Did he ask you to undertake this as Acting IG?

Mr. DEMARCO. There seems to be some confusion even today in my mind after listening to the testimony. I think the association with it being an IG project or someone thinking it was an IG project was merely because I was selected for that assignment. Before the management inquiry was actually started, and I hadn't remembered this earlier either, the question was raised with Under Secretary Brown and I actually met with Under Secretary Brown with Deputy Area Administrator Crino and Kotch and I think the former Deputy Administrator of the Pension and Welfare Benefits Program, Jack Ballard, at which time it was clarified that this was an LMSA project—that I would be going in and shortly thereafter, as Acting Deputy Assistant Secretary of Labor for LMSA—and that this was the project that was to be done by me, and these individuals under the LMSA agency.

Chairman NUNN. Who told you that?

Mr. DEMARCO. Under Secretary Brown.

Chairman NUNN. How long was that after your original conversation with him about setting up this project?

Mr. DEMARCO. It had to be a matter of a week or two because during the time that I originally heard about the project, I was involved with things that still were associated with the OSI, not the IG organized crime thing. I think we were preparing for congressional hearings and I knew that I couldn't start this project for the Under Secretary immediately. So I know it wasn't but a matter of a week or so.

Chairman NUNN. Did you select Mr. Kotch and Mr. Crino to do this review or to do this investigation?

Mr. DEMARCO. Senator, when I was first asked this question by your staff, I could not recall. Unfortunately, the person that I had to call to refresh my memory is currently convalescing from a serious illness. So I went to his executive assistant and the executive assistant recalled that either by telephone or a meeting—which we don't remember—we discussed—this happened with the former Deputy Assistant Secretary

of Labor—we discussed a need for example, management people who could do this type of survey. A number of candidates were discussed depending on availability and we finally settled on Mr. Crino, who I knew extremely well from past employment history and Mr. Kotch, who I knew by reputation.

Chairman NUNN. So you participated in that decisionmaking process?

Mr. DEMARCO. Yes.

Chairman NUNN. Did you realize that both of them were under the impression that they were at the beginning going to do an Inspector General's report and that they were being issued credentials as part of the IG staff?

Mr. DEMARCO. No. I didn't realize that at the beginning; no. But that was cleared up before they started their inquiry.

Chairman NUNN. You later realized that?

Mr. DEMARCO. Yes, sir. I later realized that.

Chairman NUNN. Then you instructed them they were not working for the Inspector General; they were working for the LMSA?

Mr. DEMARCO. And I also instructed them to make sure every person they talked to was not given the impression that they were working for the IG.

Chairman NUNN. Wasn't there a memo that went out to the Department of Labor employees saying that they should cooperate with this Inspector General's inquiry?

Mr. DEMARCO. Senator, I don't remember such a memo.

Chairman NUNN. Does staff have anything on that?

Mr. STEINBERG. On the testimony of the SIS members who told us that they were informed that this was an Inspector General's inquiry.

Mr. DEMARCO. May I inquire whether I sent a memo of that kind?

Mr. STEINBERG. They weren't sure of where the memo came from, only they had seen or been told orally this was an Inspector General's inquiry.

Mr. DEMARCO. I have no recollection of a memo at that time.

Chairman NUNN. When did you first know or suspect a person outside of the Department of Labor might become the Inspector General?

Mr. DEMARCO. Sometime in the early part of January.

Chairman NUNN. Of what?

Mr. DEMARCO. 1979.

Chairman NUNN. Did this have any bearing on your changing this from an IG project or Secretary Brown's changing it and you relaying this on to Kotch and Crino from an IG to an LMSA project?

Mr. DEMARCO. Not to my knowledge.

Chairman NUNN. You are aware that the Inspector General's statute requires reports to Congress?

Mr. DEMARCO. Yes. I am. I participated in the first one.

Chairman NUNN. Did this have any bearing on the fact that you or Secretary Brown or together you changed it from an IG project to an LMSA project?

Mr. DEMARCO. Not on my part. I am not aware that Under Secretary Brown had any such idea.

Chairman NUNN. Can you tell us the reasons it was changed from an IG project to an LMSA project; Can you give us the reasons it was changed and was not—

Mr. DEMARCO. It is my recollection that it was changed because the management problems we were going to look at were within LMSA and that I was going to be going to LMSA. At this particular time, LMSA did not have an Assistant Secretary, there was a vacancy there, and LMSA did not have an Assistant Administrator for Field Operations. It did have a Deputy Assistant Secretary who was running that operation who decided to retire, so that all three of the top positions were vacant.

[At this point, Senator Chiles withdrew from the hearing room.]

Mr. DEMARCO. Under Secretary Brown advised me that I would be going over there to take these positions—take on an acting basis two of the positions and on a permanent basis one of the positions in the near future.

Chairman NUNN. So you were transferring to that Department and that is the main reason you wanted it to be an LMSA project?

Mr. DEMARCO. That was my understanding, that there was an LMSA problem and we were going to identify the management problems there.

Chairman NUNN. Was SIS a part of LMSA?

Mr. DEMARCO. SIS, yes. LMSA has a number of components, one of which is the pension and welfare benefits program and SIS was part of that.

Chairman NUNN. I would like staff to hand you a copy of a report dated May 11, 1979, and ask you if this report was prepared by Mr. Kotch and Mr. Crino, and became known as the Kotch-Crino Report.

Mr. DEMARCO. Yes. This is my recollection of the report.

Chairman NUNN. Would you hand also Mr. DeMarco the attachments to the report, which were attachments relating to interviews? I ask you if you are familiar with these attachments and if they were attachments to the Kotch-Crino Report.

Mr. DEMARCO. Senator, I have not read this report since the date I received it. So I can't tell you that each and every one of these documents are the ones that came.

Chairman NUNN. I am not asking for that. I am just saying generally speaking those appear to be the interviews and the attachments.

Mr. DEMARCO. Yes, right.

Chairman NUNN. Was this report, if you have a copy of that report in front of you, was this report captioned up at the top, "U.S. Department of Labor, Office of Assistant Secretary, Washington," dated May 11, 1979, and captioned, "Memorandum for R. O. DeMarco, Deputy Assistant Secretary for Labor Management Relations, From Richard Crino and John Kotch, Subject: Special Investigations Staff Review"?

Mr. DEMARCO. Yes, sir.

Chairman NUNN. That is the caption of it. Did you receive the original copy from Mr. Kotch and Mr. Crino of this report?

Mr. DEMARCO. I believe, I can't swear that I did, but it would have been customary and the practice for them to send me the original. I would say that I got the original.

Chairman NUNN. Do you remember when you got it? It is dated May 11. In reference to that, do you recall when you got the report?

Mr. DEMARCO. I can't give you a specific time. It was either on that day or—

Chairman NUNN. Or shortly thereafter?

Mr. DEMARCO [continuing]. Shortly thereafter, yes.

Chairman NUNN. 1979?

Mr. DEMARCO. Yes, sir.

Chairman NUNN. Did you tell Mr. Kotch and Mr. Crino to prepare one copy only of this report and not to keep any file copies?

Mr. DEMARCO. I told them to prepare only one copy, but I did not tell them not to keep any file copies.

Chairman NUNN. You did not?

Mr. DEMARCO. I did not.

Mr. STEINBERG. Mr. DeMarco, were you interviewed by Mr. Duffy and myself and Mr. Block on August 19, 1980?

Mr. DEMARCO. Yes, sir.

Mr. STEINBERG. Did you state at that time you told Mr. Kotch and Mr. Crino to prepare only one copy of this report and not to keep file copies?

Mr. DEMARCO. Half of that statement is correct. I didn't tell them not to keep any file copies.

Mr. STEINBERG. But did you tell us on August 19, 1980, that you told Mr. Kotch and Mr. Crino not to keep any file copies?

Mr. DEMARCO. No, sir. That is not my recollection. There was also another person present at that interview, Mr. Steinberg.

Mr. STEINBERG. Yes, Mr. Gallagher. And we have Mr. Gallagher's notes of the interview. As far as I can see from his notes of the interview, from our interview of you, it appears that you did state that on that date.

Mr. DEMARCO. I have no recollection of stating that. I would refute that.

Chairman NUNN. If you did state it, it was in error, is that right? If you did state that you told them not to keep any file copies, then your statement to Mr. Steinberg in the interview was in error; is that right?

Mr. DEMARCO. I have no recollection of saying that. It would have been an error.

Chairman NUNN. Your testimony now is you are positive you did not tell Mr. Kotch or Mr. Crino to keep any file copies?

Mr. DEMARCO. That is true.

Chairman NUNN. And you are certain of that? This is not something you have any vagueness on. You recall that you did not tell them not to keep file copies?

Mr. DEMARCO. I have no recollection of telling anyone not to keep a file copy.

Chairman NUNN. Well, now, that is different. You said you did not tell them. Either you have no recollection or you do recall that you did not tell them. Which is it?

Mr. DEMARCO. I do recall that I gave them no instructions not to keep copies.

Chairman NUNN. So you specifically recall that you did not tell them not to keep copies?

Mr. DEMARCO. Would you repeat that for me?

Chairman NUNN. You recall that you did not tell them not to keep copies?

Mr. DeMARCO. No. My testimony is that I do not recall having given that instruction to Mr. Crino and Mr. Kotch, not to keep file copies.

Mr. STEINBERG. Mr. DeMarco, I located the places in Mr. Gallagher's notes and in our memorandum where we asked you these questions. There is a slight difference. However, Mr. Gallagher's notes reflect upon the question about any instructions to Mr. Kotch and Mr. Crino about keeping only the original and no copies; in his handwriting, your reply is, "Don't remember, probably did." And in our interview—

Mr. ECCLES. Mr. Steinberg, I have the same notes in front of me. It doesn't say keeping. It says "Any instructions to K-C about original and no copies." No testimony whatsoever here about whether there was an instruction to keep or not keep.

Chairman NUNN. What is your point?

Mr. ECCLES. That this question doesn't go to the question of whether they were told not to keep their own copies.

Chairman NUNN. What does that memo say, then?

Mr. ECCLES. The notes that I am reading says any instruction to K. & C. be only an original and no copies.

Mr. STEINBERG. What does that mean?

Mr. ECCLES. Just what he testified to.

Ms. CLAUSS. I think if I could try to clarify the confusion, this also came up yesterday during the questioning of either Mr. Kotch or Mr. Crino, that there is a confusion between keeping copies for personal use and making copies for distribution to the normal distribution list of the Department. I think if the question were to be asked in that way, it might clarify this matter.

Mr. STEINBERG. You know very well the Federal regulations prohibit investigators from keeping their own personal copies because that is termed an independent filing system. That is not covered under the Privacy Act; aren't you?

Ms. CLAUSS. You are referring to official records made in an official investigation. Of course, if you would call Mr. Brown as a witness, he also might be able to clarify some of these matters, but he certainly told me at the time he gave me the report that this was a management survey he asked to be done, not by the Inspector General.

Mr. STEINBERG. Could you answer the question?

Ms. CLAUSS. I am suggesting—

Mr. STEINBERG. Aren't you aware that investigators are not allowed to keep their own personal files because that is considered a separate filing system for the Government; the Privacy Act requires one filing system?

Ms. CLAUSS. I am aware, Mr. Steinberg, that under the Privacy Act if you do an investigation of an individual that you do not keep personal copies except in the personnel files.

What I am suggesting to you is that this was not an investigation of an individual. Now I did not make the assignment, but I think if you want to find out what the nature of the assignment was, you might do well to call Mr. Brown.

Senator COHEN. Was this an official management review or unofficial management review?

Ms. CLAUSS. Well, my testimony simply is hearsay, Senator. I can only tell you what Mr. Brown told me. He told me it was not an official investigation, that he simply wanted Mr. DeMarco to get on top of this matter because he was going to be taking over as Deputy Assistant Secretary, that he wanted him to have primary responsibility for the Central States investigation and that he wanted a personnel evaluation, he wanted an evaluation of how that team was working.

He heard a lot of rumors about them coming apart at the seams and wanted someone to look at it.

That is what he told me when he gave me a copy of the report.

Senator COHEN. Don't you think that an investigation to determine whether you are going to abolish the SIS is more than an unofficial review of a management problem?

Ms. CLAUSS. Again I hesitate to testify for Mr. Brown, but I don't believe he gave Mr. DeMarco the assignment for the purpose of abolishing the SIS.

Senator COHEN. That was one of the recommendations.

Ms. CLAUSS. That was a recommendation that was made at the conclusion of it, but I don't believe Mr. Brown suggested that conclusion or had that in mind.

Chairman NUNN. It was to measure the effectiveness of SIS to determine what to do with it; is that right?

Ms. CLAUSS. That is correct.

Mr. STEINBERG. Senator, Ray Maria on our staff has interviewed former Under Secretary Brown, Assistant Secretary Brown, and I believe Mr. Maria's opinion of the interview as contained in a report of interview that we have inserted into the record is substantially different than Ms. Clauss' recollection of why the report was—

Chairman NUNN. I think the Secretary's memo was a memo of conversation with him, would be the best evidence of that. I think Ms. Clauss made it plain she was not trying to speak for him in that respect, but we would note that there may be differences. But again she did say she wasn't trying to speak for him. We will defer to him.

Ms. CLAUSS. Indeed I think the best evidence, Senator, would not be what Mr. Steinberg took down in his notes but to have Mr. Brown here. If this is in your judgment a major issue as to whether he assigned it to an Inspector General or to a Deputy Assistant Secretary and whether he did it to deliberately avoid having a report transmitted to Congress, I respectfully suggest that Mr. Brown should be given an opportunity to testify.

Chairman NUNN. We have got so many major issues here I am not sure how many of them we are going to be able to tackle within a given time frame. It is an important matter, but we have many other matters we need to go into.

We will take that under advisement.

Mr. STEINBERG. Mr. Brown's interview was read to him in full.

Chairman NUNN. The interview has been put in the record. I think it is clear from the interview of what Mr. Brown's interpretation was of that assignment. Do you have any other questions along that line before we go further?

Senator PERCY. Mr. DeMarco?

Mr. DEMARCO. Yes, Senator.

Senator PERCY. There seems to be a contradiction here in what happened, what was said about the report, and what happened to the report. When Ms. Clauss, as Solicitor of Labor, handed her copy of the report back, did she say to you, "Dispose of it?"

Mr. DEMARCO. Senator, those were my words. I cannot, and at the time I was interviewed could not, quote what someone said at a meeting months before. An interpretation that I got out of that was I had no further use for my copy. The word "dispose" on my part obviously is a poor choice of words because I couldn't possibly—

Senator PERCY. That is the word that you used in your interview with three of our investigators.

Mr. DEMARCO. We had quite a discussion about that at a later part in that interview and my attempt at that time was to explain that the word "dispose" was not a quote. That was my word.

Senator PERCY. But there is no doubt in your mind that when it was handed to you by Ms. Clauss, that her intention in handing it to you, saying whatever words she used, that you had the indication that you were to dispose of that report; is that correct?

Mr. DEMARCO. My indication was that there was no further use—

Chairman NUNN. Wait just a minute. I didn't hear the answer. Your indication was?

Mr. DEMARCO. She was through with this report and had no further use for it.

Chairman NUNN. Isn't that the case any time you hand somebody something who is a superior? You mean that is what she normally said when she handed you back anything you had handed her?

Mr. DEMARCO. I don't understand that question.

Chairman NUNN. You must have gotten some unusual instructions here for you to think she said "Dispose of it," for that to be your first reaction. What was your instruction?

Mr. DEMARCO. May I?

Since my initial interview, I have had 2 or 3 weeks to try to recollect these events because it took place during the time when I was handling literally dozens of different projects.

I do remember that this was an embargoed memorandum. It was an internal thing and there was only supposed to be minimal access by departmental employees.

At the time that I was interviewed, I didn't remember most of these things. It was a matter of kind of instant recollection that didn't come back to me. When I left that particular meeting, and I really cannot swear under oath whether it was first, second, or third or how many meetings we really did have on that subject. It was my impression that I was to keep one of these copies, eventually turn over to whomever would become an Assistant Secretary, my immediate superior. And I did. I can't even tell you, I know that I asked the two preparers of the report to only furnish one because it is common knowledge in the Department that a Xerox is readily available, we could make as many—I don't know how many duplicate copies might have been made that morning. So when I became aware that this was an embargoed project, as far as the reports themselves, I think at that

time my understanding was that Ms. Clauss was through with hers, and would have no further need for it.

Senator PERCY. I am trying to determine what you believed the intention was of Ms. Clauss when she handed that report to you. The words you used in the interview, as best they could be constructed, were "dispose of it." We all throw things in our out basket all day long. We all pass things on to staff members. There is a difference between saying "I am through with it," the implication being to file it, and someone specifically handed something and told, "Get rid of it; destroy it." That is a very clear direction.

Mr. DEMARCO. I have never heard of any words of "Destroy it; get rid of it," to indicate she was through with it.

Senator PERCY. What did you do with that report after it was handed to you?

Mr. DEMARCO. I think, and I cannot recall specifically—I think I brought it back to my secretary and I have not contacted that former secretary, so I don't know. I think I advised her to dispose of the surplus copies and just keep the master working copy.

Senator PERCY. I would like to refresh your memory by quoting to you from a memorandum dated August 23, 1980, of LaVern Duffy, proceedings of a meeting between Marty Steinberg, Jerry Block, LaVern Duffy, and yourself.

I will quote:

Carin Clauss handed to DeMarco a copy she had. She said to DeMarco when she handed it to him, "Dispose of it." She had no more use for it. DeMarco destroyed this copy of the report at that time.

That is just all I have to go on. I wasn't at the meeting. There were three members of the staff at the meeting and yourself. That is what was written up after that meeting. I am trying to determine why it was clear at that time what Ms. Clauss was saying to you, and clear what you did, and why it is now so fuzzy.

[At this point Senator Chiles withdrew from the hearing room.]

Mr. DEMARCO. Senator, I am reading from notes that were taken of the meeting. Mr. Gallagher was also.

Senator COHEN. I couldn't hear you.

Mr. DEMARCO. Our notes of Mr. Robert Gallagher, who was at this interview. It said, "Rocco can't quote CAC as saying 'dispose.' He interpreted it was to dispose."

Chairman NUNN. Just a minute now. That is another page. That was later on in the interview. Let Mr. Gallagher read his page 4. This is the reference we are talking about.

We can get into what you said later on in the interview.

Mr. Gallagher, you were there. You took notes, did you not?

Mr. GALLAGHER. Yes, sir. I did.

Chairman NUNN. Why don't you just read the relevant part of page 4 of your notes?

Mr. GALLAGHER. I am trying to find the relevant part, Senator.

Can you point me to the right line?

Chairman NUNN. It is about in the middle of the page, right after the words "Brown briefing." It says she had no further use for it.

Mr. GALLAGHER. Are you sure it is page 4?

Chairman NUNN. Let me ask staff to show you this.

Mr. GALLAGHER. I have it, Senator. Thank you.

Chairman NUNN. Are those your notes?

Mr. GALLAGHER. Those are my notes.

Chairman NUNN. Would you just read that relevant part there, the part on page 4, this is the first comment Mr. DeMarco made. We can read the other part later.

Mr. GALLAGHER. "CAC said she had no further use for it—they had the original and for him to 'dispose of it.'"

Chairman NUNN. You have quotes around "dispose of it"?

Mr. GALLAGHER. I don't believe Mr. DeMarco indicated quotes. I put those quotes there.

Chairman NUNN. Why did you put the quotes there?

Mr. GALLAGHER. Because I thought that was significant.

Chairman NUNN. I would agree.

Who was CAC?

Mr. GALLAGHER. Carin Clauss.

Chairman NUNN. That was your initials for Carin Clauss.

All right.

Mr. DEMARCO. Senator Percy, would you repeat your question again?

Senator PERCY. Yes. I first asked for an explanation as to what the Solicitor of Labor Clauss said to you when she handed back her copy of the report. Then I asked what you did with the report after she handed it back to you. I quoted from the notes that were taken by La Vern Duffy after the staff meeting with you, when according to those notes, she said "Dispose of it." Then I asked what you did with it, and I again read to you from the notes of that meeting, "DeMarco destroyed this copy of the report at that time." Do you remember how you destroyed it, or where?

Mr. DEMARCO. I do not think I personally destroyed it. I think I took it back to my secretary and asked her to.

Senator PERCY. You gave it to her, and asked her to destroy it, then?

Mr. DEMARCO. With surplus copies that we had.

Senator PERCY. You have testified that you have not contacted her. Could you contact her, possibly during the noon recess today and ask her if she recalls destroying the report?

Mr. DEMARCO. I can make an effort, sir. But she does not work for—

Chairman NUNN. What is her name?

Mr. DEMARCO. Kitty Marshall.

Senator PERCY. Either we can contact her, or you can reach her.

Mr. DEMARCO. I will tell you why I didn't. I didn't want any impression that I was tampering with any of the witnesses to this proceeding. So I did not.

Senator PERCY. What we are trying to do is to be certain what actually happened at that time. We should find out if she actually did follow your instructions. Apparently, we weren't told how the report was destroyed. We were just told by you in your interview with our staff that it was destroyed at that time.

Chairman NUNN. I think it would be more appropriate—Mr. DeMarco can do whatever he pleases about that—for our own staff to get

in touch with her. If you want to get in touch with her, fine. But I don't think we should get with the witness on that.

Senator PERCY. Fine.

Mr. DEMARCO. Senator Percy and you all know that—

Senator PERCY. Mr. DeMarco, did you retain the original version of this report until the fall of 1979?

Mr. DEMARCO. I cannot testify that it was an original under oath. I did keep a copy of the report.

Senator PERCY. Did you then give the original copy of the report and its attachments to Assistant Secretary of Labor William Hobgood?

Mr. DEMARCO. It is my recollection that I did.

Senator PERCY. You testified previously that that was the intention and purpose of it, to give the report to the Assistant Secretary, is that correct?

Mr. DEMARCO. Right.

Senator PERCY. In April of 1980, did you receive the original report and attachments back from Secretary Hobgood?

Mr. DEMARCO. I did receive a report back. I cannot tell you under oath that it was an original. I cannot be sure about an April date. I do know that it was following the installation of a new investigative unit in Chicago to handle new matters arising under the Central States investigation.

Senator PERCY. What did you then do with the original report and the attachments?

Mr. DEMARCO. I cannot talk in terms of originals because I do not have a recollection.

Chairman NUNN. To just ask, what did you do with the report, whether it was an original or copy, that you got back from Mr. Hobgood, and the attachments?

Mr. DEMARCO. It was in my in box. I remember briefly looking at it. I remember, I didn't read it again, but I remember one interview that came to mind where there was some vague allegations that everybody was on the take or something like that.

And I remember thinking that "This matter is completed; I have no further use for this." And I discarded it in my wastebasket.

Senator PERCY. And you did what?

Mr. DEMARCO. I discarded it in my wastebasket.

Senator PERCY. Discarded it in your briefcase?

Mr. DEMARCO. In the wastebasket.

Senator PERCY. So it then was destroyed?

Mr. DEMARCO. My working copy that came back to me, yes, was disposed of.

Chairman NUNN. Did you tear it up or just throw it in there whole?

Mr. DEMARCO. I do not remember tearing it up.

Chairman NUNN. You mean a report that was so confidential that you didn't want to keep any originals and copies and an embargoed matter, you took it and threw the whole thing in your wastebasket?

Mr. DEMARCO. That is the best of my recollection. I do not recall physically tearing it up.

Chairman NUNN. It seems to me it would be safer as far as protecting the reputations of the people involved and, for that matter, the

Labor Department, if that was your motive, it would have been safer to put it in a safe, a confidential file, some kind of locked filing cabinet. But your testimony before this committee is that you took the report that was that sensitive and threw the whole thing in the wastebasket?

Senator PERCY. Mr. DeMarco—

Chairman NUNN. Let him answer that question.

Mr. DEMARCO. That is the best of my recollection, I did dispose of it in that way.

Senator PERCY. Could I again read from the notes of the meeting held with you and three members of our staff:

Around April 1980, DeMarco said he then destroyed it. He said it was destroyed about the time the SIS was abolished. When I asked why he destroyed it, he said it had served its usefulness.

Now the term "destruction" is used a number of times there. Those terms were apparently used by you. Today you are not using that term, "destruction." You are now saying you threw it in the wastebasket.

Mr. DEMARCO. I am not trying to be argumentative, but it had the same effect. I was through with my assignment. I had passed this memorandum through the policymakers and they had not come back to me at that time for any more information. And I don't see much difference between putting it in a wastebasket or destroying it, as far as the impact of my action.

Senator PERCY. I think there may be some difference. The difference may suggest a different intention. The question I have is why did you destroy it or throw it in the wastebasket?

Mr. DEMARCO. My assignment on this project was over. There were no further things involved personally for me to do. Another factor that I would like to bring out, I have spent the past 18 years in the field and I knew that it was custom and practice for writers of memorandums to have copies. I never once doubted in my mind on that evening that this thing, this report, would not surface if we asked for it.

Chairman NUNN. Were you concerned that somebody might pick up that copy out of your wastebasket and read it or circulate it?

[At this point Senator Cohen withdrew from the hearing room.]

Mr. DEMARCO. I cannot honestly say at this time that I had that recollection.

Senator PERCY. Didn't you look on that as a rather hot document?

Mr. DEMARCO. At that point—

Senator PERCY. Because it was an embarrassing document. It had allegations against individuals, given in confidence. Didn't you have a concern that that could somehow, if not literally destroyed by you, show up someplace?

Mr. DEMARCO. I can't—

Senator PERCY. How would you like that report on the front pages of the Washington Post, for instance?

Mr. DEMARCO. I certainly wouldn't. But I had never had any problem with, and any thought that—

Senator PERCY. Let me ask this question.

Mr. DEMARCO. Ordinarily that wastebasket material goes to a disposal somewhere. I just didn't—

Senator PERCY. Had you frequently before destroyed official Department of Labor documents in this way, destroyed or thrown them in the wastebasket that way?

Mr. DEMARCO. I have always been used to dealing with reports of investigations dealing with legal matters and have never destroyed one.

Senator PERCY. Could you name another instance when you have thrown in the wastebasket or destroyed an official investigative report of the Department of Labor comparable to this report?

Mr. DEMARCO. Never. I cannot give you an instance.

Senator PERCY. No other instance can you name. Does the DOL retain chronological files, letter files and memo files, all of which have no more use, as you put it?

Mr. DEMARCO. I cannot answer that question.

[At this point Senator Cohen entered the hearing room.]

Senator PERCY. Does it not appear strange to you that in all your years of service, you would not have ever before disposed of, destroyed, or thrown away, official documents of this nature? But, in this case, where the circumstances suggest the embarrassing nature of the report, you destroyed it. Does it not seem somewhat incredible to you, as it does possibly to us, that this was a totally innocent act?

Mr. DEMARCO. I think if I came up here and concocted a story that I rooted it out of the files or something like that, I think that would be incredible. But I certainly am not going to tell you that I purposely sat there and tore up those documents because I don't recall that, and I don't think I would have.

Senator PERCY. Was the report heavy enough, did it contain enough pages, so that they couldn't be torn other than by separating them? Is it possible that had an impact on your mind?

Mr. DEMARCO. No, sir.

Chairman NUNN. Let me ask just one or two questions.

Mr. DEMARCO. I would like to add one—

Chairman NUNN. Somewhere in the Washington area is a Kotch-Crino report, is what you are telling us, unless it was incinerated. If one gets out, it didn't necessarily come from the Labor Department or this committee, it is out there floating around in the solid disposal units of Washington?

Mr. DEMARCO. I guess you could speculate that, yes. If you are asking me—

Chairman NUNN. I suppose if some good lawyer wanted to find out what was going on internally in the Labor Department with the Teamsters investigation, they could have some procedure for searching the trash. If somebody found that copy in the trash can, the Teamster Union lawyers and other people could have a very sensitive internal document from the Labor Department, is that right?

Mr. DEMARCO. I guess you could speculate that.

Chairman NUNN. And that never occurred to you?

Mr. DEMARCO. At that moment, no.

Chairman NUNN. Mr. DeMarco, you realize you are under oath?

Mr. DEMARCO. Yes. And that is why I cannot tell you specifically that I tore it up.

Chairman NUNN. I am not sure whether I would be more comforted to know that you tore it up or that you threw it away whole.

Senator PERCY. Mr. DeMarco, were you a part of the decisionmaking process that resulted in abolishing SIS as a special investigative unit?

Mr. DEMARCO. My only part was to coordinate this document that was prepared by Mr. Crino and Mr. Kotch and I did sit in on some meetings. But I was not in the decisionmaking process.

Senator PERCY. When that decision was made, did you look upon abolishing the special investigative staff as a fairly major decision?

Mr. DEMARCO. I think my state of mind then was that a corrective action was needed.

Senator PERCY. Did it ever occur to you that Congress, or some other body, might inquire as to why this occurred? This was a highly sensitive, much publicized investigation in which there had been a long history of oversight by the Congress of the Department of Labor, Department of Justice, IRS, and so forth. Didn't you think that the question would be raised at some point why, in the midst of this inquiry, SIS had been abolished and dissolved?

Mr. DEMARCO. Senator, I did not recall thinking of that.

Senator PERCY. You did know that the Comptroller General was conducting an investigation of the special investigative staff, SIS, didn't you?

Mr. DEMARCO. I knew that from the beginning, that there was an inquiry in process.

Senator PERCY. Didn't it occur to you, that with the Comptroller General of the United States making an investigation at the direction of the Congress of the United States, that particular report—highly critical of SIS—might be a crucial report justifying the decision DOL made to abolish the unit; therefore, it might be a report that would be desirable to retain for some time to come?

Mr. DEMARCO. Senator, it would be purely speculation on my part at this time to say that I would have anticipated that GAO would have that need.

Chairman NUNN. Mr. DeMarco, you said a minute ago that when you took that copy and put it in the trash can, that you realized that there was a copy being kept by Mr. Crino or Mr. Kotch; is that right?

Mr. DEMARCO. That is right.

Chairman NUNN. That is correct?

Mr. DEMARCO. I had that feeling.

Do you recall Mr. Kowalski of GAO testifying yesterday that in March or April 1980, he asked you whether the Kotch-Crino report existed, and you told him that it did not?

Mr. DEMARCO. Senator Nunn, I heard that testimony. I do not recall—and I have talked to Mr. Kowalski a number of times over the past year because in the OSI job we were the liaison with GAO—I do not recall GAO asking for a copy of that report. However, I do recall—and I can't even swear under oath it was Mr. Kowalski—GAO asking for a copy of another report that was during this same year prepared by one Howard Marsh. I do remember referring the caller, and I think it was Mr. Kowalski, to the Solicitor's Office because the report in question dealt with litigation matters.

Chairman NUNN. You turned over that copy; is that right?

Mr. DEMARCO. I did not.

Chairman NUNN. Are you saying Mr. Kowalski's testimony is in error or are you saying you don't recall.

Mr. DEMARCO. I say that I don't recall his specific question asking for the Kotch-Crino report. So I—

Chairman NUNN. Did Monica Gallagher ever ask for you a copy of her interview and the report?

Mr. DEMARCO. I do not recall that, Senator.

Chairman NUNN. Ms. Gallagher, did you ever ask for a copy of your interview?

Ms. GALLAGHER. I asked at the time I was interviewed to be furnished a copy of the interview report. I never asked Mr. DeMarco for it.

Chairman NUNN. Mr. DeMarco?

Ms. GALLAGHER. Not for either the report or the interview.

Chairman NUNN. Did you ever get a copy of the interview?

Ms. GALLAGHER. I did not, until recent weeks.

Chairman NUNN. Did you, Mr. DeMarco, remember anybody on our staff asking you for a copy of the Kotch-Crino report?

Mr. DEMARCO. The first time any of your staff asked me was the date of interview.

Chairman NUNN. What did you respond to them?

Mr. DEMARCO. That I no longer had my copy.

Chairman NUNN. Did you say anything about anything else, any other copy?

Mr. DEMARCO. At that time, when this question arose, from my recollection, there was a discussion developed about subpoenas. And I told them that I could not speak for anybody else in the Department, they could subpoena me, and then the discussion turned to a discussion, as I recall, between Mr. Gallagher and I don't really remember whether or not it was Mr. Steinberg or Mr. Duffy, as to the reason for the subpoena. I recall Mr. Gallagher's feeling at the time that he felt that the subpoena was being used to embarrass the Secretary.

Chairman NUNN. You recall them trying to get a copy of that report. Did you indicate to them that there were other copies available of that interview?

Mr. DEMARCO. I did not. I could not swear at that time.

Chairman NUNN. Senator Cohen?

Senator COHEN. I was just going to inquire.

Mr. DEMARCO. Senator, can I complete my response?

Chairman NUNN. Go ahead.

Mr. DEMARCO. At the time I discarded the report, my feeling that there were reports in existence was for several reasons. After the original Kotch-Crino memo came to me, I had occasion to go back several weeks—I don't know, whatever it was, two—and as I recall, it was to Kotch, by phone, requesting some additional information.

As I remember, it was an implementation schedule, an executive briefing, and at that time I was aware that Mr. Kotch had copies. I had no reason to believe he had disposed of them afterward.

Second, I had completed 18 years in LMSA field offices and I knew it was custom and practice for writers of memoranda and reports to keep those kinds of copies.

Senator PERCY. Mr. DeMarco, were you a part of the decisionmaking process that resulted in abolishing SIS as a special investigative unit?

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Chairman NUNN. That is correct?

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Ms. GALLAGHER. I asked at the time I was interviewed to be furnished a copy of the interview report. I never asked Mr. DeMarco for it.

Chairman NUNN. Mr. DeMarco?

Ms. GALLAGHER. Not for either the report or the interview.

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Ms. GALLAGHER. I did not, until recent weeks.

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Mr. DEMARCO. The first time any of your staff asked me was the date of interview.

Chairman NUNN. What did you respond to them?

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Chairman NUNN. You recall them trying to get a copy of that report. Did you indicate to them that there were other copies available of that interview?

Mr. DEMARCO. I did not. I could not swear at that time.

Chairman NUNN. Senator Cohen?

Senator COHEN. I was just going to inquire.

Mr. DEMARCO. Senator, can I complete my response?

Chairman NUNN. Go ahead.

Mr. DEMARCO. At the time I discarded the report, my feeling that there were reports in existence was for several reasons. After the original Kotch-Crino memo came to me, I had occasion to go back several weeks—I don't know, whatever it was, two—and as I recall, it was to Kotch, by phone, requesting some additional information.

As I remember, it was an implementation schedule, an executive briefing, and at that time I was aware that Mr. Kotch had copies. I had no reason to believe he had disposed of them afterward.

Second, I had completed 18 years in LMSA field offices and I knew it was custom and practice for writers of memoranda and reports to keep those kinds of copies.

Chairman NUNN. Looking back on it, Mr. DeMarco, do you think it was appropriate to take a sensitive report like that and put it in the trash can?

Mr. DEMARCO. Senator, if you are asking me to use 100-percent perfect hindsight, I would agree with you. I would have kept a million copies.

Chairman NUNN. You mean you would have kept a lot of them and floated them all everywhere?

Mr. DEMARCO. No. I would have kept them so everybody who had the official need—

Chairman NUNN. There is some room in between you throwing a copy in the trash can and making a million copies. What we are trying to find is some balance here about sensitive documents. We do not deny that it should not have been circulated to the news media or to the people all over the Labor Department, but it was reasonable to keep a copy. Ms. Clauss, just let me ask you. You heard the testimony this morning. Had you heard this before, that Mr. DeMarco had thrown that in the trash can?

Ms. CLAUSS. Not until these hearings.

Chairman NUNN. Did you hear it before this morning? Had you interviewed him?

Ms. CLAUSS. I did not hear it until after he had gone up to the Hill.

Chairman NUNN. When did you hear it first?

Ms. CLAUSS. Well, let me see. I would suppose about 1 week ago.

Chairman NUNN. When you interviewed him, he said the same thing?

Ms. CLAUSS. I never really interviewed him.

Chairman NUNN. Where did you hear it, then?

Ms. CLAUSS. Mr. Gallagher.

Chairman NUNN. Mr. Gallagher told you that he had interviewed Mr. DeMarco?

Ms. CLAUSS. He told me. I was out of the country when these interviews took place.

Mr. Gallagher simply reported to me on what had taken place in my absence, including the staff's interview with Mr. DeMarco. I have also talked with Mr. DeMarco since then to try to refresh our joint recollections as to what had occurred with Mr. Brown.

Chairman NUNN. Do you think it is appropriate to have thrown that document in the trashcan?

Ms. CLAUSS. If you are asking me whether I would have thrown it in the trashcan, I probably wouldn't have. If you are asking me whether I think Mr. DeMarco did something wrong, no. I don't think he did something wrong.

Chairman NUNN. You don't think he did anything wrong?

Ms. CLAUSS. Not in the sense of anything criminally wrong, no.

Chairman NUNN. Let's don't talk about the criminal aspect. Do you think it was a mistake?

Ms. CLAUSS. I think I would agree with Mr. DeMarco, it would have been a great idea to save a copy. However, I would point out that he did save a copy for his supervisor, and his supervisor had kept it for many months. The staff had worked together in setting up the implementation of the recommendations in the report.

Chairman NUNN. Ms. Clauss, do you realize the document you spent yesterday telling us about how important it was to keep it confidential, we kept it from the public domain even today in these hearings, and now we have testimony it was thrown away as a whole copy in the trashcan. You don't see anything wrong with that?

Ms. CLAUSS. What I am saying to you, Senator, is I would not have disposed of a sensitive document in that manner. However, I certainly think that Mr. DeMarco can only tell us what he was doing.

Chairman NUNN. I am not admonishing you for telling us. I am not upset because he has told us. I am just surprised to hear it.

Mr. Gallagher, when is the first time you heard this, that the whole document had been thrown in the trashcan?

Mr. GALLAGHER. It may well be this morning. I don't think I ever heard Mr. DeMarco testify or say before the precise physical manner in which he disposed of the report.

Chairman NUNN. You didn't advise Ms. Clauss then?

Mr. GALLAGHER. That is right. I don't think I said that he threw it in the trashcan.

Chairman NUNN. Ms. Clauss, I will go back to you, then. If Mr. Gallagher did not advise you, when did you first hear it?

Ms. CLAUSS. I thought that what you meant was—when I heard the report had been thrown away.

Chairman NUNN. I am sorry my question wasn't precise enough for you.

Ms. CLAUSS. I think the problem here is, what you had is someone who thought, wisely or unwisely, about that report—that he was through with it and he threw it out and apparently it was a rather casual thing.

Chairman NUNN. When is the first time you heard the report had been thrown away, thrown in the trashcan?

Ms. CLAUSS. Thrown in the trashcan, I can't recall, this morning may be the first time, or I may have known it.

Chairman NUNN. You didn't get it to Mr. Gallagher so you must have gotten it from Mr. DeMarco. Had you interviewed Mr. DeMarco on this point?

Ms. CLAUSS. Mr. DeMarco and I talked on Sunday in an effort to piece together the sequence and dates of events. He might have said something then, but I do not recall him saying anything about a wastebasket.

Chairman NUNN. You don't recall whether this is the first time you heard about the wastebasket or not?

Ms. CLAUSS. I am sorry. I don't.

Chairman NUNN. That is not the kind of thing that you would remember; the first time you heard about a sensitive report being thrown in the wastebasket. All of this business about protecting, all the letters we have gotten from you about sensitivity, "Don't let it go in the public domain," you can't even remember whether this is the first time you heard it was thrown away as a whole document in the wastecan?

Ms. CLAUSS. It may come as a surprise to you. I don't have a single shredding machine in my entire organization. I don't believe Mr. DeMarco has one in his office. When someone tells me they threw out a report, I don't immediately think of them sitting there and cutting it up into little pieces. I don't know how he threw away the report.

Senator PERCY. Could we go back to your testimony yesterday? Now, having heard of the staff interview with Mr. DeMarco, could you repeat again to us what you said to Mr. DeMarco when you handed him a copy of the report? Did you, in any way, imply or state that you had no further use for the report, the implication being that it should be destroyed or disposed of?

Ms. CLAUSS. Senator, this is my recollection. At some point Mr. Brown came to see me and he had in his hand a copy of the report and he said that he did not want this to be circulated, that he had made this copy for me and would I please call Bob Lagather and have him come to my office and would the two of us read the report and then attend a meeting either the next day or the day after. At that meeting Mr. Brown asked me for my copy of the report, the one I shared with Mr. Lagather. I said I hadn't had a chance to study it closely and could I therefore review it again before we brief the Secretary. He said that would be all right and I kept it locked in my middle drawer.

After we met with the Secretary, to the best of my knowledge, there were only two copies, but there may have been three copies of the report.

I seem to recall that Mr. Zuck was also in a meeting with the Secretary and that there was another copy of the report lying on the table. At the end of that meeting I took my copy and whatever other copy was there, I think there was a third copy, and I returned them to Mr. DeMarco since he had been—

Senator PERCY. You handed the report to Mr. DeMarco then?

Ms. CLAUSS. That is right.

Senator PERCY. After having studied it, and satisfying yourself that you knew what was in it, as precise as you can be, what did you say to him, or what implication did you give him?

Ms. CLAUSS. Well, I don't think, Senator, that I said anything. I think that the clear understanding from the time I received the report was that I was not to keep a copy, that it was simply being shown to me, that—this matter was not in my immediate jurisdiction.

Mr. Brown was seeking my advice and also Mr. Lagather's advice, who knew a lot of these people and had been involved with them in his past positions in the Department, and Mr. Zuck's advice, and together we would brief the Secretary, give him our views and return the reports to a central custodian, which is what we did.

I think Mr. DeMarco is probably quite correct in his recollection that what he would have normally done in those circumstances, when you have been told that a report is to be kept confidential and you don't want copies, that those surplus copies would at that point have been disposed of.

Senator PERCY. What we do know is that, according to three subcommittee investigators who sat in that meeting with Mr. DeMarco, the report was handed to Mr. DeMarco by you, with the words, actually used in the report, to dispose of it. We do know that he disposed of it.

Ms. CLAUSS. What we know, Senator—

Senator PERCY. You do not recall at all implying to him that it should be disposed of?

Ms. CLAUSS. The three investigators you are referring to are the three investigators on the Senate staff who were not in the room with

the Secretary and Mr. Brown and me and Mr. Zuck and Mr. Lagather, but were in whatever room they questioned Mr. DeMarco, a year-plus later. I do not know what Mr. DeMarco said to them, nor am I faulting him for anything he said to them. I am simply giving you my recollection of what occurred in the Secretary's room.

When I am given a matter by another Assistant Secretary or by the Under Secretary to look at, and they ask me not to make a copy for my personal use, I look at it and return it, which I did.

Senator PERCY. After that meeting did you follow up to see whether or not Mr. DeMarco had disposed of it, thrown it away, destroyed it, whatever might have been the implication; and, if so, when?

Ms. CLAUSS. Senator, I did not, because it wasn't my report. I didn't have any particular concern what he had done with it. I simply was shown the document in confidence and returned it to the confidential source. So I had no particular interest in what the person whose report it was had done with the report.

I then was given additional assignments relating to the matter, and was asked to prepare various memos and organizational plans, which I did.

Senator PERCY. I have, Mr. Chairman, just a couple more questions. Then I have a meeting I have to go to. I will try to get back in time.

Senator COHEN must leave. You must leave, what, around 11:30, a quarter to 12? I will try to be back by then.

Could you tell me, Mr. DeMarco, why, when you were interviewed by Messrs. Duffy, Steinberg, and Block, you did not tell them that you had a feeling that other copies of the report existed?

Mr. DEMARCO. At the time this arose, Senator, there was a controversy going on between your staff and Mr. Gallagher over a subpoena. It appeared that prior to my interview they had already prepared a subpoena they were going to serve upon me. And when this conversation came up, I told them very frankly that I would speak for myself. I didn't have any copy anymore.

Senator COHEN. Would the Senator yield on that?

Mr. DeMarco, Mr. Crino, and Mr. Kotch testified yesterday that it was pretty standard operating procedure to maintain a working copy of the reports that they make.

Mr. DEMARCO. Absolutely.

Senator COHEN. You understood that to be the case, didn't you?

Mr. DEMARCO. Oh, absolutely.

Senator COHEN. There was no real doubt in your mind that investigators, whether they be IG or whether they be LMSA, would maintain a working copy to base their report upon?

Mr. DEMARCO. That is right. And I had no doubt in my mind that when the decision had been made to subpoena already, that these would surface.

Senator COHEN. Let me just set aside the subpoena for a second. The fact is you were contacted by the staff, and asked to come in and give your testimony as to what you knew about the facts of this case; correct?

Mr. DEMARCO. Right.

Senator COHEN. You indicated you were willing to do that.

Mr. DEMARCO. Absolutely.

Senator COHEN. The issue whether you would be subpoenaed or documents subpoenaed is really not relevant to the question that Senator Percy is asking; namely, silence in the face of a direct question isn't necessarily a neutral response. If in fact you are asked a question, "Do you have a copy of this document?" you say, "No; I have no copies." Didn't you feel an obligation to say, "But there might be two copies available through Mr. Kotch and Mr. Crino"?

Mr. DEMARCO. I had already heard seconds before that apparently Mr. Kotch had told them he didn't have a copy. At that time there was a doubt raised in my mind about him. But Mr. Crino, I hadn't faced that.

Senator COHEN. You were told Mr. Kotch didn't have a copy?

Mr. DEMARCO. That came out in the interview with Mr. Steinberg, that Mr. Kotch had indicated that he didn't have a copy; yes.

Senator COHEN. So therefore you had doubts as to whether Mr. Crino had one?

Mr. DEMARCO. At this point I thought after all these years—in my mind—the system has failed. But obviously it didn't.

Senator COHEN. What do you mean, the system has failed?

Mr. DEMARCO. It is custom and practice for the originators of these reports and memos to keep copies. And I had never known it to fail before as far as I was concerned.

Senator COHEN. So, as a matter of fact, what you are saying is that while you discarded in the wastebasket the "official" or "unofficial" report or memorandum that was handed back to you after going to Mr. Brown through the Solicitor's Office, in your mind you knew that the system would still work because there were always other copies available?

Mr. DEMARCO. For that reason, and also the fact that I had, after receiving the original Kotch-Crino report, had requested more data. And I talked to them on the phone, talked to at least John Kotch on the phone, and knew that he had copies in order to prepare the data I requested.

Chairman NUNN. Besides that, you hadn't really destroyed the report. You simply put it in the trash can, hadn't you?

Mr. DEMARCO. Yes.

Senator PERCY. Mr. DeMarco, you have had 18 or more years in the Federal Government.

Mr. DEMARCO. Thirty, sir.

Senator PERCY. How many years total?

Mr. DEMARCO. Civilian years, 28.

Senator PERCY. Twenty-eight years?

Mr. DEMARCO. Twenty-eight plus.

Senator PERCY. And many years at a management level. Are you familiar with the general statutes and regulations relating to the disposal of Government records?

Mr. DEMARCO. Not specifically, sir.

Senator PERCY. Pardon?

Mr. DEMARCO. I am aware that there are some, but not specifically.

Senator PERCY. You are aware generally that there are regulations and statutes dealing with disposal of Government records; is that correct?

Mr. DEMARCO. Government records, yes.

Senator PERCY. Didn't you know that the LMSA had its own policy and regulations concerning the disposal of records?

Mr. DEMARCO. I know that—

Senator PERCY. Did you know that?

Mr. DEMARCO. I know that we had regulations and policies dealing with investigative reports.

Senator PERCY. Could I read to you again a letter to Marty Steinberg from John Landers, Acting Archivist of the United States, dated September 12, 1980—do you have, by the way, a copy of that letter?

Mr. DEMARCO. No, sir.

Senator PERCY. Then I will read directly from that letter:

Federal records may not be destroyed unless such disposal is approved by the Archivist of the United States, as delegated by the Administrator of General Services. 44 U.S.C. 3303. Procedures for obtaining the necessary approval are contained in Chapter 101 of Title 41, Code of Federal Regulations. Under Chapter 101, authorization for destruction of Federal records is obtained by, one, applying the General Records Schedules, issued by the General Services Administration to govern the disposal of certain types of records common to many or all Federal agencies, and; two, a Standard Form 115, Request for Records Disposition Authority, to the National Archives and Records Service. Each agency is required to develop schedules for all records in its custody.

Federal law further requires heads of Federal agencies to establish safeguards against the removal or loss of Federal records, 44 U.S.C. 3105, and to notify the Administrator of General Services of any actual or threatened unlawful removal or destruction of Federal records.

The Labor Management Services Administration presently has no authority to destroy the type of report described in your letter, nor have they or the Department of Labor submitted a request for such authority. In addition, the Department of Labor has not reported the disposal of the record in question as required by 41 U.S.C. 3106.

Having had so many years in Federal Service, being generally aware of the regulations of the U.S. Government, and also generally aware of the internal Labor Department policy, again, I put the question to you: What caused you to just throw in the wastebasket this highly sensitive report?

Mr. DEMARCO. Senator, as I have stated already, I was done with my part of it. As far as I was concerned, it was merely a duplicate of something that would still be in existence from the writers, and it had served its purpose as far as I was personally concerned, my assignment, my part of it.

Senator PERCY. Did you tell Senate staff members LaVern Duffy, Marty Steinberg, and Jerry Block, on August 19, 1980, that no copy of the report or attachments existed?

Mr. DEMARCO. I told them that I was sure I didn't have a copy. I have no recollection of telling them that no copy existed—because I would have no way of knowing. It had passed through the hands of senior Department officials. As a matter of fact, I just learned now that Ms. Clauss got her copy from Mr. Brown.

Senator COHEN. Mr. DeMarco, you can't say you had no way of knowing. You already testified earlier that you had assumed that the system had worked; that namely, there would be other copies available, working copies.

Mr. DEMARCO. I am talking about in the Washington area, sir. The two field people I was sure of.

Senator COHEN. In other words, when they asked you whether any copies existed, you confined that to the Washington area?

Mr. DEMARCO. I confined it to, yes, the present office.

Senator COHEN. It never occurred to you there might be one in Pittsburgh or Chicago?

Mr. DEMARCO. At that time apparently it didn't occur to me. Let me make it clear that there was no action on my part to try to deceive anybody. If I wanted to deceive somebody, I would have said, when that darned—I would have concocted a story saying when that darned report surfaced back in my box, I just rooted it out of the file. That wasn't the truth, and I know it wasn't the truth. I have told the truth as to what I did with that.

[At this point Senator Percy withdrew from the hearing room.]

Senator COHEN. The question wasn't whether you lied to anybody or didn't tell the truth. The question was whether or not silence can be misleading on another issue. The question was whether there were any copies in existence. You indicated earlier it was still your personal belief the system had worked, that there would be working copies available from the two people who had prepared it.

Mr. DEMARCO. And that is true. From the context of the question in the interview, I do not remember now.

Senator COHEN. But, what you just said a moment ago is, "At that time I had no way of knowing whether there were any other copies available." That is inconsistent with what you testified earlier. You did have a way of knowing by the standard operating procedure which would have led you to the following conclusion: "Wait a minute, Mr. Investigator, I think there might be one or two reports still available. One might be in Pittsburgh or Chicago. The two people who conducted the investigation might possibly have some working documents available."

Mr. DEMARCO. Senator, if you are asking me at this time if I thought of volunteering that information, I didn't. I didn't think of it.

Chairman NUNN. Mr. DeMarco—

Mr. DEMARCO. Yes, Senator.

Chairman NUNN. You read the report yourself, didn't you?

Mr. DEMARCO. I read it upon receipt.

Chairman NUNN. And you read the interviews attached to it?

Mr. DEMARCO. At that time, yes.

Chairman NUNN. Were you Acting Inspector General at that time when you read them?

Mr. DEMARCO. No.

Chairman NUNN. What was your position when you read the report? That was in May of 1979.

Mr. DEMARCO. I was officially the Deputy Assistant Secretary of Labor—well, we had no Assistant Secretary of Labor. So I was the only management official at that level in LMSA.

Chairman NUNN. Did you give the report to Ms. Clauss?

Mr. DEMARCO. I do not recall giving Ms. Clauss a copy of the report.

Chairman NUNN. You do not?

Mr. DEMARCO. No.

Chairman NUNN. Did you give anybody a copy of the report?

Mr. DEMARCO. The report that I had I gave to Under Secretary Brown.

Chairman NUNN. Did you give him the attachments, too, the interviews?

Mr. DEMARCO. It would have been a customary practice for me to do that. I am reasonably sure I not only gave him the whole report, but an extra copy of the memorandum itself.

Chairman NUNN. But you think you gave Assistant Secretary Brown a copy of the report and the attachments?

Mr. DEMARCO. Right. I can't testify that I know that he read the whole report.

Chairman NUNN. I understand that. I am not asking that. Did you give anybody else a copy of the report?

[At this point Senator Cohen withdrew from the hearing room.]

Mr. DEMARCO. At that time?

Chairman NUNN. At that time or any other time.

Mr. DEMARCO. At a later date I gave a copy to my new superior, Mr. Hobgood.

Chairman NUNN. Did you give Mr. Hobgood a copy of the attachments?

Mr. DEMARCO. It is my recollection that I did.

Chairman NUNN. Did, or did not?

Mr. DEMARCO. That I did, that I gave him the whole thing that was left in the file there.

Chairman NUNN. Did you give anyone else a copy of the report, or the attachments, other than Mr. Brown and Mr. Hobgood?

Mr. DEMARCO. Not that I recall.

Chairman NUNN. Do you know of anyone else from your own personal knowledge that has had a copy of the report or the attachments, or both?

Mr. DEMARCO. As of today?

Chairman NUNN. Well, let's say as of the approximate period of 1979, during that year, before these hearings came up.

Mr. DEMARCO. No.

Chairman NUNN. Did you ever refer the report of the allegations to the Inspector General's Office?

Mr. DEMARCO. The allegations—first of all, all the allegations that were brought to my attention during the course of the inquiry were discussed between myself and Mr. Crino.

Chairman NUNN. Could you pull that mike up a little bit? You are fading out.

Mr. DEMARCO. I am sorry, sir.

All of the allegations that surfaced during the course of Mr. Kotch's and Mr. Crino's inquiry were discussed with me. Some of them—

Chairman NUNN. Discussed with you and who else?

Mr. DEMARCO. They were discussed with me.

Chairman NUNN. By Mr. Kotch and Mr. Crino?

Mr. DEMARCO. Yes.

Chairman NUNN. All right. Go ahead.

Mr. DEMARCO. Some of them were obviously scurrilous, petty, vicious. Some did not have, as far as I was concerned, a major impact as far as being a crime. And as Mr. Crino testified yesterday, on those kinds of matters, I referred Mr. Crino to advise the Inspector General staff, which was in the same office that I was.

Mr. Crino did indicate that he did go to—I have forgotten who he mentioned yesterday. But I do not know what he turned over.

Chairman NUNN. You told Crino to go to the Inspector General and acquaint him with—

Mr. DEMARCO. We were in the same office. And I told him that on these kinds of things he should report to Dick Ross.

Chairman NUNN. You told Mr. Crino to do that?

[At this point Senator Cohen entered the hearing room.]

Mr. DEMARCO. That is my recollection, yes. But they were the kinds of things that were not the major issues that we finally dealt with in the report.

Chairman NUNN. Are you aware Mr. Crino did not indicate that he had turned over anything to the Inspector General's Office but, rather, he thought that you were going to do it?

Mr. DEMARCO. I recall his specifically saying yesterday that he did approach Mr. Ross, but I don't remember—

Chairman NUNN. Your testimony here today is under oath that you asked Mr. Crino to make known certain matters to the Inspector General's Office on the Kotch-Crino report and the attachments.

Mr. DEMARCO. My testimony under oath, Senator, is that I recall indicating to Mr. Crino, "Those kinds of issues we will discuss—you will discuss with Mr. Ross." Now I can't remember specifically what those issues were because there were a lot of petty—

Chairman NUNN. Did you leave it up to Mr. Crino's judgment as to what to make known to the Inspector General's Office?

Mr. DEMARCO. No. Mr. Crino and Mr. Kotch and I talked jointly, and I—

Chairman NUNN. Did you tell Mr. Kotch the same thing or was he—

Mr. DEMARCO. It was kind of a group meeting.

Chairman NUNN. Mr. Kotch was told—you told Mr. Crino in Mr. Kotch's presence then. Do you recall that?

Mr. DEMARCO. I think it was, yes, in—it would have been in—

Chairman NUNN. Did you leave it up to him as to what should be made known to the Inspector General or did you point out particular areas he should make known?

Mr. DEMARCO. I cannot recall, Senator. It would have been the subjects that we were talking about on those particular mornings.

Chairman NUNN. Did you ask anyone to make any of this information available to the Department of Justice or did you, yourself, make it available to the Department of Justice?

Mr. DEMARCO. No; I did not ask anybody and I did not.

Chairman NUNN. Mr. DeMarco, in the summer of 1979, did Mr. Dick Ross contact you to tell you that a member of the Inspector General's Office has asked him about the Kotch-Crino inquiry?

Mr. DEMARCO. I have no recollection of any inquiry from the Inspector General's Office.

Chairman NUNN. Or from Mr. Dick Ross?

Mr. DEMARCO. Or from Mr. Dick Ross on that subject.

Chairman NUNN. You don't recall ever having talked to Mr. Ross relating to the Kotch-Crino report?

Mr. DEMARCO. That is right.

Chairman NUNN. Did you ever tell Mr. Ross there was only an oral report given and that the notes had been destroyed, or words to that general effect?

Mr. DEMARCO. Absolutely not.

Chairman NUNN. Are you sure of that?

Mr. DEMARCO. Yes.

Chairman NUNN. So your testimony is Mr. Ross never asked you for any copy of that report, or even asked you about it? You had no conversation with him about the Kotch-Crino report?

Mr. DEMARCO. I recall no conversation at all about the Kotch-Crino report with Mr. Ross.

Chairman NUNN. In January 1980, did Mr. Bob Gallagher or Ms. Monica Gallagher tell you that a member of the Inspector General's Office had been asking about the Kotch-Crino report, had asked about it?

Mr. DEMARCO. I have no recollection of that either, Senator.

Chairman NUNN. Did you know that Ms. Monica Gallagher had asked Mr. Kotch and Mr. Crino for a copy of the report and her report of interview?

Mr. DEMARCO. I do not recall.

I do recall that there was some particular problem involving—as I recall, there was a problem as to Ms. Gallagher's impression of the strength with which they were questioning her, whether they were kind of intimidating her.

Senator COHEN. Mr. Chairman, could I clarify one thing? Mr. DeMarco, when you say you don't recall, does that mean the answer is "no; I never said that," or "I don't recall ever having said that"? In other words, is it "I don't recall, I don't have any recollection?" It could in fact have taken place, but not to your recollection. Is that what you are saying, or that it did not occur, that "Mr. Ross never did ask me for this"?

Mr. DEMARCO. There are two parts of that. I do not recall Mr. Ross ever questioning me about that report.

Senator COHEN. If he said that he did, he would not necessarily be lying or in error.

Mr. DEMARCO. Right. However, I did say that I would not have said the report was destroyed or that whatever—

Chairman NUNN. That it was an oral report.

Mr. DEMARCO. Because certainly the Under Secretary is still there, Ms. Clauss is there, they all knew it wasn't.

Very frankly, as a personal observation, I was in the IG's office. It is a very aggressive office. They wouldn't have stood for an answer like that. I am sure one of them would have come to me and said we are doing something officially here, give me the oral briefing if that is all it is. I never got any requests like that.

Senator COHEN. I just wanted to clarify that point when you say you don't recall as opposed to saying it never happened.

Mr. DEMARCO. I am sorry, Senator.

Chairman NUNN. You are saying Mr. Ross could have contacted you?

Mr. DEMARCO. I don't recall he contacted me.

Chairman NUNN. You don't believe he did?

Mr. DEMARCO. I don't believe he did.

Chairman NUNN. Did you ever give Ms. Monica Gallagher a copy of the report of interview?

Mr. DEMARCO. I am not—I can't recall that Ms. Gallagher ever made a request or that someone said that she wanted one, to tell the truth.

Chairman NUNN. You don't recall that?

Mr. DEMARCO. No; I do remember that reports of interview were made at my request prior to the completion of the Crino-Kotch report because I wanted to see what the demeanor, so-called demeanor of those interviewers were at that time and what kind of questions they did ask.

Chairman NUNN. When Mr. Kotch and Mr. Crino left Washington, did they tell you that there was an area concerning criminal misconduct regarding interference with the investigation that was still pending and that they intended to come back and pursue that matter?

Mr. DEMARCO. I don't know if it occurred in the manner you just presented.

Chairman NUNN. You tell us.

Mr. DEMARCO. I do recall what I told Mr. Crino that he may have to be coming back because there was an area that I was not, in my professional judgment, quite sure as yet of having been resolved.

The information I had to date indicated that the person involved was at a place he should have been at, had a perfect right for being there, and that what the so-called interference was about was being explained.

Chairman NUNN. But you do recall saying that there was a matter that they might have to come back on?

Mr. DEMARCO. Yes.

Chairman NUNN. At the time they left Washington—

Mr. DEMARCO. I am not too sure I indicated they both would be coming back, but I do specifically remember I told Mr. Crino.

Chairman NUNN. Kind of left it, that that matter was not completed?

Mr. DEMARCO. There was no resolution at that particular time.

Chairman NUNN. Thank you. Senator Cohen?

Thank you, Mr. DeMarco.

Mr. DEMARCO. Is that all?

Chairman NUNN. Yes.

Mr. Secretary, I know you have been here awhile. We had no way of knowing how long these particular dialogs with you were going to go on. We would be glad for you to come back up if you would like to. We have a number of questions to pose to the various members of your key staff here as well as you. If you would like to be up here as a panel, that would be fine with us.

Secretary MARSHALL. All right.

Chairman NUNN. Mr. Secretary, I believe you were sworn in yesterday, were you not, with all the others?

Secretary MARSHALL. Yes, I was, Mr. Chairman.

Chairman NUNN. Is Mr. Bob Gallagher here?

Ms. GALLAGHER. He will be back in 1 minute, Senator.

Chairman NUNN. All right. Fine.

Is Mr. Perkins here?

Ms. GALLAGHER. Yes, sir.

Mr. MUSE. Could I have a moment? Mr. Perkins may join this gathering, if that is OK.

Chairman NUNN. I didn't understand.

Mr. MUSE. Mr. Perkins may join this gathering if that is OK with the committee.

Chairman NUNN. Is that what you prefer?

Mr. MUSE. I think so.

Chairman NUNN. Mr. Secretary, while we are waiting on Mr. Gallagher, he is here now, I will ask you briefly: Did you hear the testimony this morning about the disposal of that document?

Secretary MARSHALL. I came in during Mr. DeMarco's testimony. Yes.

Chairman NUNN. Did you hear him say the way he had disposed of that report?

Secretary MARSHALL. Yes; I did.

Chairman NUNN. What is your impression of that?

Secretary MARSHALL. My impression is that as the Solicitor said, there is nothing wrong with that. I might not have done it that way. I think, if it was a sensitive document, I would have first determined what the correct disposal procedure was. I think we ought to do that, and certainly we don't want to do anything that is illegal. I don't interpret that action as being illegal. I have complete confidence in my Solicitor. I found her to be a very good lawyer and have good judgment about these things. So, I would support her position completely.

Chairman NUNN. Let me ask you this: Regarding—forgetting the legality of it—what do you think about throwing a legal document away that had this sensitive material in it?

Secretary MARSHALL. I don't know what happens to our waste baskets.

Chairman NUNN. Mr. DeMarco doesn't either.

Secretary MARSHALL. I don't know whether they are burned immediately or shredded or whatever. Somebody might know that. I think it is a think we ought to look into, though, and we will. I think both issues are very important: One is what we do. Regarding disposition of copies of documents, I have always assumed that copies of documents could be disposed of and that whoever took care of those documents would understand the legal procedures, the legal requirements for doing that. We need to review that to be sure about it.

I again would rely on the Solicitor's Office to look into that, and give us a recommendation on it. I intend to ask the Solicitor to do that.

Chairman NUNN. Thank you. I want to ask counsel to begin the questioning of Mr. Gallagher in the hopes that we can accelerate this part of the questioning. It should not take too long. I will ask counsel to go ahead with that.

Mr. STEINBERG. Mr. Gallagher, how long have you worked with the Department of Labor?

Mr. GALLAGHER. Since March 1976.

Mr. STEINBERG. Did there come a point in time in your career at the Labor Department when you were assigned primarily to the Central States investigation by the Department of Labor?

Mr. GALLAGHER. Yes, sir.

Mr. STEINBERG. When was that?

Mr. GALLAGHER. I had some contact with the Central States investigation in late 1976 or early 1977 but I wasn't assigned to work primarily on that until late 1977, September 1977, I believe it was.

Mr. STEINBERG. When you were assigned to the Teamsters investigation who was in charge of that investigation?

Mr. GALLAGHER. In 1977 Mr. Lippe was in charge of the investigation.

Mr. STEINBERG. At some point in time in that year did the acting director, did the director, Mr. Lippe, leave?

Mr. GALLAGHER. I believe Mr. Lippe left in October 1977.

Mr. STEINBERG. Who was then appointed to that position?

Mr. GALLAGHER. Norman Perkins became acting director of the SIS at that time.

Mr. STEINBERG. Mr. Gallagher, were you interviewed by Mr. Kotch and Mr. Crino on April 23, 1979?

Mr. GALLAGHER. Yes; I believe that was the date.

Mr. STEINBERG. Have you had an opportunity to review that report of interview and is that report of interview generally accurate?

Mr. GALLAGHER. I have reviewed the report of interview. I think that they did a very good job in making a report of what I said. There are a number of specific statements where I think they summarized or drew some of their own conclusions that I would make a little bit differently.

Mr. STEINBERG. Mr. Gallagher, has anyone in the Solicitor's Office reviewed the areas of the pension fund investigation other than those transactions that are set forth in your civil litigation?

Mr. GALLAGHER. We have reviewed a very large number of asset management transportations in connection with the litigation. I couldn't actually say how many, more than 100 certainly.

Mr. STEINBERG. Outside of those areas, I suppose those are areas you are referring to that are either involved in your civil litigation or connected with it, the other areas such as benefits, expenses, trustees' expenses, and so forth; has the Solicitor's Office reviewed those other areas?

Mr. GALLAGHER. At the time of the interview by Mr. Kotch and Mr. Crino I was unaware of any substantial work that had been done by the SIS in those other areas. Subsequently, I have learned that they had done some work and I am sure I have seen some of the papers that they generated.

Mr. STEINBERG. The question was: As of that time had the Solicitor's Office reviewed any of these other areas?

Mr. GALLAGHER. To the best of my knowledge, no; not in any significant way.

Mr. STEINBERG. Did the filing of the lawsuit in the pension fund case in effect shut the doors on the trustees and practically speaking have the effect of limiting the areas which would be pursued or investigated?

Mr. GALLAGHER. Practically speaking, I think that with the filing of the lawsuit against former trustees we are going to be getting a judg-

ment for all we can expect to recover from them and it probably means that we won't be going back into the expenses of the old trustees and those kinds of things unless there is some significant new evidence.

Mr. STEINBERG. The question of whether or not you recover remains to be seen through the years. The question is: Did the filing of the litigation in effect shut the doors on the trustees, so to speak?

Mr. GALLAGHER. I think I told you what my view of that is. It may be that something will develop that will warrant us taking some further action against the old trustees. At this point I don't think we have; I don't think we are going to do that right now.

Mr. STEINBERG. Does ERISA permit the Department of Labor to proceed against third parties who take money out of trust funds in a fraudulent manner, that is, the borrowers?

Mr. GALLAGHER. Under some circumstances. Yes, sir.

Mr. STEINBERG. Why weren't third parties such as Glick, Shenker, et cetera, investigated or charged in a civil lawsuit at the Labor Department?

Mr. GALLAGHER. I can tell you, Mr. Steinberg, that that was something that we had considered, that I know was considered, at the time the lawsuit was brought. It was decided not to do that at that time. I don't think I know all of the reasons, and I don't think it would be appropriate to go into, in a public session, all of the reasons that we may or may not bring such an action in the future.

Mr. STEINBERG. Did it become understood at one point in time in the Teamsters investigation that the primary function of SIS was limited to supporting litigation and doing nothing else?

Mr. GALLAGHER. There was a period of time after the lawsuit was filed when it was the primary function of SIS to support the lawsuit. That is correct.

Mr. STEINBERG. Are you aware that the Kotch-Crino report and GAO reported that that SIS function was limited in approximately December 1976?

Mr. GALLAGHER. I have heard that allegation. Yes.

Mr. STEINBERG. At the time the lawsuit was filed in February 1978 was there a considerable amount of evidence remaining in the hands of third parties, that is, people outside of the fund?

Mr. GALLAGHER. Yes; certainly there was. We have been attempting to get that through discovery.

Mr. STEINBERG. Is there any reason that this work wasn't completed through investigative subpoena prior to the filing of the civil litigation?

Mr. GALLAGHER. Mr. Steinberg, you have our memorandum of January 17, 1978, that goes into the areas of consideration that were before us in determining to file a lawsuit at that time. I prefer not to discuss those reasons in public session.

Mr. STEINBERG. Mr. Gallagher, since the inception of the health and welfare investigation have there been severe problems with it?

[At this point, Senator Cohen withdrew from the hearing room.]

Mr. GALLAGHER. I would like to distinguish between litigation and the investigation. There have been problems in both. We had a problem getting a subpoena enforced with respect to the health and welfare investigation. We had procedural setbacks in the litigation that we have overcome.

Mr. STEINBERG. Mr. Gallagher, is it your opinion that with respect to the Teamsters investigation the Solicitor's Office could have done a better and more aggressive job if resources—more resources and experienced people were used in that investigation?

Mr. GALLAGHER. My statement to Mr. Kotch and Mr. Crino in that regard was directed at the litigation. I don't have direct knowledge of the problems that existed with the investigation before we brought suit.

Mr. STEINBERG. Mr. Gallagher, I refer you to your executive session testimony where you were asked a question: "Did you tell Mr. Kotch and Mr. Crino that the Solicitor's Office could do a better and more aggressive job, if more money and more experienced people were used in the investigation." Response: "Yes; I did. I said that."

Is that accurate?

Mr. GALLAGHER. I don't quarrel with the statement but the part of the statement that limits the question to the Solicitor's Office also limits it to the litigation, since the Solicitor's Office was not directing the investigation.

Mr. STEINBERG. The next question you were asked: "By that you meant that you would have preferred to have more experienced lawyers assist you in the investigation of the Teamsters fund?" Answer: "Yes, sir. That is true."

Mr. GALLAGHER. Again, I was referring to the litigation. There were no lawyers involved from the Solicitor's Office in the investigation during the time that I was involved with the Central States matter.

Mr. STEINBERG. You are aware that in the Kotch-Crino report and numerous members of the Department of Labor have testified that for all intents and purposes the Solicitor's Office was running the investigation?

Mr. GALLAGHER. I have heard that, Mr. Steinberg. I don't believe that is true.

Mr. STEINBERG. Did you tell your superiors that you would have preferred to have more resources and more experienced people to pursue the Teamsters investigation and litigation?

Mr. GALLAGHER. I was referring to the litigation. Yes; that is true.

Mr. STEINBERG. Did they comply with your requests?

Mr. GALLAGHER. Yes, sir.

Mr. STEINBERG. They did.

Mr. GALLAGHER. Yes.

Mr. STEINBERG. When?

Mr. GALLAGHER. Well, we gradually built up the number of lawyers who had been working on the case since it was filed. With the reorganization we now have I think a very adequate organization to deal with the case. We have got nine lawyers, eight auditors, and an adequate support staff.

Mr. STEINBERG. The reorganization was in May 1980?

Mr. GALLAGHER. That is correct.

Mr. STEINBERG. Your interview was in April 1979?

Mr. GALLAGHER. Yes, sir.

Mr. STEINBERG. The lawsuit was filed in February 1978?

Mr. GALLAGHER. Yes; that is right.

Mr. STEINBERG. So, it took until May 1980 to get adequate resources?

Mr. GALLAGHER. I didn't say that. I said we have been gradually building up since the time the lawsuit was filed.

Mr. STEINBERG. Was the staff which you had assigned to the Teamsters Central States investigation and litigation overworked and overburdened, consequently, did not devote enough time to SIS and the Teamsters investigation?

Mr. GALLAGHER. Again, my answer was with respect to the litigation and it is true we all had to work very hard including the auditors who were assigned to the litigation support functions from the SIS.

Mr. STEINBERG. Did you inform your superiors of that?

Mr. GALLAGHER. Yes; I did.

Mr. STEINBERG. In the formative stages of SIS that unit was modeled after the civil rights division, strike force, SEC concept of having attorneys and investigators pursuing the investigation together and ultimately filing the litigation following it all the way through. Is that accurate?

Mr. GALLAGHER. That is my understanding, yes, sir.

Mr. STEINBERG. At one point in time that so-called model that SIS is fashioned after was discontinued apparently after Mr. Lippe left. Is that accurate?

Mr. GALLAGHER. I don't have direct knowledge but that is my understanding.

Mr. STEINBERG. Were you unsatisfied with the new relationship; that is, the strictly lawyer-client relationship that the Solicitor's Office had with SIS? Was that the most efficient and effective way to pursue the Teamsters Fund investigation?

Mr. GALLAGHER. I was unsatisfied in the sense that I didn't have the control over—excuse me, the litigation support resources; direct control that I thought would be helpful.

Mr. STEINBERG. Since your assignment to the Teamsters Fund investigation have you been concerned with the leadership management of SIS?

Mr. GALLAGHER. No; there have been areas that I thought could be improved and I think they have been with the reorganization.

Chairman NUNN. Have you been concerned even though it has been abolished?

Mr. GALLAGHER. I beg your pardon, Senator?

Chairman NUNN. The SIS has been abolished. Isn't that right?

Mr. GALLAGHER. That is correct.

Chairman NUNN. But you never have been concerned about leadership and management of it?

Mr. GALLAGHER. Yes; I was concerned about the management and responsiveness of SIS and I think the abolition of SIS in bringing those resources under the direct control of the lawyers in charge of the case for litigation purposes is an important solution to that problem.

Chairman NUNN. That clarifies it. I thought your answer was you have not been concerned about it.

Mr. STEINBERG. You are stating that your concerns were satisfied in May 1980 when the reorganization took place?

Mr. GALLAGHER. That was the dramatic change that made, I think, a very effective organization. There were some changes that were made along the way that helped.

Mr. STEINBERG. You did inform this subcommittee and Mr. Kotch and Mr. Crino that throughout these years leading up to the reorganization you were concerned about the leadership and management of SIS; did you not?

Mr. GALLAGHER. Yes.

Mr. STEINBERG. Mr. Gallagher, why was no permanent Director or Chief Investigator appointed to SIS for approximately a 3½-year period?

Mr. GALLAGHER. I don't know.

Senator PERCY. Could we ask the Secretary to answer that question?

Secretary MARSHALL. One of the basic reasons for it was that we were considering what to do with the management of SIS.

We had an acting director and I had asked the Under Secretary to monitor that much more carefully and to see what we could do to strengthen the management of it. We were also heavily involved in the preparation for the lawsuit, until the lawsuit was filed and the continuing litigation thereafter. Regarding the question of what we would do with the SIS, there were various recommendations that were being made until we finally resolved that issue.

Chairman NUNN. Mr. Secretary, how do you strengthen the management by having a temporary acting director for 3½ years?

Secretary MARSHALL. The de facto management that we were relying on were the Assistant Secretary in charge of LMSA, the Solicitor, and the Under Secretary, and they were keeping me informed about the development.

Senator PERCY. In industry I had a rule for organization and management that there had to be accountability after 3 months for any supervisory personnel functioning in an acting capacity. Six months was an absolute deadline. I can't conceive of an organization operating for several years under an acting director.

Secretary MARSHALL. It was 2½ years.

Senator PERCY. The fact it was acting shows either total indecision or no confidence in the person. If so there has to be some effort to replace that person. But to have it hanging loose like that, with all the attendant uncertainty that it creates, I just can't imagine that. The interviews with SIS staff, attached to the Kotch-Crino report, most definitely reflect that uncertainty.

Secretary MARSHALL. It was 2½, not 3½ years and the people who were actually doing the work had their specific assignments and the work went on while we evaluated SIS to decide what to do with it.

Chairman NUNN. Didn't you have a memorandum recommending substantial revision and changes in the SIS in April 1978?

Secretary MARSHALL. Yes. We had ongoing discussions about that. I decided not to accept that memorandum at that time, and the real question was whether the SIS could function as it had been. There was some debate about that, or whether we needed to change. What we finally did after our inability to solve the problems through other means was, to have the internal report that we had done. This indicated two problems, one, a need for a strong management, and two, to clarify the role between SIS and the Solicitor's Office. Then we decided to separate out the functions and put one under LMSA, one under the Solicitor's Office.

Chairman NUNN. Who was running the investigations during this 2½-year period? Who was in charge of the investigation?

Secretary MARSHALL. Mr. Perkins was.

Chairman NUNN. You would know that, wouldn't you?

Secretary MARSHALL. Mr. Perkins was in charge of the investigation.

Chairman NUNN. What were his credentials as an investigator?

Secretary MARSHALL. I will let the Solicitor respond to that.

Chairman NUNN. Mr. Secretary, this is the man you had running what you described in your confirmation and afterward as one of the most important investigations, one you were going to give personal attention to. Do you know the credentials and background of Mr. Perkins?

Secretary MARSHALL. I have not gone into great detail about those. The way I operate is to assign responsibility to a particular person and then leave it up to them to select their people. I have complete confidence, had complete confidence in the Under Secretary, and his ability to select the right kind of staff. He was to be mainly responsible for that operation.

Chairman NUNN. Who do you want to answer that question about the man's credentials who headed up this investigation?

Secretary MARSHALL. I will let, since the Under Secretary is not here, I will let the Solicitor answer.

Ms. CLAUSS. I think there were several periods, Senator. I am not sure—

Chairman NUNN. Let's talk about the 2½-year period when you had an acting director.

Senator PERCY. October 1977 to May 1980.

Chairman NUNN. What were the credentials Mr. Perkins brought to the 2½-year responsibility and what I think everyone would acknowledge was an awesome responsibility?

Ms. CLAUSS. What I am suggesting is that during that 2½ years there were various people who were Mr. Perkins' supervisors who were very active in the investigation and they were—

Chairman NUNN. What I am asking now is Mr. Perkins' credentials. We can get into all of this later.

Ms. CLAUSS. He has excellent credentials but I cannot at this point give you his vitae.

Chairman NUNN. Do you know anything he had done before assuming his role in the Labor Department?

Ms. CLAUSS. Yes; he came to us as a very experienced auditor. He was the chief auditor in charge of the entire investigation at the time—

Chairman NUNN. Had he ever run an investigation before? Had he ever been an administrator?

Ms. CLAUSS. I am sorry. I don't know whether he had been an administrator. He was chosen for his chief auditor job long before we came into office.

Chairman NUNN. There is a significant difference between being chief auditor and being the man administering a very large investigation like this.

Ms. CLAUSS. What I am suggesting is that after Mr. Lippe left, Mr. Burkhardt and his executive assistant, Mr. Thompson, Wynn

Thompson, I believe, and Mr. Brown and Mr. Lagather were very active in the day to day weekly reports of the operation. At some later point—

Chairman NUNN. That contradicts the Kotch-Crino report.

Ms. CLAUSS. I can only tell he—

Chairman NUNN. Directly. That is not what they said.

Ms. CLAUSS. I can only tell you my perception.

Chairman NUNN. We don't want to get off into all of that. I guess nobody here, we will talk to Mr. Perkins later, but nobody here, Mr. Secretary, can tell us what Mr. Perkins' credentials were to run an investigation of this kind. You cannot. Is there anybody else that you would like to ask to answer that question?

Secretary MARSHALL. Does anybody know Mr. Perkins' credentials?

Mr. GALLAGHER. I do.

Secretary MARSHALL. Mr. Gallagher knows.

Mr. GALLAGHER. Mr. Perkins was an investigator with a responsible position at SEC before he came to the SIS. He worked in a supervisory capacity with the SIS for more than a year as chief auditor and I believe he was recommended by Mr. Lippe on his departure to take the acting position.

Chairman NUNN. Mr. Gallagher, I will ask Mr. Steinberg to pose a couple of questions to you on that.

Mr. STEINBERG. Mr. Gallagher, when you were asked in executive session concerning the Acting Director of SIS, and you were asked what was his background your answer was, "I believe he was an auditor or investigator with the SEC before he came to the Labor Department."

Mr. GALLAGHER. Yes; that is right.

Mr. STEINBERG. Had he ever been in charge of any type of massive investigation like the Teamsters Fund?

Mr. GALLAGHER. I don't know.

Mr. STEINBERG. Does anyone know?

Secretary MARSHALL. I assume Mr. Perkins knows.

Chairman NUNN. Mr. Secretary, this was one of the highest priorities in your whole Department.

Secretary MARSHALL. That is the reason I had the Under Secretary working on it is because it was one. He reported directly to me on a continuing basis. But that doesn't mean that I went personally and selected all the personnel all down through the hierarchy. My man headed it up.

Chairman NUNN. Your man headed it up.

Secretary MARSHALL. Well, the person I looked to, to deal with the problem, was the Under Secretary. We met frequently with the Solicitor, the Assistant Secretaries and others. It is hard to give a matter higher priority than to assign it to your Under Secretary.

Chairman NUNN. That is great if he does indeed conduct the direction of the investigations. But the Kotch-Crino report, which you said yesterday was done by credible people, came to exactly the opposite conclusion. He didn't fulfill that responsibility according to the Kotch-Crino report. There was just abundant evidence on that.

Secretary MARSHALL. I would like to respond to that. I think one of the problems, of course, in a lot of these things is that people have

been asked who have limited information about things. I don't know what Bob Brown's response to that question was or if he was asked about it. But I certainly never was—nobody asked me about my perception of that process. I think that the difficulty is that in many of these things what we have is the opinions of people who have limited information and we cannot assume that that therefore is fact.

Chairman NUNN. There are more people that have limited information in the Labor Department than in most Departments.

Secretary MARSHALL. I am not sure you have the accurate information to make that determination, Mr. Chairman.

Chairman NUNN. Well, I am getting it, Mr. Secretary.

Secretary MARSHALL. Have you done this same kind of investigation in other Departments?

Chairman NUNN. I would hope we don't have these same kinds of problems emerge in other Departments.

Secretary MARSHALL. If you haven't done that, I would—

Chairman NUNN. Mr. Secretary, you testified over and over before Congress this was a top priority of yours.

Secretary MARSHALL. It is.

Chairman NUNN. We have had testimony this morning from a man who for 2½ years was Acting Director. There was no real Director on it, and you don't even know his background. Nor can anyone here at the table tell us his background, except Mr. Gallagher.

Secretary MARSHALL. We have had people tell you his background. But that is a far cry from saying there is more misinformation, lack of communication, in the Labor Department than any other Department.

Chairman NUNN. I didn't say that. I said there is less information available. We have had a very difficult experience with the information.

Mr. Steinberg, would you ask Mr. Gallagher a couple of other questions on his evaluation.

Mr. STEINBERG. Before I proceed, first of all, Mr. Gallagher and Mr. Perkins, obviously we are not attempting to demean or denigrate Mr. Perkins' own abilities because, after all, he was thrust into his position. However, Mr. Gallagher, although Mr. Perkins may have been a competent auditor, shortly after he became assigned to the Teamsters investigation, did you determine in your own mind that it was beyond Mr. Perkins' capabilities to control that investigation?

Mr. GALLAGHER. I came to my own personal opinion that the job of managing the SIS and all of the different facets of its investigations, the support, the pension fund litigation and litigation support, was more than one person could handle and it was more than Mr. Perkins could handle.

Mr. STEINBERG. Well, in that regard, you were asked in executive session: "Is it a fact that quite shortly after you became knowledgeable of Mr. Perkins, you decided for yourself that he was not capable of directing the investigation of this sort, isn't it?" Answer: "That was my personal opinion."

Mr. GALLAGHER. Yes; and by investigation I meant the whole operation.

Mr. STEINBERG. Mr. Gallagher, did you bring that to the attention of your superiors?

Mr. GALLAGHER. Yes; I did.

Mr. STEINBERG. Was anything done about that?

Mr. GALLAGHER. Yes; things were done about it.

Chairman NUNN. How long did it take?

Mr. GALLAGHER. It took until May to have the major reorganization. But there were things that were done about it in the meantime to get more responsiveness to the needs of the litigation from the SIS.

Mr. STEINBERG. Mr. Gallagher, do you personally know whether these areas that SIS had investigated and found to be areas to have potential abuse that were outside of your civil litigation, do you know whether they were referred to the Department of Justice?

Mr. GALLAGHER. First of all, I don't know very much about them. I don't know that there were abuses found. I believe, I don't have any direct information, but I understand that Mr. Lippe did provide a good deal of information on trustee expenses and the like to the Department of Justice.

Mr. STEINBERG. What about after Lippe left?

Mr. GALLAGHER. After Mr. Lippe left, my recollection is that, at least after the lawsuit was filed, when I have direct knowledge, that everything that we came upon in the litigation support aspect of the SIS operations, which was primarily what they were doing, that would, in our judgment, have been of any interest to the Justice Department, was referred to the Justice Department.

Mr. STEINBERG. But these other areas, such as trustee expenses, allowances, benefits, and so forth, were areas you weren't familiar with.

Mr. GALLAGHER. As I said to Mr. Kotch and Mr. Crino, I had almost no knowledge of any of those areas. That was in April 1979. So I don't know what may have gone to the Justice Department with respect to those areas.

Mr. STEINBERG. Mr. Gallagher, when SIS was still in existence, a work group was instituted so that the Department of Labor, the Department of Justice, and IRS could meet on a regular basis to discuss among other things the Teamster investigation. Was Mr. Perkins invited to attend these work group sessions with the Department of Justice and IRS?

Mr. GALLAGHER. Well, he didn't attend, so I can only assume that Mr. Ballard didn't invite him to attend. I did brief him on the content of the work groups meetings from time to time.

Mr. STEINBERG. Mr. Perkins was the Acting Director of SIS?

Mr. GALLAGHER. Yes; he was.

Mr. STEINBERG. Yet he did not attend these work group sessions?

Mr. GALLAGHER. He did not attend. Maybe he did attend one or two. I don't believe he did, though.

Mr. STEINBERG. Mr. Gallagher, besides the management review portion of the Kotch-Crino Report, that report also revealed allegations of criminal conduct amounting to interference with the investigation, did it not?

Mr. GALLAGHER. I am aware of the allegations you are referring to. I think they are contained primarily in the attachments to the report.

Mr. STEINBERG. Mr. Kotch and Mr. Crino were supposed to come back and complete this investigation, yet they testified they did not. Is that accurate?

Mr. GALLAGHER. As far as I know, they did not come back.

Mr. STEINBERG. Is it accurate to state that no internal Department of Labor investigation was performed to finally resolve these issues?

Mr. GALLAGHER. As far as I know, I did what was done, and what I did was to make inquiries, including inquiries of the Department of Justice attorney who made the allegation and other staff members who made the allegation and the person against whom the allegations were made.

I was satisfied that it was really a misunderstanding, and the Department of Justice appeared to be satisfied as well.

Mr. STEINBERG. Are you aware now that apparently the Justice Department and other persons who made these allegations state that they were not fully resolved?

Mr. GALLAGHER. I was not aware of that. Hearing it from you is the first time I have heard that.

Mr. STEINBERG. We discussed it before, though.

Mr. GALLAGHER. Yes.

Mr. STEINBERG. Are you aware that Mr. Kotch and Mr. Crino had in fact gathered Department of Labor documents that would tend to support these allegations?

Mr. GALLAGHER. I am aware of the documents you are referring to; yes.

Mr. STEINBERG. Based on what you now know and what you have heard at these hearings, were there other steps that should have been taken by the Department of Labor to follow through on these allegations?

Mr. GALLAGHER. Yes; since you have told me that the Justice Department was not satisfied, I thought they were, I would have done whatever I could to try to see that they were satisfied.

Mr. STEINBERG. Mr. Chairman, in that regard, we have a sealed affidavit for the record concerning this matter.

Chairman NUNN. It will be admitted as an exhibit without objection. [The document referred to was marked "Exhibit No. 22," for reference, and is retained in the confidential files of the subcommittee.]

Mr. STEINBERG. Mr. Gallagher, did you ever see the Kotch-Crino report prior to August 21, 1980?

Mr. GALLAGHER. I am trying to reconstruct the dates in my mind, Mr. Steinberg. The first time I saw it, I believe, was the Friday following your interview with Mr. DeMarco, on which I delivered it to you.

Mr. STEINBERG. Prior to that general time period had you ever seen it?

Mr. GALLAGHER. No; I had not.

Mr. STEINBERG. Were you ever asked by anyone in the Inspector General's Office about the report or the Kotch-Crino inquiry?

Mr. GALLAGHER. I had, as I told you in executive session, I had no recollection of any inquiry about the Inspector General's Office. Mr. Repp's affidavit says that he asked me and Monica Gallagher about that. I don't deny that. We had a very long conversation with him about the Central States investigation and I probably did say what he said I said.

Mr. STEINBERG. But in your executive session testimony you said you didn't remember any contact?

Mr. GALLAGHER. That is correct. I did not remember the contact with Mr. Repp until I learned about his affidavit.

Mr. STEINBERG. If he asked you, as he said he did, and you and Ms. Gallagher said there was no report, or words to that effect, you must have known since you had personally been interviewed, you had talked to the two individuals, that a report was in fact being prepared.

Mr. GALLAGHER. As I told you, I think I assumed that there was a report at some point from the fact that they had conducted these interviews.

Mr. STEINBERG. Is there any reason that neither you nor Ms. Gallagher volunteered to the individuals representing the Inspector General's Office that he should look in a certain place or go to a certain person to try to attempt to obtain this report?

Mr. GALLAGHER. One reason would be that I didn't know that it existed. I didn't know who would have it if it did exist.

And there didn't seem to be any interest from Mr. Repp or enough interest to warrant further inquiries. He did ask for other documents, the complaint, the status report filed with the court, and some other things that we did provide him with immediately.

Mr. STEINBERG. You do suspect that bringing two top field supervisors into Washington on per diem for what was it, 11 weeks or some amount of time similar to that, was going to result in some substantial survey, memorandum, or briefing paper?

Mr. GALLAGHER. I assumed there would be something, yes.

Mr. STEINBERG. Mr. Gallagher, with respect to your statements to Mr. Kotch and Mr. Crino, did you tell them that Mr. Ballard, who was directly in charge of SIS, did not have enough time to devote to SIS because of his many other duties and since Mr. Lanoff had had to recuse himself from the investigation that the investigation did not receive the proper attention from his superiors?

Mr. GALLAGHER. I don't think I said I knew that Ballard didn't have enough time. I think I said I didn't know if Ballard had enough time.

Mr. STEINBERG. With that one correction, is your statement accurate?

Mr. GALLAGHER. I think I told you what I could tell you about the accuracy of the whole statement at the outset of your questioning.

Mr. STEINBERG. I am asking about that particular statement.

Mr. GALLAGHER. It is accurate that we haven't had the benefit of Mr. Lanoff's talents in this regard because he has recused himself.

Mr. STEINBERG. But the import of the statement, that is that Mr. Lanoff couldn't spend any time in it because he had to recuse himself, Mr. Ballard didn't have time for it because of his other duties and as a result the investigation did not receive the proper attention from the supervisors.

Mr. GALLAGHER. I don't believe I said it didn't receive the proper attention, but it is true that I don't know whether Mr. Ballard had enough time to spend on it and that Mr. Lanoff didn't spend any time on it.

Mr. STEINBERG. Mr. Gallagher, in the executive session you were asked if on the last page of your interview with Kotch and Crino you stated that Mr. Ballard does not have enough time to devote to SIS

because of his many other duties, Mr. Lanoff is not allowed to be involved in SIS and therefore the investigation may not have received the proper attention from that area. Is that correct?

"Answer: I don't deny that I said that or something like that."

Mr. GALLAGHER. Upon review of the Kotch-Crino report it appears that I did not say that to them or they don't say that I said that to them. So I am not sure what that adds up to, except that I did give my current impression and that was: I don't know if Ballard had enough time and I am sorry we didn't have Mr. Lanoff's abilities available.

Mr. STEINBERG. Did you also state to Mr. Kotch and Mr. Crino that you personally had misgivings about the commitment of the Department of Labor for the Teamsters Central States investigation in terms of resources for the Solicitor's Office and SIS?

Mr. GALLAGHER. I said I was worried that we didn't have enough commitment of resources. That is correct.

Mr. STEINBERG. Did you state that if you felt this was intentional you would probably quit?

Mr. GALLAGHER. Yes; I said that.

Mr. STEINBERG. Did you tell Mr. Kotch and Mr. Crino that it was unfortunate that the SIS model, that is the lawyer investigative team failed because of turf problems, jealousies and personalities?

Mr. GALLAGHER. Yes. I think I explained what I meant by that to you, that there was a feeling that the people within SIS resented their litigation support function and the lack of independence that goes along with that as opposed to wideranging investigations that aren't confined to a litigation support function.

Mr. STEINBERG. The turf problem wasn't confined in SIS, the turf problem was apparently between SIS and the Solicitor's Office. Is that accurate?

Mr. GALLAGHER. In the sense that some people in the SIS staff were dissatisfied with spending most of their time working on projects that were designed by the Solicitor's Office.

Mr. STEINBERG. Didn't the turf problem go both ways; that is, didn't the Solicitor's Office object to the separate unit in the Department of Labor which had a litigative function at one point in time?

Mr. GALLAGHER. The SIS never had a litigating function while I was involved in the Teamsters matter, that I recall. Possibly in the last days of Mr. Lippe—

Mr. STEINBERG. That wasn't the question.

Mr. GALLAGHER. I am sorry. Maybe you could repeat the question.

Mr. STEINBERG. The question was wasn't the turf problem an equal exchange between the Solicitor's Office and SIS, that is, didn't the Solicitor's Office feel that this unit which had originally been given its own litigative powers, was a threat to the Solicitor's Office?

Mr. GALLAGHER. I never felt that way, Mr. Steinberg. I was interested in seeing lawyers with a responsive litigation support operation getting the cases to trial and winning them.

Mr. STEINBERG. Mr. Gallagher, without going into the specific details of the litigation, can you bring us up to date in the pension fund and Health and Welfare litigation; that is, what has happened

to those two lawsuits as of this date? Have there been any legal decisions either in favor of or adverse to the Government?

Mr. GALLAGHER. There have been few legal decisions in the pension fund lawsuit. There was a motion to dismiss, which we opposed successfully, quite some time ago; and we are in discovery. Discovery is massive and complicated and is moving along at a reasonable pace under the circumstances. The *Health and Welfare* case, we were initially unsuccessful in getting the preliminary injunction which we attempted to get. We later had partial summary judgment entered against us. We appealed to the Seventh Circuit Court of Appeals and we were entirely successful in the Court of Appeals, a recent motion for rehearing was denied, and we are back in the district court proceeding with discovery, preparing for trial.

Mr. STEINBERG. Has there been any type of protective order entered that would limit the Teamsters Central States Pension Fund litigation?

Mr. GALLAGHER. There have been ongoing discovery battles in the *Pension Fund* case. There are several protective orders. I don't believe any of the protective orders substantially limit the scope of discovery in the case. I think what you are referring to is various attempts by the defendants to limit the case to 15 transactions rather than the broad range of transactions that we intend to reach.

That issue has not been finally resolved.

Mr. STEINBERG. Do the protective orders that were issued limit the Department of Labor's discovery to those 15 items?

Mr. GALLAGHER. Not permanently. There are two orders. One order is the magistrate's order that has been appealed to the district court judge and the district court judge has not ruled on that order.

Mr. STEINBERG. That order did what?

Mr. GALLAGHER. That order limited the case to 15 transactions.

Mr. STEINBERG. Limited the case to 15 transactions?

Mr. GALLAGHER. That is correct. It has been appealed from and has not been, the appeal has not been decided.

Mr. STEINBERG. The original theory of the case, just so we understand, was that those 15 transactions were examples of the items the Department of Labor hoped to prove at trial?

Mr. GALLAGHER. That is correct. The original and continuing theory of the case.

Chairman NUNN. Just general intention of the subcommittee, we all have a lot going on up here, Senator Percy does and I do. I know, Mr. Secretary, you do and your staff does. We planned to go until 1 o'clock and take a break. We would be back at 2. It would be a 1-hour break. Mr. Secretary, all of this interrelates and we may have questions for you off and on through this. We probably would not have all of the questions for you completed until after—we probably would get to the main part of it after lunch, this afternoon.

Secretary MARSHALL. That is fine, Mr. Chairman.

Chairman NUNN. It will be our intention to stay here today as long as necessary or early evening as necessary, to get through with this phase of it, anyway.

Does that 1 to 2 meet your—

Secretary MARSHALL. That is fine. Yes, Mr. Chairman.

Chairman NUNN. Our next witness we will be talking to will be Mr. Norman Perkins.

Mr. Perkins, have you had the oath? I don't think you were sworn in with the other witnesses, were you?

Mr. PERKINS. No, sir.

Chairman NUNN. Would you stand, please? Do you swear the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

TESTIMONY OF NORMAN EDWARD PERKINS, AUDITOR, SPECIAL LITIGATION STAFF, OFFICE OF THE SOLICITOR, U.S. DEPARTMENT OF LABOR

Mr. PERKINS. I do.

Chairman NUNN. I believe you have been informed in executive session that you have a right to have an attorney with you. Is that correct?

Mr. PERKINS. Yes, sir.

Chairman NUNN. You have that right in this public session also. Do you have an attorney with you?

Mr. PERKINS. Yes; I do.

Chairman NUNN. Could your attorney identify himself for the record?

Mr. MUSE. My name is Robert Muse, M-u-s-e.

Chairman NUNN. You are representing Mr. Perkins?

Mr. MUSE. I will be representing Mr. Perkins for this session, sir.

Chairman NUNN. Mr. Perkins, Mr. Muse is representing you for this session?

Mr. PERKINS. Yes.

Chairman NUNN. You understand you have the right to ask him questions, he doesn't have a right to testify, but he can advise you? Do you understand that right?

Mr. PERKINS. Yes, sir.

Chairman NUNN. Mr. Perkins, please state your name and present occupation?

Mr. PERKINS. My name is Norman Edward Perkins. I am currently an auditor with the special litigation staff, Office of the Solicitor, U.S. Department of Labor.

Chairman NUNN. Were you Acting Director of SIS for a period of time?

Mr. PERKINS. Yes, sir.

Chairman NUNN. When did you become Acting Director of SIS and when did you depart from that particular position in the Department of Labor?

Mr. PERKINS. I became the Acting Director of SIS, I believe, October 24, 1977, and departed that position when the SIS was disbanded in May 1980.

Chairman NUNN. May 1980. Mr. Perkins, before was interviewed by Mr. Kotch and Mr. Crino during the early part of March 1979?

Mr. PERKINS. Yes, sir.

Chairman NUNN. When you began your work at SIS, and I believe you have been with SIS as an auditor before you became Acting Director. Is that right?

Mr. PERKINS. As Chief Auditor. Yes, sir.

Chairman NUNN. How long had you been Chief Auditor?

Mr. PERKINS. I believe the date was the middle or end of June 1976.

Chairman NUNN. When did you start?

Mr. PERKINS. The middle or end of June 1976. I don't recall the exact date.

Chairman NUNN. Until the fall of 1977, you were appointed Acting Director?

Mr. PERKINS. Yes.

Chairman NUNN. What was your background prior to coming to SIS? What had you done before you went to SIS?

Mr. PERKINS. How far back?

Chairman NUNN. Just a brief résumé.

Mr. PERKINS. Beginning with my Government career, I started with the Government in 1972 as an auditor for the Postal Service. During the period of time there was a reorganization. My title was changed to Postal Inspector for a very short period of time. In November 1973, I went to work for the Securities and Exchange Commission at their Philadelphia Branch Office and served as an investigator in various levels until I went to work for the Department of Labor in June of 1976.

Chairman NUNN. In your previous work had you ever headed up any major investigation?

Mr. PERKINS. I worked on other major investigations.

Chairman NUNN. As a part of the team?

Mr. PERKINS. As a part of the team and as one of the persons who made decisions with regard to that investigation. Yes, sir.

Chairman NUNN. Had you ever been in charge of any kind of major investigation, in any of your Government work, prior to becoming head of SIS?

Mr. PERKINS. Not in charge—I consider every investigation major. Let me state there was nothing that would be as large as the Central States Teamsters investigation.

Chairman NUNN. As Chief Auditor, as auditor, do you actually head up investigations or does the auditor function as a part of an overall investigating team?

Mr. PERKINS. Are we speaking with regard to Central States, sir?

Chairman NUNN. No; in general. In the other investigations you participated in, you participated as an auditor as Chief Auditor, did you not?

Mr. PERKINS. No, sir. When I was with the Postal Service I participated in many of them as most of them, as an auditor. When I went to the Securities and Exchange Commission, my title was investigator and I performed various investigative functions with regard to the investigations that I worked on.

Chairman NUNN. How many people did you have working for you at the SEC?

Mr. PERKINS. I believe there were some cases where I had maybe two or three persons working for me at one time.

Chairman NUNN. How many did you have working for you when you were Chief Auditor at SIS? Approximately?

Mr. PERKINS. I would say as Chief Auditor, including persons on detail who had come in and were doing audit functions, between 7 and 12 people.

Chairman NUNN. How many people did you have working for you when you were Acting Director of SIS, approximately, again? I am not trying to pin you down precisely.

Mr. PERKINS. I would say that there were at times up to maybe 25 people.

Chairman NUNN. How many lawyers, accountants, and investigators?

Mr. PERKINS. When I became the Acting Director of SIS, there was only one attorney on the staff. The rest were accountants, investigators, and clericals.

Chairman NUNN. When you began work in SIS, was there any formal audit planned for the investigation?

Mr. PERKINS. There was a written audit plan, I believe prepared sometime in late 1975.

Chairman NUNN. Mr. Steinberg?

Mr. STEINBERG. Did you state to Mr. Kotch and Mr. Crino that when you were hired you learned there was no real audit plan for this investigation?

[At this point, Senator Percy withdrew from the hearing room.]

Mr. PERKINS. I said many things to Mr. Kotch and Mr. Crino with regard to that report. There are somewhat, I believe, points in which they summarized things which I said and condensed things into a 20-page report of a 3-day interview.

Mr. STEINBERG. Do you remember your interview in executive session on September 25, 1980?

Mr. MUSE. May I request that we have a copy of the transcript used, that if there is going to be any reference—

Chairman NUNN. We will ask Mr. Steinberg to refresh your recollection on that. The transcript has to be officially released. We will refresh your recollection.

Mr. STEINBERG. It should be pointed out that we offered to have Mr. Perkins read his transcript this morning, but apparently he did not.

Mr. MUSE. I asked that we be allowed to have it at counsel table, since there would be no problems in having custody since we are sitting here. It is a bit unfair for the counsel to be extracting bits of testimony and ask him to comment on it. In a general procedure, you would be allowed to see the question in context. I think both with regard to this testimony and with regard to the Kotch-Crino report, we have made the suggestion repeatedly, and we find the tendency to sort of summarize testimony and asking him to comment is an unwholesome way to proceed.

This man has taken an oath. He has to give his true testimony. When I pull out bits of testimony that were given in one context, suggest it may not be in a particular context makes it very difficult. I would like to express that difficulty right now because I think it is going to be pervasive throughout this whole presentation.

Chairman NUNN. Let's just ask Mr. Perkins if there was an audit planned again.

Mr. PERKINS. As I said, Mr. Chairman, when I came on board there was an audit plan prepared in December, I believe, December 1975, and I believe I did so testify in executive session.

Mr. STEINBERG. Did you also state in executive session when you were asked: "Did you state to Mr. Kotch and Mr. Crino that when you were hired you learned there was no real audit planned for this investigation? Answer: "There was no real audit plan." Is that correct?

Mr. PERKINS. Yes; I believe I did say that in my opinion there was no audit plan. I don't believe I said that I made that statement to you. I made it to Mr. Kotch and Mr. Crino, I said, in executive session.

Chairman NUNN. In other words, you don't consider it a real audit plan. That was there when you arrived? Just describe the plan in terms of its adequacy, if you would. That is what we are getting at.

Mr. PERKINS. My feeling, Mr. Chairman, was that it was not a detailed comprehensive audit plan.

Chairman NUNN. That is still your opinion?

Mr. PERKINS. Yes, sir.

Chairman NUNN. In the early stages of the SIS investigation, there were areas other than those areas listed in the present civil suit investigated, such as administrative expenses, trustees expenses, public relations expenses, and other similar items?

Mr. PERKINS. A review of the Central States pension fund's books and records into those areas was conducted, yes.

Chairman NUNN. Is it accurate to state that those investigations on those other items have never been completed?

Mr. PERKINS. Mr. Chairman, I would prefer to go down them one by one. I believe some of those areas—

Chairman NUNN. Was administrative expenses ever completed, the investigation of that?

Mr. PERKINS. Administrative expenses would cover many things and there were areas within the administrative expenses that were not completed, yes.

Chairman NUNN. How about trustees expenses?

Were the investigations on that completed?

Mr. PERKINS. As I recall, sir, the SIS completed work papers, audit work papers, of the trustee expenses and allowances paid to the trustees through, I believe it was October 1976.

Chairman NUNN. Was any litigation ever filed on any of these matters, administrative expenses, trustees' expenses, public relations expenses?

Mr. PERKINS. Any litigation filed? Not to my knowledge, sir.

Chairman NUNN. Is it accurate, Mr. Perkins, to state that prior to mid-1979, the records in SIS files were for the most part not inventoried or numbered in any manner?

Mr. PERKINS. With regard to the pension fund files, that is an accurate statement, sir.

Chairman NUNN. Have you recently instituted a new filing system?

Mr. PERKINS. With regard to the—

Chairman NUNN. To the pension fund?

Mr. PERKINS [continuing]. To the pension fund, we are implementing a new file system, yes, sir.

Chairman NUNN. Have you already accomplished it, or are you in the process now?

Mr. PERKINS. I believe we began the process of the system that is currently in existence, I believe it was April or May 1979. And I believe it is just about now into a situation where it is up to date.

I want to point out that the committee must remember that we are not talking about a few files. We are talking about something that approximates approximately 4,000 file folders.

Chairman NUNN. A tremendous number of files, right?

Mr. PERKINS. Yes, sir. And anywhere between 500 and 700 and 50,000 sheets of paper. And that is what has caused the time in getting it properly implemented.

Chairman NUNN. How long have these documents been in the possession of the Labor Department—2 years, 5 years, 6 years?

Mr. PERKINS. Many of these documents began coming into the possession of the Department of Labor from the inception. I would say the bulk of the documents were received some time during the period January 1977 through mid-, the end of April 1977.

Chairman NUNN. Would it be fair to state that from the state of the files, at least up to the institution of this new system which you started, that there was a lack of control in the files and there was no way to accurately inventory the files? Would that be a fair statement?

Mr. PERKINS. Yes; that would be a fair statement.

Chairman NUNN. Mr. Perkins, in the SIS investigation of the Teamsters Fund after December 14, 1976, did the Solicitor's Office of the Department of Labor become more involved in the Teamster investigation?

Mr. PERKINS. Yes, sir.

Chairman NUNN. Since early 1977, for the most part, has SIS been a support unit of the Solicitor's Office?

Mr. PERKINS. Mr. Chairman, I believe that the SIS performed a support function with regard to the Solicitor's Office from the beginning of January 1977 until some time around the approximate time that the trustees resigned at the end of April 1977. I do not know whether—I was not the Director at that time. I do not know whether or not SIS served in that capacity. I do know that again once the litigation against the Pension Fund was filed in 1978, the SIS again began a primary support function for the litigation.

[At this point Senator Percy entered the hearing room.]

Chairman NUNN. Mr. Perkins, did you believe that the Department of Labor had entered into an agreement with the Fund which excluded from investigation all areas outside of the few specific loans picked for the lawsuit, that is areas such as administrative or trustees expenses and other items?

Mr. PERKINS. Excuse me, Mr. Chairman. I didn't get the first part of the question.

Chairman NUNN. Well, I guess what I was really saying is, did you believe that the Department of Labor had entered into an agreement with the Trust Fund which would exclude SIS from looking into other areas, outside of the few specific loans picked for the lawsuit?

Mr. PERKINS. Mr. Chairman, I know I testified as to this in executive session. However, I would like to state that upon reflection, and

after considering that I have been informed over the years by people whom I respect at the Department of Labor, Ms. Clauss and other persons, that there is no such agreement, was no such agreement, and I never saw any such agreement, and I do believe that at this point that there was no agreement—however, I believe, if I might state, that agreement is not the word but maybe an understanding or a difference in interpretations between various persons that there would be no further investigation outside of the areas of loans.

Chairman NUNN. You still believe there was that kind of understanding, but probably not formalized?

Mr. PERKINS. Understanding, or misunderstanding among the parties, yes, sir.

Chairman NUNN. So basically you would rather use the word "understanding" than "agreement"?

Mr. PERKINS. "Understanding" or "misunderstanding," sir.

Chairman NUNN. Well, was that the general view of the people working in this investigation, that there had been that kind of understanding limiting the scope of the investigation in exchange for certain steps that the Pension Fund trustees took? Is it just your impression or were there many other people that had that impression in SIS?

Mr. PERKINS. I would hate to speculate on what other people in SIS thought. A few members of the staff had made those representations to me, and I would speak to those persons, but not as to what people who did not make any statements to me would feel.

Chairman NUNN. Up to the point of your testimony, September 25, 1980, in executive session, it was your view at that time, was it not, that there had been some agreement that limited the scope of this investigation?

Mr. PERKINS. Again, as I said earlier, Mr. Chairman, upon reflection, I would prefer that we say that there was either an understanding or a misunderstanding as to what the arrangements were.

Chairman NUNN. And of course you have heard the Secretary of Labor testify there was no such agreement, no phantom agreement, no understanding, and so forth?

Mr. PERKINS. Mr. Chairman, I was not here yesterday during any testimony and I was not here this morning, and I did not hear that testimony.

Chairman NUNN. Did you know that he had testified to that?

Mr. PERKINS. No, sir. I have not known what the Secretary has testified to.

Senator PERCY. Mr. Chairman, could I ask for a point of clarification on these questions?

Chairman NUNN. Certainly.

Senator PERCY. Mr. Perkins, could I read to you what you said to Mr. Steinberg?

Chairman NUNN. Let me ask this. I think counsel has made a legitimate point here. I would ask the staff for the purposes—we are not releasing this to the public. It is an executive session. But for the purposes of his attorney, Mr. Perkins', when we refer to the executive session testimony for the purpose of this hearing, we will ask it be made available to you. I think it is a reasonable request.

Mr. MUSE. Thank you, sir.

Chairman NUNN. We will have to get official approval of the committee to officially release it. Go ahead with your question. But I would ask that you give him the page number.

Senator PERCY. Page number 35, the bottom of the page. Could we get a copy for you?

Chairman NUNN. Senator Percy, if there are any other questions on this, if you could refer to the page number and part you are referring to, and then let them have a change to look at it. Then the question will be posed.

Senator PERCY. At the bottom of the page, I will begin with the last part of the question by Mr. Steinberg. His question was, "Didn't you tell them that Mr. Lippe was not involved in negotiations of the agreement?" And I would like to just refresh your memory, or you can just look at it yourself. If you have no objection, I would like to read into the record what you said at that time.

Mr. PERKINS. To the best of my knowledge, Mr. Lippe had no part in the negotiations that took place in February, March, and April—

Senator PERCY. The problem is the—

Mr. PERKINS [continuing]. 1977, which resulted in the resignation of the trustees.

Senator PERCY. If I could ask you, Mr. Perkins, do you have any objection to my reading what you said at that time?

Chairman NUNN. I don't think there is any objection there. If he would object to it, I would overrule that.

Senator PERCY. Mr. Perkins, you said, "However, subsequent to the trustees resigning, it was felt that these areas were now to be excluded from investigation. I got this feeling from discussions that I had with Mr. Lippe after that time." Is that still your assertion, that it was your understanding that there was an agreement reached that certain areas were to be excluded from the investigation?

Mr. PERKINS. Mr. Percy, it is my belief that from discussions that I had with Mr. Lippe, that these areas were to be excluded from the investigation, yes, sir.

Chairman NUNN. What about after you took over as Acting Director? Was that still your continuing understanding?

Mr. PERKINS. Mr. Chairman, after I took over as Acting Director during the first few months, 2½ months, approximately, I was involved in assisting in putting together the information that involved the current lawsuit. After that had happened, I was told that this would be the function of the SIS with regard to those trustees, that we would support the lawsuit.

Chairman NUNN. All right. But during that time, when you were Acting Director, did anyone ever disabuse you of the opinion you had from Mr. Lippe that there were areas that were limited, or did you continue to have that impression? Did you continue to have that impression during your tenure as Acting Director?

Mr. PERKINS. It was my understanding at that time that with regard to the trustees that had resigned as of April 30, 1977, on these areas, we would not look into these areas regarding negotiations.

Chairman NUNN. That was while you were Acting Director and during that time?

Mr. PERKINS. Yes, sir.

Chairman NUNN. I wish the Secretary was here, Senator Percy, because you made what I consider to be a crucial point. The man heading up the investigation of the Teamsters Pension Fund was under the direct impression during his tenure as Acting Director that there were certain excluded areas, and, of course, I think that is extremely important as to what happened in this overall investigation and what has not happened.

Ms. GALLAGHER. Could I address that?

Chairman NUNN. Go ahead with your question. Did you want to be heard on that point?

Ms. GALLAGHER. I think I might shed some light on that.

Chairman NUNN. We are going to question you in a minute. Make a note on it. We will come to it and let you speak on that point.

Senator PERCY. The next point that I would like to ask you about, Mr. Perkins, relates not only to the possible existence of an agreement and certain areas of investigation being excluded, but also to the degree of cooperation you could expect to get as Acting Director of SIS from the pension fund and the Teamsters trustees.

Since May 1977, has the Teamsters Fund refused access to records for SIS, giving as part of their reason the so-called agreement with the Labor Department not to pursue other areas of investigation?

Mr. PERKINS. Senator Percy, I believe there were several negotiations, a lot of correspondence between the fund and the Department of Labor regarding the production of documents. I was not involved in these areas and it would be difficult for me to answer directly.

However, I do know that during this period of time, some records, the volume of which I do not know, were provided by the fund to the Department up through possibly—this is strictly—I hate to speculate. It is not appropriate. But I would say July, maybe August 1977.

But there, again, sir, that is speculation on my part. I have no first-hand knowledge.

Senator PERCY. Did the Solicitor's Office ever challenge the so-called agreement in court?

Mr. PERKINS. No, sir, not that I know of, sir.

Senator PERCY. Did you tell Mr. Kotch and Mr. Crino that the results of this alleged agreement, as interpreted by yourself, excluded from investigation all administrative expenses and all trustees expenses. Did you tell them that these areas were not to be investigated, and that you felt the fund had been given a clean bill of health?

Mr. PERKINS. Again, Mr. Percy, what I was trying to get at earlier is that I prefer not to adopt things that are said in that report. That report summarized what was 3 days of hearing, of conversations, as well as questions and answers. With regard to that particular statement, I believe what I said in executive session—

Chairman NUNN. Let me refer you to page 67. That might refresh your recollection.

Senator PERCY. Middle of the page.

Chairman NUNN. If you could just read that to us, if you would like.

Mr. PERKINS. I believe what I said in executive session was that with regard to those expenses this was correct. However, as to giving them a clean bill of health, if I recall my response in that area was that

I felt that what had happened was that many of the abuses that I had felt were in the fund would now not be brought forward as a result of those negotiations and the resignations.

Chairman NUNN. Let me just read this to you. I think, if you have a different opinion of this now, beginning on page 67, your counsel can follow that:

Mr. STEINBERG. Did the Solicitor's Office ever challenge this agreement in court to your knowledge?

Mr. PERKINS. I have no knowledge that they did.

Mr. STEINBERG. Did you tell Mr. Kotch and Mr. Crino that the results of this alleged agreement as interpreted by yourself excludes from investigation all administrative expenses, all trustees expenses, these areas are not to be investigated. "Perkins feels that the Fund has now been given a clean bill of health."

Mr. PERKINS. Yes, sir, I believe I said that.

Chairman NUNN. Is this still your view? Have you had anything that would change your mind on that?

Mr. PERKINS. With regard to the old trustees, those that resigned prior to April 30, 1977, no, sir. There is nothing.

Chairman NUNN. That would still be your view regarding them?

Continued on page 68 of the transcript, September 25, 1980:

Mr. PERKINS. The old trustees, those that resigned April 30, 1977.

Chairman NUNN. That would remain your view as to them?

Mr. PERKINS. Right, but not as to the new trustees.

Mr. STEINBERG. Apparently from what you have stated and other SIS members, that was strong feeling in SIS that there was such an agreement made, there was an equally strong feeling about lawyers who represented the Trust Fund that such an agreement had been made. Is that correct?

I think that gives the tenor. Was that your testimony as reflected in the transcript?

Mr. PERKINS. Yes, sir.

Chairman NUNN. Is that still your testimony? Just that portion, I am not asking you to read the whole report now. I know that. That would be too much to ask anybody. Just that portion. Is that still your testimony?

Mr. PERKINS. Mr. Chairman, with regard to everything except for the statement that Perkins feels that the fund has now been given a clean bill of health. If I recall, without having read this testimony in its entirety, I believe somewhere else in my testimony this matter was discussed also; something like that, and at the time I said that my feeling was that my interpretation of that statement that what had happened was that having trustees resign rather than having it brought out in litigation, that the abuses that I felt that were in the fund would not be brought public, would not be made public and the public would not be aware of those abuses.

Chairman NUNN. That is what you meant?

Mr. PERKINS. That is what I believe, I believe I also said that elsewhere in the transcript.

Chairman NUNN. So that the agreement was that the trustees would resign and abuses that may have taken place, criminal or civil, would not be made public?

Mr. PERKINS. Again, sir, we are talking about an agreement that I would say I prefer to refer to as an understanding or what I interpreted to be an understanding or misunderstanding.

Chairman NUNN. Mr. Secretary, you see this is why we have such profound concern in this whole area. You have got a man heading

up your investigation for 2½ years who has up until today this understanding, thought it was an agreement as of September 25. This has profound implications as to what the Labor Department was doing. We know you have testified there was no such agreement. You may want to comment on this. But you have felt, I am sure, that the Labor Department is being put upon by this subcommittee but when we have ample testimony on this kind of matter, I mean there was, I don't know whether there was an agreement or not, but there might as well have been an agreement if the man who is heading up your investigation felt here was one and as far as the exposure of those trustees who resigned, as far as the Labor Department's effectiveness in pursuing them, civilly or criminally, Mr. Perkins was the man who headed it up and he felt at one time they had been given a clean bill of health, now he feels there would be no public disclosure of any abuses. This is why we are so concerned.

Secretary MARSHALL. This is a concern, Mr. Chairman, as I told you yesterday, that I share. We concede that there were management problems within SIS, and that there were problems of—there were personnel problems within SIS. That is one of the reasons I had the investigation made that led to the clarification and remedy for those problems.

There was a problem of information flows. Because of the lack of a clear assignment SIS was kind of an organization that did not have particular line of authority. That made it very difficult. But let me ask—I believe that Ms. Gallagher has direct information about this. I would like her to respond to that—the question of the agreement.

Ms. GALLAGHER. Apparently Mr. Perkins heard from Mr. Lippe that there was some kind of a deal. I was personally present when the Secretary's chief negotiators clearly stated to Mr. Lippe exactly what was agreed to. And I think that Mr. Lippe's testimony here indicated that he was never told what the deal was, or exactly what it was. I was personally present when he was told what the deal was or exactly what it was. I was personally present when he was told exactly what it was. So it is very hard for me to believe or understand why that misinformation would be conveyed either to Mr. Perkins or to the subcommittee.

Chairman NUNN. Your point is well taken. The concern we have, though, is not mitigated by the question of who might have been at fault in this huge communication gap. The concern is that if the man who is heading up the investigation has this belief, then obviously the whole thrust of the investigation is affected by that one way or the other. And, Mr. Secretary, you have been very, very critical, which is your right, of our investigation here. But, sir, when we have a matter of this importance, we have been given oversight to for 5 years, and we have the kind of information that we have, sworn to by people still in your Department, then we have to be concerned. Otherwise, we would be derelict in our duty. Somebody has got to cure these problems in the Department of Labor.

Secretary MARSHALL. I think the problems are cured, Mr. Chairman. And I think that the information you got—to find out that there was a problem to start with—came from us, from our investigation or from talking with people.

There was never any mystery to us that we had a problem, but what we do argue is that with respect to the main thrust of both of our investigations and our litigation, that has gone on and as I testified yesterday, maybe those people thought they had a deal but they certainly got sued. We filed suit against them.

Chairman NUNN. They haven't had any criminal action brought against them and any thing about the administrative expenses or the trustees or the trustees' expenses, none of that has been examined at all.

Secretary MARSHALL. As I testified, the main reason for that is that the priority we established was first to protect the assets and, second, to bring the suit, personal suits for violation of fiduciary responsibilities against those trustees who were alleged to have violated their fiduciary responsibilities and we considered those to be much more, much higher priority and more significant than, say, pursuing expense accounts and other administrative expenses, but nothing precludes our going back now and examining those things, and nothing precludes the Justice Department from taking criminal action.

Chairman NUNN. What about the statute of limitations?

Secretary MARSHALL. I will let the Solicitor respond.

Chairman NUNN. What about people's memories? What about witnesses? Mr. Secretary, I have been in the practice of law, when a case gets cold, it is really cold.

Secretary MARSHALL. That is the reason—

Chairman NUNN. These cases are cold, cold, cold.

Secretary MARSHALL. They are not cold with respect to the assets. That was the most important thing in this case in my mind and they are not cold—

Chairman NUNN. They have been the most important but that doesn't mean that anything else was not important.

Secretary MARSHALL. When you have got limited resources to undertake any—

Chairman NUNN. Did you ever utilize fully the resources Congress allocated to you?

Secretary MARSHALL. We utilized fully the resources that were available to us, which is a different thing. Sometimes it takes a long time to get positions filled and we had some problems there.

Chairman NUNN. Four years, four years? It has never been filled.

Secretary MARSHALL. They are filled now. There are no professional vacancies now in this operation.

Chairman NUNN. It took until May 1980 to fill those. Is that right?

Secretary MARSHALL. One of the reasons we wanted to put this in the Solicitor's Office and in LMSA is the resources would not be limited to whatever got assigned.

Chairman NUNN. Congress authorized these slots. The GAO documents that. I don't know why you couldn't hire them if the Labor Department can't fully staff up.

Secretary MARSHALL. We are fully staffed up.

Chairman NUNN. How long did it take you?

Secretary MARSHALL. I don't think—I will have to look at the staffing patterns.

Chairman NUNN. Mr. Gallagher just testified that the Solicitor's Office itself was understaffed.

Secretary MARSHALL. I think any time you ask people if they could do a better job with more resources, the answer you are going to get is, yes.

Chairman NUNN. He said if he thought it was intentional he would have quit.

Secretary MARSHALL. He didn't quit.

Chairman NUNN. He didn't think it was intentional. I am not saying it was intentional, either.

Secretary MARSHALL. The fact of life is that you are always going to have limited resources.

Chairman NUNN. Who limited it?

Secretary MARSHALL. The Congress limits it. The budget process limits it.

Chairman NUNN. You didn't fill what Congress gave you.

Secretary MARSHALL. Your ability to fill those depends on going through the civil service procedure.

Senator PERCY. Mr. Secretary, we had testimony that for over 1 year investigators were not investigating. Professional people were doing menial work of a clerical nature.

Secretary MARSHALL. Partly because of the priorities.

Senator PERCY. The resources were being engineered in this way?

Secretary MARSHALL. They were not being squandered. If they were being directed toward the priorities we had set and the priority we set, as I repeat, was first to protect those funds. If we had not done that, we would still be in litigation maybe and the funds would still be in control of people who were alleged to have abused them. And we still might not be able to make them as secure as they are. Because of the action we took, not only are those funds today secure and the return is doubled in that investment, they are in the hands of independent money managers, and we have also brought suit against the people against whom we alleged violations. We established that priority. When you run any kind of organization, you have got to have priorities. It might well be that everybody won't agree with those priorities and they obviously don't in this case.

But the priority we set, I think, in retrospect was a good one. We have to worry about our ability to bring those suits and to protect those funds. Those are the two most important, immediate concerns we have. We can more leisurely go after smaller items like expense accounts and administrative expenses which are dwarfed into insignificance, relative to the size of that fund. There were legal aspects of this. I don't know if I ought to say anything about it since I am not a lawyer.

Ms. CLAUSS. Let me just add to that by saying that the decision to focus on asset management was a decision that was made by the original SIS Director. It was concurred in by everyone that has looked at it since then. There was never any disagreement on that, although an initial look was made into the expense accounts and the charges, fees paid to service providers, and any information suggesting wrongdoing was at that point immediately communicated to the Justice Department.

The thrust of the Department's investigation from 1976 forward has been on the asset management because that's where we saw our priority to be.

Now in terms of the investigation of the new trustees, since they have not engaged in substantial asset management, the thrust of the investigation would be necessarily quite different. But any information we had about the old trustees suggesting wrongdoing would have been communicated to the Department of Justice.

Chairman NUNN. We had testimony yesterday from Mr. Crino that the person in charge of communicating with the Department of Justice in SIS, those people, you had no record as to what had been turned over to them. There was basically no record of that. There was no investigative report on that.

Ms. CLAUSS. I think a very good procedure, Senator Nunn, would be to make a record of referrals. But apparently that has been a system that has been used by the Department of Labor with the Department of Justice for a number of years and was used by the previous director also. I think, I know the Secretary agrees with me, that that's something that there should be a more formal record of.

Chairman NUNN. I am glad you are going to make changes in that. I think you have to have enough there that somebody can come in and pick up and take on.

Ms. CLAUSS. I agree.

Senator PERCY. Mr. Secretary, in contrast with what you described yesterday as a stunning success, the man who headed this investigation for 2½ years testified this morning that significant areas of potential trustee abuse were not fully investigated by SIS and were left undone. His long-time presumption was that it was left undone because there was some sort of an agreement that excluded certain areas from investigation. And then when the lawsuit was filed, it effectively closed the door on those matters. Is that what you testified to, Mr. Perkins?

Secretary MARSHALL. I will let Mr. Perkins respond to that.

Mr. PERKINS. No, sir. I don't believe I ever said that, anything regarding the success of the investigation. I believe what we talked about were certain areas of administrative expenses, trustee expenses and items in that area. I want to make the point that I do support the Department's position. I do feel that the strides taken by the Department were proper, that at the time, considering what the Department knew at the time—I was not involved and did not have all the information available to me that were made with regard to accepting the trustees' resignations or why they were accepted or if there's a so-called phantom agreement, that it does exist. However, I do believe it was an important step on the part of the Department of Labor to remove those assets from the hands of those trustees. And I do support that.

I also believe that the litigation that was filed was an important piece of litigation with regard to this investigation. And I do support and do feel that that investigation, that that area was there. I also believe that if you read the statement in the Kotch-Crino report, I believe with regard to administrative expenses, I did state that I

didn't think that there was anything there and mentioned the other areas as areas of importance.

So my testimony is that I do support the Department's position with regard to it. I do think that they did a good job. I do think that with regard to the loans with regard to the lawsuit, with regard to the removal of trustees, that the Department did do a very, very good and credible job.

Secretary MARSHALL. Let me also say, Senator Percy, that this judgment was concurred in jointly by the Secretary of Treasury, Mr. Blumenthal, and by the Attorney General at the time we decided to make the judgment, as I testified yesterday. I thought it was important for us to present not just the Labor Department position but a Government position. And I think that's the reason that we were successful; I found the very best people that I could find to help me evaluate that decision. We did that.

We went over it very thoroughly. And I am convinced that it was a stunning success and that it, for the first time in the history of this fund, put those funds in secure hands and has caused them to be well managed. We have continued to monitor that and have blocked repeated efforts, or at least two efforts, to interfere with that agreement and our right to do that has been upheld.

So I think we have demonstrated that we could use ERISA both to protect funds and to bring suit against people who had violated their fiduciary responsibilities. And I think when we collect on those suits, as I am confident that we will, that there will be a significant deterrent to the abuse. But the important thing to me initially was the ability to move rapidly because I was worried when I saw what was involved in this kind of investigation that could go on forever and you still might not get those funds in the hands of independent money managers and get the trustees removed.

Chairman NUNN. Mr. Secretary, you are saying that the Labor Department and the Justice Department worked together smoothly in this regard?

Secretary MARSHALL. I met with the Attorney General and with the Secretary of the Treasury and we agreed on this strategy as a way to deal with the problem, as I testified yesterday.

Chairman NUNN. And you think the Justice Department is satisfied that all the criminal information that they needed has been passed on to them?

Secretary MARSHALL. Oh, I think they might not be satisfied that all they need—it's like asking anybody, did you get all you wanted? But I think that—

Chairman NUNN. You think they are generally satisfied with that?

Secretary MARSHALL. I think now they are generally satisfied with the cooperation between the Labor Department and what we have been able to pass on to them. I don't have any evidence to suggest that they are not. I know that our people are meeting regularly with the Justice Department people. But also it wouldn't surprise me at all if they said, "I wish they would do more."

Chairman NUNN. The January 1978 memo from Deputy Assistant Attorney General Keeney, I will quote from that memo:

With respect to the joint Teamster investigation, the Criminal Division is designated as Justice's representative. Through the early stages of the investigation, and continuing until August or September 1977, the joint concept worked well. Labor's investigative staff was in daily contact with our people. Matters were referred to us for criminal investigation. And we were kept apprised in advance of any major civil remedy to be demanded by Labor. However, over the course of the following winter, the personnel and structure of Labor's efforts changed. Labor no longer has the investigative manpower or leadership that was originally available.

We are not apprised of the current size or makeup of this staff or what it is doing. In fact, working members of the staff have been instructed not to discuss the investigation with us. Additionally, we were advised only yesterday by Labor that over a month ago, the pension fund trustees had resolved to deny the task force investigators' access to its records. This represents a complete turnaround by the fund, as we had had complete access to its records since the investigation began, and certainly should have been brought to our attention at once.

In December, we were advised that the Secretary had ordered a 45-day review of the entire investigation and that he would determine at that time what course the investigation would take. During the 45-day period, we were not able to ascertain what was being reviewed or proposed. We have been advised that the Secretary has decided upon a course of conduct, but we have not been apprised of its nature. Rather, we were told that the Secretary would discuss it with the Attorney General and after a decision had been reached at that level, we would be informed of the results. We are at a loss as to how any decision reached in this manner could be called a joint decision, and we, of course, cannot apprise the Attorney General of recent developments so that he may have the benefit of our thoughts on any decision to be reached.

Secretary MARSHALL. I think there are two points. One is my comment that the strategy we developed was jointly entered into by the Secretaries of the Treasury, Labor, and the Attorney General, the policy, how to proceed.

Chairman NUNN. Right. This directs itself to the implementation.

Secretary MARSHALL. That's right. That's a different matter entirely, I am aware. But I think there's a subsequent memorandum.

Chairman NUNN. If policy isn't implemented, you don't have policy.

Secretary MARSHALL. That's the reason I want to call your attention to the subsequent statement, I believe it's by Mr. Nathan—I will let the Solicitor respond to that—which bears directly on that question.

Ms. CLAUS. Yes. That memo you are reading from was an internal memo that was never shown to us from the Deputy Assistant AG for the Criminal Division to his Assistant AG. Now that was just weeks before our lawsuit was filed back in February 1978. And we have long ago, Senator, advised this committee on numerous occasions that there was a breakdown in communication to the Criminal Division at this time. We were communicating with the Civil Division because that's our standard point of contact for ERISA matters, and the Secretary was communicating with the Attorney General. That was certainly an error, and immediately after that Tim Baker and I got together and we set up a work group. We tried to work very closely since that time. I know that Mr. Nathan has testified before this committee that relationships since that time have been very good.

So that's a memo almost 3 years ago. I would just suggest it doesn't reflect our current relationship.

Chairman NUNN. Did you have a written agreement of understanding with Justice that you were going to coordinate with the Criminal Division even before this January 1978?

Ms. CLAUSS. That was a written agreement, yes.

Chairman NUNN. Why were you then coordinating with the Civil Division?

Ms. CLAUSS. Senator, as I said, that was an error we made and we admitted to that error before this committee several years ago. I think there are obviously coordination and communication problems in the Justice Department, that those people didn't communicate. But at the time we were making the decision to file the lawsuit, the people, for myself and my top aides, were not intimately familiar with that memorandum of understanding that had been negotiated by the SIS staff and had not been called to my personal attention. Now that's an oversight that I deeply regret. But I believe that relationship—and Tim Baker and I worked very hard at that, with his top people, to correct that relationship for the future. I would certainly hope that we have done that.

Chairman NUNN. You think it's smooth now?

Ms. CLAUSS. As far as I know. I have received no complaints. And we have kept in close touch on these matters. We meet on a regular basis.

Chairman NUNN. We are trying to meet this time schedule we established. It looks like it is going to be hard. I will ask Mr. Steinberg to try to go through the rest of the questions with Mr. Perkins here. I will refrain from interruptions.

Mr. STEINBERG. Mr. Perkins, was it your conclusion that as of March 1979, it would have taken an additional 2½ years for the Department of Labor to complete its investigation to enable it to pursue the litigation that it had filed in February 1978?

Mr. PERKINS. Mr. Steinberg, I believe that I did do a study which stated that for a certain number of transactions, many more than those listed in the lawsuit—I would prefer not to mention the numbers in public session—that it would take 2½ years to complete the investigation with regard to those loans; yes.

Mr. STEINBERG. Mr. Perkins, during the time you were Acting Director of SIS, was it the Department of Labor's policy not to pursue criminal investigations as it pertained to labor union trust funds?

Mr. PERKINS. It was the Labor Department policy to investigate the criminal matter only until such time as it was determined that there was sufficient criminal evidence to then refer it to the Department of Justice for investigation; it was not a policy for the special investigations staff to conduct criminal investigations.

Mr. STEINBERG. That was your understanding of the Labor Department policy?

Mr. PERKINS. Yes.

Mr. STEINBERG. And that still is your understanding?

Mr. PERKINS. Yes.

Mr. STEINBERG. Mr. Perkins, were you disappointed in the SIS investigation because it was not in the depth that you had anticipated?

Mr. PERKINS. Mr. Steinberg, I think any investigator, probably especially myself being an auditor, who is very meticulous and likes to know all the facts and everything there is, is always disappointed if something happens and decisions are made which curtail getting to the very depth of everything there is. To that extent, yes, I was disappointed that it was not carried to that depth.

Mr. STEINBERG. And are you still of that opinion?

Mr. PERKINS. I still feel that there were areas that as an investigator I would have liked to have gotten into, yes.

Mr. STEINBERG. Mr. Perkins, after the litigation was filed, was SIS advised by the Solicitor's Office that it could no longer issue administrative summons?

Mr. PERKINS. I believe that we were instructed that with regard to matters under litigation, that administrative subpoenas could not be used, that those documents would have to be gotten through the civil procedures of civil discovery. I believe there was also some mention as to peripheral people and peripheral matters that would have to be taken up on a case-by-case matter.

Mr. STEINBERG. What about people like Mr. Glick, Mr. Malnik, Mr. Shenker, the people who obtained the fund's assets? Did you serve an administrative summons on them?

Mr. PERKINS. No, sir. It was my understanding those records would be obtained through the discovery procedures using the courts.

Mr. STEINBERG. Didn't you request the Solicitor's Office to investigate the B. & A. account, what we all call the B. & A. account?

Mr. PERKINS. No, sir.

Mr. STEINBERG. Didn't you say that there was \$30 million in that account that had not been reconciled?

Mr. MUSE. Could he have a reference to when he said that?

Mr. STEINBERG. I want to know what his recollection is.

Mr. MUSE. You asked him didn't he say something. I would like to know when and where he would have said it.

Mr. STEINBERG. I am asking him if he remembers requesting to investigate the B. & A. account.

Mr. PERKINS. Is your question do I remember requesting to investigate the B. & A. account?

Mr. STEINBERG. Yes.

Mr. PERKINS. Yes.

Mr. STEINBERG. Were you denied that permission?

Mr. PERKINS. Yes.

Mr. STEINBERG. Do you know why?

Mr. PERKINS. The explanation given to me on one of the occasions was that there was no evidence at that time that there was anything wrong with the B. & A. account, there had been no complaints with regard to the B. & A. account from anyone, the assets that were being maintained by the fund, that the investments that they were placing the cash into were quality, paid quality commercial paper and CD's and thus it was felt that there was no need to investigate.

Mr. STEINBERG. Who made that decision?

Mr. PERKINS. On one occasion, I remember that coming from Mr. Burkhardt and on a subsequent occasion I believe Mr. Ballard made that statement.

Mr. STEINBERG. Mr. Perkins, wasn't this despite the fact that in earlier investigations SIS had uncovered abuses of those same types of accounts that as of that date that you made that request there was still \$30 million that had not been reconciled in the B. & A. account, and that there were allegations that the trustees had gained, had personal gain with respect to the purchase of those CD's that you referred to?

Mr. PERKINS. At the time that I made the request—first, let me explain in talking about the B. & A. account, I talked about two phases of it. One phase being the assets that the fund had invested; the other phase of the B. & A. account is that portion of it that was used for administrative expenses.

Let me state that the area that I requested to look into was the area involved in investments, not the area with regard to expenses.

Mr. STEINBERG. Was what I said to you accurate? Was what I just said to you accurate?

Mr. PERKINS. Could you please repeat what you said?

Mr. STEINBERG. That is, was this decision made despite the fact that SIS had uncovered earlier abuses in those same accounts, the fact that there was over \$30 million which had not been reconciled in that account and that there was, if not evidence, there was a very strong indication that the purchase of the CD's had involved personal gain by the trustees?

Mr. PERKINS. With regard to the fact that the SIS believed that there were abuses by the previous trustees in those areas, yes, sir, I believe that was made with knowledge.

With regard to \$30 million being involved in the account, that \$30 million that you speak of, a majority of that, and I would speculate if I said what percentage, but I believe probably two-thirds or more of the \$30 million that we are talking about is expenses incurred by the investment managers for the fund, including their fees.

With regard to the fact—

Mr. STEINBERG. Before we leave that issue, didn't you state in your memo that the \$30 million of pension fund receivables had not been reconciled with the employers and this amount is staggering; an allegation of this type must be verified?

Mr. PERKINS. Sir, I don't know what memo you are talking about.

Mr. STEINBERG. October 10, 1979.

Mr. PERKINS. Could I see a copy of it, please, sir?

Mr. STEINBERG. The area that you are talking about is not the expenses that were paid, but employer contributions; that is, contribution, money, accounts receivable from employers, not moneys expended for, by the fund for any purpose.

Mr. STEINBERG. However, you want to characterize that sum of money, is it still a fact that that was one of the areas you wanted to investigate?

Mr. PERKINS. Yes, sir. I did want to investigate that.

Mr. STEINBERG. The third area about CD's is it accurate to say that there was an allegation that those CD's had been purchased and personal gain had been attributed to some of the trustees?

Mr. PERKINS. I don't recall there being any evidence that there were personal gains by the trustees with regard to the purchase of the CD's.

Mr. STEINBERG. Didn't you state in your interview with Mr. Kotch and Mr. Crino that one of the areas that you wanted to look into but could not was the area of the purchase of CD's, wherein trustees were alleged to have received personal gain?

Mr. PERKINS. Sir, I believe my statement there is that it was my belief that that area should be looked into.

Mr. STEINBERG. That is what I am asking you.

Mr. PERKINS. Sir, because, not that there was evidence, but because I felt it was an area of abuse, of potential abuse that should be looked into.

Mr. STEINBERG. But it was not?

Mr. PERKINS. It was not at that time, no, sir.

Mr. STEINBERG. Was it ever?

Mr. PERKINS. Sir, can I consult with counsel for one moment, please?

Chairman NUNN. Yes.

Mr. PERKINS. Excuse me, sir, I don't believe that right now in open session is an appropriate place for me to discuss matters that could possibly be under investigation by the Department at this time.

Chairman NUNN. If that is your answer, we respect that.

Mr. PERKINS. Yes, sir.

Mr. STEINBERG. In addition to the denial to pursue the B. & A. account inquiry without going into those areas, was one of the problems raised by the Solicitor's Office that you couldn't serve an administrative summons during this period of time? Do you want to refer to that memo? You may.

It is the same paragraph on page 3. There is a sentence in there concerning that.

Chairman NUNN. Mr. Secretary, we said we would break up at 1 o'clock. Obviously, we are not going to get through Mr. Perkins at 1 o'clock. I don't want that to inconvenience the other witnesses.

You have an hour off. If we would excuse everybody but Mr. Perkins now, you are welcome to remain if you would like to, but we are going to cut our hour short. I don't want to cut yours short. If you would like to come back at 2 o'clock, that would be all right, or any of the other witnesses other than Mr. Perkins. It is strictly up to you. You are welcome to stay.

Mr. PERKINS. Can you please tell me where in this that reference is?

Mr. STEINBERG. Page 3, section 4, about the seventh sentence down.

Mr. PERKINS. At the top of part 4, sir?

Mr. STEINBERG. No. On page 3, under section 4, seventh line down. Do you have the answer?

Mr. PERKINS. Now that I've found the section, could you please repeat the question?

Mr. STEINBERG. Was one of the reasons given to you for not going forward with that investigation was that you couldn't issue administrative summons or subpoenas, whatever you want to refer to them as?

Mr. PERKINS. Sir, I don't recall on this particular memo anybody ever coming back to me and saying to proceed or not to proceed. It is my recollection that shortly after this memo was prepared, Mr. Marsh from our Atlanta office came to the Department of Labor, came to Washington—

Mr. STEINBERG. Let me ask you this: Is it one of the considerations listed in the memo?

Mr. PERKINS. It was one of the considerations for the people to make the decision to consider. Yes, sir.

Mr. STEINBERG. Mr. Perkins, is there any possible way to trace the ultimate conclusion of funds taken from a labor union trust fund without a third-party investigation?

Mr. PERKINS. No, sir.

Mr. STEINBERG. Mr. Perkins, can you sue the borrower or any other third party in the financial transaction if you do not pursue a third-party investigation?

Mr. PERKINS. Sir, I am not an attorney, but from a layman's standpoint, I would have to say no.

Mr. STEINBERG. To your knowledge?

Mr. PERKINS. Yes, sir.

Mr. STEINBERG. Mr. Perkins, does the Labor Department have the authority under the law to pursue borrowers or other third parties who are involved in misappropriated funds assets?

Mr. PERKINS. Sir, that is a matter that I believe that has been discussed among counsel many times. One interpretation that I had received was that they do not.

Mr. STEINBERG. They do not?

Mr. PERKINS. No, sir.

Mr. STEINBERG. Wouldn't that be an important issue in the entire Teamster Fund investigation to determine whether or not you had the authority to go after these third parties who had taken money out of the fund?

Mr. PERKINS. I would say it would be an important consideration, but I might also add that initially in the early days of the investigation we did look into areas concerning—

Chairman NUNN. You never completed them though, did you?

Mr. PERKINS. Sir, we are still, all the loans that we got within our lawsuit that I can think of that are currently included in the lawsuit are covered under the lawsuit.

Chairman NUNN. You haven't got any third parties going into the lawsuit?

Mr. PERKINS. Not to this date, no.

Chairman NUNN. What you are saying is, in answer to the question you say there is no possible way to trace the ultimate conclusion of the funds in the trust fund without a third-party investigation and your answer also is you can't pursue the borrower or any other third party if you do not pursue an investigation. And your answer is you do not think the Department of Labor has the authority to pursue borrowers or third parties who are involved in misappropriated fund assets.

Mr. PERKINS. I believe the fund has a right to review those areas. However, it was my understanding—again, I am not an attorney—that the Department could not sue the third parties unless the moneys were misappropriated by those parties.

Chairman NUNN. Unless they were?

Mr. PERKINS. Yes.

Chairman NUNN. If they were appropriated, they would have the authority?

Mr. PERKINS. If they were appropriated?

Chairman NUNN. If they were misappropriated, the Department would have the authority to pursue them; is that correct? I mean, obviously, they wouldn't have the authority—they couldn't succeed in a lawsuit against somebody who didn't misappropriate funds, but if they did misappropriate funds, could not the Labor Department pursue third parties, or do you know?

Mr. PERKINS. Sir, I would be guessing at this point.

Mr. STEINBERG. Let me ask you this, Mr. Perkins.

Did you hear or were you given advice that the Labor Department could not pursue those third parties in a civil lawsuit?

Mr. PERKINS. I remember discussing the matter with regard to this particular investigation and was told that at the time the Department was not going to pursue third parties.

Whether that means that there is no possibility or that they had closed the door, I don't know.

Mr. STEINBERG. This type of legal advice, did that come from the Solicitor's Office?

Mr. PERKINS. That would have come from the Solicitor's Office. Yes, sir.

Mr. BLOCK. May I ask one question at this point? We have heard testimony from the GAO, from Mr. Lippe, from Mr. Seidel, and we heard considerable surprise yesterday by Mr. Crino and Mr. Kotch that these third-party investigations were not undertaken.

Do you share that concern that third-party investigations were abandoned in December of 1976 and not undertaken?

Mr. PERKINS. I believe that the interpretation that is being used—that we are talking about investigations—and that third-party investigations ceased once the lawsuit was filed is incorrect. I think that those investigations are continuing, but instead of being continued as a separate investigation, that the Department is pursuing these third-party investigations through the discovery process, through the lawsuit.

They are getting into these books and records, and so forth, or are trying to, with third parties.

Chairman NUNN. How can you get that information from the third parties when the third parties aren't a part of the lawsuit?

Mr. PERKINS. Again, it is my understanding that under discovery that third parties who have a dealing or have information that deal with the matter under, in the complaint, that those records can be obtained through the discovery process.

Chairman NUNN. That would discover those 15 transactions, would it not?

Mr. PERKINS. My opinion is that the Department of Labor's lawsuit covers all of the transactions in the portfolio, and that the Department will eventually get all of those records with regard to the entire lawsuit.

Mr. BLOCK. But you don't have subpoena authority under civil discovery, isn't that correct?

Mr. PERKINS. Sir, again, the only thing I can say is that it is my understanding that through discovery and the discovery process that the Department will be able to get these records.

Chairman NUNN. Ms. Clauss, can you get discovery against a party that is not a member of the lawsuit?

Ms. CLAUSS. Sure. We take depositions of people not parties to lawsuits all the time. We serve them—

Chairman NUNN. Without subpoenas?

Ms. CLAUSS. With subpoenas or without subpoenas—both ways. And you can ask them to bring documents with them.

Chairman NUNN. They are not compelled to without a subpoena?

Ms. CLAUSS. You have to go to court to enforce it if they don't bring it, but you certainly have the right to.

Chairman NUNN. You have to subpoena them first?

Ms. CLAUSS. You do in the administrative process, too. The only difference is that the other side is going to have the right to be there and to listen in to the questioning which they won't have—

Chairman NUNN. You subpoena people who aren't in the lawsuit?

Ms. CLAUSS. Or get their voluntary cooperation, which we have done in a number of cases; yes. If you serve them with subpoenas, the other side is going to be there, whereas in the administrative investigation, the other side would not be there.

But the only way we could have accomplished that would have been not to file the lawsuit when we did, and we had a very good reason for filing the lawsuit.

Mr. STEINBERG. Isn't it accurate to state that you can't obtain evidence from third parties on subject matters that aren't included in the lawsuit?

Ms. CLAUSS. Third party evidence is included in this lawsuit, as far as we are concerned.

Mr. STEINBERG. I am asking you that question first, if you don't mind. Is that an accurate statement?

Ms. CLAUSS. Obviously, any kind of discovery in a lawsuit has to be relevant.

Mr. STEINBERG. It also has to be limited to parties involved in those subject matters, doesn't it?

Ms. CLAUSS. No. I don't know why you think discovery has to be limited. I don't understand your question. I have tried lots of cases. We certainly don't limit ourselves to the—

Mr. STEINBERG. If the party has nothing to do with what you have specifically designated in your lawsuit, do you have any right to gain anything from him on discovery?

Ms. CLAUSS. I think you have been asking every witness that:

Don't third parties have something to do with loan transactions? I don't see how you can bring a lawsuit involving a loan transaction unless you can find and talk to all of the people that are involved in that loan transaction.

Mr. STEINBERG. Ms. Clauss, I just said that the matters outside specific transactions in the lawsuit.

Ms. CLAUSS. The lawsuit—

Mr. STEINBERG. Can you investigate them through civil discovery?

Ms. CLAUSS. Will you answer the question? Can you investigate those other areas that are not in your civil lawsuit through discovery?

Ms. CLAUSS. Mr. Steinberg, your questions confuse me. If you mean, can we investigate through discovery things like administrative expenses, that is not involved in the lawsuit. If you are asking whether we can investigate third parties, which is what I thought was the subject matter, the conversation, I say, yes, we can. And we are doing so. And we have served several subpoenas, taken lots of depositions, and have talked to lots of people.

Chairman NUNN. Where the loans are, of the 15 loans—right?

Ms. CLAUSS. Our lawsuit, Senator, was a pattern and practice lawsuit directed at all loan transactions. Now we are having a temporary

problem with the magistrate who has now made a serious error of law, who in connection with a recent deposition has ruled that we are limited to those 15 loan transactions. But that wouldn't be the first day where a magistrate has made an error, and I daresay won't be the last.

Chairman NUNN. I will agree with that.

Mr. BLOCK. Of the subpoenas that Mr. Lippe wanted to enforce to conduct third-party investigations in December 1976, how many of those subpoenas have now been served subject to civil discovery since the lawsuit was filed in February 1978?

Ms. GALLAGHER. Of those exact subpoenas, the answer would be zero, because those were administrative subpoenas. The subpoenas that are being used at the present time would be judicial subpoenas.

If your question is, how many of the same individuals are involved, which is what I assume is the question, I would be glad to get it for you for the record.

Chairman NUNN. Furnish that for the record.

[The information requested had not been furnished at the time these hearings were printed.]

Mr. STEINBERG. Mr. Perkins, did you tell Mr. Kotch and Mr. Crino that areas outside of the litigation were lost, would never be worked, and no effort would be made to work those areas?

Mr. MUSE. What page?

Mr. STEINBERG. I am asking him if he told him that.

Mr. MUSE. We would like to know the context of that question.

Mr. STEINBERG. You can refer to your interview with Mr. Kotch and Mr. Crino.

Mr. MUSE. Can you give us a page?

Mr. STEINBERG. No, I can't.

Mr. PERKINS. I believe I did make that statement. However, that was with regard to the old trustees. But I do not recall the exact context or the question that was posed to me with which I made the statement.

Mr. STEINBERG. Mr. Perkins, did you attempt to raise these issues in these other areas with the Solicitor's Office and did they respond to you by telling you that, as far as they were concerned, the investigation was closed?

Mr. PERKINS. Sir, I don't recall.

Mr. STEINBERG. Page 112 on your executive session testimony.

Mr. PERKINS. Again, sir, I might have made a mistake in the executive session. I do not recall raising the question, whether it was with the Solicitor's Office directly or through one of my supervisors. But with that reservation, the statement is basically correct; yes, sir.

Mr. STEINBERG. So except for the fact that you personally may not have done it, it may have been done through some other person, the statement is correct?

Mr. PERKINS. Basically; yes, sir.

Mr. STEINBERG. Mr. Perkins, with respect to the Labor Department's civil litigation, did you feel that all the eggs were in one basket, so to speak, considering the fact that the Department was not pursuing these other areas?

Mr. PERKINS. I believe I have made that statement.

Mr. STEINBERG. Mr. Perkins, did you feel that curtailing the investigation and allowing the trustees to resign would permit many of these people to walk away from improper transactions without exposing them to the public?

Mr. PERKINS. In retrospect, yes, sir, I do believe that I did feel that by accepting their resignations they were able to walk away free. However, again, I must reiterate that I was not involved in the negotiations and I do feel that it was a major factor for the Department in being able to remove the assets from the hands of the trustees and place them into safe hands.

Mr. STEINBERG. Mr. Perkins, did you feel that the fund's attorney had outmaneuvered the Labor Department in obtaining the resignation of the remaining trustees in exchange for terminating the rest of the investigation?

Mr. PERKINS. Again, I do feel that with regard to the resignation of the trustees that by allowing them to have resigned and not making public what I felt were abuses, some of which possibly will not be able to be brought out in our lawsuit, was an outmaneuvering on the part of the trustees. But, again, I must state that I wasn't there, I don't know all the facts, and that I still do support the Department's efforts in getting those assets into the hands of the investment managers.

Mr. STEINBERG. Mr. Perkins, do you believe that whoever made that agreement with the fund's trustees handicapped the investigation of the fund?

Mr. PERKINS. To the extent that we weren't able to get into the areas outside of the loans, the loan portfolio and investment.

Mr. STEINBERG. Did your attorney just show you the portion in your executive session testimony?

Mr. MUSE. I would object to that question.

Chairman NUNN. I would agree with the objection. You can ask him whether he wants to look at that.

Mr. STEINBERG. Have you just referred to your executive session testimony?

Mr. PERKINS. Yes, sir.

Mr. STEINBERG. In your opinion, Mr. Perkins, was it your opinion that no one in the Department of Labor had control over the Solicitor's Office?

Mr. PERKINS. Sir, I believe that I may have at one time made that statement. But I would prefer some more specific question that I could respond to.

Mr. STEINBERG. Let me ask you this: On the bottom of page 114, and the top of page 115, did you state in response to a question, "Was it your opinion that no one in the Department of Labor had control over the Solicitor's Office?" was your answer, "Yes, sir"?

Mr. PERKINS. Yes, sir, that was my answer in executive session.

Mr. STEINBERG. Mr. Perkins, was the Solicitor's Office actually running the investigation and running SIS, in your opinion?

Mr. PERKINS. To the extent that what the SIS was doing, and subsequent to the lawsuit, the extent of what areas of investigation the SIS could or could not get into, with regard to how they impacted upon the litigation, yes, sir.

Mr. STEINBERG. Mr. Perkins, in the health and welfare investigation, did you prepare at one time an all-encompassing subpoena for the health and welfare fund records and did the Solicitor's Office reject this subpoena and suggest a much narrower subpoena?

Mr. PERKINS. I did prepare an all-encompassing subpoena for the health and welfare fund. That subpoena was not issued. I was requested to prepare a more abbreviated—not abbreviated—a subpoena requesting specific items rather than an all-encompassing subpoena, yes, sir.

Mr. STEINBERG. After some point in time, did you attempt to obtain advice as to whether or not you could issue additional subpoenas for the additional records you might need from the health and welfare fund?

Mr. PERKINS. Yes, sir.

Mr. STEINBERG. Did the Solicitor's Office then tell you that due to the fact that the original subpoena had been limited, and due to their interpretation of ERISA, you could not serve another subpoena for another entire calendar year?

Mr. PERKINS. For a 12-month period, yes, sir. Someone in the Solicitor's Office did tell me that.

Mr. STEINBERG. With respect to the health and welfare investigation, did the filing of that litigation prohibit the service of administrative subpoenas and have the result of handicapping that investigation also?

Mr. PERKINS. I am sorry, Mr. Steinberg. There was some talking here at the table. Could you repeat your question?

Mr. STEINBERG. With respect to the health and welfare investigation, as opposed to the pension fund investigation, did the filing of the litigation on the health and welfare case interfere with the service of administrative summons and have the result of handicapping your investigation?

Mr. PERKINS. Yes, sir.

Mr. STEINBERG. Mr. Perkins, is the benefits and administration account under the control of the so-called independent asset managers?

Mr. PERKINS. No, sir.

Mr. STEINBERG. Mr. Perkins, with regard to the B. & A. account, was anyone from the Department of Labor monitoring the actual disbursements from that account in order to enable them to know exactly how the trustees were using the money in the B. & A. account?

Mr. PERKINS. You are talking with regard to the expenses paid out of the B. & A. account, Mr. Steinberg?

Mr. STEINBERG. Well, I am talking about monitoring the B. & A. account specifically.

Chairman NUNN. The in-flow and the out-flow.

Mr. PERKINS. There was no one at the fund on behalf of the Department of Labor reviewing the daily receipts and disbursements.

Chairman NUNN. Was the Labor Department monitoring that B. & A. account?

Mr. PERKINS. We monitored what was being forwarded out of that account to the investment managers. We received the 5500 on an annual basis and reviewed it to determine how the moneys were being spent.

To that extent, yes, sir, there was monitoring. I might add, in addition, we discussed the matter with other agencies.

Mr. STEINBERG. Mr. Perkins, is it accurate to state that besides what the asset managers, who apparently did not have control of the B. & A. account, reported to you, and besides what you saw on a financial form filled out once a year by the fund, there was no regular monitoring of the B. & A. account by the Labor Department?

Mr. PERKINS. Not to my knowledge, sir.

Mr. STEINBERG. Mr. Perkins, was any comprehensive, all-encompassing report of the Teamster pension or health and welfare fund investigation ever written?

Mr. PERKINS. There was a report that was included in a memorandum dated July sometime, 1977, with regard to the pension fund. I believe, I don't know whether it was all encompassing or not, but I believe there was a report issued with regard to the health and welfare fund sometime in the summer of—

Chairman NUNN. Let me just make this announcement. We have run overtime. We will be back here at 2:15. So anyone else who is going to testify would not need to be here before 2:15.

Mr. STEINBERG. Mr. Perkins, maybe I could make it simpler.

Mr. PERKINS. I believe it was the summer of 1979.

Mr. STEINBERG. Mr. Kotch and Mr. Crino found there was no comprehensive investigative report of either investigation. Would you concur on that finding?

Mr. PERKINS. At the time that Mr. Kotch and Mr. Crino talked to me, or at the time they issued their report, there had been none with regard to the health and welfare fund.

With regard to the pension fund, the report had been prepared and, again, in the summer of 1977, but I don't believe one was prepared to cover the period after that date.

Mr. STEINBERG. And I believe you have described that report as not being a comprehensive type report; is that correct?

Mr. PERKINS. Sir, I remember it was a very thick, detailed report. I would hate to say at this point whether it was comprehensive.

Mr. STEINBERG. Mr. Perkins, do you know why no permanent director of SIS was appointed for 2½ years?

Mr. PERKINS. No, sir, I don't.

Mr. STEINBERG. Mr. Perkins, did you, during your tenure as acting director of SIS, experience personnel problems and did you request your superiors to handle those problems?

Mr. PERKINS. Some of the personnel problems that I did encounter were brought up to my superiors, yes, sir; and I did ask for some assistance.

Mr. STEINBERG. Was anything done concerning these problems until May 1980?

Mr. PERKINS. No, sir.

Chairman NUNN. When was the request made of your superiors to help handle those problems?

You don't recall?

Mr. PERKINS. Sir, I would say that it would be sometime prior to the visit of Mr. Kotch and Mr. Crino.

Chairman NUNN. Over 1 year, then?

Mr. PERKINS. Yes, sir. But I do not want to go back any further than that; no, sir.

Chairman NUNN. At this point, we will recess until 2:15, at which time—does counsel want to say anything?

Mr. MUSE. Is Mr. Perkins finished or does he have to come back?

Chairman NUNN. Mr. Perkins is excused unless he is so interested in the subject he would like to sit in the audience, in which case he would be welcome.

Mr. MUSE. Thank you.

Chairman NUNN. He does not have to be here.

We appreciate you and your counsel's cooperation. Thank you.

Mr. MUSE. Thank you.

[Members of the subcommittee present at the time of recess: Senator Nunn.]

[Whereupon, at 1:32 p.m., the subcommittee was recessed.]

AFTERNOON SESSION

[Members of the subcommittee present at the commencement of the afternoon session: Senator Nunn.]

Chairman NUNN. The subcommittee will come to order.

We will begin with Monica Gallagher. Ms. Gallagher, if you will state your name and occupation, then you can begin. I think you have a prepared statement; is that correct?

TESTIMONY OF MONICA GALLAGHER, ASSOCIATE SOLICITOR FOR THE PLAN BENEFIT SECURITY DIVISION, U.S. DEPARTMENT OF LABOR

Ms. GALLAGHER. Yes, sir.

Chairman NUNN. We will give you every opportunity to read that statement and present it to the subcommittee. Could you give us your name and present occupation?

Ms. GALLAGHER. Thank you, Senator.

My name is Monica Gallagher. I am the associate solicitor for the Plan Benefits Security Division in the Office of the Solicitor, in the Department of Labor. The attorneys in our Division provide the Department's legal services, including handling litigation, relating to ERISA.

During the subcommittee's public hearings which began on August 25, 1980, a number of allegations were made which were directed at me personally or involved my conduct as a Labor Department official. Some of these allegations are flatly untrue, others are irresponsible half-truths. Some are trivial and do not warrant a response. But some do merit a reply because, if believed, they would not only adversely affect my reputation, but could well hamper men discharging my duties in connection with the enforcement of ERISA.

I regret that the subcommittee chose to air these charges at a public hearing before even seeking my side of the story. At no time either before or after the public testimony given on August 25, 1980, was I asked by any member of the subcommittee or of its staff for my response to, or my version of, the allegations relating directly to me. I was never asked whether I would present myself for interview or for testimony in executive session. I personally wish that the subcom-

mittee's concerns for the reputation of the innocent Department staff had become more actively apparent at an earlier time.

Chairman NUNN. We did request that you be made available as a witness in executive session and that was Labor Department's refusal on that.

Ms. GALLAGHER. As I understood the Labor Department's position, it was that it would not direct any staff employee to present himself or herself for executive session, but that if the committee wished to approach the employee, the employee was free to present himself or herself. I did make a request to present myself when I was not contacted.

Chairman NUNN. I can understand that. From my point of view, we contacted several different people in the Labor Department and all of them refused to appear, and we contacted a couple that said they would volunteer. And then they talked further with the Labor Department superiors and decided not to appear.

So we assumed that was the position of everyone. Perhaps we should not have assumed that in your case.

Ms. GALLAGHER. I am sorry if there was a misunderstanding.

In any event, I do appreciate the opportunity to present my version of the events which have been subject of testimony.

Before I discuss any of the substantive allegations, I think it might be helpful to briefly acquaint the subcommittee with my professional background. After graduating from law school in 1966, I was employed in the Department of Justice for 6 years. I left my position as a supervisory attorney in the criminal section of the Civil Rights Division in 1972, to become assistant professor of law at Georgetown University Law Center. After teaching full time for 2 years, I became deputy to the general counsel of the United Mine Workers health and retirement funds.

In July 1975, I was hired by the Labor Department as the first counsel for litigation in the Plan Benefits Security Division. At that time, the Associate Solicitor was Steven J. Sacher, whom I succeeded in that position in the fall of 1977. Since I joined the Department, we have prepared and filed about 50 civil actions brought on behalf of the Secretary under ERISA against plan fiduciaries, alleging violations of their fiduciary responsibilities. Approximately half of these actions have involved multiemployer plans associated with labor unions; many have involved large sums of money.

I am proud to be able to say, to the credit of the Department and Division, that the Secretary has been essentially 100-percent successful in litigation brought under ERISA and concluded to date. More importantly, many of the Department's victories represent major achievements. Far reaching relief has been secured, sizable money judgments have been obtained for the benefit of plan participants, and ground-breaking legal precedents have been established that help to clarify and expand the rights of all participants and beneficiaries.

In my capacity as Associate Solicitor, I have also been responsible for the litigation brought by the Secretary against the trustees of the Central States pension and health and welfare funds. I made the recommendations to bring these actions and these recommendations were approved by the Solicitor and the Secretary. Until May of this

year, however, I have never had any responsibility or control over the investigations, or the investigators in the SIS, who were involved in aspects of the investigation of the Central States funds. In May, I assumed, in addition to my regular duties, the temporary role of acting director of the Special Litigation Staff, the new unit created to handle litigation involving the Central States funds. A new Associate Solicitor will be joining us next week to take over that responsibility.

I would like now to turn to the charges which have been aimed at me.

I have been accused of directing officials of the Special Investigations Staff to refuse to cooperate with the Department of Justice. I do not believe there has ever been an occasion on which I have even suggested, much less instructed, anybody in the SIS or elsewhere not to cooperate with the Department of Justice in the proper execution of its mission. In connection with this allegation, certain inelegant language has been attributed to me ["F - - - Justice"]. I have carefully reviewed the specific testimony given by Mr. Shelvin and Mr. Lippe before the subcommittee on this matter. While I would contest the detail, I do not deny that phrases such as those mentioned may have escaped my lips on occasion. The most likely circumstances would have occurred in the context of a conversation with some Labor Department employee who, without authority or adequate justification, was invoking the name of the Department of Justice to influence a course of action under consideration by the Labor Department. If one of them advocated that the Labor Department take action which was inconsistent with its interests and mission to protect employee benefit plan assets, solely on the basis that the action might be in the interests of the Justice Department, I could well have been provoked to make such a remark to express my dismay with this line of argument. I absolutely deny that any such remark was meant to express any intention to interfere with or not cooperate with the Department of Justice.

Chairman NUNN. Ms. Gallagher, as you state on the bottom of page 3: "I do not believe there ever has been an occasion on which I suggested much less instructed* * *."

Did any of these remarks, basically in general terms, suggest that the Department of Justice should have sex with itself?

Ms. GALLAGHER. The language which, I think that it is going to be complicated if we keep doing—if you won't find it contemptuous of me, I will say yes, that I said, "Let Justice go fuck itself."

Chairman NUNN. It seems to me that a reasonable person could gather that you were suggesting less than the expression of full cooperation with Justice, using those terms.

Ms. GALLAGHER. That would be true if the Department of Justice had actually said the thing that was being alleged that they had said. When in fact the name of the Department of Justice is being invoked by some Labor Department employee who doesn't want to do his job, and who is saying that the reason he doesn't want to do his job is because the Department of Justice doesn't want him to, it seems to me one appropriate kind of response is to say the kind of thing which I said, which is a way of saying I just don't believe that.

Chairman NUNN. I would think though other people listening, who might not have known the full context of those remarks as you have

enumerated them, could draw the conclusion that you weren't too interested in cooperating with the Department of Justice.

Ms. GALLAGHER. I don't think that I ever said that on an occasion when the people who were present were not in a position to know exactly what my views were about cooperation with the Department of Justice, which views are and have always been that what we ought to be doing is working together so that each of us can fulfill our law enforcement mission. To the extent that those people who heard those remarks chose to misconstrue them, I simply think there is no excuse for it.

Chairman NUNN. Of course, as you well realize, the subcommittee didn't make these charges. These were people that had worked with you, who testified about the same thing.

Ms. GALLAGHER. I think there are two who testified about this. As I say, I am perfectly well aware that the subcommittee didn't make the charges and I think that the people who made them understood perfectly well what they were being told.

Chairman NUNN. Thank you.

Ms. GALLAGHER. In the previous testimony before this committee, subcommittee, I was accused of proposing a plan to conduct a high visibility road show for the purpose of creating a false impression of investigative activity by the Department of Labor.

I did have some involvement in a project designed to redirect a portion of the SIS investigative effort, but the characterizations of that plan and its purpose which have been given here are totally wrong and misleading. During the spring of 1977, after the trustees had agreed to resign and to appoint independent asset managers, I learned that the Secretary wished to examine alternatives for the future direction to be taken by the investigation.

One of the deficiencies of the investigative effort which I understand became apparent to the Department's highest officials during the period of negotiation for the resignation of the holdover trustees and the appointment of an investment manager was the lack of an overall investigative plan by SIS, even in the limited area of asset management. Because of this lack, it was quite clear that SIS was not prepared to make critical investigative judgments respecting the fund's more than 300 loan and other asset management transactions which had not theretofore previously been examined. I believe Mr. Lippe was asked to submit suggestions for the redirection of the investigation. If he made proposals, they were not thought to be reasonably calculated to permit the Department to make adequately informed and timely judgments about its future course of action. Other alternatives were requested. At a meeting I attended with Steven Sachser, my supervisor, and Eamon Kelly, the Secretary's Special Consultant, Mr. Kelly determined that the Department should, within a relatively short time frame, undertake to survey and categorize the other asset management activities so as to identify those meriting further immediate attention. We discussed the use of the technique of taking administrative depositions of then identifiable persons outside the fund with first hand knowledge of the various transactions. I was asked to prepare a list of individuals on the basis of whose depositions we might make some better informed judgments

about which transactions to pursue. I did so. The list included 81 names.

Although I am sure that the purpose of this project was clearly described, both orally and in writing, to Mr. Lippe, he apparently never accurately communicated the plan to his staff; the investigators were apparently told to examine the loans with which the 81 individuals were associated, as though those loans had already been selected for thorough investigation. I can only speculate that it was because of their lack of enthusiasm for the redirection of the investigation, which Messrs. Lippe, Seidel, and Ryan have testified to, that the project was never accurately presented to the staff, and in fact was never accomplished. While the Department recognized, and certainly I recognized, that a failure to redirect the investigation effectively would be negatively perceived by Congress and the public, I want to make clear that the purpose of the deposition project as I understood it always was to provide some real direction to the investigation and to help prepare for the litigation which followed.

I also understand that I am accused to some extent of blocking the investigation by SIS into transactions involving the National Bank of Georgia. I made no decision regarding whether such investigation should or should not be conducted and I have no personal knowledge of any such decision.

My only involvement came when Mr. Lippe sought our office's approval to issue a subpoena to the Pension Fund. After a discussion with Mr. Lippe I was of the view, which was later concurred in by my superiors, that the need for the subpoena sought was outweighed by the possible risks involved. We were already involved in subpoena enforcement litigation. I was aware that the asset management contracts were due to close very soon, and that the issuance of subpoena to the fund might give the trustees some excuse to delay or back out of that closing. Obvious investigative avenues other than subpoenaing fund documents had not been explored. For these reasons, I said that I would not approve the subpoena. I did nothing, however, to discourage or prevent Mr. Lippe from conducting investigation apart from issuing the subpoena to the fund. To the contrary, as my memorandum regarding this matter shows. I specifically suggested to Mr. Lippe that other avenues of investigation might be followed, including direct contact with the bank and review of the materials gathered by other Federal agencies which were then investigating the bank. I do not know why Mr. Lippe apparently chose not to conduct such investigation.

Last, it has been suggested that I sought control over the anticipated litigation involving the Central States Fund out of motives of personal ambition or without regard to the interest of the Labor Department in carrying out its responsibilities most effectively. I have examined my conscience on these charges, and it is clear. Long before I became Associate Solicitor, the Department had concluded that, whatever might have been contemplated when the SIS was created, that organization was not prepared to handle major litigation relating to the Central States Funds. While I did not make that decision, I fully agreed with it, and I accepted the responsibility it implied for me personally and for our Division. I have done my best, both per-

sonally and professionally, to fulfill that responsibility, and I expect to continue to do so long as it is mine.

Thank you for affording me this opportunity to testify. I would be pleased to attempt to answer any questions you may have. However, if I might, there are a couple of matters that have come up this morning and yesterday which I would like to address just briefly.

Chairman NUNN. Go right ahead.

Ms. GALLAGHER. First, there seems to have been some issue presented about the Solicitor's Office role in the approval of administrative subpoenas within the Labor Department.

It is my understanding and has been so long as I have been employed by the Plan Benefits Security Division that administrative subpoenas, whoever they are signed by, are presented for clearance to the Office of the Solicitor. That is the way of insuring that should there be noncompliance with the subpoena, the Solicitor's Office is committed to enforcement.

Mr. Hutchinson, who delegated to Mr. Lippe the power to issue subpoenas, routinely cleared all his subpoenas in the Solicitor's Office. There was apparently a brief period when Mr. Lippe did not understand that his subpoenas were to be cleared in the Solicitor's Office. Once that misunderstanding became apparent, it was cleared up. There was never a time when the subpoena authority possessed by the special investigations staff was changed, as far as I am aware. There was merely a clarification of policies which exist throughout the ERISA program.

Chairman NUNN. May I ask a question there? There just appears to have been huge communication gaps between various elements in the Department of Labor, particularly between the Solicitor's Office and SIS.

Of course, the Secretary and others have testified that Mr. Lippe and the ones who were here before testifying were disgruntled employees and so forth.

But we had Mr. Perkins this morning who obviously was straining in every opportunity to mitigate any kind of damage that his statement might make against the Labor Department, yet at the same time hopefully present the facts accurately to this committee. He obviously had a huge communication gap even up until May 1980, with the Solicitor's Office, including being under the impression there was at least an understanding with the former trustees about limiting their liability in exchange for resigning.

Now, my question is not to get into the detail of that, but how do you, first of all, explain that kind of communication gap, if you agree that one existed, and, second, what do you do about correcting it in the future, whether it is SIS or some other organization?

Ms. GALLAGHER. I agree that there have been serious problems with communication. I certainly was not aware that they were as serious as is suggested by Mr. Perkins' misunderstanding of the situation. That is something that I want to take up and that I think may clarify exactly the scope of Mr. Perkins' understanding or misunderstanding of the agreement, or understanding or misunderstanding.

If I may do that, I do want to come back to your question because it is one I am certainly real concerned with.

Chairman NUNN. Go right ahead.

Ms. GALLAGHER. There are three items which have been referred to at various times as agreement or understanding, or, as Mr. Perkins called it, understanding or misunderstanding.

The first is the agreement which the Department reached with the trustees of the plan involving the resignation of the trustees and the appointment of independent asset managers—the so-called press release agreement.

That agreement has been criticized for its form. It has certainly never been criticized for its substance, as far as I am aware.

A second thing which has been called an agreement has also been called the "phantom agreement," a deal, an arrangement that the Labor Department would or would not do certain things.

The Secretary has testified numerous times that there was no such deal. I have talked to the Secretary's negotiators and they have told me, and I believe them, that there was no such deal. I was present when Mr. Lippe was told that there was no such deal. I don't know whether Mr. Lippe believed that or not, but from Mr. Perkins' testimony, it seems that Mr. Lippe suggested to Mr. Perkins that there was some kind of deal along those lines. I am sorry if that is the basis of some misunderstanding that has continued to this very day in Mr. Perkins' mind. But I suggest a third possibility—

[At this point, Senator Percy entered the hearing room.]

Chairman NUNN. But you would agree that being Acting Director 2½ years and being either under the understanding or misunderstanding, whichever the case about some kind of phantom agreement is certainly a serious problem in an investigation of this magnitude.

Ms. GALLAGHER. It certainly would have been a serious problem but for the third possibility, and that is there was a policy decision made under Mr. Lippe's jurisdiction and concurred in by the Secretary, that the asset management phase of the funds operation was so far and away more important than anything else that might be looked at, that it would take priority.

So the Department was committed to a policy of pursuing asset management first and foremost.

Now, I agree that if it weren't for that policy commitment, the misunderstanding which Mr. Perkins testified about could have been a very, very serious problem. But I also think it would have become apparent to all of us, much earlier. We would have been asking, why is nothing happening? As it was, those of us who didn't have the misunderstanding didn't worry about why no investigation was being made of trustee expenses. We assumed it was because there was adherence to the policy decision, that that was unnecessary.

I do think that the problem of communication—

Chairman NUNN. Instead of having a press release issued, if there had been a written agreement with the trustees, then you wouldn't have had people all the way through the Labor Department under misunderstandings in this area, would you?

Ms. GALLAGHER. Well, I don't know, Senator. I don't know if they would have believed that everything was there in the written agreement. They didn't believe it when they were told on the highest authority in the Department what the agreement consisted of.

Chairman NUNN. How does the Labor Department have such a degree of mistrust by its own key people?

Ms. GALLAGHER. I sure wish I knew that.

Chairman NUNN. Do you consider that a serious problem that needs addressing in the Department of Labor? If everybody over there distrusts everybody else, or a lot of people—I strike the word “everybody.” I just would say if they have the degree of mistrust we have had expressed in both public and executive sessions, to say the least, that is disturbing. I am sure it is disturbing to you, isn't it?

Ms. GALLAGHER. I think that there have been problems that have been very disturbing. Many of them have been corrected long ago. Some of the people who had the least confidence in the Department and in whom the Department had the least confidence are no longer associated with this undertaking.

I hope that all of the problems are either resolved or very close to being resolved. I can only say that I agree with the concern, but I do think the Department has been working on it, and real hard.

Chairman NUNN. Did you hear Mr. Perkins' testimony that he didn't believe that the Department or he had been given reason to believe the Department couldn't undertake investigations of borrowers, third parties?

Ms. GALLAGHER. I heard his testimony about borrowers. It wasn't entirely clear to me where it came out, because I think—

Chairman NUNN. I would agree with you on that.

Ms. GALLAGHER. [continuing]. I think he is well aware that there is a third-party investigation in progress of borrowers. And I think he tried to present his clarity on that issue. As far as the legal theories are concerned, I might say that to the extent that the subcommittee would like to hear the Department's legal theories, I suppose I ought to tender myself as the appropriate witness on those questions. They might be harder for some of the others.

Chairman NUNN. Does the Department have the authority under ERISA or other legislation to pursue third parties on loan transactions in your view?

Ms. GALLAGHER. In my view, ERISA provides remedies for persons other than—against persons other than fiduciaries in some circumstances, and the Department has brought suits in which defendants other than plan fiduciaries, such as a borrower might be, have been named.

Chairman NUNN. Mr. Perkins was under the impression that you did not have authority to bring suits, or if he was, against third parties and investigates third parties—that was an erroneous opinion on his part?

Ms. GALLAGHER. I think it is—it is not clear to me he really had that opinion. If he had it, it is wrong—that is right.

Chairman NUNN. He was there 2½ years. I have a hard time on a matter of this question; I just have a hard time believing there couldn't have been better communication between the Solicitor's Office and the man heading up the investigation.

Senator PERCY. Could I interrupt for just a moment? I have been on the Senate floor managing a piece of legislation, and now I have to leave town in a few minutes. I would like to express to the Secre-

tary and to his colleagues my appreciation for the time they have given us in the last 2 days to try to resolve this problem. I think you know, Mr. Secretary, that I have been greatly concerned that we in the Congress fulfill our obligation to make certain that the Labor Department vigorously pursues this investigation. But I am also concerned about the apparent failure of the Labor Department to supply GAO with information—in this instance, the Kotch-Crino report—vital to their completing the assignment that we requested of them. GAO serves as an arm of the Congress. It has the staff and resources to accomplish things that we can't possibly do. The difficulties we have encountered in obtaining this report disturb me greatly.

We should not be spending this amount of time on this particular aspect of this case. But we are dutybound to see it through. Until this matter, I have had a very good relationship with the Labor Department for my 14 years in the Senate. That includes the last 3½ years under your direction. I do hope what will come out of this hearing will be a desire by both of us to do everything we can to find a way to come together, and understand each other better, and then work toward a common goal. I haven't any doubt now that the common goal is to resolve this matter fairly and honestly, and to pursue and carry out vigorously the mandate that each of us has in the matter. From my standpoint, I certainly want the Congress to give you backing and support once we understand what your problems have been.

But I do think you have had some very serious management problems in the Department that only you can resolve. I hope we have helped you better understand those. Some points you have clarified for us, and I thank you for that. We have cleared up some of the misunderstandings. I simply want to pledge that I will work with you.

I want to say again the subcommittee staff has been, of necessity, very diligent in carrying forward this investigation. I again want to say to you, Senator NUNN, you have been fair, just, evenhanded, and truly bipartisan in conducting this investigation.

I'm sure that we all want to resolve this matter and get it behind us just as soon as we can.

Secretary MARSHALL. Thank you, Senator Percy. We certainly want to do that. As I have said repeatedly, I knew about the problems in the Department before I ever became Secretary of Labor because they came up in my confirmation hearing. We have worked diligently to resolve them. It has taken longer to do it than I would like. We had trouble finding people. We had trouble finding somebody under the new reorganization. I think we have done that now. We had some personnel changes that delayed that process. But I want to assure you also that despite all of those personnel matters, the people in the Department were giving high priority to this matter and we have established very clearly our priorities and have carried those out.

I think we do have a structure now that is much more effective than the previous one that we had. And I think it is obvious that we did have some serious communication problems. I think those are leadership problems. It is hard for me to believe anybody would not have known what our policy was because we publicized that extensively. I held press conferences and testified and those memoranda circulated throughout the Department. And the purpose of all of that was so

that everybody would clearly understand why we were doing what we were doing. I think the problem is that because of the tension between the SIS and the Solicitor's Office and LMSA, you had natural problems of communication. I think that was not a good structure, particularly once we get into the phase of the Central States activity we are in now.

And that is the reason that I made the decision to do away with that and to establish clearer lines of authority. And I think that this new system will work better. But I don't delude myself into thinking that there will ever be one final act. I think that these things evolve. You constantly try to improve the structure. That has been my experience in every other area of the Labor Department. There was no area of the Labor Department that didn't have serious management problems when I came in. But I don't believe there is any area now where we have not made substantial improvements in the internal management, including this activity, partly because I have made it a high-priority to work at it very hard, and we will continue to.

As I said in my testimony yesterday, I was surprised that you all felt that somehow the Department had not carried out my pledge to communicate with you, because my staff understands that that is what I want them to do, to be responsive. And I think that, I hope that the thing that has been learned by the committee is that when you want some information from the Labor Department, come to me.

Chairman NUNN. Mr. Secretary, there are a lot of things, when you get into oversight investigation of this magnitude, if we come to you on every bit of information, we cannot rely on your staff at the lower level, you won't have time to do anything else.

Secretary MARSHALL. The problem we have is whether or not on particularly sensitive things, people at lower levels will actually know. I will know who knows. But if you start from the bottom, people can say they don't know and be perfectly honest.

Chairman NUNN. We started with the man on this report that had jurisdiction over the report, that ordered the investigation and the report was given to, and as it turned out the one who either destroyed it or had thrown away the report. That was a pretty good start.

Secretary MARSHALL. As soon as you came to the Solicitor's Office you were able to get it.

Chairman NUNN. With a subpoena.

Secretary MARSHALL. Well, I think that is debatable, too. I think Mr. Gallagher testified yesterday that he was, at least, he told me and I think that was the case, he was seeking the information and had actually asked Mr. Steinberg to do it without the subpoena. I will let him respond to that.

Chairman NUNN. I think we have been introduced enough on that. I share Senator Percy's sentiments and certainly we will be going into a lot of detail on some more matters but I hope we can end on a note of cooperation.

Secretary MARSHALL. I hope so, too.

Senator PERCY. We realized when we issued that subpoena to an executive branch department that we were establishing a precedent on the subcommittee. Never before has the subcommittee had to compel documents from a Government agency by subpoena. I notified the

Republican caucus of that precedent. I said we were doing it not only because of the particular facts of this case but also because the Congress has a definite and clear mandate for oversight of the executive branch. We can't exercise that mandate unless there is cooperation. I hope all executive branch departments will be on notice that this subcommittee, and every committee that I have anything to do with will issue subpoenas if they cannot get the necessary information on a voluntary basis. We had to show that we meant business. It was necessary as a matter of principle.

Secretary MARSHALL. I had to also show that I was determined to protect the due process rights of our employees. That was an important consideration to me. I think we have had the chance to do it.

Chairman NUNN. Due process of your employees is in great jeopardy when that confidential report went into the wastebasket.

Secretary MARSHALL. That is another thing. As I have mentioned this morning, we have to monitor that process as well.

Chairman NUNN. Senator Percy, let me thank you before you leave for your complete cooperation and that of your staff in this investigation. It is not unusual. It is always there and we appreciate it.

Mr. Steinberg?

Senator PERCY. I will see our former colleague, Senator Griffin, in Detroit. He was the one who originally urged, and then received, on setting up a special select Senate committee to conduct an investigation of the Teamster Pension Fund. When he left the Senate, I told him that this subcommittee would carry out its duty to conduct vigorous oversight of the Teamster Pension Fund investigation. I believe we have fulfilled that pledge. Again, the majority has just been totally cooperative in that regard.

Thank you.

Chairman NUNN. Mr. Steinberg, you had a question.

Mr. STEINBERG. Ms. Gallagher, you heard Mr. Perkins and I don't want to try to characterize his testimony. I will say that he remembers some advice being given to him not to pursue these third-party borrowers, at least up until a very recent date and he also has stated to the effect that in fact they weren't pursued, they weren't named in the lawsuit and so forth.

Isn't it true that the ERISA statute gives the Department of Labor authority to pursue those third-party borrowers? Haven't courts decided that issue at this point in time?

Ms. GALLAGHER. I am not aware of any decision squarely on the point. We certainly take the view that the Department has the authority in appropriate circumstances to join as defendants and to recover from such persons. I take it back. There is a decision. DeKeyser permits us to recover against persons other than a fiduciary.

Mr. STEINBERG. As far as I can tell from the legal papers you were one of the parties that the decision was sent through, *Freund v. Marshall*?

Ms. GALLAGHER. Yes; that is DeKeyser.

Mr. STEINBERG. That does give you legal authority to pursue those people. Is that correct?

Ms. GALLAGHER. Under certain clearly described circumstances. That is the position that I was saying. Certainly we have the authority to join persons who are not fiduciaries.

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Mr. STEINBERG. Don't you think you should communicate that you have the authority to the person conducting the investigation in 2½ years?

Ms. GALLAGHER. I don't think, if you review what has been done in the investigation, that there is any lack of attention given to third parties. If Mr. Perkins was of the view that it is not possible to join them as defendants, I don't know where he got that view. He certainly didn't get it from us. Legal theory in the Department of Labor is not developed or articulated by the program personnel, including investigators, by and large.

Chairman NUNN. You are the first person I have heard testify yet that said the third-party investigations were not completed. Everybody said that they had completed third-party investigations.

Ms. GALLAGHER. Everybody who has testified has been a kind of nonrandom sample of the people who know about this matter.

Chairman NUNN. Have you completed third-party investigations of the Teamster Pension Fund?

Ms. GALLAGHER. We are in the process of making extensive third-party investigation in connection with the Central States Pension Fund.

Chairman NUNN. When was it we were told that? In 1977, was the last time we were told that by the Labor Department. What month? June 1977, I believe Secretary Marshall testified that there was going to be—I wish I had the direct quote—the impression I got that vigorous third-party investigations were in process. Of course, everybody was supposed to be carrying out those investigations that testified that I know of, both Acting Directors. That is not exactly a random sample.

Ms. GALLAGHER. Perkins testified that they are in the midst of extensive third-party investigations.

Ms. CLAUSS. Senator?

Chairman NUNN. If they are, when were those undertaken without getting into the detail?

Ms. CLAUSS. I think if the reporter would read back Mr. Perkins' testimony, I wrote it down as he testified. He said third-party investigations were not abandoned in December 1976, that they did not cease when the lawsuit was filed and that they are currently being pursued through the discovery process and I have also read Mr. Lippe's testimony very carefully.

I think this gets down to the fundamental policy disagreement. There were those in SIS who did not want the Department to proceed with immediate plans for litigation.

What they asked the Secretary was to be given 2 or 3 years to complete a broad-scale investigation and to complete the third-party investigation which they wanted—and it was his decision and our decision that we didn't have that kind of time.

First, we had to proceed to prepare for litigation to lock up the assets if negotiations stalemated and, second, these trustees who had so flagrantly violated their fiduciary responsibilities had to be held accountable in a court of law and exposed to that accountability.

So we did not think we could hold off for a long period of time. That was a fundamental policy decision with which Mr. Lippe and others have disagreed. And that is what, when their testimony was read carefully, they are saying.

They had to give up their third-party investigations at that very time in order to prepare for the litigation and that then they got back into the third-party investigations in September 1977, and then once again, just as they were getting going, a decision was made to file suit, which closed off the administrative process. But no one has ever suggested—and we can supply this for the record, although I believe the GAO has some figures in its report, that we have interviewed well over 100 third parties in the preparation of this lawsuit since the Secretary testified.

We will be happy to provide for the record some very exact figures.

Chairman NUNN. Are third-party defendants in the lawsuit?

Ms. CLAUSS. None of these people have been made defendants in the lawsuit, but nothing precludes us from amending our complaint should the circumstances develop that would warrant that.

Chairman NUNN. What about the statute of limitations?

Ms. CLAUSS. The statutory problems are quite different there. We could have had real statute problems with regard to matters that we had the records in our possession since 1975. It was partly on that basis that we filed suit.

Chairman NUNN. You don't think you have got any statute problems now with third parties?

Ms. CLAUSS. Well, you see, it depends on the circumstances. If you could establish that somebody knew of a prohibited act, a wrong act that occurred, and the statute was running, with full knowledge the statute runs from the time of our knowledge. But those are litigation decisions we are making on a regular basis.

Mr. STEINBERG. Correct me if I am wrong, but if the Department of Labor was familiar with one side of the transaction, in fact, charged the trustees who violated their fiduciary responsibility, you mean to say that a court would rule that the Department of Labor never had knowledge of who received the money?

Ms. CLAUSS. Mr. Steinberg, all I can say so as to not jeopardize the litigation, our files are open to you and to the GAO. All the files were made available to GAO. You can read what we have garnered in our investigative process. They can read what we have as of February 1978, compare it to what we have now.

But the testimony you are referring to, what people have said to this committee, is not that no third-party investigation has taken place. What they have said is that it was their recommendation that suit not be filed until the third-party investigations were completed.

Mr. STEINBERG. I don't believe that is the testimony before this committee.

Ms. CLAUSS. They also testified that they were taken off third-party investigations during the period when we were preparing for an immediate lawsuit, to remove the trustees and lock up the assets.

Mr. STEINBERG. I believe that GAO and Mr. Kotch and Mr. Crino and virtually every other person we asked stated that third-party investigations came to a halt in December 1976, and while—not that I am going to argue with you—if you don't mind, let me finish.

Ms. CLAUSS. I agree with that.

Mr. STEINBERG. Let me finish?

Ms. CLAUSS. I am sorry.

Mr. STEINBERG. My recollection is not as your recollection reflects concerning what Mr. Perkins said. My recollection of what he said is that the third-party investigations stopped in December 1976, until the trustees resigned in April 1977, continued for a brief period, stopped again in February 1978, when the civil lawsuits were filed.

Ms. CLAUSS. I thought that is exactly what I just said, that people were pulled off the third-party investigations.

Mr. STEINBERG. What that means is there was only a few months in that period where they—

Ms. CLAUSS. No. You left out 2½ years, Mr. Steinberg. The third-party reviews were—they had planned to kick them off in December 1976. The testimony is very clear that a decision was made by the prior administration, with which this administration agreed, that you could not leave the assets sitting out there while some large investigation was conducted that would take several years.

So the decision was made to see whether or not we had enough based on what we had at that point to deal with the immediate problem. That process consumed the first part of 1977. The third-party investigations then resumed, I believe I said, just a few minutes ago, approximately in October or September 1977.

People were then again taken off sometime after that to prepare for the lawsuit. Once the lawsuit was filed, and you will not find any contradiction of this if you will carefully read the testimony of the other persons, that once the lawsuit was filed, third-party investigations then did commence again, but this time through legal process and not through administrative process.

The administrative process had been cut off by the filing of the lawsuit. As I said this morning, our reasons for filing the lawsuit—we have given you all of the memorandum that led up to that decision. We welcome your second legal judgment on that, but it was our best judgment at the time and it is still my best judgment today.

Mr. BLOCK. Do you agree that, from an investigative standpoint, third-party investigations through the use of an administrative subpoena before the filing of the suit can gain more information and be more effective than the voluntary nature of interviewing relevant persons in depositions that come with civil discovery following the filing of the lawsuit?

Ms. CLAUSS. Absolutely, Mr. Block. Nothing would have made me happier than to come into the job of Solicitor and find a completed investigation. That would have been wonderful. But it wasn't one of the options we had.

It is very difficult moving to protect assets and protect people with the timeclock running when you don't have a finished investigation. It made it hard for the lawyers. It made it hard for the investigators, but we didn't want to be coming here today and telling you how come we had left the assets unprotected for 2½ years while they were looted, and Mr. Steinberg has had some experience with that because he was very concerned about the situation in Florida involving the situation where assets were left to the management of the fund.

Nor did we want to have to explain to this committee how come all of these lawyers with their backgrounds could have allowed the statute to run on that because the investigation wasn't completed?

Mr. BLOCK. But the fact remains that the decision to limit the third-party investigations came in December 1976. The lawsuit was filed 14 months later, in February 1978. Isn't that correct?

Ms. CLAUSS. You know, you say the decision to limit third-party investigations. I think the correct statement would be the decision to postpone the kickoff of a third-party investigation until Mr. Lippe and his people had put together enough of a report on what they had done to enable the then administration and then the new administration to make an evaluation as to whether or not they could move in court to lock up the assets and remove the trustees. Yes, that was the policy judgment made then in sorting out the priorities.

Mr. BLOCK. During that 14-month period, while these months of negotiations were going on with the trustees, the SIS leadership was not involved in those negotiations, is that correct?

Ms. CLAUSS. There were only two negotiators for the Department, Mr. Kelly and Mr. Sacher. However, all of us, including in particular Mr. Lippe and Mr. Seidel, met with the Secretary on a great deal of business and were fully briefed on the course of the negotiations. Mr. Lippe was briefed, sometimes on a daily basis, in the course of those negotiations, and we made these decisions jointly with the Secretary.

Not everyone concurred in all of the decisions made, but everyone's voice and vote was heard. The reason that we didn't immediately resume the planned third-party investigations while the negotiations were in progress is that we had no hard evidence that those negotiations would be successfully concluded. As the Secretary testified yesterday, they were hard and bitter and every day we thought they would break off permanently, and that we would then go into court as fast as possible to seek the relief in court, and we were busy trying to get ourselves ready for that eventuality.

So Mr. Lippe and his staff were, throughout that period, trying to bring the investigation into some kind of focus getting the data prepared if that is the course we had to take.

Chairman NUNN. Ms. Clauss, one other question along that line. You said third-party investigations resumed again through the discovery process after a lawsuit was filed. Who was in charge of those third-party investigations under the discovery process?

Ms. CLAUSS. Of course, once it had moved into legal discovery, Senator, that was supervised by the supervising attorney, Mr. Gallagher, although he is fully assisted by investigators. I mean, they do assist him.

Chairman NUNN. So Mr. Perkins would have still been involved in the investigative role then?

Ms. CLAUSS. Well, I would like to defer that to Mr. Gallagher, because I can't speak from my personal knowledge.

Mr. GALLAGHER. Yes, he was. In support of the litigation Mr. Perkins was involved in all of the activities regarding obtaining information from third parties.

Chairman NUNN. And that has been carried out by Mr. Perkins in SIS until their abolishment?

Mr. GALLAGHER. It has been carried out by lawyers from the Solicitor's Office working with auditors from the SIS.

Chairman NUNN. You do have and have had rigorous investigations of third parties since the lawsuit was filed?

Mr. GALLAGHER. That is correct, Senator. And we have the records that will evidence that. I think GAO had access to some of them. They can see that we have probably taken 40 depositions and talked to a hundred or more people during that period and obtained records from numerous people as well, with or without judicial process.

Ms. CLAUSS. Senator, I might just—

Chairman NUNN. Is that concerning and limited to the 15 transactions named in the lawsuit?

Mr. GALLAGHER. It has not been limited to the 15 transactions.

Ms. CLAUSS. If I could just clarify one other point, I want to make it very clear to the committee that although we feel we do have legal authority in appropriate circumstances to name third parties as defendants, that doesn't mean that automatically every borrower involved in an imprudent transaction automatically becomes a defendant.

Chairman NUNN. I understand that.

Ms. CLAUSS. It may be very prudent to loan me money only if I aid and abet your fiduciary ability.

Chairman NUNN. I understand that.

Back to Ms. Gallagher. I am going to ask counsel to read excerpts of statements concerning a meeting in February, April or May 1977. Miss Gallagher, do you remember holding a meeting with Mr. Lippe, Mr. Gallagher, Mr. Ryan, Mr. Barbatano, Mr. Seidel, and Mr. Shevlin in February, April or May, somewhere in that time frame, 1977?

Ms. GALLAGHER. I don't remember any single meeting with that whole cast of characters, although I am sure I met with all of them on various occasions. Perhaps I will have a better recollection.

Chairman NUNN. Let counsel read the excerpts from previous testimony we have on that meeting and we will get your comments.

Mr. STEINBERG. I will first start by reading Mr. Ryan's testimony concerning that meeting. Actually they were referring to two separate meetings, Miss Gallagher.

In February 1977, I was asked to accompany Mr. Lawrence Lippe to a meeting at the office of Mr. Robert Lagather, Deputy Solicitor of Labor. Present at the meeting were Lagather, Monica Gallagher, Lippe and myself. The subject of the meeting was to determine what steps should be taken in the Teamsters investigation in order to respond to strong expressions of Congressional interest in the investigation.

During this period, I was aware that the Department of Labor was receiving substantial Congressional pressure from various quarters to be more aggressive in the Teamster investigation.

This intent was expressed by correspondence from members of Congress, hearings and proposed hearings, and contacts from various staff members from Capitol Hill.

During this meeting in Mr. Lagather's office, Monica Gallagher did most of the talking. She recommended that, in response to Congressional interest, we should put on a quick, high visibility show to get Congress off our back. She advocated that the SIS staff be directed to conduct a large number of brief interviews or depositions to create the appearance of activity in the investigation.

Chairman NUNN. Is this close to paraphrasing her words, are these her words, or your impression of her words?

Mr. RYAN. I am not quoting her, but I believe this to be an accurate summary of what was explicitly stated.

I understand the full substance of her remarks to advocate that the Department of Labor put on a false show of activity for the sole purpose of deceiving Congress concerning the progress of the Central States Pension Fund investigation.

This clear impression from her remarks caused me to conclude that the dictates of legal ethics required me to protest her proposal. I thereupon interrupted Monica Gallagher's presentation and stated that I believed it was unethical for a lawyer to try to conduct a "sham show" to deceive Congress, and that as a lawyer I could have no part of such a project.

When I voiced these comments, Monica Gallagher was noticeably angry but I do not recall any direct response to the objections I had raised. She ignored me the rest of the meeting. The meeting broke up a few minutes after this exchange.

While walking back to our office, I told Mr. Lippe that I felt this incident was the final straw in my relationship with the Office of the Solicitor. I asked him to make the necessary efforts to have me transferred to the program side of the SIS and out of the Office of the Solicitor.

It was not my intent to be removed from the Teamster investigation but to be outside the control of the Solicitor's Office. Shortly thereafter, I was informed by Mr. Lippe that such a transfer would be possible because the Department of Labor had determined that the SIS would not be permitted to conduct its own litigation and that any litigation would be conducted by Monica Gallagher's staff in the Solicitor's Office.

With respect to Mr. Lippe's testimony, on the question being asked—

Chairman NUNN. That is all Mr. Ryan's testimony.

Mr. STEINBERG. That is correct.

Upon being asked by Chairman Nunn,

Did you ever attend a meeting with Monica Gallagher where she discussed a high-visibility and a quick-roadshow approach to the investigation?

Mr. LIPPE. I was, sir. I believe it was the same meeting that has been previously described by Mr. Ryan.

Chairman NUNN. Time frame, approximate?

Mr. LIPPE. This was a meeting that occurred, as I recall, in Mr. Lagather's office who was then, I believe, the Deputy Solicitor of Labor.

Chairman NUNN. Time frame, approximate?

Mr. LIPPE. In March, April of 1977, the spring of 1977, maybe a little sooner, in that time frame. It could be as early as February, within that time frame.

We were called to this meeting which Ms. Gallagher either produced at that meeting or said she had back in her office a list in which approximately somewhere between 50 to 75 or so principals involved and maybe as many loans had been identified by her with respect to which she said we should immediately subpoena those persons in and question them with respect to each of the loans that they were associated with.

When I probed with her first, what was the basis for her selecting those names and those loans or transactions, by what criteria were they selected, the only answer that she gave that I can recall that was even an answer, if you will, was that those were loans which she had quickly read about in some minutes, fund trustee minutes of their meetings and loans in which the principals could be easily identified and we could then go after them in what would be a quick roadshow fashion.

Chairman NUNN. She used those words?

Mr. LIPPE. Yes, sir.

Chairman NUNN. Did she use the words "high visibility" also?

Mr. LIPPE. Or to that effect, yes, sir.

I protested vigorously for all the obvious and logical reasons that any experienced investigator and prosecutor would protest. I don't know whether the chairman wants me to go into all the reasons I articulated.

Chairman NUNN. I think you ought to go into detail on that one.

Mr. LIPPE. Among the reasons that I clearly recall is that of course, I reminded Ms. Gallagher we had been focusing on a number of other, which in our judgment were obviously egregious loans that various groupings had previously described, the Malnik grouping, Shenker grouping, the Glick grouping of loans as to which we had prepared extensive third-party subpoenas and were prepared to do extensive work.

We did not know very much about these loans, if anything, that she wanted us to question these folks about. The newest investigator or prosecutor would

have the temerity to begin questioning borrowers involved in complex financial transactions without knowing anything about the transaction, other than what you might read about in a few sketchy fund minutes and at best fund minutes in many instances were sketchy. No investigator or trial attorney wants to question a witness who knows one hundred times more about the transaction than he does. This could, indeed, have an adverse impact on other potential civil or criminal inquiries which would be based on much more adequate preparation. In short, I told Ms. Gallagher that I thought this was sheer and absolute irresponsible madness.

Chairman NUNN. What was her response?

Mr. LIPPE. Totally unresponsive to any of either mine or Mr. Ryan's protestations, and she continued with the apparent support of Mr. Lagather who was present during the meeting to order that we forthwith begin preparations to carry out this activity which she had planned.

Chairman NUNN. Did she say this course of action was to appease Congress? Did she ever use words to that effect?

Mr. LIPPE. I believe that phrase was used during the meeting, or words to that effect.

Chairman NUNN. Did this occur after the SIS third-party inquiry was terminated?

Mr. LIPPE. Yes; this was clearly subsequent to the instructions which Mr. Seidel and I received during that mid-December meeting which I described earlier and as I said sometime commencing either in February, March or April of 1977.

Chairman NUNN. Did your office indeed begin the line of inquiry she had advocated?

Mr. LIPPE. Only in the most token fashion, in effect, to get her off our back. So long as I was there, Mr. Chairman, that inquiry was not going to proceed in any meaningful way.

Chairman NUNN. You felt it was improper?

Mr. LIPPE. Ridiculous at the very least. Certainly improper.

Chairman NUNN. Do you feel it was unethical?

Mr. LIPPE. Certain aspects of it could have bordered on that.

Mr. SHEVLIN. Early in 1977, rather than let the investigation take its normal course with the third party investigation we had planned, the Solicitor's Office advocated going directly to principals for depositions. Monica Gallagher of the Solicitor's Office wanted to begin a 60-90 day high visibility investigation. She had selected 81 persons that she wanted us to take depositions from without the SIS staff having done any preliminary work on the persons named by her.

We then went to the May 4 meeting. I recall the meeting well. Present at the meeting were Monica Gallagher and Steve Sacher of the Solicitor's Office. Larry Lippe, Les Seidel, Salvatore Barbatano and I represented the SIS staff.

Monica Gallagher claimed that she had come up with a list of 81 names in a little over 3 hours that could be deposed by reviewing minutes of trustees' meetings of the Teamsters Central States Fund. One of the names on the Gallagher list was former Attorney General Richard Kleindienst.

She said that she would ask him how much money be offered (as a bribe) in connection with a certain loan. Seidel pointed out that the loan she had reference to had never been disbursed. She commented she would ask him if he thought the loan would have been approved if he, Kleindienst, offered more (bribe) money. I was incredulous. I could hardly believe my ears. I never heard anything quite so professionally irresponsible concerning an approach to a witness.

Chairman NUNN. Then there was an affidavit by Mr. Barbatano. We will put it in the record. We won't read the substance of it.

[The document referred to was marked "exhibit No. 23" for reference, and follows:]

EXHIBIT No. 23

STATEMENT OF SALVATORE A. BARBATANO

I am 33 years old and reside in Evanston, Illinois. Since early 1974, I have been admitted to the practice of law in the federal and State courts of Wisconsin and Illinois. I am presently engaged in the private practice of law in Chicago.

Illinois. My work is generally concentrated in the areas of bankruptcy and reorganization litigation, general commercial litigation, and, occasionally, securities litigation. From early November, 1974 until mid-June, 1977, I was employed as a Staff Attorney and Assistant to the Director of the Special Investigations Staff ("SIS"), United States Department of Labor. During this period, the Director of SIS was Lawrence Lippe, Esq. For most of this period, my immediate supervisor was Lester B. Seidel, Esq.

My employment with SIS occurred as the result of a chance social meeting with Mr. Seidel in or about July, 1976. My wife and I had dinner with Mr. Seidel and a mutual friend. During the course of the evening, I described for Mr. Seidel my experience in bankruptcy and commercial litigation, representing financial institutions, and indicated that I was in the process of seeking new employment (at the time I was employed by a twenty-five person law firm in Chicago, Illinois). Mr. Seidel was apparently impressed by my experience and its applicability to the type of investigation which SIS had undertaken. Accordingly, Mr. Seidel inquired as to whether I was interested in working for SIS. I replied affirmatively. This was followed by a few more interviews with Mr. Seidel in Chicago, and interviews with Mr. Lippe and Mr. Steven Sacher in Washington, D.C.

This process culminated with my hiring in November, 1976. During that period, Mr. Seidel encountered substantial frustration in obtaining approval of my hiring. As I was to learn in late 1976, the delay in hiring was the indirect result of an ongoing interneine dispute between SIS, and the office of the Solicitor of Labor. This dispute was waged during the entire time of my employment with SIS and resulted, in my judgment, in the complete frustration and subversion of the investigation of the Teamsters' Central States Pension Fund. This bureaucratic wrangling has done an enormous disservice to the government and the public. It has, in effect, perpetuated the looting and irreparable depletion of a two billion dollar pension fund. There are many victims in this scenario; but those suffering the greatest injustice are the Teamster union members who will be deprived of pension benefits because the Labor Department failed in its mission.

I arrived in Washington in November, 1976 with great hopes and aspirations, to borrow a phrase—"wide-eyed in Babylon". I viewed my work as a great opportunity for public service and for the advancement of my professional career. By February, 1977, I had become sufficiently discouraged to commence seeking new employment. In June, 1977, I left in disgust, convinced that a concerted effort had been made by persons within the Labor Department, and elsewhere, to destroy the investigation undertaken by SIS. My views on that subject have not changed.

Upon my arrival in Washington, Mr. Seidel requested that I prepare a legal analysis of several large Central States Fund loans, focusing upon whether the loans reflected a breach of fiduciary duty by the Trustees of the Fund. This analysis was designed to identify those transactions which could be targeted as part of the third party investigation which SIS intended to commence in the spring and summer of 1977.

I was also asked to meet with an informant who had volunteered to provide information regarding extensive dealings with Fund trustees over a period of several years. While the witness' information was helpful as background, it was not germane to the immediate purposes of the investigation. It was also apparent that the witness had come forward in order to minimize problems which he was having with the Justice Department and other federal agencies.

This process of legal analysis and investigation was abruptly halted in December, 1976. In that month I was asked to prepare an analysis of the various ways in which an enforceable consent decree with the Fund might be implemented. Among the mechanisms considered were the use of independent trustees and the use of a federal magistrate as a "receiver". This process was halted in midstream in late December and early January. At that point, SIS was asked to prepare briefings on the history, operations and financial status of the Fund for senior officials of the incoming Carter Administration. Lloyd F. Ryan and I were given primary responsibility for this project. The project consumed all of our efforts for a period of several weeks.

Thereafter, we resumed our preparation for the third-party investigation. This coincided with two significant events: the mass resignation by the Fund trustees, and that intensification of the effort by the Office of the Solicitor of Labor to

wrest control of the investigation from SIS. The Department of Labor nurtured and achieved substantial, favorable publicity as a result of the mass resignations by the trustees. These actions reflect what I believe to be a recurring pattern in the Department's approach to the Central States Fund investigation. Once or twice a year, the Department announces dramatic gestures (e.g. the resignations in late 1976, the filing of a lawsuit in 1977, the formation of a new Special Litigation Staff in 1980) and vows to reform the Fund. This generates favorable headlines. Thereafter, the Department returns to "business as usual" and the investigation languishes.

Following the mass resignations, the SIS legal staff was relieved of primary litigation responsibility and relegated to "investigator" status. This occurred, to the best of my recollection, in February of 1977. At that time, the SIS lawyers were informed that, in order to retain our status as litigation attorneys, we would be required to transfer to the Office of the Solicitor and leave the SIS staff. I declined the opportunity to join the Solicitor's office and elected to remain with the SIS staff. At this time, I also informed Messrs. Lippe and Seidel of my decision to return to private practice as soon as possible. Shortly thereafter, Mr. Lippe and Mr. Seidel were able to obtain for Mr. Ryan and me the new designation of "assistants to the director of SIS." This was essentially an effort, acquiesced in by the Solicitor's office, to put the best face on an embarrassing situation. Nevertheless, Mr. Ryan and I were very grateful to Mr. Lippe and Mr. Seidel.

Contemporaneously with these events, it is my understanding that Mr. Robert Lagather instructed Mr. Seidel to "take a vacation for several weeks". During Mr. Seidel's absence, Monica Gallagher and her legal staff assumed the litigation function previously assigned to the SIS legal staff. During this period, the SIS legal staff spent much of its time acquainting Ms. Gallagher and her staff with many of the transactions which had thus far been analyzed by SIS. To the best of my recollection, the SIS investigative work ground to a virtual halt in this period.

In early April, 1977, SIS staff, at the request of Ms. Gallagher prepared a list of proposed deponents in connection with numerous Fund transactions. Simultaneously, Ms. Gallagher and her staff began a review of various SIS reports and copies of minutes of the meetings of the Fund trustees. On April 13, 1977 there occurred a remarkable meeting which is summarized in a memorandum which I prepared shortly thereafter (the memorandum to file dated April 18, 1977). At this meeting, Ms. Gallagher informed us that the Department of Labor's primary concern for the foreseeable future would be the identification of potential criminal violations arising from Fund transactions and the referral of such information to the Department of Justice. Ms. Gallagher further informed us that the Department of Labor did not intend to pursue parallel civil proceedings related to the identified transactions or to formulate its own investigative plan beyond a review of the minutes of the meetings of the Fund's trustees. The practical effect of this decision by the Department of Labor was the cessation of the Central States Fund investigation. During the remaining two and one-half months of my employment with SIS, there was, to my knowledge, no meaningful investigative effort conducted by anyone on behalf of the Department of Labor with respect to the Central States Pension Fund.

With the passage of time, the outrage and indignation which I felt at the time of my resignation have given way to a sense of profound sadness and regret. Yet, this process has also permitted reflection upon the failure of the Central States Fund investigation and the reasons for that failure. Accordingly, I believe it appropriate to conclude this statement with a summary of those thoughts.

It is apparent that a decision was made, at some level above the Office of the Solicitor, to utilize the Solicitor's office in orchestrating the subversion and ultimate collapse of the investigation. To my knowledge, no one in the Solicitor's office had the authority or the political strength to undertake such an effort without support and direction at much higher levels, either within or outside of the Department of Labor. It is my considered belief that a decision was made which called for dramatic, albeit ultimately harmless gestures (such as the unenforceable "handshake" agreement in the spring of 1977) designed to improve the Department's enforcement image. This decision was, I believe, tempered by a companion decision to terminate the investigation in order to avoid the political turmoil which could be wrought with the exercise of the Teamsters Union's political and economic strength.

The foregoing perception also reflects the fact that the Labor Department is, as an institution, incapable of conducting an investigation of the complexity,

scale and intensity demanded in the Central States Fund investigation. Unlike the Securities and Exchange Commission, The Justice Department or the Federal Trade Commission, the Labor Department has no tradition, no extensive background in this type of investigative/litigative endeavor. It has never developed either the mechanisms or the expertise requisite to the task. Just as important, is the realization that the Department was thrust into the role of investigating one of the foremost elements of the very constituency whose interests it is intended to serve. The Department is, for better or worse, the chief governmental spokesman for the interests of the labor movement. As such it must coexist and cooperate with the Teamsters Union on a daily basis. To assume that the Department can accomplish this admittedly difficult task while simultaneously conducting an intense investigation of the Fund is naive.

I will close by noting that, although I applaud the efforts of this Committee and the General Accounting Office, I am concerned that this process not terminate with the censure of a few individuals. It is far more important, in my judgment, that this committee address three questions:

(1) What existing mechanisms, if any, can be most effectively utilized in the prevention of future pension fund abuses (e.g., transferring investigative authority to the Justice Department)?

(2) Should a new agency be established, independent of the Department of Labor, and empowered to investigate and conduct civil litigation?

(3) Can anything be done to salvage the future benefits of those many thousands of workers who have been victimized by the abuses at the Central States Pension Fund?

CERTIFICATION

Salvatore A. Barbatano, on oath states and deposes that he has prepared the foregoing statement, that he has knowledge of the facts and circumstances set forth therein, and that the foregoing statement is, to the best of his knowledge and belief, true and accurate.

Subscribed and sworn to before me this 26th day of September, 1980.
SALVATORE A. BARBATANO.
KATHERINE M. KLOSS, Notary Public
(My Commission expires March 14, 1983).

Mr. STEINBERG. I would like to refer to a contemporaneous memo Mr. Barbatano wrote at the time of one of these meetings:

At 3:17 p.m. on Wednesday, April 13, 1977, a meeting was commenced among the following participants: Lawrence Lippe, Monica Gallagher, Lester B. Seidel, Thomas J. Bauch, Lloyd F. Ryan, Jr. and Salvatore A. Barbatano. The purpose, as understood by the SIS representatives, of the meeting was to attain a consensus as to the list of persons to be deposed and/or interviewed and the transactions to be intensively investigated within the next few months.

Ms. Gallagher noted at the outset of the meeting that it was her understanding that the primary purpose of the exercise projected for the next few months was to achieve an identification of those Fund transactions which indicate apparent criminal violations and should, therefore, be referred to the Department of Justice (DOJ). Ms. Gallagher indicated further that it was her understanding that the Department of Labor (DOL) has no intention of pursuing "parallel proceedings" in conjunction with the Department of Justice. In other words, DOL will take no further action on cases referred to DOJ and will not suggest the initiation of joint civil and criminal proceedings. This process would, according to Ms. Gallagher, further result in the identification of transactions which lack either criminal or civil potential and should, therefore be ignored.

The conferees then began a discussion of the initial list of proposed deponents and interviewees prepared by SIS on April 4, 1977. Ms. Gallagher suggested, and the other conferees agreed, that, at least for purposes of discussion it would be appropriate to anticipate a series (or "rounds"); of depositions and that Fund trustees, lawyers and employees should not be included in the first "round" of depositions. (A list of proposed deponents agreed upon among the conferees is attached hereto; also attached is a subsequent list of additional deponents submitted by Ms. Gallagher. This latter group has not yet been discussed with SIS in any detail.) Ms. Gallagher also indicated the following:

1. It is her understanding that by May 1, 1977, Mr. Lagather would like to "see a show on the road" consisting of a final list of 50-100 deponents.

2. The depositions would not be taken for the purpose of developing evidence for the prosecution of civil or criminal cases, but rather for the purpose of identifying cases with criminal potential which could then be referred to DOJ.

3. Ms. Gallagher will submit a list (attached hereto, as noted above) of prospective deponents derived solely from an initial review of a large volume of minutes of various Fund trustees' minutes. It is anticipated that at the time said persons are deposed, information upon which the depositions taken will have been derived primarily, and in some instances, solely, from minutes of trustees' meetings. Given the presently operative time constraints and limited personnel resources, this procedure would virtually eviscerate any effort to utilize depositions as a component of an investigative plan. Of course, as indicated above, DOL apparently does not contemplate formation of an investigative plan—at least for the foreseeable future. It should be noted that, with respect to the great majority of persons on this list, the transactions to which they are related have received no prior analysis other than Ms. Gallagher's review of minute entries.

4. Ms. Gallagher indicated that it is her understanding that DOL anticipates a referral to DOJ of 60-70 percent of cases arising from Fund transactions as a result of the deposition process.

Chairman NUNN. Ms. Gallagher, on the basis of all that testimony I want to pose a few questions to you and I know you have addressed part of this in your opening statement.

Did you recommend that DOL quickly interview and depose scores of people whose names you had picked out of the Teamsters' minutes?

Ms. GALLAGHER. I made to Mr. Kelly numerous suggestions of what might be done to redirect the investigation. We talked about various things.

Mr. Kelly chose that approach. I was the messenger who apparently got all the "mis-credit" for this being my plan. Mr. Lagather at that time was functioning as the Secretary's supervisor over the SIS. That is the meeting that has been described which involved Mr. Lippe and Mr. Ryan and Mr. Lagather and myself, not the meeting Mr. Barbatano was describing. And I presented, at that time, what I understood to be Mr. Kelly's desire to have some kind of a way to make a preliminary determination about the vast majority of the asset portfolio, which hadn't been looked at up until then, and which it didn't look as though Mr. Lippe was ever going to look at.

Yes. The short answer is yes, I made the recommendation along with other recommendations that were considered and, yes, I brought back the answer to Mr. Lippe.

Chairman NUNN. Did you tell those persons who attended the meetings you wanted a quick, high-visibility road show?

Ms. GALLAGHER. No, sir. I think the words road show and the words high visibility were both theirs, but I don't deny using that language. I may very well have thrown it back at them. But it is obviously—I think if you examine it, it is pejorative language they used to characterize this project which they were not in favor of.

Chairman NUNN. You didn't initiate that language?

Ms. GALLAGHER. I did not.

Chairman NUNN. Did you ever say you wanted to put on this type of proceeding to appease Congress?

Ms. GALLAGHER. I don't recall saying I wanted to go to appease Congress, but it is conceivable that I would use language of that type.

Chairman NUNN. According to the testimony in the record in mid-December 1976, SIS was told to halt its third-party investigation; do nothing but prepare for civil litigation. Up to this point SIS had

prepared extensive third-party expenses, 60 or so, focusing on the Shenker and Glick loans which SIS had already done substantial work on, yet DOL scrapped this line of inquiry, and that was when you suggested naming people without any prior inquiry after you came up with their names?

Ms. GALLAGHER. No; that is not exactly the right sequence.

Chairman NUNN. Why don't you correct that?

Ms. GALLAGHER. In December 1976 or November 1976 Mr. Chadwick in his role as supervisor of Mr. Lippe told Mr. Lippe to have his people start presenting their evidence for review so that it could be looked at, to determine whether enforcement action was appropriate. It was long after that, long after the new administration had come in, and after the trustees had agreed to resign, that I discussed with Mr. Kelly and Mr. Sacher alternative techniques for the redirection of the investigation which led to the meeting in Mr. Lagather's office.

Chairman NUNN. In that meeting did Lippe, Ryan and Barbatano all tell you or did any of them tell you that such an ill-prepared venture could have a future negative impact on both the potential civil and criminal matters? Did they use words to that effect?

Ms. GALLAGHER. I know that Mr. Lippe and Mr. Ryan were very much opposed to the idea. I don't think Mr. Barbatano was at that meeting.

I think that they probably made a number of arguments about why they didn't want to do it, because what they wanted to do was keep looking at their six loan groups. They made that clear to everybody.

They made it clear to Mr. Sacher, to Mr. Kelly, to me. That is what they wanted to do. So anything else was unacceptable. I imagine that they did say it would make future civil and criminal proceedings impossible.

Chairman NUNN. Did you propose such names as Richard Kleindienst to them for possible interview?

Ms. GALLAGHER. Mr. Kleindienst's name was on the list that I prepared, yes.

Chairman NUNN. Did you say it was because he was highly visible to them?

Ms. GALLAGHER. No, I did not.

Chairman NUNN. Did anybody say that at the meeting?

Ms. GALLAGHER. I don't recall so. I don't think the list had been created at the time of that meeting, but I am not certain.

Chairman NUNN. Did you suggest DOL ask Kleindienst how much money he offered as a bribe in connection with a certain loan?

Ms. GALLAGHER. That conversation—the report of that conversation has just enough truth in it that I think the only way to deal with it is to try to describe it and it may look worse rather than better. But in the course of trying to advance these dozens of arguments about why the program that Mr. Kelly and the Secretary wanted to have initiated couldn't be initiated, one of the arguments made was that they couldn't possibly think of anything to ask these people such as, for example, what would we ask somebody like Mr. Kleindienst?

And I think I would have said to that something like ask him what he knows about this loan application. You understand, Mr. Senator, that Mr. Kleindienst had represented a prospective borrower with

respect to the fund, as well as being involved in a number of other fund transactions, it turns out. So someone of them, opposed to the project, would say, "Well, but the loan wasn't made. How could we ask him about the loan?"

I would say something like, "Well, ask him if it would have been made, if there had been a kickback involved."

It was one of those conversations of frustration, Mr. Senator. It was my attempt to say, I am sure if you put your heart into this effort, you could find a way to make it a productive effort on the part of the Department of Labor to figure out what is happening in this plan's assets portfolio.

Chairman NUNN. Would you think without any more evidence than that that a former Attorney General of the United States would be willing to answer that kind of a question and give you meaningful information, "Would the loan have been made if you gave him a bribe?"

There is no background, no evidence, no nothing.

Ms. GALLAGHER. We are aware, Mr. Senator, that in at least one case, one of the prospective borrowers from the fund was told that if he made a kickback, he would get the loan. I am not saying that is what happened in Mr. Kleindienst's case. I don't have any idea whether that happened in any other case, but I am saying if you asked witnesses what happened, under compulsory process, some of them may tell you what happened. And that that would put us ahead of the game in our investigative efforts from where we were.

Chairman NUNN. Even though there had been no background, no investigation, no evidence, no nothing?

Well, you might get somebody to tell you something on that kind of inquiry, but if it is all your people said, I would certainly agree, that is sort of a strange investigative technique.

Wouldn't you agree that that would have been a strange technique without having any kind of information that there was anything amiss?

Ms. GALLAGHER. I am not an investigator. If I had been running this investigation from the outset, I would have tried to become an investigator. I am sure I would have come out differently from Mr. Lippe, since we came out differently on many things.

I am not certain that it would have been a total waste of time to inquire from persons who were in a position to know what they knew about this plan's loan transactions. It was something that was never done. So I don't think we can assess whether it would have worked well or badly.

Certainly, if the investigative staff had been totally prepared and had examined all the loan files and had been ready to take these depositions with full preparation by that time, that would have been a far better situation.

It doesn't take an investigator to know that.

Chairman NUNN. Have you handled investigations yourself? Have you been in charge of investigations or have you primarily been in the litigation end?

Ms. GALLAGHER. My litigation experience has involved me in work which might be called investigatory in nature. I have done records

analysis. I have gone out and interviewed witnesses. I have done the things that investigators do. I haven't had any formal training as an investigator.

Chairman NUNN. Have you ever been in charge of an investigation as such?

Ms. GALLAGHER. I am not sure how to answer that question. I have been in charge of a project which involved major investigations and which become litigation; yes.

Chairman NUNN. Did you state that you wanted to investigate potential criminal matters for quick referral to Justice in that meeting, or those meetings?

Ms. GALLAGHER. What I said when I sent that list of names to Mr. Lippe was what I understood had been decided. That was, that our effort was to make a rough sort of those transactions into those that were promising for civil investigation, those that were promising for criminal investigation and those that were unpromising. Obviously, that would leave a bunch that we didn't know enough about yet, but those were the three categories.

Chairman NUNN. Did you state to him that a lot of the witnesses would take the fifth and you then could refer them to the Justice Department?

Ms. GALLAGHER. Not that I recall.

Mr. BLOCK. Mr. Chairman, could I ask a question? Do you know what investigative experience—I believe you said it was Mr. Kelly who suggested this plan? Am I correct?

Ms. GALLAGHER. I said that Mr. Kelly, who was the Secretary's special consultant, determined that this was the way that the Department wanted to proceed.

Mr. BLOCK. Do you know what experience he had in running and conducting investigations?

Ms. GALLAGHER. No, I do not.

Mr. BLOCK. This was during the spring of 1977 that you suggested this go forward; is that correct?

Ms. GALLAGHER. I don't think it is fair to say that I suggested it go forward, but it was during the spring of 1977 that that course of action was adopted.

Mr. BLOCK. What concerns me is that this plan was intended to go forward just a few months after the decision had been made to put off the third-party investigations. We were just told that the reason to put off the third-party investigations was to prepare for lawsuits, but this new plan would have taken at least 2 or 3 months and would have taken the resources of SIS. Is that correct?

Ms. GALLAGHER. It is not exactly correct. The decision to put off the third-party investigation temporarily while we were going to prepare for a lawsuit to remove the trustees was the decision made in late 1976.

By the time this program was adopted, the trustees had agreed to resign. So while, yes, it is correct it would have taken the resources of the SIS and it would have taken resources which they otherwise might have applied to their third-party investigation; it was not resources that they were being asked to devote at that time to litigation support, because it didn't appear to be necessary to bring the suit, to remove the trustees. They had agreed to resign.

Chairman NUNN. Ms. Gallagher, did you ever tell Mr. Lippe not to cooperate or give information to the Justice Department?

Ms. GALLAGHER. I did not.

Chairman NUNN. On no occasion did you?

Ms. GALLAGHER. I believe that I never told him not to cooperate with the Department of Justice and I believe that I never told him not to give information to the Department of Justice. As I am saying that, it occurs to me that I might have told him if he was still there, there was a period when the Secretary was meeting with the Attorney General, and when my instructions were that the communication was going to be at the top level and that there was to be a temporary halt at the staff level communication about litigation.

But I don't think so. I think Mr. Lippe was gone at that time.

Chairman NUNN. We have a lot of testimony on that point. I am not going to try to capsule it all. I am sure you are familiar with a good bit of it.

Just very briefly, I asked Mr. Lippe were SIS staff ever told by Department of Labor personnel not to cooperate or give information to the Department of Justice?

Mr. LIPPE. I was told that among others.

Chairman NUNN. By whom?

Mr. LIPPE. By Steven Sacher and Monica Gallagher.

Chairman NUNN. Did they give you reasons?

Mr. LIPPE. None that were acceptable.

Mr. GALLAGHER. Mr. Senator, as you read it to me, there is one category of information which I specifically recall discussing with Mr. Lippe and telling him that he was not to give to the Department of Justice, and that was a series of drafts prepared by persons working under his supervision which we knew had problems of various kinds and which we wanted to control the dissemination of. That was material which was later subject of a lot of discussion between me and other people in the Department of Justice and has been worked out, but at a very early time Mr. Lippe was all for sending unreviewed, inaccurate material out of the Department to a place where I thought there was considerable risk of it ending up in bad hands, and I did tell him not to send copies of that material out.

By the way, if I could just inject this, I think you have a letter from me to Kurt Muellenberg, who was then chief of the Organized Crime Section of the Criminal Division, involving an effort by one of the staff attorneys over there, a stated effort to subpoena some records, and my request that Mr. Muellenberg not permit that.

My assurance was that we would produce everything that the Department wanted. That was a letter that Mr. Kowalski said yesterday that he had been unable to find in our files. So yesterday afternoon when I went back to the office, I just went to the file which was there at Mr. Kowalski's disposal. It is right there. There is no—it has always been in that file. I am sorry that he didn't find it. He certainly never asked for it, but it is there.

Chairman NUNN. Could you furnish a copy of that to us for the record?

Ms. GALLAGHER. Sure. I think you have it attached to the Kotch-Crino report.

Chairman NUNN. Then we have it. That is all right. We have been informed by many witnesses and several of DOL memos that indicate that you or your office told SIS that since litigation was filed, they were precluded from using an administrative subpoena to investigate.

Was that the legal advice the Solicitor's Office gave to SIS?

Ms. GALLAGHER. The legal advice that the Solicitor's Office gave to the SIS was that with respect to any matter which was involved in our litigation, that it would not be proper—or at least that we did not want to test the limits of propriety of—using administrative process to obtain information.

We thought that the civil discovery mechanism was adequate to that purpose and that that is the way we wanted to proceed.

Chairman NUNN. Was that your legal analysis?

Ms. GALLAGHER. Yes.

Chairman NUNN. Was that a legal analysis or a tactical position?

Ms. GALLAGHER. I think there are aspects of both to it.

Chairman NUNN. Isn't it true that this is not really the law in that respect, and that the Department of Labor has objected in other cases to this?

Ms. GALLAGHER. I don't know what you mean by "not really the law." I know that we wanted to present ourselves in this litigation as beyond reproach. We want this litigation not to focus on any of the million side issues which can distract a court from the central theme.

We need to try this case on the merits of the fiduciary violations involved and I don't want to spend my time worrying about whether we went beyond the call of what was proper in using an administrative deposition when we should have been proceeding through civil discovery.

Chairman NUNN. Mr. Steinberg?

Mr. STEINBERG. Ms. Gallagher, as you have heard, you have been here for the last 2 days. Many people stated that as to other areas outside of the lawsuit that investigators were precluded from issuing administrative summonses in many of those areas to complete their investigation. Was it also your opinion that the filing of the litigation precluded the Department of Labor from issuing subpoenas in these other areas and not to continue the lawsuit?

Ms. GALLAGHER. Absolutely not.

Mr. STEINBERG. Do you know why those subpoenas were not issued?

Ms. GALLAGHER. The Department adopted a policy of making litigation and support of the litigation its highest priority. To the extent that investigators desire to do other things inconsistent with that priority, I am sure they were told to put their desires to one side.

Certainly there was no legal impediment to their issuing subpoenas in areas not relating to the lawsuit.

Chairman NUNN. Miss Gallagher, was it your understanding when SIS was set up that it had the direction to investigate but not litigate from the outset?

Ms. GALLAGHER. It was my understanding that the SIS was an experimental creation and that the Director of the SIS, as a matter of personal prerogative, was to be a special assistant to the Solicitor and

was to be permitted to participate in major litigation involving the *Central States* case.

It was also my understanding that the SIS was not to have any other personnel functioning in a way which could be characterized as the practice of law. So it was always my understanding that there would be a role for the attorneys in the Solicitor's Office in any litigation under ERISA.

Chairman NUNN. Was it your understanding that SIS would not then participate in litigation but would simply be there for aiding investigation, supporting litigation? In other words, wouldn't they participate at all in the litigation as lawyers?

Ms. GALLAGHER. My best answer is that I know that it was contemplated that the Director, Mr. Lippe, would participate. And I think everything else was left relatively open to see how it would develop.

Ms. CLAUSS. I might just say what the agreement contemplated was that Mr. Lippe would participate under the direction and control, and as an employee of the Solicitor's Office, as a special assistant, and the Solicitor, both Mr. Kilberg and myself, would assign him and use him in the way we thought best. We certainly intended to use him.

Mr. STEINBERG. Miss Gallagher, did you tell Mr. Kotch and Mr. Crino that the Teamster Central States has taken the position that the Department of Labor investigation was limited by a so-called phantom agreement that we have discussed and that, although you disagree with that position, you have not really had the need to challenge the Teamster Fund on this point?

Ms. GALLAGHER. If I said that, I said it prefaced by the phrase, "It is my understanding that," or something along those lines. I don't have any direct information about that.

Mr. STEINBERG. They have since May 1977 started a course to refuse to cooperate with the Labor Department by their refusal to grant you access to records; is that true?

Ms. GALLAGHER. At the present time, as I understand it, they are producing substantial volumes of records in compliance with a subpoena. So there have been ups and downs in the cooperation which they have extended in terms of producing records. I am not sure of the dates. I am not trying to be evasive. But, yes, there was a time when they were less cooperative and there have been times when they have been more compliant.

Mr. STEINBERG. Isn't it accurate to state, though, generally since the middle of 1977 up to a very recent time they did not permit you access to the records, contrary to the original agreement that you had with the Teamsters?

Ms. GALLAGHER. It is true that sometime from the middle of 1977 until some 3 or 4 months ago we have been involved in a number of subpoena enforcement records cases, and we have not been receiving any records voluntarily.

Mr. STEINBERG. Have you, indeed, upon the refusal of the fund to grant you access to the records, gone to court to obtain those records?

Ms. GALLAGHER. Yes. That is what we have been doing.

Mr. STEINBERG. On how many occasions?

Ms. GALLAGHER. Well, we are involved in a number of different subpoena enforcement proceedings. One of them has been going on since 1977, if I can just give you what you might call a colorful example.

This involves a subpoena I believe served in June 1977 which we moved to enforce. There were a series of objections. They were briefed. A long time elapsed before the objections were decided on. The court entered an order fully enforcing our subpoena. Then the defendants moved for reconsideration.

That was taken under advisement. That is where we are. We haven't gotten a document yet out of that subpoena.

Mr. STEINBERG. Was that an affiliated fund?

Ms. GALLAGHER. That was amalgamated.

Mr. STEINBERG. I am talking about the fund.

Ms. GALLAGHER. The health and welfare fund subpoena had not—

Mr. STEINBERG. The pension fund.

Ms. GALLAGHER. The pension fund; we have a subpoena in litigation.

Mr. STEINBERG. When did you begin litigating that issue?

Ms. GALLAGHER. March 1978.

Mr. STEINBERG. March 1978?

Ms. GALLAGHER. Yes. That is a judicial subpoena as opposed to an administrative subpoena. The others are administrative subpoenas.

Mr. STEINBERG. What I am referring to is an administrative subpoena to obtain records that you couldn't obtain because they refused to grant you access according to their earlier agreement.

Ms. GALLAGHER. We do not have any administrative subpoena involving pension fund records which is not being complied with. The only outstanding administrative subpoena involving pension fund records is being complied with without judicial process.

Mr. STEINBERG. Let me make sure I understand. They started to disagree or refuse to supply records in May 1977. But it is your testimony that you did not issue a subpoena to obtain those records. Is that correct?

Ms. GALLAGHER. I guess I am going to have to back up because I don't know what the records were that they refused to supply in May 1977.

I thought it was my testimony that starting sometime in the middle of 1977 they indicated that they were not going to voluntarily produce records for us. We didn't issue any subpoena. No subpoena was presented for clearance that I am aware of until the subpoena that recently came down the track, which is being complied with.

Mr. GALLAGHER. Maybe I can answer your question better. The records that they refused to supply in mid-1977 were records that relate to loan transactions which are the subject of the lawsuit. A judicial subpoena was issued for those records in March 1978, and that has been in the enforcement process since then.

Mr. STEINBERG. Ms. Gallagher, did you tell Mr. Kotch and Mr. Crino that you personally would recommend against any new issues being investigated or litigated because it would lead to "messy subpoena enforcement action"?

Ms. GALLAGHER. No, sir. I will tell you exactly about that. I would like to say at the outset that the reason I asked to see my interview report—and I wish now that I had been a little bit more aggressive about it—was because I thought that there might be some minor mis-castings of some reasonably subtle points.

The reason that I offered to have that interview tape-recorded was for the same reason.

One of the things that I was asked by Mr. Kotch and Mr. Crino was what arguments can be made against or might be made against commencing new investigations at this time. And the material which you have paraphrased from their report in your testimony is a sort of rough version of my response to that question. And I think that by the time there have been whatever gaps in communication there were between me and them and then between them and their report and your paraphrasing it, it is not a very accurate summary of what I said.

Mr. STEINBERG. I am reading from the report, so I am not paraphrasing it. You have read the Kotch-Crino report, haven't you?

Ms. GALLAGHER. I have.

Mr. STEINBERG. Don't they give five points which you gave or which they state you gave as refusing to go into other areas?

Ms. GALLAGHER. No; it was not as refusing to go into other areas. It was as grounds for thinking cautiously about where you would go if you undertook new investigations.

Mr. STEINBERG. One of those areas was the question about subpoena enforcement. Is that correct?

Ms. GALLAGHER. Yes.

Mr. STEINBERG. Was another area, as they state, that if you went into other areas it would appear that the Department of Labor was harassing the fund?

Ms. GALLAGHER. Again, I don't think that is an accurate report of what I would say about it.

Mr. STEINBERG. Ms. Gallagher, did Bob Gallagher ever tell you that there was a lack of qualified, experienced solicitor staff to support the Teamster case?

Ms. GALLAGHER. Bob Gallagher told me he could use more lawyers.

Mr. STEINBERG. Didn't you tell Mr. Kotch and Mr. Crino at that same time or around that time that Mr. Gallagher was complaining about the lack of attorneys, that, "If needed, I can make more attorneys available for the Teamster litigation, but I feel the attorneys currently assigned are not overburdened with the Teamster litigation"?

Ms. GALLAGHER. I said words along those lines, yes. And I also said that I could use three times as many attorneys, and I also said that I thought that we were making the best use we could of our resources given what they were and what we had to do.

Chairman NUNN. Did you ever ask for more resources?

Ms. GALLAGHER. I sure did.

Chairman NUNN. To whom?

Ms. GALLAGHER. Carin Clauss.

Chairman NUNN. Ms. Clauss, did you ask for more resources?

Ms. CLAUSS. I doubt that you will find a manager in the Department who doesn't ask for more resources, Senator, but we did assign more people to the case. As Mr. Gallagher testified this morning, we have been building up as the suits have intensified, and in the new reorganization there are, I believe, nine full-time attorneys.

Chairman NUNN. Do you think you have an adequate number now?

Ms. CLAUSS. Well, for the moment.

Chairman NUNN. For this investigation?

Ms. CLAUSS. For the moment. I am sure for fiscal 1988 I might be asking for more.

Chairman NUNN. I don't think that you will ever have anything other than support in Congress for the resources you need for this investigation. I can't speak for the rest of the Labor Department activities. That is another matter. But I think Congress has been on record very much in favor of getting the kind of resources needed here.

Mr. CLAUSS. We have gotten full support, Senator Nunn. In fact, this committee was very instrumental in getting us resources for this function a few years ago.

Chairman NUNN. Ms. Gallagher, in the Kotch-Crino report there was a quote from you, and I am just going to quote part of it and ask if this is accurate.

For strike force work, guts and imagination are at a premium and legal theory less important. The investigator has a principal role as a fact finder in areas where case law is adequately developed. The reverse is true in terms of ERISA enforcement, which is less fact oriented and more dependent on legal theory at this stage.

Do you recall having said that?

Ms. GALLAGHER. I think I said something substantially along those lines.

Chairman NUNN. Do you still believe ERISA has primarily the legal theory and is less fact oriented than other investigations?

Ms. GALLAGHER. It isn't a question of less fact oriented. I think it is a question of what kinds of talents you need to look for and the people that you have to have in order to put together a team that has all the talents that are needed.

At this early stage of the development of ERISA we certainly need a high level of theoretical, analytical competence, which might not be so necessary in an area of the law with 20, or 40, or 100 years of precedent behind it.

I am not saying that deduction and analytical savvy and street sense are not in a premium at the ERISA program. Of course they are. That is always very valuable. But I am saying that we also need some things that may not be so essential in other programs.

Chairman NUNN. Did you tell Mr. Kotch and Mr. Crino that it is the Solicitor's policy not to take depositions of parties involved in more than one TCS loan until all loan files have been reviewed?

Ms. GALLAGHER. Yes; I said that in the context of the litigation. I didn't think it would make any sense to try to depose somebody who was going to be involved in several major pieces of the litigation about one of those pieces until we knew what all the pieces would be.

Chairman NUNN. Were you aware that only six individuals or entities received the bulk of questionable loans from TCS, people like Glick, Maynik, Shenker, et cetera?

Ms. GALLAGHER. I don't think that that is true.

Chairman NUNN. I am saying of the questionable loans.

Ms. GALLAGHER. I don't know what you mean by the questionable loans.

Our litigation charges a pattern and practice of misapplication of plan assets which involves, certainly, 50 or 60 loans which I would think ought to be called the questionable loans.

Chairman NUNN. Out of those that you call questionable loans, do you know how many of them were loans to these five or six individuals?

Ms. GALLAGHER. They aren't most of them.

Chairman NUNN. Well, 30, 40, 20 percent?

Ms. GALLAGHER. I would be glad to supply the number. A few of them are, out of that group.

Chairman NUNN. Does counsel have that? Do we have that in the record presently?

Mr. STEINBERG. Yes; it is in the record. It is in the Labor Department reports. They state approximately 45 to 50 percent of the questionable loans are for six or seven individual entities.

I believe the Secretary testified before our committee in 1977 also on that.

Chairman NUNN. If you waited until all records were reviewed, your own investigators estimated it might take 5 to 10 years before you could adequately depose any of these people.

Ms. GALLAGHER. I am not familiar with any estimate of 5 to 10 years. But certainly before we go to trial, we are going to have to know what the borrowers say. I shouldn't say "certainly." But it seems to me likely that we are going to make some kind of assessment of what kind of a case we are going to present to the courts, and with respect to those pieces that we are going to present to the courts, we are going to want to know what the evidence is from the people who have firsthand knowledge.

I don't think that we anticipate anything like 10 years. Nobody has led me to believe that we are looking at a schedule that long.

Chairman NUNN. You still have the rule that you are going to have all of the loan files reviewed before you take the deposition of these people on any particular loan? Or any other people, for that matter? Is that still the Department of Labor policy, the Solicitor's policy?

Ms. GALLAGHER. The issue hasn't been brought to me recently, but, if it were brought to me today, that would certainly be my judgment.

Chairman NUNN. If you were told it would take several years to complete any one of these individuals who may have a good many loans, would you still have that policy?

Ms. GALLAGHER. It would be my judgment that in the context of the litigation we ought to get together whatever we want to ask a person about and then ask them about all of that material. Yes. Even if it were going to take quite a while.

Chairman NUNN. Is that consistent with your suggestion that 81 people who, no background has been given on, no allegations, no nothing, be simply interviewed and asked whether they bribed somebody? I mean it looks like to me it is diametrically opposite.

Ms. GALLAGHER. I guess my best answer to that is that it seems to me that both a lawsuit and an investigation are a means to an end; the ends are different. An investigation is a means to determine whether enforcement action is necessary. And, if you can make the judgments you need to make, you don't have to investigate for any other purpose.

A lawsuit is a means to seek relief. And you need to figure out how you are going to be able to get the relief you are entitled to.

Chairman NUNN. I was not talking about a lawsuit. I was asking about a deposition.

Ms. GALLAGHER. A deposition is a piece of the lawsuit.

Chairman NUNN. I was asking if it is your policy not to take a deposition on any of these individuals until all of these loans are investigated and brought up, and you answered yes.

That is, of course, consistent with everything we have heard. I suggest to you, if that is your case, you are going to have a long, long wait before anybody by the name of Glick, Malnik, or Shenker has any kind of notice to be deposed by the Department of Labor.

Ms. GALLAGHER. I am not sure all of that follows.

We have already taken Mr. Shenker's deposition in a different case at some length. I don't know—

Chairman NUNN. Did you take his deposition on all of the matters that he had involved—

Ms. GALLAGHER. In that case.

Chairman NUNN. In one case?

Ms. GALLAGHER. In that case.

Chairman NUNN. You departed from your policy you just stated?

Ms. GALLAGHER. We took his deposition at a time when we thought we have had together everything we needed to ask him about in that litigation.

Chairman NUNN. But you had not checked on all of his loans, had you?

Ms. GALLAGHER. That is right. They weren't involved in that litigation.

Chairman NUNN. In a case where there are a small number of persons involved in numerous potential abuses, wouldn't it be wise to complete each investigation in a timely fashion rather than to wait until all the potential abuses are reviewed to complete any one of them?

Ms. GALLAGHER. I am having a little trouble with the hypothetical. I guess I function better in a more concrete situation.

In this case, we don't have numerous, I can't reconstruct your words—if you could restate the question. But it doesn't seem to me we have what you were talking about.

Chairman NUNN. My words were in a case, in the case where a small number of persons are involved in numerous potential abuses, isn't it wise to complete each investigation in a timely fashion rather than wait until all the potential abuses are reviewed to complete any one of them?

Ms. GALLAGHER. My answer is I don't know, but that is not the situation we have here.

Chairman NUNN. You don't know—we have a couple of negatives in there. I am not sure where that comes out.

Ms. GALLAGHER. I don't know the answer to your question, but I don't think your question presents the circumstance of the Central States litigation.

Chairman NUNN. You are aware that there are people in your Department who feel strongly that they should not be required to wait to investigate a particular loan until all loans of a particular individual are investigated, are you not?

Ms. GALLAGHER. I don't—I am not aware of anybody remaining in the Special Litigation staff who feels that they are being prevented from carrying on a constructive litigation support function.

I am aware that there are people in the Labor Department elsewhere than in the Special Litigations staff and outside the Labor Department who don't like the way it is being done.

Chairman NUNN. We will furnish you, Ms. Gallagher, with information from people who still work there who do feel they are being held up. We have deposed a couple of people, and I will ask counsel to get those depositions so we can read it back to you. But you do still have people who believe they will never get this matter completed because of that policy which you just articulated.

Ms. GALLAGHER. I hope we will be able to work with whoever they are and by improving our communications, which you have pointed out and which I have certainly become increasingly aware of, that we will be able to work together effectively and become an integrated, effective unit to do this job.

Chairman NUNN. I agree with you. I hope that is right.

If nothing else comes out of this series of hearings, it will be a positive step forward.

Mrs. Gallagher, did you ask to see a copy of your interview with Mr. Kotch or Mr. Crino, or did you ask for their final report?

Ms. GALLAGHER. I did not ask for the final report. I think that was a misunderstanding. I notice that the report of interview which I saw within the last few weeks said I asked for a copy of the final report. I did not. I did ask for a copy of my report of interview at the time of my interview. Yes.

Chairman NUNN. Who did you make that request to?

Ms. GALLAGHER. To the interviewers.

Chairman NUNN. Did you ever get a reply from them?

Ms. GALLAGHER. They told me at the time that they would see to it or try to arrange it. There was a reply along those lines.

Chairman NUNN. Did you ever pursue it any further?

Ms. GALLAGHER. I did not.

Chairman NUNN. Did you ever get a copy?

Ms. GALLAGHER. I did not.

Chairman NUNN. Did anyone from the Department of Labor Inspector General's Office ask you about the Kotch-Crino report?

Ms. GALLAGHER. Sheldon testified yesterday that he had asked for it in a conversation that he had with me and Bob Gallagher and that sounds right to me, although I probably wouldn't have recalled it independently.

Chairman NUNN. Do you recall your answer to him?

Ms. GALLAGHER. I think, no, I don't recall it specifically, but I imagine that I would have said that I had never seen such a report.

Chairman NUNN. Did you pursue it any further? Did you go to Ms. Clauss with it or anyone else?

Ms. GALLAGHER. No; I am quite certain that he did not ask me to procure it. If he asked me anything, he asked me if I had it.

Chairman NUNN. By that he meant whether you had it in your desk or in your possession? What did he mean?

Ms. GALLAGHER. I don't know what he meant, but he didn't say to me, "Will you get it for me?"

I am pretty sensitive to those requests, especially when they come from someone like the Inspector General's Office. When someone

asked me to obtain something, I tend to jump through hoops to try to obtain it.

I am quite certain that he did not ask me to obtain it.

Chairman NUNN. He just asked you if you had it?

Ms. GALLAGHER. Yes.

Chairman NUNN. How do you keep a person in the office like the Solicitor's Office? How do you interpret it when someone asks you if you have a certain report? Do you think they mean that you have it in your own possession or in your own personal files or in your desk drawer or at your house? How do you interpret that?

Ms. GALLAGHER. I would interpret that as meaning, "do I have it within my own files or within the files of my office?"

Chairman NUNN. Your office is the Solicitor's Office?

Ms. GALLAGHER. My office is the Plan Benefits Security Division of the Solicitor's Office.

Chairman NUNN. If someone asked you if you have a file on such and such, or just do you have it, and you knew that the file was in the Labor Department's Solicitor's Office, but it wasn't in your personal file, what would you answer?

Ms. GALLAGHER. If it were in the Plan Benefits Security Division, I will say look for it or, yes, I will get it for you.

Chairman NUNN. What if it were not in that division, but in the Solicitor's Office?

Ms. GALLAGHER. It would be unlikely that I would know that. If it were not in my division, I would not volunteer to go look for it until somebody asked me for it. I think I would say I don't have it.

Chairman NUNN. If you tell him to go to Ms. Clauss and ask her or go somewhere else or just say you didn't have it?

Ms. GALLAGHER. I don't remember the conversation. My best guess about what must have happened is that he said to me, "Do you know something about or have a report prepared by some people who were looking into the management problems?" And I would have said something like, "No, I have never seen such a report."

Chairman NUNN. Have you read the Kotch-Crino report now?

Ms. GALLAGHER. Yes.

Chairman NUNN. Do you agree with it substantially, disagree with it substantially? How would you categorize the report itself?

I am not talking about the attachments at this point.

Ms. GALLAGHER. My reaction to it was that I was amazed how much they got right given the short time they had to look into it and the large task that they had coming to it from no background at all. I think they got a whole lot right in their perception of what the problems were and perhaps what ought to be done about it.

I am not saying it is 100 percent right.

Chairman NUNN. Ms. Gallagher, we have the executive session transcript here with Mr. Kandel. Do you know Mr. Kandel?

Ms. GALLAGHER. I do.

Chairman NUNN. Does he still work in the Solicitor's Office? Where does he work now?

Ms. GALLAGHER. He worked in the Solicitor's Office, Special Litigations staff the most recent time I talked to him, but I heard that he had another job opportunity as of a couple of weeks ago, although I

saw him here today. I don't know what his technical status is as of this moment.

Chairman NUNN. He has been working in this overall matter?

Ms. GALLAGHER. Yes.

Chairman NUNN. He has been working under you?

Ms. GALLAGHER. Yes.

Chairman NUNN. Let me read to you page 228 of this testimony.

Mr. STEINBERG. Let me read from your interview. "Principals such as Glick, Shenker and Malnick are not being investigated in the field." No one has explained to him why the loan principals, Glick, et al. cannot be investigated at this time.

SIS cannot directly obtain additional records and Perkins has said to "Stay away" and we "don't want to get anyone nervous."

That is the end of Mr. Steinberg's quotation as a quote to Mr. Kandel. Mr. Kandel then replies:

Mr. KANDEL. I have been assigned to the Malnick loan. Without going into actual specifics, I was also curious as to why we were interviewing persons who only remotely knew about the actual loans without going to Mr. Malnick himself. And it was explained to me that they wanted to interview Mr. Malnick after all the loans that he was involved with were investigated and not get Mr. Malnick one loan at a time.

Then another time on another loan.

Mr. STEINBERG. Do you know how long it would have taken to get together all of the loans that Mr. Malnick was involved in?

Mr. KANDEL. A long time.

Mr. STEINBERG. Do you think you could have ended your career working on the loans Mr. Malnick was involved in?

Mr. KANDEL. They are trying to achieve that. I am not too sure if they are going to accomplish that.

Mr. STEINBERG. Let me ask you with respect to that situation, did the Department of Labor know that a substantial portion of all the Teamsters fund money that was loaned out to anybody, individual, entity, was loaned only to six entities or individuals?

Mr. KANDEL. I think it was quite clear at least in my mind as to—and anyone familiar with the investigation as to whether the majority of loans went to the individuals.

Mr. STEINBERG. These people, Shenker, Glick, et cetera, weren't the focus or they didn't appear to be the focus of the Department of Labor investigations?

Mr. KANDEL. The loans were?

Mr. STEINBERG. The loans were.

Mr. KANDEL. The individuals were not.

Mr. STEINBERG. And these individuals have not been charged in any civil suit, is that correct?

Mr. KANDEL. Not to my knowledge.

Chairman NUNN. We have other testimony. I just suggest, I don't want to belabor this point—you have given your views and the witnesses we have had from your Department and those who were there before seem to feel strongly that if you are in dispute, you are never going to reach a conclusion on any of these very crucial matters.

I would hope you take it under advisement and Ms. Clauss would take it under advisement and determine if this policy is appropriate.

Ms. GALLAGHER. I certainly will both take it under advisement and try to work more with people involved and bring it to the attention of the new associate solicitor. I do think that litigation strategy judg-

ments in the final analysis have to be made by the litigators, but it ought to be true that if those judgments are good judgments, that by and large they ought to make sense to everybody around who is working on the case.

So to the extent they are not making sense, that is something we have to work on.

Chairman NUNN. I certainly understand the litigators are not going to always have the same view as the investigators. That is an inherent different role and there have been two differences there.

Staff is not always going to have the same view as Senators. But I think it is awfully important for there to be a thorough conversation and to be thorough and good communication and then you still are going to have some difficulty. But it would be minimized.

Mr. Secretary, we are now prepared to begin questioning you and it is going to take a while. I suggest we take a break. Do you want 5 minutes?

Secretary MARSHALL. That would be all right.

Chairman NUNN. Or do you want 10 minutes?

Secretary MARSHALL. Ten minutes is fine.

Chairman NUNN. We will give you that long, if you want it.

[Brief recess.]

[Member of the subcommittee present at the time of recess: Senator Nunn.]

[Member of the subcommittee present after the brief recess: Senator Nunn.]

Chairman NUNN. Mr. Secretary, we have already been into a number of these areas. I am instructing counsel as we get to areas that we have already covered not to cover them again. We don't want to duplicate. But we do have a number of important matters.

Apparently, as you said and observed, there's a great deal of difference of opinion about the Department of Labor's role in criminal matters. That's one of the fundamental policy disputes here that many people have different feelings on. Many Department of Labor employees have contended that the Department of Labor does not have a responsibility for detecting or investigating criminal matters dealing with the trust fund. We have a rather confusing picture.

Let me try to capsualize it. In 1977, after declining to let SIS pursue its third-party investigations of transactions on persons which had already been developed, as we heard today, Miss Gallagher gave SIS a list of 81 new names for investigation for possible criminal potential.

Second, the Comptroller General of the United States has testified that the Department of Labor has clear responsibility to take the leading role, or the lead role, investigating and conducting investigations, both civil and criminal in nature. That was GAO's testimony.

However, Norman Perkins, from whom we heard this morning, acting head of SIS for over 3 years, stated in the Kotch-Crino report that "SIS has never conducted any aspect of a criminal investigation and had better not," and that, not quoting him now, but it was DOL policy not to conduct criminal investigations. This is the man that headed up and was Acting Director of SIS.

Next, in contrast to Mr. Perkins' statements and according to the Federal Register, volume 41, No. 241, dated December 14, 1976, and

subsequent updated volumes through 1979, and I quote from that Federal Register,

Criminal Law Enforcement: The principal function of the Special Investigations Staff, Pension and Welfare Benefit Programs, pertains to the enforcement of the criminal laws. It conducts investigations to prevent and detect violations of laws which bear criminal penalties, which investigations in appropriate cases will result in criminal prosecutions.

Also the Secretary of Labor's Order No. 13-76, dated May 17, 1976, states that DOL has the responsibility to "participate in the President's antiorganized crime program and carry out the responsibilities within the program that pertain to IRS and WPPDA."

Moreover, a memorandum of understanding between the Department of Labor and the Department of Justice, dated February 5, 1975, states that the Secretary of Labor has the responsibility for conducting investigations of persons who violate ERISA, including investigations of certain criminal matters.

In testimony before our subcommittee in July 1977, Mr. Secretary, you pledged that the Department of Labor was entering into a new phase of both civil and criminal investigations. You testified that DOL would examine transactions that lend themselves to civil restitution as well as identify transactions that warranted criminal prosecution.

You indicated that DOL was shifting to an aggressive third-party review to obtain records and evidence from third parties to look at the other side of the fund transactions and to use the DOL investigative subpoena to obtain the evidence.

Nowhere in that testimony did you indicate or imply that the DOL had any question about legal authority to investigate criminal transactions.

ERISA states, at 29 U.S. 1136, Other Agencies and Departments, and I quote from ERISA,

The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law.

Yet, in your prepared statement, Mr. Secretary, in light of all this, you seem to be heading in another direction when you state,

It is not the objective of the Department of Labor to use its ERISA investigative authority to investigate violations of the criminal code, and we believe that we would be on dubious legal grounds if we attempted to do so.

So I don't know whether you understand our perplexity in trying to deal with this in light of what we see as very contradictory policies relating to law, to the regulations, to previous statements, and to your present statement and seemingly your present policy.

Secretary MARSHALL. Let me say generally what I think it is, and I have a lawyer who knows more about the distinction. I think a good bit depends on whether you are talking about only ERISA, which is one aspect, and whether you are talking about the Labor Management Relations, LMRDA, the Labor Management Reporting and Disclosure Act.

Chairman NUNN. All of these things we have cited are directed at ERISA. SIS has been set up to pursue ERISA.

Secretary MARSHALL. That's right.

Chairman NUNN. Let me read that one more time. This is what the Federal Register says on that subject.

Ms. GALLAGHER. Is that the Privacy Act Notice that you are dealing with, Senator?

Chairman NUNN. What is that?

Ms. GALLAGHER. That was the Privacy Act Notice that Mr. Ryan of SIS put in the Federal Register. That was not cleared and has subsequently been corrected.

Chairman NUNN. That's no longer in the Federal Register?

Ms. GALLAGHER. That has been corrected.

Chairman NUNN. Have you got a corrected copy?

Ms. GALLAGHER. I can get it for you.

Mr. STEINBERG. We have the 1979 edition of the Federal Register which lists the same function of SIS.

Ms. GALLAGHER. All I can tell you is I inquired about that very recently. I was told it had been corrected.

Mr. STEINBERG. Of course SIS was abolished in 1980, so it would be changed.

Ms. GALLAGHER. I think there's a corrected version available. If I am wrong, I apologize in advance. I did inquire about it only a couple of days ago. I was told it had been corrected.

Chairman NUNN. Does Mr. Ryan have the authority to put that in the Register?

Ms. GALLAGHER. No; it should be cleared by the Solicitor's Office, but it wasn't.

Chairman NUNN. Another communication problem?

Ms. CLAUSS. Well, Senator, the Privacy Act requires you to publish a list of records and functions. And that's prepared by the program people. They do clear them. You know, I think we have to be careful in this inquiry that a lot goes back to the same people who were dissatisfied.

Chairman NUNN. We don't know that. Mr. Ryan's work went to the Federal Register.

Ms. CLAUSS. Well, he did. It did not go through channels and was corrected.

Chairman NUNN. When was it corrected?

Ms. CLAUSS. I understand it has been corrected, but we will supply that for the record.

Chairman NUNN. When was it put in the Federal Register to begin with?

Mr. STEINBERG. 1976.

Chairman NUNN. It was in the Federal Register for 3 years during the heart of this investigation without being corrected.

Ms. CLAUSS. Well, I am afraid that Privacy Act notices are not something that are read by that many people in the Solicitor's Office. There's one group in the Solicitor's Office that does that. It is not very true. It just doesn't get—that's not the part of the code that we look at. It is an administrative—a ministerial matter.

Mr. GALLAGHER. Senator, if you will excuse me, I don't want Monica or Carin Clauss to be giving you incorrect information. It was me who advised them that it had been corrected. My advice was based on conversations I had with people in the Division of the Solicitor's Office

that deals with Privacy Act notices and freedom of information last year. I haven't personally checked it myself, but I will certainly do that.

Chairman NUNN. You are not sure it has been corrected?

Mr. GALLAGHER. I was told that it has been or would be corrected. But I don't have certain knowledge that it has been. I have not checked the Federal Register myself.

Ms. GALLAGHER. If it is of any interest to you, I have a note to the special investigations staff from 1976 which pointed out to them that there is an incorrect statement of their mission and it shouldn't have been published that way. Again, I should be careful. I wrote such a note.

Ms. CLAUSS. Senator, let me try to answer your question. I think the—

Secretary MARSHALL. Go ahead.

Ms. CLAUSS [continuing]. The Department's position here, I hope, has always been consistent. It certainly has always been the same so long as I have been in this job. Our responsibility for criminal investigations under ERISA is for criminal violations of the reporting and disclosure portions of the act. And the ERISA investigators working under what used to be—well, under Ian Lanoff, do prepare those and transmit those to the Department of Justice for prosecution as finished, prepared investigative files. That's the only criminal violation that we have authority to investigate under the ERISA statute.

Chairman NUNN. Reporting and what?

Ms. CLAUSS. Disclosure violations. In other words, willful falsification of the disclosure or reports. Those are the requirements in the statute. And there's a companion responsibility under the Landrum-Griffin Act which is also investigated by the Department of Labor and transmitted to Justice for prosecution. Just parenthetically, they often ask us to assign our people to work on those prosecutions in many cases.

In addition, we have an organized crime operation that works under the Inspector General which has 87 investigators who are available to the strike force attorneys to participate in any investigation that they should be assigned to. This is a wide-ranging operation and goes far beyond criminal violations of reporting and disclosure. And I think Mr. Hobgood might like to comment on that. But with respect to the level at which the SIS was staffed, it was never intended, it was never anticipated, that that level, whether it had been 45 or 30 or whatever, ever would have been enough to fully investigate and pursue all criminal allegations involving the Teamsters. I mean our organized crime people are available to perform that function with the Justice Department. We are, however, under a legal duty as well as a normal duty, to turn over to the Department of Justice any evidence we find and to be able to look at it for leads.

Before asking Mr. Hobgood to give you the details of that coordination with the Inspector General's Office and his office and Mr. Lanoff's office and the Justice Department, I would just comment on those 81 names, that the SIS staff was asked to look at. The concern of Mr. Kelly and Mr. Lagather and others—and the Secretary had asked them to look at SIS when he came into office—was that although

they had been at this investigation for a long time, the focus of the investigation had been quite narrow, had been concentrated on just six groups of loans and that we were at a point where we would shortly perhaps be in court for the purposes of removing the trustees and getting asset management and also for punishing the trustees, and that the bulk of the loan transactions portfolio had not been looked at.

So he wanted to find a way to get part of the investigative effort going to look at these other matters. Now that was not inconsistent with the decision that before you could pursue good matters, I mean, matters that had already been identified as targets, that we would have to prepare for litigation. But there were several things that Mr. Kelly wanted going on at one time, which I think were proper and good. One is that we would, the lawyers, with the help of the investigators, would be getting ready to go to court if that became necessary.

Chairman NUNN. Excuse me, please. You are not finished?

Ms. CLAUSS. Then the second thing is that we would be looking to devise a good investigative plan that would not be—that would cover all of asset management. The third would be to pursue those targeted loans in a more detailed way. So that was the—

Chairman NUNN. Let me ask you this: Mr. Perkins was quoted as saying that "SIS has never conducted any aspect of a criminal investigation and had better not." Would that be in accordance with what you understand to be the duty of the Department of Labor and, in turn, the duty of SIS?

Ms. CLAUSS. It is, I think, a little bit of an overstatement, but I think a natural one, because they have never had an allegation, they have never focused on false reporting. He just hasn't come across that.

Chairman NUNN. In 2½ years?

Ms. CLAUSS. Well, I am not aware of any allegations or findings. Are any of you? I mean I think if you were to ask him the question, what about suspected criminal violations in the reporting and disclosure requirements, he would say to you well, of course yes. I think he was thinking of something other than reporting and disclosure.

Chairman NUNN. What happens if they run into embezzlement or kickbacks or something of that nature?

Ms. CLAUSS. That would not be investigated by SIS. Let me ask Mr. Hobgood to tell you the procedure, because he is the one in charge of that.

Mr. HOBGOOD. Yes, Senator. We have a specific agreement, written agreement, with the Inspector General's Office whereby during the course of ERISA investigations, should we or should our investigators come across any matters which might be criminally related, there are procedures established both at the national office level and the field level for the coordinating and sharing of this information with the Inspector General's people.

Chairman NUNN. So if they run across an embezzlement or kickback, a bit of evidence under your own investigations under ERISA, they should go to the Inspector General's Office?

Mr. HOBGOOD. There is a procedure for doing that. Then the procedure, through proper consultation, is whether they want to proceed with the IG. They might want to proceed on the criminal line, or whether it is more appropriate to go the civil route.

Chairman NUNN. That is not what Mr. Perkins said. He said that "SIS has never conducted any aspect of a criminal investigation and it better not." That would include the criminal violations for disclosure also. He is basically saying that his instructions to all SIS people or at least his understanding as head of it was that they had no criminal jurisdiction.

Ms. CLAUSS. Senator Nunn, I think I would make two points here. One, and it is a problem that we recognized this morning, that SIS has had what Mr. Hobgood has testified to is a typical procedure used by the Department when it comes across criminal, possible criminal violations. SIS, from its inception, functioned a little differently because originally there were Justice Department members to the team. That was the work policy group. So the referrals were made directly. Now we certainly recognize on the basis of all that has come out of these hearings that we are going to have to put SIS, the successor to SIS, under some more fixed rules on how to make the referrals. Mr. Hobgood's unit in Chicago will of course be following the normal process, which is when they come across something that has potential criminal aspects to it, unless it is reporting and disclosure, you do not complete the investigation, but you give it to the Inspector General who then discusses it with the Attorney General or his people and they make a decision. But the question is whether it will be organized crime strike force people who complete that investigation, or whether it is assigned to the Justice Department.

Chairman NUNN. All right. Let me ask you this question. The years that SIS has been in existence—and I guess it was about 5 years, was it not, before it was abolished?

Ms. CLAUSS. That's right.

Chairman NUNN. Are you saying they never ran across a reporting or disclosure violation, criminal violation in 5 years?

Ms. GALLAGHER. If they ever did, I never heard that. No one ever came and said, "We have this reporting violation alleged. Shall we investigate or not investigate?" It seems to me that's a likely thing they would have done being aware of the difficulties that we have had in the jurisdictional area.

Chairman NUNN. Of course if Mr. Perkins thought, as he said, they better not ever investigate a criminal matter, I don't know what he would do if he ran across one.

Ms. CLAUSS. Senator Nunn, if they ran across one, they would do one of two things. Either they know they are supposed to investigate it themselves and they would do that, and refer it to Justice, or they would do what they do when they run across embezzlement matters or some other suspected criminal activity; they would turn it over to Justice. I assume that if Justice had gotten a reporting or disclosure referral, they would have been yelling back to us and our work group saying, "Hey, you are trying to get rid of this work, this is your responsibility." But maybe they accepted one and did it themselves. We can check.

Chairman NUNN. We would like any amplification of that for the record you can give us.

Mr. Hobgood, do you have any kind of records of how many suspected non-ERISA violations have been turned over by SIS during the course of their investigation?

Mr. HOBGOOD. I don't have them with me.

Chairman NUNN. Could you furnish that for the record?

Mr. HOBGOOD. We will do that.

[The information had not been furnished to the subcommittee at the time the hearings were printed.]

Chairman NUNN. There have been some?

Mr. HOBGOOD. I did not bring any material with me.

Chairman NUNN. You don't know whether there has been one or not?

Mr. HOBGOOD. The agreement that we entered into with the Inspector General has been within the last 6 or 8 months and I have not monitored to see how many have been—

Chairman NUNN. What about before that? Who would they have gone to under this procedure before that was entered into?

Mr. HOBGOOD. They would have gone to the Inspector General but we wanted more specific procedures defined so that both the national office and the field office structure could be coordinated.

Chairman NUNN. As far as you know right now, nobody knows of any reporting or disclosure investigation by SIS and no one knows of any referral to the Inspector General—although you will furnish for the record if you find one—in 5 years?

Mr. HOBGOOD. Yes.

Mr. GALLAGHER. If I may, Senator, the practice with SIS, this is predating the reorganization and the creation of a new investigative unit, has been for the most part to make referrals directly to strike forces attorneys or Department of Justice attorneys.

Chairman NUNN. We heard testimony from Mr. Crino this morning that there was no record of what had been sent over there except in very few cases.

Mr. GALLAGHER. I don't think that is correct, Senator. I think all of the testimony and the evidence gathered by GAO has been that in the sum, there have not been enough records kept. Certainly GAO found records of referrals to the Justice Department.

Chairman NUNN. I think they said 11 cases.

Mr. GALLAGHER. The Justice Department came back with a number like 26. Neither of those numbers is entirely accurate. Of my personal knowledge, I know of nearly 80 or approximately 80 transactions that we have discussed with the Department of Justice and provided information to the Department of Justice regarding those transactions.

Chairman NUNN. Mr. Steinberg?

Mr. STEINBERG. Mr. Hobgood, without respect to disclosure violations, has SIS or its predecessor unit referred any matters to the Inspector General's Office dealing with embezzlement, conversion, kickbacks, or anything like that?

Mr. HOBGOOD. On any investigation?

Mr. STEINBERG. On the Teamster fund?

Mr. HOBGOOD. On the current investigation, to my knowledge under the current investigation no matters have been referred to the Inspector General's Office.

Mr. STEINBERG. Would that be true through the years with the SIS operation?

Mr. HOBGOOD. I can't respond to that.

Ms. CLAUSS. I think we have just answered, and we will supply for the record, the numerous referrals that were made by SIS to the Department of Justice.

Mr. STEINBERG. I understand that, but Mr. Hobgood just testified a few moments ago that that procedure you are referring to with the Inspector General's Office at a certain point in time and I asked him if there had been any referrals; he said he didn't know.

Ms. CLAUSS. But then he said before that. I was just responding to the second part of your question.

Mr. STEINBERG. Mr. Hobgood, what is the responsibility of the Department of Labor to detect and investigate conversions, embezzlements, kickbacks, and so forth under ERISA?

Mr. HOBGOOD. Our responsibility is once we discovered any of that activity, we were to turn that information over to the Inspector General, as I said.

Mr. STEINBERG. What is your responsibility to detect it and investigate in order to turn it over? Did you have responsibility to aggressively go out and detect those types of violations, turn them over either to your own Inspector General or to the Justice Department?

Mr. HOBGOOD. Our job is to aggressively protect the assets of the plans and we do. In following that objective, if we do come across any information, we do turn that over to the Inspector General.

Mr. STEINBERG. There is a difference between coming across information and going out and investigating something, see if it has criminal potential and turning it over as other agencies in Government do. You are aware with the Justice Department; that is, the other agencies investigate criminal matters within their jurisdiction, once they get near a case which appears to have litigative potential, they turn it over to the Justice Department. I am sure you are aware of that.

Mr. HOBGOOD. I am sure of that, Mr. Steinberg. I am sure you are aware if we came across any information related to any possible criminal conduct that information would be pursued if we were asked to check it, or we would turn it immediately over to the Inspector General.

Mr. STEINBERG. Mr. Hobgood, I would like to ask you a further question. The statement by the Secretary in our record is that "it is not the objective of the Department of Labor to use ERISA investigative authority to investigate violations of a criminal nature but we believe we would be on dubious legal grounds if we attempted to do so."

Our question is does the Department of Labor have the obligation or responsibility to initially detect, investigate violations of ERISA, criminal violations?

Ms. CLAUSS. Mr. Steinberg, since that is a legal question, I will answer it. I will answer it and try to do it very clearly. Where the Department of Labor has jurisdiction and responsibility for criminal investigation, it carries that responsibility out fully and completely. Under our different statutes, we have different responsibilities. Under some of our statutes we do have the responsibility and jurisdiction for investigating embezzlement and where we do, we do so.

Under ERISA, our jurisdiction over criminal matters is limited to reporting and disclosure. Therefore we do not have authority without permission from the Department of Justice to go beyond investigation

into those matters. If we find evidence of criminal activity involving ERISA matters in an ERISA investigation, or which doesn't involve an ERISA investigation, we communicate that to the Department of Justice. The Labor Department stands willing to investigate that through its organized crime strike force people in the Inspector General's office which would be the appropriate way for us to do it.

If we run across a criminal reporting and disclosure problem, it is our obligation to investigate it first, make a conclusion and transmit it to the Justice Department. They would be very upset if we undertook to make the investigation before we contacted them in any matter outside our jurisdiction.

Mr. STEINBERG. As I understand it from what you have said, you are saying the Department of Labor only has an obligation to initiate and investigate disclosure and reporting violations but does not have the responsibility to initiate and investigate embezzlements, conversions, kickbacks, and so forth under ERISA. Is that correct?

Ms. CLAUSS. That is correct. We do have an obligation however to report it immediately to the Department of Justice.

Mr. STEINBERG. Do we need a change in the law to allow you to investigate those items?

Ms. CLAUSS. I think the Attorney General would want to testify on that.

Mr. STEINBERG. Does this section of ERISA which requires you to refer matters to the Attorney General that warrant consideration for criminal prosecution under the provisions of this subchapter—I suppose they mean all the provisions—require you to investigate embezzlements, conversions, kickbacks, and so forth?

Mr. GALLAGHER. All I can do is repeat what Carin says. No. It doesn't require us to investigate. It requires us to refer what we find. That is what we do.

Ms. CLAUSS. I really think, Mr. Steinberg, if you were to contact the Department of Justice and ask them this question that they would tell you they would not want basically civil law enforcement agencies to conduct independent criminal investigations except under their direction and control. We recognize our obligation to do that under their supervision and that is what we do with our 87 people assigned to the Organized Crime Strike Force Unit in the Inspector General's Office. I really respectfully suggest that they would not approve of us going outside our authority.

Chairman NUNN. But you would agree that Mr. Perkins went far beyond, what you have just explained as your role, when he said that SIS has never conducted any aspect of a criminal investigation and had better not?

Ms. CLAUSS. Yes, I would.

Chairman NUNN. That is not the way you interpret ERISA?

Ms. CLAUSS. No. He was mistaken. I think though that he was thinking in terms of the embezzlements and I think had we asked him what about criminal reporting and disclosure violations, he would have answered the question correctly. I just don't think he understood the question that way.

Chairman NUNN. Mr. Secretary, on January 17, 1977, in a letter, you state "Interagency cooperation between DOL and other agencies was

imperative and criminal violations would be referred to the Justice Department promptly."

One thing, we have already asked you about Deputy Assistant Attorney General Kenny's memo and you have given your answer and interpretation of that. The acting head of SIS, Mr. Perkins stated—the Kotch-Crino report—that even when organized crime figures were found to be intimately involved in Teamster finances he took it upon himself not to refer this information to Justice because in his opinion no ERISA violation existed.

Mr. Secretary, do you think when there are known organized crime involvements in particular loans that these kind of matters should be referred to the Justice Department even if there is no violation on the face of the matter?

Secretary MARSHALL. I think these are the kind of things that I assumed did come up during the periodic informal discussion biweekly between the Department and the Justice Department. Some leads rather than investigatory activities, I think have been referred to the Justice Department in those cases and I think that it is appropriate, that the Department ought to do that, ought to refer any kind of leads that suggest criminal activity to the Justice Department.

Chairman NUNN. The problem was Mr. Perkins wasn't invited to those meetings and didn't understand that obviously by his own statements. So for at least his tenure in office, it is likely that has not been happening.

Secretary MARSHALL. This has been happening.

Ms. CLAUSS. His supervisor has attended the meetings, Jack Ballard, but I think the point is well taken, that in order to assure that the Justice Department knows everything we know, it would be good to have more communication at a lower level than at the level of, in that case, a deputy administrator. So I think that is something which we should be very careful to ensure.

Chairman NUNN. Are you confident that Mr. Ballard knew all about the organized crime figures that may have been run across by Mr. Perkins in SIS? If he didn't know about it, obviously nothing would have happened, no referrals would have been made.

Ms. CLAUSS. I understand that. I can't speak for Mr. Ballard, but it seems to me it would be a good caution to have greater representation from the program unit in those meetings and I will personally see to that.

Chairman NUNN. I am delighted to hear that. Kotch and Crino said Mr. Ballard didn't have time to really get involved in communicating with SIS. I am not trying to quote directly from the report, putting all of this together, what you have is a potential gap relating to turning information over to the Justice Department concerning organized crime figures.

Mr. GALLAGHER. If I may add, I don't think there has been much that has fallen through that gap, if there is any gap. It is unfortunate that the context of Mr. Perkins' remarks during the Kotch-Crino interview has been lost. I would like to know what the context was. I have met with Mr. Perkins and with attorneys from the Justice Department who have gone through hundreds, not hundreds, but prob-

ably a hundred of these loans, any loan where there was any reason to think that the Justice Department might have any interest.

We have discussed it with the Justice Department and told them what we know about it, including identify people for the Justice Department who may be connected with organized crime. I seriously doubt that anything has fallen through the cracks in those procedures.

Chairman NUNN. Are you aware of the testimony that there was no referral of organized crime involvements unless there was a loss on the particular transaction involved?

Mr. GALLAGHER. I have heard you refer to the testimony and that is why I said I don't have the context of it.

Chairman NUNN. Have you read the Kotch-Crino report?

Mr. GALLAGHER. I have read the Kotch-Crino report. It does not give me the context of the remarks that were made during the interviews, but I personally sat through these meetings, Senator. I can tell you the names of Justice Department people who were there as well.

Secretary MARSHALL. My understanding was that any information like that was being passed to the Justice Department and we ought to formalize it and be sure it is and will.

Chairman NUNN. I wish you would do some backtracking on that because things like this have indeed fallen through the cracks. We are not in the position to make a judgment here, but you have put various segments of this together and it seems to me there was a rather broad crack there, particularly when you take Mr. Perkins' statement about criminal and organized crime matters, and then the Kotch-Crino report about Mr. Ballard's lack of time, and the fact Mr. Ballard was a representative of the Justice Department in the meetings and Mr. Perkins wasn't there, you put all of that together, it raises serious questions about a gap.

Secretary MARSHALL. Mr. Gallagher was also in the meetings with the Justice Department with Mr. Ballard where those things were discussed. It is hard to reconcile those.

Chairman NUNN. I want to say one thing about Mr. Gallagher because the people we talked to, most of them in SIS said that Mr. Gallagher was the person who did take a lot of time and spend a lot of time in talking to them and communicating with them and they were very grateful for that. At least that was the overwhelming impression I got. So I think he is to be commended for that kind of close effort.

Secretary MARSHALL. That is one of the reasons why we kept him. [Laughter.]

Chairman NUNN. I am not willing to put myself in the position that you didn't want to put yourself in regarding the replacement of trustees. Not wanting to assume the responsibility of Mr. Gallagher's conduct from here I won't comment on that. I do think we should say that he has been praised for his effort to communicate. And this was with a group of very, very frustrated people who frankly did not feel they had very much communication.

Ms. Secretary, your statement indicates that over 80 matters dealing with the pension fund have been referred to the Department of Jus-

tice. GAO reported they could only document 11 such referrals. In March 1980, you testified before the House Ways and Means Committee that the Department of Labor had referred 25 matters to the Department of Justice but the Labor Department records apparently don't reflect this.

Can you or somebody give us a figure of what is accurate?

Ms. CLAUSS. As Mr. Gallagher just testified, Senator, we will supply that for the record. Many of these referrals are not reported in an easy-to-find way, but that will be provided for the record.

Chairman NUNN. We would like to have that for the record with any analysis you can make about those referrals, particularly how many of them came from SIS, how many came from somewhere else.

Ms. CLAUSS. We will provide that and the names of the persons to whom we gave the information in the Department of Justice.

[The information requested had not been furnished to the subcommittee at the time the hearings were printed.]

Mr. BLOCK. Mr. Lippe would often send information over to the Justice Department that he felt was interesting or worthwhile and was not necessarily a criminal referral. Am I correct in that?

Ms. CLAUSS. That is correct in that same kind of referral, is continuing, in the work group session.

Mr. BLOCK. But you are talking about specific referrals where there is something specifically pointing to a criminal violation and that is what you are going to supply for the record. Am I correct?

Mr. GALLAGHER. I think what I would like to supply you, Mr. Block, would be our best information on what referrals have been formally made, informally made, and generally what our program has been with respect to making information available to the Department of Justice where we think it would be of interest to you.

Chairman NUNN. Mr. Secretary, in your statement before the subcommittee, you state that after the civil case is litigated, the Department of Labor expects a judgment in the millions of dollars, a judgment which will probably exceed the amounts which are recoverable from the combined assets of the defendants and their insurance. That is a quote from you.

Does the fact that the defendants in the lawsuit, the civil suit, that is the old trustees, may not be in a financial position to reimburse the fund even if you get a large verdict? Does that bother you?

Secretary MARSHALL. It would in terms of the fact that we didn't recover from those people but I think that some of them, as I understand it, have insurance that will cover it and I think that the estimate that I have seen that our people made is that the amount that they expect to recover will be, that the amount will be greater than that. But let me ask somebody who has made an assessment of that, Carin?

Ms. CLAUSS. I think what we are saying is that it is quite possible that we will establish in court a liability beyond the resources of any of the defendants. That is unfortunate for the fund if we cannot recover everything that was lost through mismanagement. There was also money lost due to bad management prior to the effective date of ERISA, that we will not be able to recover.

Chairman NUNN. Doesn't that make it even more essential that you have a vigorous pursuit of possible culpability by third parties?

Ms. CLAUSS. We are investigating each and every loan transaction in its entirety.

Chairman NUNN. Of course the third parties presumably are the ones that benefited from any fiduciary breach that may have occurred unless there was a direct criminal kind of kickback or embezzlement by the trustees themselves? In other words, if they breached their fiduciary relationship and did certain things, made certain acts that make them civilly liable, the third parties are the ones who were the beneficiaries of that in most cases, I would imagine, except in cases of kickbacks.

Ms. CLAUSS. I would say it is a lot easier to be imprudent than it is to aid in the breach of fiduciary, but certainly we will not overlook any avenue for restoring to the fund the money that has been lost.

Mr. STEINBERG. Ms. Clauss, without asking for a positive legal opinion because I don't want to affect any future litigation, isn't there a possibility that a lot of those loan transactions may be lost due to the running of time; that is, as to the third parties?

Ms. CLAUSS. Mr. Steinberg, you know as well as I do that the statute runs from the date of the knowledge of the action. All I can tell you is that as a legal matter, we believe that ERISA gives us authority to go after third parties where the evidence establishes the cause of action. And we have in fact filed suits against third parties and we will continue to file suit against third parties wherever it is appropriate to do so, wherever the evidence enables us to do so.

Mr. STEINBERG. But not in this case?

Ms. CLAUSS. I don't want to comment, if I could, on what we will do in this case.

Chairman NUNN. Mr. Secretary, evidence in our record, including the Department of Labor's internal February 1980 memo and the information that PSI has placed in the record from various Federal investigations, our own staff investigative efforts and the fact that Teamster official Roy Williams appeared before the subcommittee and refused to respond to questions concerning his influence on present Teamster trustees, his relationship with high-ranking organized crime members and the manipulation of Teamster fund assets at the request of organized crime through Mr. Williams, all of these things lead almost, at least presumably, to the conclusion that despite whatever efforts have been made by the Department of Labor with respect to the Teamster fund, organized crime still has, seems to have a substantial influence in the operation of the fund and trustees.

Do you agree or disagree with that general conclusion?

Secretary MARSHALL. It is clear that we have to be concerned about that and we are watching those funds and we know that efforts have been made to reassert control, but each time those efforts have been made, we have moved vigorously and blocked it. We intend to continue to do that and to watch for any evidence that persons associated with organized crime are causing the current trustees to violate the law and if so we will take appropriate action.

Chairman NUNN. From what we know today and from the Labor Department's own reports internally, it is apparent the old trustees exerted some influence on the new trustees to affect their action. Did the Labor Department, since 1976 after the trustees, the original trust-

ees were removed, have you conducted any investigation to determine if those trustees still influence the financial transactions of the fund?

Secretary MARSHALL. Yes. We are watching that whole question very carefully and that is the reason that we have moved to try to block this. We think it is true that some former trustees hold appointive or elected positions in organizations which had a role in the selection of the new trustees. We are aware of the evidence that some former trustees may have influenced or attempted to influence the selection of other trustees. It is also true that certain actions of the new trustees seem to be consistent with the interests of the former trustees.

We have no direct evidence at this time that any former trustee acting individually has appointed any of the current trustees or that any former trustee has exercised direct control over the action of any current trustee.

If the subcommittee has any such evidence, we would request that the subcommittee make it available for our consideration, but the real question is not how the new trustees were selected but whether the assets are protected and whether there is any wrongdoing by the new trustees. The assets are protected and during our onsite investigations in Chicago, if we discover any wrongdoing, we will take prompt action to stop it and to correct the wrongdoing.

Chairman NUNN. Did you have any real analysis, before the second group resigned, about whether the first group that resigned was still influential in the selection and conduct of their replacement?

Secretary MARSHALL. We knew, of course, that they were in the same organization, as I mentioned. I don't think we had any evidence about their impact on their replacements. Let's see if anybody does have. Bill? Carin? Bob?

Mr. GALLAGHER. I don't have personal knowledge of that, but I have seen a memorandum in the file. I think you have it. It shows that there was, I think it is deposition testimony regarding the appointment of one of the Pressers to succeed each other. Mr. Fitzsimmons might have been involved in that appointment. It is a very general kind of evidence.

Mr. STEINBERG. Mr. Gallagher, isn't it true that the old trustees who resigned in 1976 would have been the exact same people who would have been responsible for voting and so forth to put in their replacements? They would be responsible people in the various conferences that selected people?

Mr. GALLAGHER. I think the Secretary has already said that that is correct, that there are some of the old trustees, for example, Roy Williams, who hold high union office that would allow him some role, whether it be official or unofficial, or some voice in the selection of the successor trustees.

Chairman NUNN. Mr. Secretary, you reported in your statement that the old trustees who resigned posed no threat to the fund and you made a similar statement to the House Ways and Means Committee in March of 1980. In addition, you stated that you have agreed not to adopt any proposal which would have left the existing trustees in control regardless of the procedures they might follow. I believe you also indicated that you would like to believe that the new trustees will not revert to old patterns.

But didn't you have before you testified before the House a memo from the Solicitor of Labor telling you about the influence of the old trustees, the influence they have on the new trustees and also the influence they have on the financial transactions of the fund?

Secretary MARSHALL. Do you recall that? I don't recall the memo, but let me ask the Solicitor.

Ms. CLAUSS. We have written so many memos. I don't know if this is the memo you had reference to. Yes; we certainly expressed a concern and it was, I think, instrumental in—well, it was one of many factors that led to the investigation, the on-site investigation of the current trustees—that the new trustees were not performing at a level that we thought was cooperative and that we needed to look very closely at their behavior so that if they do not bring the type of reform we wanted in the fund that we can move to take additional action.

But in terms of the fund, the assets, the \$2.5 billion, that is locked up. Now, of course, the new assets coming in do pass through the trustees, part of it staying in the B. & A. account, part of it being turned over to Equitable. And that is a matter that is being looked at very closely.

Chairman NUNN. I have here a memo from you, Ms. Clauss, to the Secretary, dated February 1, 1980. I will just read the summary portion of that.

We believe that a review of the new trustees' performance to date demonstrates significant disregard for the interest of the participants and beneficiaries of the fund and a determination to frustrate the efforts of the Department, in its ERISA enforcement activities. The records of the new trustees' conduct also supports the inference that the former trustees of the fund still exert significant influence over the operation of the fund.

Ms. CLAUSS. Yes; I mean I do remember writing such a memo.

Secretary MARSHALL. Of course that is one of the reasons we have our investigation under way of the trustees. That is part of the work. Why don't we let Mr. Hobgood comment on that since it is his unit in Chicago that is carrying that forward.

Chairman NUNN. But you still believe they are no threat to the fund at the present time?

Secretary MARSHALL. They are no threat to the assets. We are monitoring their control of the so-called B. & A. account. We have a number of different sources of information to watch that. And we think we have good information about what is happening to that account.

Mr. HOBGOOD. Senator, we have seven people in Chicago who are part of that special unit. We have five areas which are currently under investigation.

We have investigative plans filed on all of them and reports of investigation have been filed on two of them. So we feel we are pursuing it aggressively and effectively.

Chairman NUNN. Looking back on it, if you had involved yourself in the selection of the new trustees in any way, could you perhaps have avoided some of the effort and some of the possible threat that the new trustees posed because of the influence of the old trustees, or do you still believe you were correct in that respect?

Secretary MARSHALL. I believe that we were correct, yes. I think the main thing that was important was removing the assets from their

control, limiting their assets that they do control, to mainly the B. & A. account. We still have the power if these new trustees violate ERISA in any way, we can still proceed against them.

The thing that we wanted to avoid was the liability of our having selected people who violated fiduciary responsibility and to prevent any kind of stamp of governmental approval on those people. So I think the present system does provide adequate safeguards. We are concerned about it, and we are aggressively investigating the new trustees.

Mr. BLOCK. Mr. Secretary, what happens at the end of the 5-year contract with the asset managers? Can the trustees then take over the asset management again for themselves? Are there any restrictions on them at that time?

Secretary MARSHALL. Well, of course, they would still be subject to ERISA. So we could continue to monitor them very carefully. I think they know that that is likely to be the case and, therefore, I hope that they will continue this arrangement which has been going for the fund.

It has doubled the income, doubled the rate of return. It has been a very good arrangement. They moved away from heavy concentration on real estate and in the direction of securities. And all of that is good for the beneficiaries of that fund.

What we will do, regardless of what they do, is continue to monitor their activities very closely. I think they know that.

Mr. BLOCK. I hope that they would continue some kind of arrangement along those lines, also. But there is no obligation for them to do that.

Secretary MARSHALL. No. That is right. Under the agreement there is no legal obligation.

Ms. CLAUSS. That is correct. I might just point out that under the statute if someone was guilty of a crime, you know, the statute only removes them from office for 5 years. There really was no option that would have given us a life-long guarantee. You may recall back in the fifties when the Dave Beck matter was being investigated, the court imposed a trusteeship on the international. Even that, the court dissolved that after 2 years. Sure, that is a continuing problem. If we can't reform the fund and the people who operate the fund, we will constantly have to go back and get court-imposed relief of some kind to protect the assets.

We are willing to take on that obligation. One of the reasons we felt it was so important to file our lawsuit promptly against the trustees was to send out a clear message to all trustees, and particularly the new trustees of this fund, that there are serious and substantial sanctions now available to the Government when trustees of pension funds engage in the kind of conduct that we found in Central States.

Secretary MARSHALL. In other words, nothing prevents us from finding the same kind of evidence, from having the same legal threat to the trustees that we had when we started this whole thing, except now we will have the experience of having demonstrated that we can do it and that we can bring a suit and be successful, that we can bring a suit and remove trustees, and that we can adopt the arrangement that we now have, which provides that they cannot discontinue the rela-

tionship without my approval, even though I am not a party to the agreement that they have between the fund and the money managers.

Mr. BLOCK. But that holds only as long as the contract.

Secretary MARSHALL. That is right. Five years. But we still have all the legal options we have when we first started this process.

Chairman NUNN. If you find abuse.

Secretary MARSHALL. That is right, if we find that they are abusing. I hope we wouldn't. I hope that they see, because we are willing to move vigorously, willing to go for heavy restitution, for violations of fiduciary responsibility. That is the reason it is so important for us to succeed with that. And I am confident that we will.

Chairman NUNN. Based on Ms. Clauss' memo and some of the other evidence, I am sure you have at least heard snatches of, I myself am a bit dubious about the attitude after the agreement expires. I am sure you have a certain degree of healthy skepticism.

Secretary MARSHALL. That is the reason we will have the evidence because we are on the spot already investigating the new trustees. They should not take any comfort from the fact that this will be up in 5 years. We will have had 5 years of pretty solid evidence about their activities as well as prosecution in the interim, if they violate their fiduciary responsibilities under the law.

Chairman NUNN. Mr. Secretary, are you familiar with a 1977 joint position paper by the Department of Labor and the Internal Revenue Service set forth relating to trying to get a neutral majority on the board and selection and qualification of neutral trustees, exchange of documents and meetings, and so forth and so on?

Secretary MARSHALL. I am familiar with that. I know that there is such a memo and I know that was an option that was discussed.

Chairman NUNN. Why did the Department of Labor proceed to accept the resignation of the trustees and file suit without requesting a court order consent decree or a majority neutral board or veto power over the selection of trustees? Let's take them one at a time.

Secretary MARSHALL. The last one I mentioned.

Chairman NUNN. You have mentioned the last one.

Secretary MARSHALL. The answer to the other question is, we didn't want to do anything that would have the trustees in charge of the assets. And a majority, neutral majority, would still leave those old trustees there with some control over the assets, and that was unacceptable to us. So that when the Attorney General and Secretary of Treasury and I discussed that option, we concluded that we ought not to do anything that would leave the trustees in charge, in control of the assets. And that is the reason that we opted for the other option, to get them removed and put the assets in independent hands.

Chairman NUNN. What about a court-ordered consent decree?

Secretary MARSHALL. When you have a consent decree, of course you have to have everybody agree. We didn't see anything we could achieve through a court-ordered decree more than we could achieve through the arrangement we worked out.

Ms. CLAUSS. I might just add that we could not have gotten a court-ordered decree reflecting the arrangement we got, Senator.

What the fund had talked about giving to us in a court decree was that all the trustees would stay on board, the four holdovers would

remain, and that they would agree to sign a court paper that would require them to manage the money, prudently, from there on in.

And we were not ready to accept that.

Secretary MARSHALL. They are required to do that anyway. So we would have gained nothing with that kind of agreement.

Mr. STEINBERG. The Labor Department, did it not, filed a lawsuit January 20, 1977, *Marshall v. Snyder*, and a few days later, on February 4, obtained a court order restricting the action of the trustees, and in that same suit on April 8, 1977, the Secretary filed a contempt motion which basically resulted in a court order, I believe, issued that same day enjoining the trustees from using fund assets and appointing an independent receiver to run the fund.

Everything in this case, including the appeal, was decided in less than a year, apparently. Other similar cases have been filed in which the same quick action by the courts has been experienced by the Department of Labor, including removal of trustees, appointment of court-ordered neutrals, and appointment of receivership. If these relatively quick court-enforced remedies—removal, receivership, injunctions, and neutral trustees—were available as long as a year before the 1978 lawsuit was filed, why weren't those options considered, or why didn't you go to court to obtain those options?

Secretary MARSHALL. We thought about going to court and we thought about what we could get if we did go to court. We concluded two things in this case, as I recall. One is you weren't likely to get an easy resolution of this matter in court. That was likely to take a good while to get a judgment. And that we were able to achieve all of our objectives without going to court. So that you had no advantage in going to court.

Mr. STEINBERG. What we have on that is that the idea, I guess, is that the Central States Fund would fight you tooth and nail.

Secretary MARSHALL. That is right.

Mr. STEINBERG. It would take a while.

Ms. GALLAGHER. May I respond?

Mr. STEINBERG. Can I finish the question first? The remedy that you received in *Marshall v. Snyder*, although that wasn't the Central States Fund, it was a general Teamsters employee local, is that correct?

Secretary MARSHALL. Do you remember that *Marshall v. Snyder*?

Ms. GALLAGHER. I remember the case.

Mr. STEINBERG. I said that was a general Teamster employee local; is that correct?

Ms. GALLAGHER. I was trying to let you finish the question. Was the question, is that a Teamster fund? The answer is, "Yes."

Secretary MARSHALL. The question is, why didn't we do the same thing in this case?

Ms. GALLAGHER. I am just floored because I thought that that was what I was trying to address when I was—we didn't do the same thing in this case because it was a different case. The issues were different. The problems were different. The litigative strategy necessarily was different because the claims were different. Snyder involved, among other things, ongoing cash payments to one of the trustees of \$1 million a year.

Chairman NUNN. Mr. Secretary, the agreement that the fund entered into with independent asset managers states on its face that it only

lasts 5 years; that is, it will terminate in June 1982. What prohibits the fund from going back to its prior practices at that time?

Secretary MARSHALL. The law and the experience we have had with them in the meantime in that they know that we will have a much better track on them this time because we are already tracking them. We have a unit in Chicago watching the new trustees. They are going to be scrutinized very carefully. And I think that that being the case, well, I hope they recognize the wisdom of not going back to the previous practices.

Chairman NUNN. At the termination of the asset managers, the money will be back in the hands of the trustees themselves, will it not?

Secretary MARSHALL. That is right.

Chairman NUNN. And the independent asset managers will not be involved?

Secretary MARSHALL. Not after the end of their agreement, unless they enter into a new agreement.

Chairman NUNN. Now based on your past experience, if they were to begin to abuse the trust and fiduciary relationship, how long do you believe it would take the Labor Department to find out about it and take action?

Secretary MARSHALL. No time at all because we are living with them, almost.

Chairman NUNN. You think that that kind of dedicated effort is going to be important in the future by the Labor Department, regardless of who is Secretary of Labor and regardless of who the President is?

Secretary MARSHALL. I think it is. I think the magnitude of this fund and its history is such that I would suspect whoever the Secretary of Labor would be would pay very close attention to it, as long as we have got ERISA. I think the advantage that we will have is we will have the experience and the precedent that we built up with ERISA. I think we built many safeguards. I point that out in my testimony. That will either make it stronger, have a stronger position in—what is it, 1982, than we had when we started in 1977.

Chairman NUNN. Are the trustees still responsible for the actuarial soundness of the fund?

Ms. GALLAGHER. Under ERISA, the plan has the duty to meet the funding standard account, if that is what you mean by actuarial soundness. The trustees have a duty, which is a phased-in duty depending on a number of factors, including in this case the date of execution of certain collective bargaining agreements, to maintain the fund at a level specified by the statute. And that obligation is enforced by the IRS.

Chairman NUNN. One of the things that is perplexing in this area is since there was no written agreement as to who is responsible for what between IRS and the Labor Department, Mr. Secretary, you say that there was no need for a written agreement because all the terms of the agreement were put in place in April of 1977.

Ms. Gallagher, in a statement before the House committee in response to a question about the conditions for requalifications which have not been met, and I quote, "The conditions of the requalification are the IRS's responsibility exclusively."

We are talking about requalification for tax exemption.

Secretary MARSHALL. Right.

Chairman NUNN. In testimony before our committee in July 1977, you stated, Mr. Secretary, "On March 14, the Labor Department and IRS issued identical news releases announcing its terms of the agreement." You then listed the terms of that agreement, including the points required for IRS qualification. Now the General Accounting Office reports that many of the conditions for requalification have not been met, and the question is, what role will the Department of Labor play in that requalification, if any?

Secretary MARSHALL. That is mainly a responsibility of IRS. We are working with them very closely, though, to avoid the repetition of the prior experience we had before when the fund—before I came in—the fund was disqualified without the Department's knowledge.

Chairman NUNN. That requalification would have a direct bearing on that fiduciary responsibility?

Secretary MARSHALL. That is right.

Chairman NUNN. Therefore, even though you would not be primarily responsible for making that determination, you do have a vital stake in it?

Secretary MARSHALL. That is right. I think it is still important, therefore, for the Government to present a united front in these things, IRS, Justice, and Treasury. We continued that coordination for that reason. We are in a lot stronger position if the Government presents a united front.

Chairman NUNN. Mr. Secretary, we will take another 5-minute break. We are still conscious of the time. We are going to try to complete this as soon as possible. We will take a break.

[Member present at time of recess: Senator Nunn.]

[Brief recess.]

Chairman NUNN. Mr. Secretary, we have a great number of questions and to ask them all and get a clear answer, you would miss your meeting. We would be here probably until 10 or 11 o'clock tonight.

Rather than go that way, one of the areas where we have a great number of additional questions is the Department of Labor's ERISA criminal responsibility, what is the Department of Labor's general criminal responsibility, and how does that interrelate with the Department of Justice. You have embarked on a new Inspector General referral in the last 6 months. What I would like to ask you to do, after a preliminary meeting with my staff, and your legal staff, and some appropriate representative of the Justice Department, if they could generally agree as to what should and should not be the jurisdictional matters, it is all a matter of law and interpretation of law. We are not talking about factual cases. If they could agree, we may have made some progress. But we do have fundamental differences in areas to how we interpret the law and how you interpret the law and people with good will can interpret the law differently. But after that kind of preliminary meeting sometime in the next 2 or 3 weeks when it can be arranged, that the other differences, if we have other differences, that we will submit to you our view and have you and the Attorney General agree to meet on them. You don't have to agree with us, but at least get back to us some kind of a joint position from you and the Attorney General as to this area, I think we would have made a lot of progress

along that line. Anywhere we disagree, we would know where we disagreed. Would you be willing to make that—

Secretary MARSHALL. I think so. I would like to get it clarified in everybody's mind. There is no question that there is a lot of confusion. I don't see anything wrong with that procedure. It seems like a good one.

Chairman NUNN. Mr. Steinberg and Ms. Clauss and whoever else they want to get together could ask our contact—

Secretary MARSHALL. In fact I would like to see it written up for myself and for the guidance of everybody involved in the process.

Chairman NUNN. I think there would be a lot of progress on all of the problems that have developed and I am sure the frustration that you all have for being put through these hearings. I think all of that would be worthwhile if we could come out of it with some kind of joint statement and if we don't agree, if that is your interpretation, I think the burden falls in our court to try to change the law if we don't agree with it.

Of course, at least we would know that the Labor Department and the Attorney General had come to some agreement. He may agree with everything you said.

Secretary MARSHALL. My understanding is we have come to an agreement with them. But let's see.

Ms. CLAUSS. I think it is a good suggestion.

Secretary MARSHALL. We have ceded some of our criminal responsibility under other acts to the Justice Department.

Ms. CLAUSS. They have ceded some back to us.

Secretary MARSHALL. There was a complex problem.

Chairman NUNN. I think if you met with Mr. Steinberg, he has studied this matter at great length and has different opinions. I think that would be a fruitful endeavor.

We will be in touch with you on that. We are going to cut out a great number of these questions along that line. Also, we would ask that we be able to submit questions to you for the record. We can cut out another whole great number of questions. You could respond to those and I would like, Mr. Secretary—I know how responsive the records are, but I would like for your assurances that you will look over those yourself.

Secretary MARSHALL. I will do that.

Chairman NUNN. Mr. Steinberg will ask you a few more questions.

Mr. STEINBERG. In our 1977 hearing you acknowledged the need to actively monitor the B. & A. account. GAO stated, of course, the Department of Labor has not adequately monitored the B. & A. account. The Department of Labor's own internal memos reflect that the Department of Labor wasn't monitoring the account, the Department of Labor does not know how the fund operated financially, and it did not know in fact if they were sound.

As we heard from Mr. Perkins, he stated there was no monitoring of the B. & A. account with any regular basis. I believe before the House committee, Mr. Secretary, you testified in response to questions about the monitoring.

I think the IRS is monitoring. It is where we got our information about it. I assume that if they are not monitoring it we would have not gotten the information. I think it is a question of monitoring. I am not sure who does it. We get our information from IRS. I assume they are doing it.

But the question we have is: Who is doing the monitoring of the B. & A. account and is the Labor Department doing it itself?

Secretary MARSHALL. We are monitoring the B. & A. account. We get information from a variety of sources, some confidential, some IRS, some onsite investigation that Mr. Hobgood discussed.

We have, I don't know if this has been put into the record, the detailed information that we do have on that account. Has that been put in the record? We would be glad to do that, which provides a monthly summary of the low balance, high balance, payments to Equitable and benefits paid by month. It comes from all of our sources, and I think it helps understand some of the things that the GAO testified about. For example, at the end of December 1979 the B. & A. account contained \$142 million. That statement is true but alone is misleading.

In order to put to rest speculation regarding the amount held in that account our investigative staff in Chicago has summarized the activity in the account since January 1979, and I offer this information for the record, Mr. Chairman.

The reserve balance of the account has fluctuated for the most part between \$45 million and \$80 million while the high balance fluctuated between \$85 million and \$142 million. During the later months of 1979, there was an extraordinary accumulation of funds for the purpose of funding of one-time supplemental benefit payments to beneficiaries of approximately \$315 per beneficiary. Following this extraordinary—as you will see from this table—following this extraordinary payment of benefits, the level of the account has steadily declined.

Mr. STEINBERG. Is there any adequate way to monitor the account without actually being there or having the access to the records on a regular basis?

Secretary MARSHALL. I think it is important for us to get information from a variety of sources including being in there and that is the reason we are in there.

Mr. STEINBERG. Has the Department of Labor ever established any guidance of what is or was not reasonable to have in the B. & A. account?

Secretary MARSHALL. No; not quantitative amounts, a judgment call.

Mr. STEINBERG. Do you intend to establish guidelines?

Secretary MARSHALL. I think that it is best probably to leave it as a judgment rather than having a numerical amount of any particular amount. I don't have any strong feelings about it, but I think that the present system seems to be working pretty well so long as we can get information about what is happening to the fund.

Mr. STEINBERG. The GAO stated that the cost of the SIS investigation alone was over \$5.5 million or an amount to that effect. Do you have any present estimate of what the Labor Department's costs for the investigation have been?

Secretary MARSHALL. We can supply that for you. I don't have it at my fingertips. Bill?

Mr. HOBGOOD. When I first assumed the office, I asked for a cost assessment just for the SIS part of it. I hate to restate that figure because I don't have it in front of me. As I recall, it was around \$2.5 million. But we will give you the exact figures.

Mr. STEINBERG. I am aware that you have two lawsuits in litigation with the fund. Besides those two lawsuits, has any other money been recovered by the fund since the investigation started?

Ms. GALLAGHER. We also are involved in—I don't know which two you are counting. You are counting Fitzsimmons and Robins?

Mr. STEINBERG. The Central States fund?

Ms. GALLAGHER. Fitzsimmons, Robins, and M. & R. In M. & R. we defended, depending on how you choose to count, against the plaintiffs' recovery of \$40 million, \$100 million, or \$90 million. So that is money which I think can be fairly said to have been saved.

Mr. STEINBERG. Is that the money that was attempted to be transferred from the B. & A. account as a loan?

Ms. GALLAGHER. The claim for \$40 million was for specific performance of a commitment which would have been paid presumably out of unsegregated assets at a time prior to the installation of the investment managers.

The damage issue is not clear, if there had been a judgment for damages what it would have been paid out of the \$90 million, we don't have any information about what was contemplated. So, I am not able to answer. I think it is certainly fair to be suspicious that there was some idea it could have been paid out of the B. & A. account.

Mr. STEINBERG. That is the amount you prevented from being paid from the fund. Is that correct?

Ms. GALLAGHER. I think our participation in the litigation was a substantial contributing factor to the court's reaching the result that it did, which was a judgment that the loan was prohibited and unenforceable and that therefore no payment was to go on that loan commitment.

Mr. STEINBERG. Besides that transaction, have any moneys been recovered by the fund itself to this date?

Mr. GALLAGHER. Yes. We are aware of a number of suits that the fund has brought against borrowers. There are quite a number, actually. Many of them are routine suits based on State law claims for foreclosure and the like. There have also been several suits that assert against borrowers claims very much like those asserted in our lawsuits. I know at least one of those has been concluded by a settlement that resulted in a payment to the fund of in excess of \$1 million.

Mr. STEINBERG. Mr. Hobgood, you stated that there is a new group in Chicago investigating the fund and it is comprised of six full-time investigators, one full-time clerical; is that correct?

Mr. HOBGOOD. There are seven positions that have been allocated. Of course they do have access to the normal administrative support staff in Chicago.

Mr. STEINBERG. In your opinion is that an adequate number of people to investigate the fund at this point?

Mr. HOBGOOD. We had a study commissioned, conducted by Mr. Marsh from Atlanta, and in his recommendations it was determined that that would be sufficient to do the job and since the investigation has been undertaken out there we—since that investigation has been undertaken there has been no concern voiced that is not sufficient.

Chairman NUNN. Are you sure you got the right communications? Mr. HOBGOOD. We have superb communication, Senator.

Chairman NUNN. Who would be responsible to tell you if you didn't have enough people?

Mr. HOBGOOD. We have direct responsibility for this group out there Mr. Klevan, who is the Deputy Administrator of the Pension and Welfare Benefits programs. On-site direction is under the direction of Mr. Benages, who is the area administrator in Chicago. But we have a very close and very tight working relationship with that group and it has involved Mr. Klevan's frequent—or at least several—visits to Chicago, and frequent reports to me and in turn periodic briefings of the Secretary.

Chairman NUNN. You had 28 people in the SIS before it was abolished and of these 7 people were in Chicago. They are supposed to take the place of those people that were in SIS or are in some functions of SIS that were picked up by the Solicitor's Office and other offices?

Mr. HOBGOOD. This is purely investigation of the matters involving current trustees.

Chairman NUNN. Seven people?

Mr. HOBGOOD. Yes.

Chairman NUNN. Who picked up the other functions of SIS?

Mr. HOBGOOD. The litigation support function has been put in the Solicitor's Office.

Chairman NUNN. How many people are involved in that?

Ms. CLAUSS. There are 8 staff attorneys, 8 auditors and investigators, 8 auditors, there are librarians, there are paralegals, there are also 4, I guess, full-time computer people and then there is a staff of 20-plus part-time people who are engaged in the computer and record operation.

Chairman NUNN. So if you combined a group with the group out in Chicago, plus the people in the Solicitor's Office that were formerly working on this, are those two the equivalent of each other?

Ms. CLAUSS. It is the equivalent-plus.

Chairman NUNN. You have more people now than you had before?

Ms. CLAUSS. That is right.

Mr. HOBGOOD. Not only do we have the seven people out there but in case peripheral matters come up under this current structure we can use the services of the entire PWBP investigative staff throughout the country to follow through on certain matters.

Chairman NUNN. Your testimony is, Mr. Secretary, that you have all the people you need now to do the job on this investigation?

Secretary MARSHALL. I think at the moment, but I think we have to keep that under review and if it looks like the workload expands, to try to expand the staff. I think the advantage of the arrangement that we have now is its flexibility. That is the fact that being in LMSA and in the Solicitor's Office, to have the flexibility without lot of conflict between something called the SIS and the other units, to expand as needed. But right now, the judgment that we made is that the people available are adequate to do the job that we have them doing right now.

Mr. HOBGOOD. We don't know what other matters may develop during the course of the investigative strategy that we now have underway. So that could change as far as the number of people.

Chairman NUNN. But as of right now, you have to do the job as you see it?

Mr. HOBGOOD. Yes.

Chairman NUNN. Mr. Gallagher, do you concur on that? You are in the front line. I will ask both of you.

Mr. GALLAGHER. Yes, sir. I believe we do.

Ms. GALLAGHER. I agree with that.

Chairman NUNN. Ms. Clauss?

Ms. CLAUSS. I am satisfied at this moment, Senator.

Chairman NUNN. Mr. Block, do you want to put something in the record?

Mr. BLOCK. Mr. Chairman, I would like to ask that we make a sealed exhibit a number of documents that we received from the Labor Department on Saturday afternoon after having requested them late last week that relate to the matter of the National Bank of Georgia. I ask that they remain sealed until staff can determine which, if any, of these documents ought to be made a part of the public record.

Chairman NUNN. Without objection.

[The documents referred to were marked "Exhibit No. 24," for reference, and are retained in the confidential files of the subcommittee.]

Mr. STEINBERG. As we told Ms. Gallagher some time ago, we are going to give the Department of Labor an opportunity to review any of the documents we now have in the record or will put into the record for their objections to any public dissemination.

Chairman NUNN. We have to reserve final judgment, but we would like your comments.

Ms. Gallagher?

Ms. GALLAGHER. In addition to that, it didn't come through to me very clearly, but apparently there is something relating to Mr. Barbatano that relates to me and that was put in the record and sealed. If I might have an opportunity to look at that also?

Chairman NUNN. We will make that Barbatano statement a part of the record.

[The statement of Mr. Barbatano was introduced previously as Exhibit 23 and appears on p. 476.]

Chairman NUNN. I have read it, but I have not reviewed it as to whether any parts of it should be confidential. Has the staff reviewed it?

Mr. STEINBERG. There is no problem in letting Ms. Gallagher review it in your office sometime.

Chairman NUNN. I think it should be a part of the open record. You can have a copy this afternoon.

Ms. GALLAGHER. Thank you.

Chairman NUNN. Before we close the hearing, I want to pay a special tribute to all of the staff, minority and majority, and to Senator Percy for his cooperation as well as Senator Cohen, Senator Chiles, and others who participated in this hearing, particularly Marty Steinberg, LaVern Duffy, Bill Colombell, Ray Maria, Bill Goodwin, Myra Crase, Mary Robertson, Suzanne Davis, Liz Taylor, Jerry Block, Chuck Berk, Sarah Presgrave, and Adele Linkenhoker. All of these people have worked long and hard and overtime. I want to particularly express my appreciation to LaVern Duffy, who is standing over here in the corner. Mr. LaVern Duffy is general counsel to the sub-

committee and I want to thank you, LaVern, not only for the work you have done in this hearing, but also for the 28 years of distinguished service you have given to this subcommittee.

LaVern joined the Permanent Subcommittee on Investigations 28 years ago. After attending Marquette University, he joined the U.S. Marines during World War II where he was wounded in Pacific fighting. After the war, LaVern received his law degree at Georgetown whereupon he came to work on Capitol Hill. Shortly thereafter, he began working with the late Bobby Kennedy, who was chief counsel of the subcommittee.

LaVern has participated in and directed many significant investigations for the subcommittee, the most noteworthy probably being the Joseph Valachi hearings. The Valachi hearings exposed the Nation to the awesome threat of traditional organized crime resulting in ever-increasing law enforcement pressure directed at this type of violent criminal activity.

Other important investigations undertaken by LaVern include labor racketeering, fraud in Government programs and public corruption. Much of LaVern's work has been used in criminal proceedings to convict major criminal figures.

More importantly, however, his efforts have helped in congressional action aimed at strengthening existing laws or creating new laws designed to facilitate the Government's fight against organized crime and other forms of corruption.

One key to LaVern's successes throughout the years has been the respect and confidence extended to him by both the private and the public sector alike. That respect and confidence has been generated by the high degree of integrity, professionalism, fairness and thoroughness which he has maintained in all his work. During his 28 years with the Permanent Subcommittee on Investigations, LaVern has enthusiastically helped in the training and guidance of new staff members, always imposing on them the same high standards he sets for himself.

I speak for all members of the subcommittee when I say that LaVern has, through his association with us, earned our respect, our praise, and our sincere appreciation.

You are not leaving us, but I just wanted to take this time to tell you that because you have been such a valuable asset for not only the subcommittee of the Senate, but I think for the entire country and you have made a meaningful and lasting contribution to the subcommittee. So we thank you for that.

Mr. DUFFY. Thank you, Senator.

Chairman NUNN. Mr. Secretary, I want to just say to you that it has been a difficult experience for you to go through these hearings—and Ms. Clauss, Ms. Gallagher, Mr. Gallagher, Mr. Hobgood, all of the people that have been here. I know that. I realize that. It is not a pleasant duty to have to have vigorous oversight investigations of this nature. But I think it is part of our duty and as I told you when we started I was dedicated to doing my duty as I saw it and I am sure you would do and have done what you see to be your duty. We do hope that out of this there will be a positive result. And even though we have had serious disagreements and perhaps still do on several of these matters, I do hope that we can work together in the future because you have an important role.

I continue to believe, as I have told you, that you are a man of integrity. We can disagree and still believe that. I certainly believe that about you and I know you personally. So I can say that.

To the other people who are here, I thank you for being here. You have your duties and we have ours, but we do hope a better understanding will come out of this, by both the executive branch and the legislative branch, about the awesome responsibilities we both have in this overall area.

And I hope that any kind of policy clarifications that need to be made in the future will be made and we certainly will do our part to further that end.

Mr. Secretary, we are getting you out of here a little earlier than we thought. If you have anything else to say at this point, we would be glad to hear it.

Secretary MARSHALL. Let me thank you, Mr. Chairman, for your statements as well as the opportunity for me to present my views here. I think that a better understanding will come out of the hearings. In fact, I think they have. I think it has done a lot to clarify a lot of issues. I pledge to you that as long as I am Secretary of Labor we will cooperate with the committee. I hope that we have learned from this experience that it is important to do that. I know we have. We are quite ready to respond to any requests that you have that we can satisfy. I think you have outlined some ways that we can clarify the question of the differences in interpretation of criminal responsibility requirements I think that will be very instructive. And you also have suggested some things that we need to tighten up and we intend to do that; those as I have indicated throughout the hearing. So we are grateful to you. I know I speak for all of my colleagues; having had the chance to lay our views on the record.

Chairman NUNN. I regret that you were not able to do that when we first had these hearings and I also regret that we did have to use the subpoena. Perhaps the schedules had been different, if you had been in town, at that time, I know your trip had been planned for a long time, perhaps some of these problems would have been avoided. But at least in the future I hope that we will be able to avoid that kind of problem.

Ms. Clauss, we appreciate you being with us. Do you have anything else you want to say?

Ms. CLAUSS. No. Thank you, Senator.

Chairman NUNN. Ms. Gallagher?

Ms. GALLAGHER. Thank you, Senator.

Chairman NUNN. Mr. Gallagher?

Mr. GALLAGHER. I would like to thank you for the consideration you have shown for my concerns about protecting privileged information that could damage our litigation. Thank you.

Chairman NUNN. Thank you. Mr. Hobgood?

Mr. HOBGOOD. Thank you, sir.

Chairman NUNN. Thank you. We will submit questions for the record.

[The questions referred to that were submitted to the Department of Labor together with the answers were marked "Exhibit No. 25" for reference and may be found in the files of the subcommittee.]

[Whereupon, at 6:05 p.m., the permanent subcommittee was adjourned, to reconvene subject to the call of the Chair.]

END