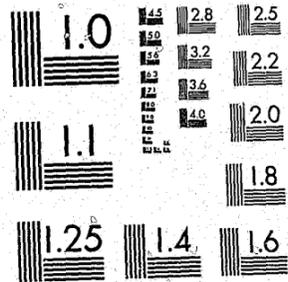


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9/15/83

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION
TENTH ANNUAL REPORT



*Submitted to the
Governor and Legislature*

77267

TENTH ANNUAL REPORT
of the
COMMISSION OF INVESTIGATION
of the
STATE OF NEW JERSEY
to
THE GOVERNOR AND THE LEGISLATURE
of the
STATE OF NEW JERSEY

U.S. Department of Justice
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OF THE STATE OF NEW JERSEY

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*** Mr. Patterson was appointed to the Commission by Governor Byrne in February, 1979.

**** Mr. Francis was appointed to the Commission by Assembly Speaker Christopher J. Jackman in February, 1979.



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COMMISSION OF INVESTIGATION

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TO: *The Governor and the Members of the Senate and
the General Assembly of the State of New Jersey*

The New Jersey State Commission of Investigation is pleased to submit for the year 1978 its tenth annual report and recommendations pursuant to Section 10 of P. L. 1968, Chapter 266 (N.J.S.A. 52:9M-10), the Act establishing the Commission of Investigation.

Respectfully submitted,

Arthur S. Lane, *Chairman*

John J. Francis, Jr.

Lewis B. Kaden

Henry S. Patterson, II

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ORIGIN AND SCOPE OF THE COMMISSION

Despite the range and impact of the Commission's achievements, inquiries continue to be made about its jurisdiction, the way it functions and its importance to a better New Jersey. The Commission believes this important information should be conveniently available. Accordingly, the pertinent facts are summarized below.

The New Jersey State Commission of Investigation (S.C.I.) was an outgrowth of extensive research and public hearings conducted in 1968 by the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey. That Committee was under direction from the Legislature to find ways to correct what was a serious and intensifying crime problem in New Jersey.

Indeed, by the late 1960s New Jersey had the unattractive image of being a corrupt haven for flourishing organized crime operations. William F. Hyland, who was Attorney General from 1974-1978 for the State of New Jersey, vividly recalled that unfortunate era in testimony before the Governor's Committee to Evaluate the S.C.I. He said in part:

"... our state quickly developed a national reputation as a governmental cesspool, a bedroom for hired killers and a dumping ground for their victims. Whether this was a deserved reputation was not necessarily material. The significant thing was that this became an accepted fact that seriously undermined confidence in state law enforcement."

The Joint Legislative Committee in its report issued in the Spring of 1968 found that a crisis in crime control did exist in New Jersey. The Committee attributed the expanding activities of organized crime to "failure to some considerable degree in the system itself, official corruption, or both" and offered a series of sweeping recommendations for improving various areas of the criminal justice system in the state.

The two highest priority recommendations were for a new State Criminal Justice unit in the executive branch of state government and an independent State Commission of Investigation, patterned

after the New York State Commission of Investigation, now in its 21st year of probing crime, official corruption and other governmental abuses.

The Committee envisioned the proposed Criminal Justice unit and the proposed Commission of Investigation as complementary agencies in the fight against crime and corruption. The Criminal Justice unit was to be a large organization with extensive manpower and authority to coordinate and press forward criminal investigations and prosecutions throughout the state. The Commission of Investigation was to be a relatively small but expert body which would conduct fact-finding investigations, bring the facts to the public's attention, and make recommendations to the Governor and the Legislature for improvements in laws and the operations of government.

The Joint Legislative Committee's recommendations prompted immediate supportive legislative and executive action. New Jersey now has a Criminal Justice Division in the State Department of Law and Public Safety and an independent State Commission of Investigation* which is structured as a commission of the Legislature. The new laws were designed to prevent any conflict between the functions of this purely investigative, fact-finding Commission and the prosecutorial authorities of the state. The latter have the responsibility of pressing indictments and other charges of violations of law and bringing the wrongdoers to punishment. The Commission has the responsibilities of publicly exposing evil by fact-finding investigations and of recommending new laws and other remedies to protect the integrity of the political process.

The complementary role of the S.C.I. was emphasized anew by the Governor's Committee to Evaluate the S.C.I.**, which conducted in 1975 a comprehensive and impartial analysis of the Commission's record and function. The Committee's members consisted of the late Chief Justice Joseph Weintraub of the New Jersey

*The bill creating the New Jersey State Commission of Investigation was introduced April 29, 1968, in the Senate. Legislative approval of that measure was completed September 4, 1968. The bill created the Commission for an initial term beginning January 1, 1969 and ending December 31, 1974. It is cited as Public Law, 1968, Chapter 266, N. J. S. A. 52:9M-1 et seq. The Legislature on November 12, 1973, completed enactment of a bill, cited as Public Law, 1973, Chapter 238, which renewed the Commission for another term ending December 31, 1979. A bill granting the S.C.I. an extension of its tenure for another five years is awaiting final approval by the Governor and the Legislature.

**The Governor's Committee to Evaluate the S.C.I. was created in April, 1975, by executive order of the Governor after the introduction in the Senate of a bill to terminate the S.C.I. touched off a backlash of public criticism. The measure was subsequently withdrawn.

Supreme Court, former Associate Justice Nathan L. Jacobs of that same Court, and former Judge Edward F. Broderick of the New Jersey Superior Court.

That Committee in its October 6, 1975, public report rejected summarily any suggestion that the S.C.I. duplicates work of other agencies. Indeed, the Committee said the record demonstrated convincingly that the Commission performs a valuable function and that there is continuing need for the S.C.I.'s contributions to both the legislative process and the executive branch.

The Committee concluded that it saw no likelihood that the need for the S.C.I. will abate, and recommended amendment of the S.C.I.'s statute to make the Commission a permanent rather than a temporary agency. In support of this statement, the Committee declared:

"Our evaluation of the work of the S.C.I. convinces us that the agency has performed a very valuable function . . . The current public skepticism of government performance emphasizes the continuing need for a credible agency to delve into the problems that plague our institutions, an agency which can provide truthful information and sound recommendations. There must be constant public awareness if we are to retain a healthy and vibrant system of government. Indeed we see no likelihood that the need for the S.C.I. will abate . . ."

To insure the integrity and impartiality of the Commission, no more than two of the four Commissioners may be of the same political party. Two Commissioners are appointed by the Governor and one each by the President of the Senate and the Speaker of the Assembly. It thus may be said the Commission by law is bipartisan and by concern and action is nonpartisan.

The paramount statutory responsibilities vested in the Commission are set forth in Section 2 of its statute.* This section provides:

2. The Commission shall have the duty and power to conduct investigations in connection with:
 - (a) The faithful execution and effective enforcement of the laws of the state, with particular

*The full text of the Commission's statute is included in the Appendices Section of this report.

reference but not limited to organized crime and racketeering.

- (b) The conduct of public officers and public employees, and of officers and employees of public corporations and authorities.
- (c) Any matter concerning the public peace, public safety and public justice.

The statute provides further that the Commission shall conduct investigations by direction of the Governor and by concurrent resolution of the Legislature. The Commission also shall conduct investigations of the affairs of any state department or agency at the request of the head of a department or agency.

Thus, the enabling statute assigned to the Commission, as an investigative, fact-finding body,* a wide range of responsibilities. It is highly mobile, may compel testimony and production of other evidence by subpoena, and has authority to grant immunity to witnesses. Although the Commission does not have and cannot exercise any prosecutorial functions, the statute does provide for the Commission to refer information to prosecutorial authorities.

One of the Commission's prime responsibilities when it uncovers irregularities, improprieties, misconduct, or corruption, is to bring the facts to the attention of the public. The objective is to insure corrective action. The importance of public exposure was put most succinctly by a New York Times analysis of the nature of such a Commission:

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

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

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

*As a legislative, investigative agency, the S.C.I. is not unique, since investigative agencies of the legislative branch of government are as old as the Republic. The first full-fledged Congressional investigating committee was established in 1792 to "inquire into the causes of the failure of the last expedition of Major General St. Clair." (3 Annals of Congress 493-1792).

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

The exact format for public action by the S.C.I. is subject in each instance to a formal determination by the Commission which takes into consideration factors of complexity of subject matter and of consciseness, accuracy and thoroughness in presentation of the facts. The Commission may proceed by way of a public hearing or a public report, or both.

In the course of its conduct, the Commission adheres to and is guided by the New Jersey Code of Fair Procedure.*

The Code sets forth those protections which the Legislature by statute and the Judiciary by interpretation have provided for witnesses called at private and public hearings and for individuals mentioned in the Commission's public proceedings. Section Six of the Code states that any individual who feels adversely affected by the testimony or other evidence presented in a public action by the Commission shall be afforded an opportunity to make a statement under oath relevant to the testimony or other evidence complained of. The statements, subject to determination of relevancy, are incorporated in the records of the Commission's public proceedings. Before resolving to proceed to a public action, the Commission analyzes and evaluates investigative data in private in keeping with its solemn obligation to avoid unnecessary stigma and embarrassment to individuals but, at the same time, to fulfill its statutory obligation to keep the public informed with specifics necessary to give credibility to the S.C.I.'s findings and recommendations.

The Commission contends that indictments which may result from referral of matters to other agencies are not the only test of the efficacy of the agency's public actions. Even more important are the corrective legislative and regulatory actions sparked by arousing the public interest. The Commission takes particular pride in all such actions which have resulted in improved governmental operations and laws. It will continue to work for more effective protection for the taxpaying public from abuses in the expenditure of public funds and other subversions of the public trust.

*The New Jersey Code of Fair Procedure (Chapter 376, Laws of New Jersey, 1968, N.J.S.A. 52:13E-1 to 52:13E-10) is printed in full in the Appendices section of this report.

RESUME OF THE COMMISSION'S MAJOR INVESTIGATIONS

This is a summary of the Commission's major investigations undertaken since June, 1969, when the S.C.I. became staffed and operational. In describing them as major investigations, it is meant that they required considerable time and effort and, where appropriate, resulted in a public hearing or a public report. Since these inquiries have been discussed fully in separate reports or in previous annual reports or in sections of this report, only a brief statement about each — including subsequent results — is set forth.

1. ORGANIZED CRIME CONFRONTATIONS*

Since the summer of 1969, the Commission has been issuing subpoenas for the appearance and testimony of individuals identified by law enforcement authorities as leaders or members of organized crime families operating in New Jersey. This program has been part of the Commission's continuous effort to increase the storehouse of intelligence, mutually shared with law enforcement agencies, about the status, modes and patterns of underworld operations in this state. However, the need to penetrate the so-called "Oath of Silence", behind which organized crime figures try to hide, has required the Commission to utilize every constitutional weapon at its disposal. One of these important anti-crime tools is the power to grant immunity, following procedures that are in strict accord with the protections laid down by law and the judiciary. The Commission believes that, once witnesses have been granted immunity against the use of their testimony or any leads derived from such testimony, a proper balance has been struck between protecting individual rights and the responsibility of the state to safeguard the public by learning as much as possible about the plans and strategies of the underworld. This philosophy and approach have been approved by the highest state and federal courts.

* See New Jersey State Commission of Investigation, Annual Reports for 1970, 1971, 1972, 1973, 1974, 1975, 1976 and 1977. See also p. 42 of this Annual Report.

As part of this program of confrontation, nine organized crime figures who were served with subpoenas elected to undergo extended periods of court-ordered imprisonment for civil contempt for refusing to answer S.C.I. questions. In addition, certain organized crime figures remain under S.C.I. subpoena for either continuing or future testimony, including Angelo Bruno, Simone Rizzo (Sam the Plumber) DeCavalcante, Carl (Pappy) Ippolito, Joseph Paterno and Antonio (Tony Bananas) Caponigro. Among the many organized crime figures known to have fled New Jersey in an effort to avoid being served with S.C.I. subpoenas are Anthony (Tumac) Acceturo of Livingston, Emilio (The Count) Delio and Paterno of Newark, Joseph (Demus) Covello of Belleville, John (Johnny D) DiGilio of Paramus, Tino Fiumara of Wyckoff, John (Johnny Keyes) Simone of Lawrence Township, and Ippolito. The attempt by a number of these to seek alternate places of residence, primarily in South Florida, has been interrupted from time to time by federal and state indictments charging various criminal violations.

As indicated above, nine organized crime figures have chosen to spend prolonged periods of court-mandated incarceration on civil contempt grounds because they refused to testify before the S.C.I.

Of these nine, four gained release from jail only after agreeing to testify before the Commission. These four were Angelo Bruno, Nicodemo (Little Nicky) Scarfo, Anthony (Little Pussy) Russo (deceased) and Nicholas Russo. A fifth, Gerardo Catena, who had been imprisoned in March, 1970, was ordered released in 1975 by the New Jersey State Supreme Court, which ruled that imprisonment had lost its coercive effect because he had demonstrated a resolve never to testify. Similarly, two others, Ralph (Blackie) Napoli and Louis (Bobby) Manna, subsequently gained release after long periods of incarceration. An eighth, John (Johnny Coca Cola) Lardiere, who had been jailed since 1971 for refusing to testify before the S.C.I., was shot to death during the early morning of April 10, 1977. The murder occurred in the parking lot of a Bridgewater motel, while Lardiere was on a court-ordered Easter furlough. The ninth, Joseph (Bayonne Joe) Zicarelli, is on temporary medical furlough from jail.

New Jersey's former Attorney General Hyland, who was the agency's first chairman, has observed: "... much has already been done to eliminate — or at least to weaken — organized crime. Much of the credit for that success belongs to the S.C.I. for its

efforts in seeking testimony from alleged organized crime figures and for focusing the spotlight on, and thus alerting the public to, the problems associated with organized crime." Illustrating the former Attorney General's views was a report by the Pennsylvania Crime Commission which emphasized as a prime reason for the "continuing" influx of New Jersey mob figures into Pennsylvania a fear in the underworld of New Jersey's S.C.I. The Pennsylvania report also stressed other factors such as telephone wiretaps and electronic surveillances as well as the active "stalking" of mob operations in New Jersey that has been an important aspect of the S.C.I.'s surveillance activities.

2. THE GARBAGE INDUSTRY*

The Legislature in 1969 passed a resolution requesting the Commission to investigate the garbage industry and make recommendations for possible corrective action at the state level. An investigation was subsequently undertaken by the S.C.I. of certain practices and procedures in that industry. The investigation ended with two weeks of private hearings, concluding in September, 1969.

A principal finding of the Commission was that some garbage industry trade associations discouraged competition, encouraged collusive bidding, and preserved allocations of customers on a territorial basis. Unless the vice of customer allocation was curbed by the state, the Commission concluded, many municipalities would continue to be faced with the problem of receiving only one bid for waste collection.

The Commission recommended legislative action leading to a statewide approach to regulating and policing of the garbage industry. Specific recommendations were: Prohibit customer territorial allocation, price fixing and collusive bidding; provide for licensing by the state (to the exclusion of municipal licenses) of all waste collectors in New Jersey, and prohibit discrimination in the use of privately owned waste disposal areas. State regulation of the industry eventually was enacted by the Legislature.

* See New Jersey State Commission of Investigation, A Report Relating to the Garbage Industry, October 7, 1969.

3. ORGANIZED CRIME IN MONMOUTH COUNTY*

The seashore city of Long Branch had since 1967 been the focus of publicized charges and disclosures about the influence of organized crime. One charge was that an organized crime figure, Anthony (Little Pussy) Russo, controlled the mayor and the city council. Official reports indicated mob figures were operating in an atmosphere relatively secure from law enforcement. The Commission began an investigation in May, 1969, that culminated with public hearings in early 1970. Among the major disclosures were:

That a Long Branch city manager was ousted from his job by the city council after he began taking counter-action against organized crime's influence; that Russo offered to get the city manager's job back for that same person if he would close his eyes to underworld influences and act as a front for the mob; that impending police raids on gambling establishments were being leaked in time to prevent arrests despite the anti-gambling efforts of an honest police chief who died in 1968, and that the next police chief lacked the integrity and desire to investigate organized crime and stem its influence.

After the hearings, the irresponsible police chief resigned and the electorate voted in a new administration.

The Asbury Park Press commented editorially that the Commission's hearings did more good than four previous grand jury investigations. Also, the Commission's special agents developed detailed fiscal information and records relating to corporations formed by Russo, information which was used by federal authorities in obtaining a 1971 indictment of Russo on a charge of failure to file corporate income tax returns. He pleaded guilty to that charge and received a three-year prison sentence.

The Long Branch inquiry extended to the office of Monmouth County's then chief of county detectives. This probe determined that a disproportionate share of authority had been vested in this office. Twenty-four hours after the Commission issued subpoenas in October, 1969, the chief committed suicide.

* See New Jersey State Commission of Investigation, 1970 Annual Report, issued February, 1971.

Public hearings were held in late 1970. Testimony showed that a confidential expense account supposedly used for nine years by the chief of detectives to pay informants was not used for that purpose and could not be accounted for. The testimony also detailed how that fund was solely controlled by the chief with no county audit and no supervision by the county prosecutor. In fact, the county prosecutor testified that he signed vouchers in blank.

The Commission after the hearing made a series of recommendations to reform the county prosecutor system. A principal recommendation was for full-time prosecutors and assistants. A state law, since enacted, has established full-time prosecutorial staffs in the more populous counties of New Jersey and additional statutes are requiring full-time prosecutors in certain other counties. Prior to the Commission's probe, there were no full-time county prosecutors in the state.

4. THE STATE DIVISION OF PURCHASE AND PROPERTY*

The Commission in February, 1970, began investigating charges of corrupt practices and procedures involving the State Division of Purchase and Property and suppliers of state services. Public hearings were held at which testimony showed payoffs to a state buyer to get cleaning contracts for state buildings, rigging of bids on state contracts, renewal of those contracts without bidding, unsatisfactory performance of work called for under state contracts, and illegal contracting of such work.

After the investigation, the state buyer was dismissed from his job. Records of the investigation were turned over to the State Attorney General's Office which obtained an indictment charging the buyer with misconduct in office. He pleaded guilty and was fined and placed on probation.

This investigation met with immediate correctional steps by the Division of Purchase and Property, which voluntarily changed procedures to prevent recurrence of similar incidents.

* See New Jersey State Commission of Investigation, 1970 Annual Report, issued February, 1971.

5. THE BUILDING SERVICES INDUSTRY*

The probe of the Division of Purchase and Property brought to the Commission's attention anti-competitive and other improper practices and influences in the building services industry. Public hearings were held in June, 1970.

Testimony showed the existence of a trade organization designed to thwart competition by limiting free bidding and enterprise. The hearings also revealed that a union official linked with organized crime figures was the real power in the trade organization, and that coerced sales of certain detergent cleaning products and imposition of sweetheart contracts were sometimes the price of labor peace. The inquiry also revealed that a major organized crime figure in New Jersey acted as an arbiter of disputes between some cleaning companies.

The Commission's investigation of restraint-of-trade and other abusive practices in the building service and maintenance industry aroused the interest of the United States Senate Commerce Committee. The committee invited the S.C.I. to testify at its 1972 public hearings on organized crime in interstate commerce. As a result of that testimony, the Anti-Trust Division of the United States Justice Department, with assistance from the S.C.I., launched an investigation into an association which allocated territories and customers to various member building service maintenance companies in New Jersey. In May, 1974, a Federal Grand Jury indicted 12 companies and 17 officials for conspiring to shut out competition in the industry. The companies were the same as those involved in the S.C.I.'s public hearings. Attorney Roger L. Currier of the Justice Department's anti-trust division in Philadelphia, in coordination with the U.S. Attorney's office in New Jersey, brought the entire case to a final conclusion on Oct. 25, 1977. On that date the defendants ended the government's civil action by agreeing to a consent judgment stipulating they would abandon the practices alleged against them. Earlier, the government's criminal suit against the defendants was completed in March, 1976, by which time one company had pleaded guilty to the charges, the other defendants pleaded no contest and fines totaling \$233,000 were levied.

* See New Jersey Commission of Investigation, 1970 Annual Report, issued February, 1971.

6. THE HUDSON COUNTY MOSQUITO COMMISSION*

During 1970 the Commission received allegations of corrupt practices in the operation of the Hudson County Mosquito Extermination Commission. An investigation led to public hearings at the close of 1970.

The Mosquito Commission's treasurer, who was almost blind, testified how he signed checks and vouchers on direction from the agency's executive director. The testimony also revealed shake-down payments in connection with construction projects or rights-of-way in the Hudson meadowlands, the existence of a secret bank account, and kickback payments by contractors and suppliers under a fraudulent voucher scheme.

One result of this investigation was abolition of the Mosquito Commission, an agency which served no valid function and whose annual budget was approaching the \$500,000 mark.

Also, after receiving S.C.I. records of the investigation, the Hudson County Prosecutor's Office obtained conspiracy and embezzlement indictments against the Mosquito Commission's executive director and his two sons. The executive director pleaded guilty to embezzlement and in June, 1972, was sentenced to two to four years in prison. His sons pleaded guilty to conspiracy and were fined \$1,000 each.

7. MISAPPROPRIATION OF FUNDS IN ATLANTIC COUNTY**

The Commission in 1970 investigated the misappropriation of \$130,196 that came to light with the suicide of a purchasing agent in Atlantic County's government. The Commission in December of that year issued a detailed public report which documented in sworn testimony a violation of public trust and a breakdown in the use of the powers of county government. The inquiry revealed how that purchasing agent fraudulently diverted money to his own use over a period of 13 years. The sworn testimony confirmed that for years prior to 1971, monthly appropriation sheets

* See New Jersey Commission of Investigation, 1970 Annual Report, issued February, 1971.

** See Report on Misappropriation of Public Funds, Atlantic County, a Report by the New Jersey State Commission of Investigation, December, 1971.

of many departments contained irregularities traceable to the purchasing agent but that no highly placed county official ever tried to get a full explanation of those irregularities. The testimony also disclosed that after county officials were first notified by the bank about the false check endorsement part of the agent's scheme, an inadequate investigation was conducted by some county officials.

Copies of the Commission's report were sent to Freeholder Boards throughout the state for use as a guide in preventing any further instances of similar misappropriation of funds. As a result of fiscal irregularities uncovered in its probes not only of Atlantic County but also of county agencies in Monmouth and Hudson counties, the Commission recommended that county and municipal auditors be mandated to exercise more responsibility for maintaining integrity, with stress on continuous reviews of the internal controls of county and local governments.

8. DEVELOPMENT OF POINT BREEZE IN JERSEY CITY*

The lands that lie along the Jersey City waterfront are among the most valuable and economically important in the state. The Commission in the Spring of 1971 investigated allegations of corruption and other irregularities in the development of the Point Breeze area of Jersey City's waterfront as a containership port and an industrial park.

The investigation revealed a classic, informative example of how a proper and needed development could be frustrated by improper procedures. Public hearings in October, 1971, disclosed a payoff to public officials, improper receipt of real estate commissions, and irregular approaches to the use of state laws for blighted areas and granting tax abatement.

Two bills implementing S.C.I. recommendations from this probe were enacted into law. One improved the urban renewal process and the other tightened statutory provisions to prevent a purchaser of publicly owned lands from receiving any part of the brokerage fee attendant on such a purchase.

* See New Jersey State Commission of Investigation, 1971 Annual Report, issued March, 1972.

In addition, the Commission referred probe records to prosecutorial authorities. A Hudson County Grand Jury returned an indictment charging a former Jersey City building inspector with extorting \$1,200 from an official of the Port Jersey Corp. and obtaining money under false pretenses. The inspector was convicted of obtaining money under false pretenses and fined \$200 and given a six-month suspended sentence.

9. TACTICS AND STRATEGIES OF ORGANIZED CRIME*

Although not a "sworn" member of organized crime, Herbert Gross, a former Lakewood hotel operator and real estate man, became during 1965-70 a virtual part of the mob through involvement in numbers banks, shylock loan operations, cashing of stolen securities and other activities. In order to shorten a State Prison term in 1971, Gross began in that year to cooperate with government agencies, including the S.C.I.

Gross's testimony during two days of public hearings by the Commission in February, 1972, pinpointed the ruthless operations of organized crime figures in the Ocean County area and their ties back to underworld bosses in Northern New Jersey and New York City. His testimony and that of other witnesses detailed how mobsters infiltrated a legitimate motel business in Lakewood. A former restaurant concessionaire at that motel testified that because of shylock loans arranged through an organized crime association, he lost assets of about \$60,000 in six months and left town a broken and penniless man.

Records of this investigation were made available to federal authorities who subsequently obtained an extortion-conspiracy indictment against nine organized crime figures relative to a shylock loan dispute which culminated with an underworld "sitdown" or trial. New Jersey law enforcement officials testified at the S.C.I. hearings that the public exposure afforded by those sessions demonstrated the need for continually active vigilance against organized crime, particularly in rapidly developing areas, where the inquiry showed how organized crime follows population growth.

* See New Jersey State Commission of Investigation, 1972 Annual Report, issued February, 1973.

10. PROPERTY PURCHASES IN ATLANTIC COUNTY*

The Commission during 1971 received information that the State may have overpaid for the site of the Stockton State College in Galloway Township, Atlantic County. Subsequent field investigations and private hearings extending into 1972 showed that payment of \$924 an acre for a key 595-acre tract was indeed excessive.

Substantially the same acreage had been sold only nine months earlier by two corporations headed by some Atlantic City businessmen to a New York City-based land purchasing group for \$475 per acre, which was about double the per acre price of two comparable large-tract sales in the Galloway area. The Commission in a public report in June, 1972, cited two critical flaws as leading to excessive overpayment for the land by the state: Inadequate and misleading appraisals of land that had recently changed hands at a premium price, and a lack of expertise and safeguards in State Division of Purchase and Property procedures to discover and correct the appraisal problems.

The report stressed a number of recommendations to insure that the Division would in the future detect and correct faults in appraisals. Key recommendations were post-appraisal reviews by qualified experts and strict pre-qualification of appraisers before being listed as eligible to work for the state. The recommendations were promptly implemented by the Division.

11. BANK FRAUD IN MIDDLESEX COUNTY**

Investigative activities during 1971 in Middlesex County directed the Commission's attention to Santo R. Santisi, then president of the Middlesex County Bank, which he founded. A full-scale probe by the Commission's special agents and special agents/accountants concentrated on Santisi-controlled corporations, in particular the Otnas Holding Company.

The probe uncovered schemes by Santisi and his entourage for the use of publicly invested funds in Otnas solely for their own personal gain, apparently illicit public sale of stock without the

* See Report and Recommendations on Property Purchase Practices of the Division of Purchase and Property, a Report by the New Jersey Commission of Investigation, issued June, 1972.

** See New Jersey Commission of Investigation, 1972 Annual Report, issued February, 1973.

required state registration and misapplication by Santisi of hundreds of thousands of dollars of funds of the Middlesex County Bank. Those funds were "loaned" to members of the Santisi group who either personally or through their corporations acted as conduits to divert the money for the benefit of Santisi and some of his corporations.

During the first quarter of 1972 the Commission completed private hearings in this investigation but deferred planned public hearings at the request of bank examiners who expressed fears about the impact of adverse publicity on the bank's financial health. Instead, the S.C.I. referred data from this investigation to federal authorities who obtained indictments of Santisi and several of his cohorts on charges involving the misapplied bank funds. All pleaded guilty. Santisi was sentenced to three years in prison. One of his associates was sentenced to a year in prison and two others received suspended sentences.

12. THE OFFICE OF THE ATTORNEY GENERAL*

In the summer of 1972 the Commission was requested by the then Attorney General of New Jersey, George F. Kugler, Jr., to investigate his office's handling of the case of Paul J. Sherwin, the Secretary of State who was convicted on a conspiracy indictment in connection with a campaign contribution made by a contractor who had bid on a state highway contract. The request triggered an investigation which extended into early 1973. The Commission took from 22 witnesses sworn testimony consisting of more than 1,300 pages of transcripts and also introduced exhibits consisting of more than 300 pages. The Commission, by unanimous resolution, issued in 1973 a 1,600-page report which was forwarded to the Governor and the Legislature and to all news media. John J. Francis, the retired Associate Justice of the New Jersey Supreme Court, served without compensation as Special Counsel to the Commission in the investigation.

A primary conclusion of the report which climaxed this inquiry — a report which made public all recorded testimony and exhibits — was that "we find no reliable evidence whatever to reasonably justify a conclusion that Attorney General Kugler was derelict in

* See Report on Investigation of the Office of the Attorney General of New Jersey, A Report by New Jersey State Commission of Investigation, issued January, 1973.

his law enforcement obligations." The report also attacked certain types of political campaign contributions as a "malignant cancer in the blood stream of our political life" and urged the prohibition of such contributions to public officials by those aspiring for governmental contracts.

13. THE WORKERS' COMPENSATION SYSTEM*

New Jersey's system for compensating individuals for employment injuries became during the early 1970s the object of intense scrutiny. In addition to evidence and statistics indicating faults in the system, there were persistent published reports that irregularities, abuses and illegalities were being ignored or condoned. Mounting complaints led the State Commissioner of Labor and Industry to request an investigation. That task, which was undertaken by the S.C.I., was one of the agency's most comprehensive inquiries. The facts, as presented at nine days of public hearings in Trenton in May-June, 1973, documented abuses which included unwarranted compensation claims, lavish gift-giving and entertaining, questionable conduct by some judges, and the use by some law firms of favored heat-treating doctors or "house doctors" who inflated claims by bill-padding.

As a result of the investigation, three Judges of Compensation were given disciplinary suspensions, with one of them eventually being dismissed from office by the Governor. After referral of data in this probe to prosecutorial authorities, an Essex County Grand Jury during 1975 indicted two partners of a law firm and the firm's business manager on charges of conspiracy and obtaining money under false pretenses in connection with the alleged heat-treatment, bill-padding scheme exposed at the S.C.I.'s public hearings. Also, the Waterfront Commission of New York Harbor used the investigative techniques and methodology established by the S.C.I. in this investigation to uncover widespread Workmen's Compensation frauds involving dock workers.

The Commission made more than a score of proposed law changes to the Legislature. One recommended measure, to stifle bill-padding and related malpractices, became law but a full-fledged effort to enact wide-ranging revisions did not actually

* See Final Report and Recommendations on the Investigation of the Workmen's Compensation System, a Report by the New Jersey State Commission of Investigation, January, 1974.

begin until after the introduction of major proposed reform bills in 1978 by Senate President Joseph P. Merlino, Senators Anthony Scardino, Jr., and Eugene J. Bedell, and Assemblyman Joseph D. Patero.

14. MISUSE OF SCHOOL PROPERTY IN PASSAIC COUNTY*

A citizen's complaint received in January, 1973, prompted the Commission to inquire into the handling and distribution by the State of federal surplus property donated for use in schools and other institutions as well as questionable transactions at the Passaic County Vocational and Technical High School in Wayne. The investigation was capped by five days of public hearings at the Passaic County Courthouse in Paterson.

The hearings disclosed that the school's purchasing agent, who also was its business manager, failed to obtain competitive prices for many goods purchased, that substantial amounts of goods and services were purchased through middlemen, one of whom marked up prices by more than 100 per cent, and that regular payoffs were made to the school's purchasing agent. The evidence also confirmed that the purchasing agent used some school employees and property for improvements at his home and that the school had become a dumping ground for millions of dollars of federally donated surplus property under a mismanaged state program.

This investigation led to S.C.I. recommendations for administrative corrective steps to establish an efficient program of state distribution of the surplus property and for improved procedures for school boards in overseeing purchasing practices. The State Board of Education relayed the S.C.I. recommendations to all school boards in the state with instructions to be guided by them.

Further, after referral of data from this probe to the State Criminal Justice Division, a State Grand Jury indicted Alex Smollock, the school's manager and purchasing agent, on charges of taking nearly \$40,000 in kickbacks. He was convicted of nine counts of accepting bribes and was sentenced to one to three years in state prison and fined \$9,000. Superior Court Appellate Division early in 1977 upheld Smollock's conviction. Later, in March, 1977, in a civil suit by Passaic County freeholders and the Technical-

* See New Jersey State Commission of Investigation, Annual Report for 1973, issued in March, 1974.

Vocational High School, Smollock was ordered by Superior Court to return salary he received during suspension from school duties as well as the bribe money. In February, 1978, he agreed under a Superior Court settlement to repay the county more than \$50,000 in 60 installments during a five-year period upon completion of his prison term.

15. THE DRUG TRAFFIC AND LAW ENFORCEMENT*

Narcotics and their relationship to law enforcement in New Jersey are a natural area of concern for the Commission, since the huge profits to be made from illicit narcotics trafficking are an obvious lure to criminal elements. As a result of an increase in the S.C.I.'s intelligence gathering during 1973 relative to narcotics, the Commission obtained considerable information concerning certain criminal elements in Northern New Jersey. A subsequent investigation produced a mass of detail about drug trafficking. At public hearings in late 1973, witnesses revealed their involvement in heroin and cocaine transactions in North New Jersey, marked by accounts of a killing and an attempt by crime figures to persuade a witness to commit murder. Federal, state and county authorities testified about the international, interstate and intrastate flow of heroin and cocaine and problems of law enforcement units responsible for the fight against illicit narcotics distribution.

Due to a combination of a reliable informant and an extensive follow-up investigation by S.C.I. agents, this probe had significant collateral results. These included the solving of a gangland style slaying case and the busting of a stolen jewelry fencing ring and a crime federation burglary ring of more than 30 individuals. Both the Essex County (N. J.) Prosecutor and the Lackawanna County (Pa.) District Attorney complimented the S.C.I. for referrals of probe data and otherwise aiding law enforcement. The hearings also generated S.C.I. recommendations for an improved law enforcement attack on narcotics distribution and for revisions of the narcotics law, including sterner penalties for non-addict pushers.

* See New Jersey State Commission of Investigation, Annual Report for 1973, issued in March, 1974.

16. PSEUDO-CHARITABLE FUND-RAISING APPEALS*

A growing number of companies were established in New Jersey to sell by telephone exorbitantly high-priced household products, principally light bulbs, in the name of allegedly handicapped workers. Although different in age, size and some operating procedures, all created an illusion of charitable works for the handicapped through telephonic sales presentations which stressed references to "handicaps" or "the handicapped." Consumers by the hundreds, outraged upon learning they had been duped into thinking these profit-oriented businesses were charities, registered complaints with the State Division of Consumer Affairs. That Division sought a full S.C.I. investigation of these pseudo-charities because of the broader purview of the Commission's statute, the Commission's investigative record and its public exposure powers.

Facts put into the public record at hearings held by the S.C.I. in June, 1974, included: That people were willing to pay high prices of as much as 1,100 per cent above cost only because telephone solicitors gave the illusion they were aiding a charity; that some companies used healthy solicitors who claimed they were handicapped to induce sales; that solicitors, handicapped or not, were subject to prompt dismissal if they did not produce enough sales to assure a profit for the owners; that an owner of one company received a total of more than \$1 million in four years from the business; that authentically handicapped solicitors could be harmed by having to constantly dwell on their ailments in order to induce sales, and that pseudo-charitable appeals drained off millions of dollars each year that otherwise could be tapped by authentic charities.

Access to data from this investigation was offered to federal officials both during the probe and immediately after the public hearings. Subsequently, the owner of one of the profit-making companies identified at the S.C.I.'s hearings and the sales manager of another company were charged with fraud by federal authorities. Both pleaded guilty.

A number of bills to implement S.C.I. recommendations in the charitable fund-raising field were introduced in the Legislature. In April, 1977, Governor Brendan T. Byrne signed into law a bill to require authorization by the Attorney General before corpora-

* See Final Report and Recommendations on the Investigation of Profit Oriented Companies Operating in a Pseudo-Charitable Manner, a Report by the New Jersey State Commission of Investigation, September, 1974.

tions can identify themselves as fund raisers for the "handicapped" or the "blind." Another bill, to require professional fund raisers to provide financial reports to the Attorney General, also cleared the Legislature and was signed into law by the Governor on December 15, 1977.

17. THE DELAWARE RIVER PORT AUTHORITY*

The State Executive Commission on Ethical Standards during 1974 requested the S.C.I.'s assistance in investigating allegations of possible conflicts of interest of Ralph Cornell, then the Chairman of the Delaware River Port Authority. He had been a commissioner of that Authority since its inception in 1951. The reason for the request, as stated by the Ethics Commission, was that "the State Commission of Investigation is better equipped in terms of personnel, resources and operating procedures to conduct this inquiry."

The investigation involved the analysis of a virtual mountain of books and records of the Authority, corporations and banks in order to expose certain business relationships relative to subcontracting work done on Authority projects. After holding private hearings on 14 occasions from March through August of 1974, the Commission issued a comprehensive public report on this inquiry and sent it to the Governor and the Ethical Standards Commission, appropriately leaving to that Commission the final judgments on the full factual picture presented by the report. The Attorney General's Office also was given copies of the report.

The principal facts developed by the S.C.I.'s investigation were that Mr. Cornell's Cornell & Company had received substantial income for work performed on Port Authority projects on a subcontracting and sub-subcontracting basis while other companies were listed in the Authority's records as the subcontractors with no listing of Cornell & Company in those documents; that he was the recipient of substantial dividend payments as a major stockholder in the insurance company which was the New Jersey broker for the insurance needs of the Authority, and that as an investor in lands subject to value enhancement by proximity to existing or proposed Authority projects, Mr. Cornell had received more than \$1.9 million

* See Report on the Compatibility of the Interests of Mr. Ralph Cornell, Chairman of the Delaware River Port Authority, a Report by the New Jersey State Commission of Investigation, October, 1974.

in unadjusted profits. The report stated, however, that the probe found no evidence of Mr. Cornell making land purchases on the basis of "insider information" and that the purchases could have been made by any well informed citizen with substantial monetary resources.

In October, 1977, the Delaware River Port Authority agreed to accept a payment of \$50,666 by Mr. Cornell as a repayment of profits some of his firms made on Authority projects. The settlement represented a compromise of the Authority's claim that the profits amounted to \$64,330 and Mr. Cornell's claim that they were \$37,004. Port Authority counsel said the settlement was accepted to avoid "extensive expensive litigation." Cornell's counsel emphasized that the settlement was not to be regarded as an admission of liability. Mr. Cornell, who was absolved of any criminal wrongdoing by the state in 1975, was not reappointed to the Authority when his term expired in January, 1975.

18. THE GOVERNMENT OF LINDENWOLD*

A citizen's letter alleging abuses in the government of the Borough of Lindenwold, a rapidly developed suburban community in Camden County, was received by the Commission in the latter part of 1973. One of the letter's signatories, a former Borough Councilman in Lindenwold, in a subsequent interview with S.C.I. special agents, told not only of abuses concerning ethical standards but also of official corruption. He brought with him to the S.C.I.'s office \$5,000 he received, but never spent, as his share of payoffs made for votes favorable to land development projects.

During 1974 the Commission obtained substantial corroboration of this man's story of amorality in the Borough's government in a lengthy probe involving full use of the Commission subpoena and witness immunity powers and its investigative and accounting background. At three days of public hearings in Trenton in December, 1974, the Commission heard testimony supported by numerous exhibits that \$198,500 had been paid by land developers to Lindenwold public officials in return for favorable treatment and cooperation of the Borough government, that a Borough official and a county official had accepted substantial amounts of cash from

* See New Jersey State Commission of Investigation, 1974 Annual Report, issued in March, 1975.

companies owning land subject to the officials' regulation, and that Lindenwold public officials used strawmen to mask their purchases of properties which were offered for sale by the Borough, the value of which could be enhanced by the officials' acts.

The public disclosure of what the Commission called "the democratic process of local government operating at its worst" sounded a warning to communities throughout New Jersey. The principal S.C.I. recommendation stemming from this hearing was for enactment of a tough conflict of interest law to apply uniformly on a statewide basis to all county and municipal officials. Legislation meeting the S.C.I.'s standards is pending in the Legislature.

The S.C.I. referred the Lindenwold probe records to the Criminal Justice Division which obtained State Grand Jury indictments in 1975. Former Mayor William J. McDade and real estate developer John Piper pleaded guilty to bribery and conspiracy charges on September 26, 1977, as their trial was scheduled to start. Former Councilman Arthur W. Scheid was found guilty on three counts and former Councilman Dominic Stranieri was found guilty on two counts after their trial concluded October 5, 1977.

19. LAND ACQUISITION BY MIDDLESEX COUNTY*

The Commission received a series of citizens' complaints during the Spring of 1975 about alleged overpayment by the Middlesex County government for purchase of certain lands for park purposes under the State's Green Acres program. A preliminary inquiry by the Commission indicated that overpayments had occurred and that faulty real estate appraisals and insufficient review of those appraisals by the County's Land Acquisition Department and by the State's Green Acres unit were at the root of the problem. Accordingly, the Commission authorized a full-scale investigation of the County's land acquisition procedures and related Green Acres' program practices. Public hearings were held in Trenton in January, 1976.

This investigation, aided by two of the most respected post-appraisal reviewers in the State, determined that the County did overpay by some 100 per cent above fair market value for certain parcels of land in the Ambrose and Doty's brooks area of Piscata-

* See New Jersey State Commission of Investigation, Annual Report for 1975.

way Township. Both experts found that the appraisals made for each of the parcels overstated the value of the lands, largely because of failure to account adequately for physical deficiencies in terrain. The investigation determined that the Administrator of the County's Land Acquisition Department had approved the land purchase prices with virtual rubber stamp consent from the Board of Freeholders. The Administrator not only constantly solicited a stream of political contributions from the appraisers doing business with the County but also, according to the sworn testimony of two of those appraisers, solicited such payments from the two at a time when they were being awarded appraisal work for the County by the Administrator. Additional testimony at the hearings indicated serious deficiencies and confusion in the appraisal review function of the State Green Acres program, which supplies matching funds for county and local land purchases for park purposes.

As a result of the S.C.I.'s exposures in this investigation, the Administrator of the County's Land Acquisition Department was suspended from his post, and the County government moved to institute a more stringent process of checks and balances on land acquisition procedures. Even before the S.C.I. completed its 1976 hearings, arrangements were being formalized voluntarily by state officials, alerted by the Commission's findings, for the transfer of the Green Acres appraisal and post-appraisal review and control system from the Department of Environmental Protection to the Department of Transportation — one of many general and technical recommendations by the Commission that were implemented as a result of the inquiry. In addition, data from the S.C.I. investigation was referred to prosecutorial authorities.

The Middlesex Grand Jury investigated the conduct of the Middlesex County Land Acquisition Department and its former Administrator as a result of allegations raised during public hearings by the S.C.I. On September 27, 1976, the Grand Jury returned a presentment in which it said that while it found "no provable affirmative criminal act" by the Administrator, "it does feel that his actions in that capacity indicated an insufficient expertise and lack of concern to perform his office in the best interests of the citizens of Middlesex County." The Grand Jury also noted that he solicited and collected political contributions from the same people with whom he dealt as departmental administrator.

The Grand Jury's presentment noted that "since the public hearings of the State Commission of Investigation in January, 1976 the Freeholders of Middlesex County have already taken substantial corrective actions." However, it urged in addition that the office of Land Acquisition Administrator be "completely disassociated" from solicitation and collection of political contributions and also that "all of the county officials who control the award of contracts be forbidden from soliciting contributions from individuals over whom they have the power to award contracts." The presentment also recommended that the post of departmental administrator be filled on a nonpartisan basis.

20. PRE-PAROLE RELEASE IN THE PRISONS*

The Commission during 1974 and 1975 received complaints alleging abuses of the pre-parole release programs of New Jersey's correctional system. The programs, aimed at the worthy goal of re-introducing inmates to society, included furloughs, work releases, education releases and community releases. Lengthy preliminary inquiries to evaluate the complaints indicated clearly to the Commission that the effectiveness and goals of the programs were being subverted by gross misconduct attributable to weaknesses in the operation and supervision of the programs.

Accordingly, the Commission by resolution in September, 1975, authorized a full investigation. The probe extended into 1976, with public hearings being held during May and June of 1976. Principal disclosures at the hearings included:

- Falsification of furlough and other types of applications to gain premature entry into the release programs.
- Establishment of favored status for some inmates and a resulting system of bartering for favors, including monetary exchanges among inmates.
- The ease with which work, educational and other releases could be ripped off because of insufficient supervision in hands of the inmates themselves.
- The intrusion of a barter-for-favors system for the transfer of inmates from one to another of the various penal institutions.

* See New Jersey State Commission of Investigation Eighth Annual Report.

As the Commission stated publicly, its probe and hearings were aided substantially by Ann Klein, the former Commissioner of Institutions and Agencies who is now Commissioner of Human Services, and by Robert J. Mulcahy, 3d, the former Deputy Commissioner of Institutions who, as the first Commissioner of a new State Department of Corrections, initiated major reforms of prison furlough procedures. These changes included elimination of inmate supervision of the furlough program and the provision of funds for non-inmate control of it, as the Commission had recommended. Mr. Mulcahy, who became Chief of Staff to Governor Byrne, later commented to a news reporter: "The S.C.I. investigation was a high-class, highly professional job. It was done in a positive fashion. The effect was really to help the department correct problems rather than simply expose them."

In addition to these reforms that followed the Commission's inquiry into furlough abuses in the prisons, a series of indictments and arrests resulted after the Commission referred its facts and public hearings transcripts to the Attorney General and other appropriate prosecuting authorities.

The Attorney General announced in January, 1977, the indictment by the State Grand Jury of five former inmates of Leesburg State Prison on charges of escape in connection with alleged fraudulent obtaining of furloughs from the prison. The then Criminal Justice Division Director Robert J. Del Tufo said the indictments charged the five defendants "bought" furloughs from fellow inmates who had been utilized as clerks by the prison system to process forms, records and other paper work that enabled inmates to qualify for furloughs.

The State Grand Jury also indicted a since-dismissed clerk of Trenton State Prison for false swearing and perjury as a result of her testimony on prison furlough abuses during the Commission's private and public hearings. A glaring abuse involving the ex-clerk was the utilization of a bogus court opinion to obtain a substantial reduction in the prison sentence—and therefore the premature release—of one inmate, Patrick Pizuto, known to law enforcement authorities as an underling of Anthony (Little Pussy) Russo, the seashore mob figure. This disclosure at the S.C.I.'s hearing led to the immediate reincarceration of Pizuto, who was subsequently indicted for murder and on federal bank fraud charges. On December 8, 1977, Superior Court Appellate Division dismissed as moot Pizuto's appeal from his reincarceration.

21. THE NEW JERSEY MEDICAID PROGRAM*

In December of 1974 Governor Brendan T. Byrne requested the State Commission of Investigation to conduct an evaluation of New Jersey's system of Medicaid reimbursement. Also, at that time, the New Jersey Attorney General's office announced that it was probing the alleged interests of Dr. Bernard Bergman in New Jersey nursing homes. Later, that office set up a special section of its Enforcement Bureau to deal specifically with criminal activities and fraud in the area of reimbursement to nursing homes and other providers, a unit which has obtained many indictments. In January, 1975, the Governor announced the formation of a cabinet-level committee to study the problems of Medicaid reimbursement for nursing home care. That committee issued its report on November 13, 1975, and certain recommendations relating to property costs reimbursement reiterated suggestions initially made by the S.C.I. on April 3, 1975, in the S.C.I.'s first report on nursing home reimbursement. The New Jersey Legislature also created a committee to examine nursing homes in January of 1975. That committee, chaired by then Senator John Fay of Middlesex County, examined the quality of care in New Jersey nursing homes receiving Medicaid reimbursement and other aspects of the program.

The extent to which this \$400 million-a-year program of health care for the poor was under simultaneous investigation by the Commission and various other agencies indicated both the complexities of the various functions involved and the degree to which they were misused and abused at great public cost.

During the course of its probe, the Commission reported to the Governor on an update basis from time to time—an operational pattern based on the premise, later substantiated, that the social and financial cost of apparent widespread exploitation of the huge health care delivery system would warrant urgent interim statutory and regulatory correction. A chronological charting of the entire investigation shows the Commission took the following public steps:

- **NURSING HOMES**—An initial public report by the S.C.I. on April 3, 1975, exposed serious flaws in the rental and related phases of New Jersey's method of property cost reimbursements of Medicaid-participating nursing homes, one critical conclusion of which was that inflated reimbursement schedules allowed unconscionably inflated profits to greedy entrepreneurs at heavy cost to taxpayers.

* See New Jersey State Commission of Investigation 1975, 1976 and 1977 Annual Reports.

• **CLINICAL LABORATORIES**—A formal public S.C.I. pronouncement on April 23, 1975, detailed dangerously poor conditions and procedures in certain independent clinical laboratories and recommended swift legislative enactment of a pending remedial measure. Subsequently the Legislature approved and the Governor signed the highly effective Clinical Laboratories Act.

• **CLINICAL LABORATORIES***—The Commission conducted in June, 1975, a series of public hearings that effectively exposed how Medicaid was being bilked by some independent clinical laboratories through false billing and kickbacks practices, among other evils. The S.C.I.'s probe and recommendations in this vital area also were followed by major reforms. The Medicaid manual regulating independent clinical laboratories was drastically revised to bar abusive activities and the maximum fee schedule for reimbursing laboratories was reduced by 40 percent. Taxpayer savings from these improvements alone were estimated at \$1.4 million for the fiscal year ending June 30, 1976.

• **NURSING HOMES****—The final S.C.I. dissection of nursing home property cost reimbursement under Medicaid provisions emphasized so-called "money tree" plucking by unscrupulous operators through facility selling-financing-leasing-back schemes that excessively ballooned the value of the facilities. A two-day public hearing in October, 1976, corroborated the gross abuses revealed in the S.C.I.'s inquiries into the nursing home property cost reimbursement system phase of its Medicaid inquiry.

• **"MEDICAID MILLS"†**—How some doctors, dentists and pharmacists corrupted the system was dramatized by the Commission's exposé of over-billing and over-utilization practices that bared a loophole potential for far wider abuse of the Medicaid system.

• **MEDICAID HOSPITALS‡**—Utilizing its staff of accountant-agents, an S.C.I. team made an in-depth assessment of the emerging rate-regulating and Medicaid reimbursement process affecting hospitals with substantial Medicaid in-patient care. This was done to determine the adequacy, if any, of fiscal controls by supervisory public agencies to insure the system's efficiency, economy and

* See New Jersey State Commission of Investigation, Annual Report for 1975.

** See New Jersey State Commission of Investigation, Annual Report for 1976.

† See New Jersey State Commission of Investigation Annual Report for 1976.

‡ See Report of New Jersey State Commission of Investigation on Hospital Phase of The Medicaid Program, April, 1977.

integrity. Such an unusually complex analysis of methods of controlling hospital costs was vital because of the huge impact of such costs on the Medicaid program.

A number of statutory and regulatory steps were taken in response to the revelations of abuses and exploitation of the Medicaid system following—and even during—the Commission's investigations, interim reports and public hearings. These actions included the Legislature's enactment of a New Jersey Clinical Laboratory Improvement Act, as well as a law increasing maximum penalties for bilking the Medicaid program through overbilling and false billing.

Many of the Commission's recommendations were expeditiously adopted by the Division of Medical Assistance and Health Services as a result of the S.C.I.'s clinical laboratory hearings.

The inflated fee schedule — which facilitated the making of financial inducement type payments from some laboratories to their physician customers — was reduced 40 per cent. Language in the program laboratory manual was tightened to clearly proscribe the practice by which small laboratories subcontracted particular tests to large reference facilities and then, in many instances, marked-up the cost by more than 300 per cent and reaped windfall profits at the taxpayer's expense. The manual now explicitly prohibits the breakdown of automated component-part tests into separate procedures and the submission of bills to Medicaid for each to the end that a lab might receive between \$60 and \$80 for a profile which costs less than \$3.50 to perform. A computer system for analyzing and screening group tests was developed. The Division took steps to insure that laboratories fully identify the procedures performed and for which payment is requested. In this regard, a requirement was imposed upon Prudential (the fiscal intermediary) that all claims be itemized in detail. Aggregate billing — which was effectively used by some labs to mask improper requests for reimbursement — is no longer tolerated. The Division adopted a hard line with respect to the flow of inducement type payments in any form whatever between laboratories and physician customers.

The Division cured a glaring weakness by employing more staff expertise in clinical laboratory processes and procedures. The

Commission recommended that a panel be formed to draft an equitable competitive bid system for laboratory work based upon awards of a regional nature. In furtherance of this recommendation, the Commission testified against impractical restrictions of federal law before several Congressional bodies.

At the conclusion of the second phase of the Commission's probe of gross profiteering in Medicaid nursing home facilities in October, 1976, the Commission urged that Senate Bill 594, requiring full public disclosure of those who have financial or other business interest in nursing homes, be substantially strengthened to eliminate practices that siphoned health care dollars from patients to speculators. This bill, which had passed in the Senate on April 12, 1976, subsequently was amended on the Assembly floor in accordance with the S.C.I.'s recommendations, according to a spokesman for the Legislature's Joint Nursing Home Study Commission which drafted the original legislation. The revised measure then cleared both the Assembly and the Senate in February and April, 1977, and was signed into law by Governor Byrne on September 29, 1977.

Additionally, subsequent to the issuance of its Final Report on Nursing Homes, the Commission persisted in its efforts to have New Jersey's system of property cost reimbursement to Medicaid nursing homes restructured along the lines suggested by the Commission in that report. Commission representatives met on several occasions with high-ranking officials of the appropriate administrative agencies. Those agencies have accepted the Commission recommendation, which will show a savings of as much as \$6 million per year, according to the Director of the Division of Medical Resistance and Health Services.

Certain unusually alarming aspects of the Commission's complicated Medicaid inquiry, such as the clinical laboratory abuses and the evils of the "Medicaid mills," helped to spur corrective efforts. In fact, the clinical laboratory phase was a pioneering probe that revealed for the first time the hard facts about unscrupulous ripoffs of the system. These disclosures resulted in the appearance of Commission officials before the U.S. Senate Committee on Aging and the U.S. House of Representatives Subcommittee on Oversight and Investigation. U.S. Senator Harrison A. Williams of New Jersey, reporting his "dismay" over the "widespread fraud and abuse among clinical laboratories," told the Senate in remarks entered into the Congressional Record:

"With respect to the latter, I am pleased to note that the Aging Committee gives great credit to the New Jersey Commission of Investigation and to our New Jersey Department of Institutions and Agencies (now Department of Human Services). The Legislature and the Department responded with prompt implementation of corrective measures."

In October, 1978, Joseph H. Rodriguez, then the Chairman of the S.C.I., and Executive Director Michael R. Siavage testified before the House Select Committee on Aging in Washington on the topic of "Organized Crime in Medicare and Medicaid." Mr. Rodriguez said the Commission's Medicaid investigations had demonstrated the feasibility "of more vigorous program surveillance activities by the Federal Government to protect the integrity of the funding" of Medicaid and Medicare programs. Mr. Siavage testified that the "Federal surveillance effort and Federal auditing of publicly funded programs are being outdistanced by the capability for organized, collusive fraud." The Commission later provided upon request background and investigatory material from its Medicaid inquiry to fiscal officers and analysts of the Federal Health, Education and Welfare department charged with improving program integrity controls.

22. ORGANIZED CRIME AND CASINO GAMBLING IN ATLANTIC CITY*

After New Jersey voters authorized legalization of casino gambling in Atlantic City on Nov. 2, 1976, and at the request of Governor Brendan T. Byrne, the Commission directed an extensive surveillance of organized crime activities in that shore resort region for the purpose of taking "public action in order to make constructive recommendations to the Governor, the Legislature, and the people for the effective control and policing of casino gambling." As a part of this investigative effort, the Commission issued on April 13, 1977, a 167-page report to the Governor and the Legislature highlighting 57 detailed recommendations for an effective control law that would "thwart the infiltration of casinos and related services and suppliers by organized crime." Upon passage of the Casino Gambling Control Act, the Commission

* See New Jersey State Commission of Investigation Report on Casino Gambling, April 13, 1977; also Ninth (1977) Annual Report; also the Commission's Report on the IncurSION of Organized Crime into Certain Legitimate Businesses in Atlantic City, January 12, 1978.

characterized it as an acceptable statutory base upon which to build even stronger controls in the future.

By the Summer of 1977, the Commission's monitoring of organized crime activities linked to the development of the new gaming industry in Atlantic City had uncovered enough evidence of an actual intrusion of legitimate business to warrant public hearings in keeping with the S.C.I.'s statutory mandate to alert and inform the citizenry. The Commission's inquiry had revealed, as was later confirmed publicly, that organized crime—in addition to its historic interest in casinos and allied services—was also, already, penetrating certain other legitimate businesses that had not been a target of legislative restraints and over which regulatory controls, where they existed at all, were inadequate and only casually enforced.

The Commission conducted four days of public hearings, in August, 1977, during which a succession of witnesses, including organized crime figures, revealed through testimony the machinations of mobsters in such legitimate enterprises as cigarette vending machines, bars, restaurants, hotels and gambling schools. The hearings confirmed the cooperative interest in casino gaming spin-off action by Angelo Bruno, boss of the Philadelphia-South Jersey crime family, and cohorts of the Gambino crime family of the New York metropolitan area. Bruno himself was a witness.

These hearings disclosed:

- Strong-arm expansion into the cigarette vending business in Atlantic City and vicinity by a mob-controlled company, John's Wholesale Distributors of Philadelphia, and its affiliates. How this company's business tripled, with the aid of its "super salesman," Bruno, was a public hearing highlight.

- The mysterious financial flimflam surrounding the Casanova Disco in Atlantic City, including a \$40,000 "hole-in-the-wall" cache that became part of a maze of cash and bank check transactions.

- An attempted \$12-million purchase of the Hotel Shelburne by a Gambino relative hiding behind an alias while trying to enlist a reputable Philadelphia businessman to "front" for the acquisition.

- The attempt of a crime figure known as "Mustache Mike" to muscle into a prospective Atlantic City casino gambling school.

On January 12, 1978, the Commission submitted to Governor Byrne and the Legislature its "Report and Recommendations on the Incursion by Organized Crime into Certain Legitimate Businesses in Atlantic City." This report emphasized a recommendation to strengthen the licensing and disqualification procedures under existing law so as to more effectively prohibit the acceptance of applicants with organized crime backgrounds for licensure as cigarette vending agents of the state or as owners and operators of ventures under jurisdiction of the Alcoholic Beverage Control laws.

Based on the Commission's recommendations, two bills subsequently were sponsored by Senator Steven P. Perskie, D-Atlantic. These measures, similar to legislation also introduced by Assemblyman Michael J. Matthews, D-Atlantic, would strengthen the licensing requirements of the State Division of Taxation for those involved in the cigarette industry and of the Alcoholic Beverage Commission so as "to impede organized crime from using various subterfuges to camouflage the actual ownership and control of legitimate business." The statement of purpose attached to the bills also pointed to strengthened and expanded provisions for disqualification of applicants for licensure. Senator Perskie's legislation passed in the Senate and is pending in the Assembly.

23. PRIVATE SCHOOL ABUSES OF SPECIAL EDUCATION FUNDS*

During the early part of 1977, increasing complaints and allegations were circulating throughout the state about alleged abuses by non-public schools of New Jersey's \$26 million Special Education program for severely handicapped children. The State Commission of Investigation was the recipient of a number of such complaints. The Commission's evaluation of these allegations quickly developed into an extensive investigation.

By June, the Commission's staff was pursuing fresh reports of questionable activities if not outright misconduct by some non-

* See New Jersey State Commission of Investigation Report on Misuse of Public Funds in the Operation of Non-public Schools for Handicapped Children, May 18, 1978.

public schools. Inquiries in the field were supplemented by in-depth auditing of actual expense budgets and hundreds of bank checks, vouchers, purchase orders, and miscellaneous business records. These inquiries and audits confirmed the misuse of large sums of money that had been earmarked for the education of more than 5,000 children too seriously handicapped to be served by the public schools.

The Special Education program about which the Commission was concerned is a critically significant part of New Jersey's overall effort to improve the lives and minds of unfortunate children. Most of these children (some attend special residential schools out-of-state) were enrolled in 125 non-public day schools and 25 non-public residential schools throughout New Jersey. Such schools were required to offer appropriate educational programs for one or more of a dozen categorized handicaps—educable or trainable mentally retarded, perceptually impaired, orthopedically handicapped, neurologically impaired, visually handicapped, auditorially handicapped, communication handicapped, emotionally disturbed, chronically ill and multiply handicapped. While the Commission's inquiry concentrated on financial irregularities in certain non-public day schools, it also touched on questionable operations in residential facilities.

The Commission held public hearings on January 19 and 20, 1978, to expose the wrongdoing it had verified in four out of six private schools on its investigatory agenda. As then-Commission Chairman Joseph H. Rodriguez stated at the opening of the hearings:

The abuses of a few of these schools should not be permitted to damage or destroy the reputation of the entire system or of the many dedicated people serving the handicapped children of our state.

Because we felt that the improprieties our inquiry uncovered should be halted as quickly as possible, we decided they should be subjected to swift public exposure and swift correction—even as our inquiry into this complex and vital system continues into other aspects.

The Commission on May 18, 1978, issued its formal report to the Governor, the Legislature and the public. The S.C.I.'s recom-

mendations centered on its findings of inadequate staffing and malfunctioning of the Education Department's Branch of Special Education and Pupil Personnel Services, the absence of a clear, detailed list of allowable and non-allowable private school expenses, inadequate record keeping and reporting requirements for participating schools, and an inefficient rate-setting procedure.

In brief, the recommendations included:

Establishment of a more adequate state agency to supervise the financial reimbursement of private schools for the handicapped, with sufficient staff to supervise *all* day, residential and summer programs and with at least five auditors who would be responsible for fiscal control and rate-setting; stipulation of non-allowable costs to eliminate diversion of public funds for non-educational purposes; requirement of detailed reports to the state control agency, including detailed expense budget forecasts and itemized actual cost reports; promulgation of tuition rates by June 15 based on budget estimates adjusted by actual costs submitted by May 1; offsetting of a prior year's excess revenues by the following year's reduced tuition rates, and, in general, establishment of rate-setting procedures that would assure provision of adequate services to handicapped children for which the schools are being reimbursed based on fair and reasonable rates conducive to continuing quality programs.

Several bills focusing on problems bared by the Commission's investigation and hearings were introduced in the Legislature during 1978, during the drafting and discussions of which the Commission maintained contact with appropriate legislators and legislative Committee aides. One measure that has been the subject of most legislative discussions is Assembly Bill No. 1770, which is still in Committee. This measure contains some of the Commission's recommendations.

24. ABUSES AND IRREGULARITIES IN THE BOARDING HOME INDUSTRY*

The Commission's investigation of abuses and irregularities in New Jersey's boarding homes focused on an industry consisting of an estimated 1,800 facilities serving upwards of 40,000 people,

* See New Jersey State Commission of Investigation Report on Abuses and Irregularities in New Jersey's Boarding Home Industry, November, 1978.

most of whom are elderly and disabled. These boarding facilities were assigned to one of two categories—licensed or “unlicensed.” The former group consisted of about 275 boarding homes under State Department of Health licensure. But the unlicensed category was further divided, the largest subgroup of which was subject to nominal registration and inspection by the State Department of Community Affairs. A smaller bloc came under local jurisdiction. Finally, an unknown number of facilities operated illegally, devoid of any controls whatsoever.

The fact that more than 1,500 boarding homes were commonly referred to as “unlicensed” underscored the negative quality and lax enforcement of whatever standards that did exist for regulating and otherwise monitoring their activities.

Of New Jersey’s total boarding home population, close to 10,000 resided in the homes licensed for sheltered care purposes by the State Health Department. They lived in facilities that offered the most personal care and supposedly were subject to the most stringent standards. However, despite tighter controls than were imposed on other boarding homes, some Health Department-licensed facilities also were targets of harsh critiques during the Commission’s public hearings.

The remaining 30,000 boarding home residents were found in the so-called unlicensed establishments. Most of these places provided only room and board and could not legally offer sheltered care or other supervision. Since most of these boarding homes were registered with the Community Affairs Department under New Jersey’s Multiple Dwellings Law, they were subject to infrequent scrutiny by state or local inspectors. Moreover, since these inspections were mandated by a law that was *not* designed to provide guidelines for social services, they concentrated only on structural factors relative to public health or safety. Thus, such inspections ignored the overall adverse social climate in which many boarders found themselves.

As the Commission emphasized, its primary concern throughout its investigation and public hearings was for the wellbeing of the most vulnerable of the human beings forced to subsist in a system that offered no solutions to the special problems that made them easy prey for unscrupulous operators. The Commission’s inquiry, therefore, centered on a multitude of boarders who, because of old age, blindness or other disabilities, were eligible for the Federal Social Security Administration’s Supplemental Security Income

(SSI) benefits. Such SSI recipients were not only numerous among residents of boarding homes licensed by the State Health Department but comprised many of those residing in unlicensed facilities.

The Supplemental Security Income or SSI federal system replaced a State of New Jersey welfare program for the aged, blind and disabled in January, 1974. However, the state, by agreement with the Social Security Administration, continued to contribute partial financial support of the elderly, infirm and impoverished SSI populace in the form of allotments of varying amounts that are included in the monthly SSI checks issued to eligible recipients. At the time of the Commission’s hearings, the federally processed checks consisted of an SSI benefit of \$177.80 as well as a state of New Jersey supplement of either \$130.20 or \$22.20. The higher state supplement was included in checks amounting to at least \$308 that were mailed to eligible SSI residents in Health Department-licensed boarding homes. The smaller state supplement was part of the federal SSI checks amounting to at least \$200 that went to eligible residents of other boarding homes. As the Commission’s public hearing record demonstrated, this difference in the size of SSI checks mailed to residents of licensed versus unlicensed boarding homes fueled the greed of some operators.

Compounding the tragic problems besetting the boarding home industry was a proclaimed national and state policy of “de-institutionalization.” This humane, progressive concept had as its primary objective the return to society of mental patients found to be most capable of an enduring separation from continuous custodial confinement. However, aggressive implementation of “de-institutionalization” was marked by a failure to adequately prepare for what became too abrupt a transition from confined care for many former mental patients lacking sufficient self-reliance. As a result, the state’s boarding home population became increasingly dominated by such boarders thrust with little or no follow-up attention from close custodial care into a mostly unconcerned, unsupervised, unsanitary and often unsafe community environment.

The overall target of the Commission’s investigation included hundreds of boarding homes of wide-ranging quality and size, operating under various governmental entities, and subject to disparate and conflicting laws and regulations—or no controls at all. Many operators were untrained for their tasks and, all too

often, callous and greedy in the management of their homes and the treatment of their boarders. The day-to-day operation of these facilities was largely financed out of Supplemental Security Income checks mailed to eligible recipients at the boarding home where they supposedly (but often were not) residing.

Because of inadequate (and often the absence of) boarding home account books, registers and other records reflecting the flow of revenues, costs and clients, the Commission's staff accountants had to reconstruct numerous financial profiles in order to ascertain the true extent of the mismanagement of these facilities and the resultant abuses against boarders that such misconduct generated. The facts exposed by such audits were confirmed and supplemented through field inquiries by the Commission's special agents. This investigative team work revealed a wide gamut of irregularities and improprieties—the diversion of SSI checks from boarders to the personal use of operators, charging of luxury cars, vacation travel and other personal expenses as business costs, an inordinate use of cash in payment of boarding home bills without supportive receipts, little or no accounting of personal funds doled out to boarders each month, excessive compensation to operators and to relatives of operators, use of unlicensed satellite facilities as way stations for boarder-transfers that improperly increased the cash flow into licensed homes of bigger SSI checks than warranted, and the serving of cheap, substandard food even while the operators netted disproportionately large profits.

Because of the complexity of the issues involved, the Commission was obliged to extend its public hearings through an entire week. In all, about 60 witnesses were questioned during the five public hearing days—Monday, June 26, through Friday, June 30, 1978. Close to 200 exhibits were introduced.

In a 260-page report issued in November, 1978, the Commission listed a score of recommendations to resolve basic problems causing the most serious abuses in the boarding home industry. Designed to expedite the development of more humane, secure and rehabilitative surroundings for elderly and infirm boarders, the proposals were submitted with a belief that they could be enacted and implemented realistically from the standpoint of available personnel and limited funds.

The most important recommendation called for centralization of licensure and supervisory controls over boarding facilities. Since

the Commission felt that social services rather than health services should be the primary concern, it proposed concentration of controls in the Department of Human Services that were divided among three departments—Health, Community Affairs and Human Services.

The Commission noted that its proposal would center licensing and monitoring obligations in a department which possessed the most expertise in the area of social services. Moreover, the Department of Human Services, through its Division of Mental Health and Hospitals, controlled the flow of de-institutionalized former mental patients from hospitals to the community. Such individuals made up most of the boarding home population which demanded special attention.

The following summary of the recommendations illustrates the Commission's objectives and their order of priority:

I. Jurisdiction

—A two-tier licensure system under which all Boarding Homes will be regulated—Level I to cover Licensed Boarding Homes for Supervisory Care, as defined, and Level II to include other licensed Boarding Homes.

—All regulatory jurisdiction to be transferred to the Human Services Department.

—The State must certify residents who need supervisory services.

—Immediate identification of the whereabouts of all SSI recipients with mental health disabilities.

—An immediate survey to provide statistical data on availability of Boarding Home space and profiling problems particularly relevant to former mental patients entering boarding homes under de-institutionalization.

—The Health Care Facilities Financing Authority should provide low interest financing for increased private construction of boarding facilities.

II. Regulatory Recommendations

—Regulations of Licensed Boarding Home operators should contain complete, clearly stated definitions of their duties, particularly with regard to any responsibility for supervisory and personal care.

—A licensed operator must notify appropriate authorities when a boarder residing in his facility is in need of their specialized services.

—Operators must qualify for licensure. Operational deficiencies demonstrating a qualification weakness should require immediate remedial training.

—The new Boarding Home Bureau shall staff and maintain annual and spotcheck inspections to assure compliance with all regulations.

—The present manual of standards should be expeditiously revised with particular attention to prescribed penalties.

—Operators of Licensed Boarding Homes must keep adequate records on standardized forms reflecting every aspect of specific functions, and in full accordance with generally acceptable accounting practices.

—Hearings on violations of regulations by operators must be expedited and implemented according to proper legal standards, particularly in the use of reports by inspectors as evidence and in testimony by inspectors based on their surveillance.

—A definitive, efficient internal system should be established within the Boarding Home Bureau for the flow of the complaint—violation process.

—Transferring boarders from one place to another without the boarder's permission must be prohibited.

—If a Boarding Home must be shut down for any reason, ample advance notice must be given to affected residents or an assigned social worker.

—An operator who employs a resident at the facility must notify state authorities in advance of the conditions of employment, including compensation and type and hours of work.

—An operator must provide diversified recreational activities for boarders.

III. Mental Hospitals

—Prior to the release of any patient from a Mental Hospital, a written determination must be made as to the degree of supervisory or personal care such patient requires if any.

—If a person released from a Mental Hospital is inappropriately placed due to circumstances beyond the control of either hospital or placement authorities, the Boarding Home Bureau and the County Welfare agency must be notified in writing of this action.

—When a person is released from a Mental Hospital to a licensed Boarding Home, a formal, written agreement must be signed by the Boarding Home operator stipulating the operator's commitment to providing the services that conform with the hospital's determination of the patient's needs and the available community services to which the resident should have access.

—Mental Hospitals in the process of discharging patients must include available Community Mental Health Centers in their network of required contacts in behalf of such individuals.

IV. Welfare Agencies

—County Welfare Agencies must maintain files for each SSI boarder in their area, assign a social worker, maintain contact and record and notify authorities of any change in a resident's needs or address.

—Interim welfare assistance paid to prospective SSI boarders should be at levels adequate to maintain the supervisory care or other services certified as necessary.

—Model programs should be developed, utilizing volunteers to improve social services for boarders.

V. Social Security Administration

—A formal procedure must be worked out between the Department of Human Services and the Social Security Administration whereby reimbursement can be assured when mental hospitals provide interim assistance for a boarder who is a prospective SSI recipient.

—The investigative procedure utilized by field workers must be augmented by training in surveillance techniques designed to identify problems in program integrity.

ORGANIZED CRIME PROGRAM

INTRODUCTION

Under the S.C.I. enabling law, the Commission is required to cooperate, advise and assist the Attorney General, County Prosecutors and other law enforcement officials both in New Jersey and elsewhere in the performance of their official duties. With regard to organized crime, the Commission began in 1977 a program of heightened liaison with the Attorney General's office and with county prosecutors. The Commission's work with regard to prosecutorial officials extended to the counties of Atlantic, Burlington, Camden, Essex, Hudson, Passaic and Union and through 1978 eventually reached almost all of the remaining counties of the state. The Commission has realized for some time that the office of the county prosecutor is often the most accurate and complete repository of information regarding organized criminal activity within each jurisdiction. Cooperative sharing of information and expertise has been an invaluable aid to the Commission's various activities while aiding these local offices with particular regard to priority and approach. Communication and cooperation with the Division of Criminal Justice of the Attorney General's office, additionally, have served to enhance the Commission's understanding of the level of the statewide organized crime problem. At the same time this liaison effort has added the resources of the Commission's public hearing and confrontation powers to the centralized anti-organized crime arsenal.

1978 UPDATE

During 1978 two high ranking members of the DeCavalcante crime family, John Riggi and Louis Larasso of Linden, were subpoenaed to appear before the Commission. They remain under subpoena for continuing testimony.

On October 30, 1978, Joseph Paterno, who had fled New Jersey to avoid S.C.I. process, was served with a subpoena when he returned to New Jersey from Florida. Paterno unsuccessfully contested the validity of that subpoena in the Appellate Courts of the State.

Joseph (Bayonne Joe) Zicarelli was originally imprisoned in January of 1971 after being held in civil contempt for refusing to answer questions before the S.C.I. about organized crime despite being granted immunity from prosecution. In June of 1971, Zicarelli began serving a 12-to-15 year sentence after being convicted of bribery and extortion. In July of 1977, having been paroled from that sentence, Zicarelli was immediately returned to civil confinement. Alleging, as with Gerardo Catena, that he too had demonstrated a resolve never to testify, Zicarelli filed an action in Superior Court requesting that he be released from confinement. In dismissing Zicarelli's petition on October 10, 1977, Superior Court Judge George Y. Schoch stated: "Mr. Zicarelli's resolve not to testify (before the S.C.I.) has not really been tested." Since December of 1977 Zicarelli has been released from custody on a series of court-ordered medical furloughs.

Carl (Pappy) Ippolito of Trenton and Morrisville, Pa., had long been a fugitive from justice. After litigation in Superior Court Appellate Division and the New Jersey Supreme Court, Ippolito was directed again to appear before the S.C.I. After he failed to do so, the State Grand Jury issued an indictment charging him with criminal contempt. The Division of Criminal Justice subsequently obtained the extradition of Ippolito from Pennsylvania.

Also during 1978 the New Jersey Supreme Court ruled that the trial courts had acted correctly in determining that the continued civil confinement of Ralph (Blackie) Napoli and Louis Anthony (Bobby) Manna had lost its coercive effect. Manna had served five years and Napoli six years.

Manna in August, 1978, lost a Superior Court suit to expunge from the records his conviction in 1957 on a charge of unlawful possession of an illicit beverage. The State Commission of Investigation submitted its objection to the requested expunction in a letter to Assistant Prosecutor Vincent J. LaPaglia of Hudson County. In this letter, the Commission recited a history of its experience with Manna. The letter said that the S.C.I. "has been interested in obtaining the testimony of Mr. Manna with respect to organized crime and racketeering in the State of New Jersey since April of 1972 and is still interested in obtaining his testimony. . . . While it is true that Mr. Manna has not been convicted of a crime since 1956, it is also true, in the opinion of the Commission, that his handling of his affairs during the time period from 1956 to the present has not been done with circumspection. His

contumacious conduct, which continued until one year ago and, in effect, continues even now, certainly cannot be viewed as an indication of rectitude."

Superior Court Judge Joseph P. Hanrahan, in his opinion denying Manna's petition, included the following observation:

Finally, the Court must determine what, if any probative value is vested in the fact that the Petitioner refused to be sworn and testify before the S.C.I. Counsel on behalf of Petitioner, in his letter of May 11, 1978 (supplimental to his brief) theorized that, "it may well be that the Petitioner so honors his right of privacy or so cherishes his autonomy that the moving force in his refusal to testify is a morality which is beyond the comprehension of his accusers." Counsel then characterized his client's refusal to be sworn, as an act of resistance to the power of the State similar to the defiance of Socrates, Christ, St. Thomas More, and Thomas Paine. As a matter of historical accuracy, the Court must note that each of the esteemed gentlemen to whom Petitioner has been likened by Counsel, chose to answer his accusers. Counsel's characterization of Petitioner's violation of *U.S.C.A.* 18:1951 & 371, racketeering and conspiracy to commit same, together with his subsequent refusal to appear before the S.C.I. and answer questions relating to racketeering and organized crime within the State of New Jersey is indicative of a lack of moral change or rectitude as required by *N.J.S.A.* 2A:164-28, and as such the Prosecutor's objection to Petitioner's motion is a material one.

The Appellate Division of Superior Court subsequently upheld Judge Hanrahan's decision.

In addition to a continuing confrontation of high-ranking members of organized crime, the Commission also construes its statutory mandate to compel investigations into organized crime's impact upon various facets of life in New Jersey. The investigations of the affairs of the City of Long Branch and the infiltration of Atlantic City were two such investigations. During 1978 the Commission launched additional probes into other "generic" areas of organized crime infiltration and these inquiries are ongoing at this time.

INVESTIGATION OF ABUSES OF NEW JERSEY'S ABSENTEE BALLOT LAW

INTRODUCTION

The Commission's public hearings in late 1978 on absentee ballot abuses and irregularities climaxed a prolonged series of inquiries by the S.C.I. and other state and county law enforcement agencies, and by the press, in numerous localities of the state. These investigations confirmed a widespread and flagrant disregard of a law that, although enacted with the intention of safeguarding the sanctity of the ballot for eligible voters unable to go to the polls in person, was so ambiguously constructed as to invite fraud at every step of the absentee voting procedure. So inadequate was this law—as probes by Attorney General John J. Degnan's office and by various county prosecutors particularly illustrated—that effective prosecution of obvious violators was practically impossible. The statute's contradictions, restrictions and loopholes defied the most vigorous prosecutorial attempts to indict and convict individuals who coerced voters to advance their own personal and political ambitions, who improperly distributed and collected absentee votes in bargain-basement fashion, and who forged signatures and altered ballots. Because of the persistent statutory impediments, Attorney General Degnan launched with the S.C.I. a cooperative effort to expose these violations to public scrutiny. It was felt that, by utilizing the Commission's traditional fact-finding and public hearing functions, resultant public awareness of and concern about the situation would spur enactment of essential reforms. As the Attorney General's Criminal Justice Director Edwin H. Stier later observed:

We have conducted many investigations over the years into absentee-ballot fraud. The results have been frustrating for us because we have found that certain difficulties which we have experienced, practical difficulties in conducting these investigations and legal difficulties in developing viable criminal prosecutions, have resulted in shocking practices going unpunished. The practices that we have found . . . have demonstrated a consistent lack of protection

for one of the most fundamental rights of the public; that is, to cast his vote in secret.

It's because of the practices that we found, the pattern of activity that we have uncovered over the years, that the Attorney General has taken such a strong interest in trying to bring about reform, and we felt, after very careful analysis of the information that we had and the number of alternatives available to us, that the most important vehicle for translating the information which we had found into action, legislative action toward reform, would be to assist the S.C.I. in its efforts and to bring about specific proposals in that way, and public awareness of the seriousness of the problem in the hope that the gaps in the law that we have been experiencing and laboring under will be closed.

THE S.C.I. INVESTIGATION

The Commission's probe, which extended into many areas of the state, uncovered numerous incidents of misuse and abuse of the law. Under the supervision of Counsel David L. Rhoads, the Commission's investigators found evidence of irregularities that ranged widely—beginning where the absentee ballot procedure begins, with the application for a ballot, and disrupting with increasingly adverse impact each succeeding step, including:

- The approval or rejection of the ballot application . . .
- The return of the ballot to the voter who has declared he cannot vote in person . . .
- The marking of the ballot by the intended absentee voter (or some one ostensibly authorized to "assist" such a voter) . . .
- The submission of the completed ballot to proper election officials . . .
- And the certification of the completed ballot as a valid vote to be cast and counted.

In certain localities an almost total emasculation of the absentee ballot law occurred. The investigation thus centered on those municipalities where the abuses were not only numerous and gross but also representative of particular patterns of misconduct that were widespread in practice. These representative municipalities,

the Commission decided, should be subjected to the spotlight of examination at public hearings. Such target localities included:

—North Bergen, in Hudson County, where ballots were steamed open and altered for partisan reasons, where illiterate voters who could only sign ballots with "X" marks were vulnerable to political trickery, where politically aligned "messengers" obtained, distributed, collected and otherwise processed ballots without legal authorization, where blank ballots and absentee voting registrations were illegally processed en masse to the ballot box, and where a local politician's home was converted into clandestine center for mishandling votes.

—Fieldsboro, in Burlington County, where a candidate for mayor, who was losing by 2-1 at the polling places, was re-elected by means of an almost 100 per cent absentee ballot vote, where a zoning variance was offered in return for a vote, where political candidates solicited and distributed absentee votes in their own behalf, where many so-called absentee voters confirmed the falsity of sworn excuses for not voting in person by their presence in town on election day, and where a candidate himself apparently marked a number of the absentee ballots.

—Sea Isle City, in Cape May County, where summer residents legally domiciled outside the state were falsely represented as having signed and certified the absentee ballots that were processed to a countdown in a manner unknown to them, and where such ballots were cast with choices marked by other than the certified voters.

As previously noted, because of the difficulty of criminal prosecution under a statute that stymied such law enforcement activity, various prosecutorial agencies joined with the Commission in developing an exposé of the abuses. The result of this cooperation with the Commission by the Attorney General's staff (including Deputy Attorney General Charles Sapienza, a former S.C.I. counsel) and by county prosecutors, was a productive sharing of investigatory files and tasks. This inter-agency cooperation demonstrated the unity of support within the law enforcement community for the implementation of legislative reforms.

THE PUBLIC HEARINGS

The Commission's hearings took place on December 14 and 15, 1978, in the Senate Chamber of the State House. Joseph H. Rodriguez, then the S.C.I. chairman, opened the hearings with a statement that acknowledged the investigatory support of prosecutorial agencies and described the inadequate statutory framework governing the absentee voting process. He emphasized the importance of preserving the integrity of the electoral system at a time when many citizens were questioning the credibility of the democratic process. Mr. Rodriguez added:

Of course, the Commission's most important objective with respect to its investigation and this public hearing is the strengthening of the democratic process, of which the privilege of casting a secret ballot in an honest election is an integral part. We all know that there is increasing citizen skepticism of our democratic institutions and of the credibility of governmental conduct in general. Perhaps the most sinister threat to the preservation of our democratic society, in this atmosphere of public distrust of government, is the abuse of our election system. One symptom of what's wrong with the electoral system is our target here—the apparent inability of government to guarantee the integrity of absentee voting procedures under law.

The significance of this most basic objective of the Commission has been underlined in recent years by an increasing disinterest in voting by thousands of citizens who are eligible to vote. This unfortunate trend was highlighted by a survey undertaken by Secretary of State Donald Lan of election results throughout New Jersey during 1978, a year in which the refusal of many registered voters to exercise their privilege at the polls was particularly marked. This survey pointedly demonstrated that scores of elections were climaxed by unusually close decisions by those who did exercise their privilege to vote for competing congressional, county and municipal candidates. In fact, Mr. Lan's report disclosed that out of 197 municipal elections where the winner's margin was by less than 100 votes, 74 contests were decided

by 25 votes or less and 15 by five votes or less. In four of these municipal contests, a single vote was pivotal.

We all hope, naturally, that this light-vote trend won't persist but its confirmed presence these days imposes a greater responsibility than ever before on the Legislature and on responsible election law officials to safeguard—and improve—the process. The fact that so many elections were decided by such small margins dramatizes the importance of assuring that *every* vote that is cast is a legal vote, untainted by tampering, coercion or other abuses.

If we can achieve effective reforms in even one section of our notoriously deficient statutory controls over elections—that governing the privilege of voting in absentia—it will signal at least a start toward rebuilding the credibility of our election system as a whole.

THE TESTIMONY—First Day

Criminal Prosecution Difficult

The Commission's first witness was Criminal Justice Director Stier, whose division spearheads the prosecutorial activities of Attorney General Degnan's department. Mr. Stier's most significant comments concerned the difficulty of obtaining criminal indictments against individuals who flouted the absentee ballot law.

He particularly noted the misuse of absentee ballots in North Bergen during the course of a Congressional election some years ago, an election in which improperly processed absentee votes played such a pivotal role that a scandal erupted. This episode, which he characterized as "one of the most shocking examples of absentee ballot abuse," occurred in a municipality that was to become the subject of the Commission's initial public hearing exposé. Mr. Stier recalled that his staff personally interviewed 1,499 individuals whose so-called absentee votes were at issue in that election contest and that the state Grand Jury during 1976-77 devoted six months to evaluating the testimony of 30 key witnesses. Of this case, which was supervised by Deputy Attorney General Sapienza, the former S.C.I. counsel, Mr. Stier observed:

I want to state for the record before this Commission and for the public that no investigation that has been conducted by the Division of Criminal Justice has received more intensive effort on our part, both from an investigative standpoint and from the standpoint of researching the law to try to develop viable theories of prosecution.

At the end of our investigation, and as the result of very intensive legal research done by Mr. Sapienza and others in the Division of Criminal Justice, we came to the conclusion that we could not develop a viable criminal prosecution on the basis of the evidence that we had uncovered or the state of the record that existed.

That didn't mean that we didn't find abuses. That didn't mean that we didn't find practices that were reprehensible. Indeed, we did. And you're going to produce testimony from that investigation in these hearings which, I think, will support the conclusions that we reached.

Obviously, the basic conclusion that we reached was that the absentee-ballot laws needed reform. The basic problems in the investigation that we conducted were that the elements that the statutes required us to prove were such that we had to obtain the cooperation of somebody who had been directly involved in the fraudulent activity itself. One of the most difficult things for a prosecutor to do, as this Commission well knows, is to obtain the cooperation of somebody who himself is a part of a conspiracy to bring about some unlawful objective.

If we had a legislative scheme that would permit us to use the testimony of independent witnesses, witnesses who were victims of the offenses rather than those who participated in the offenses themselves, the investigation would be much less difficult to conduct; the credibility of the witnesses that we could produce would be much stronger, and I think criminal prosecution could be had in a majority of these cases.

One of the practical difficulties in conducting an investigation of absentee-ballot fraud after the votes are counted is that it's very difficult to identify the voter who filed a particular absentee ballot. The certifications have been removed from the ballots. And even though we may come to the conclusion that handwriting on a number of ballots is similar, if not identical, even though we may find a series of erasures, even though we might find other indications of fraud or misconduct, it becomes extremely difficult to identify a particular ballot with a particular voter to a point where we can reconstruct how that ballot reached the stage that it did when it ultimately comes into our hands.

The "Immunity" Loophole

Mr. Stier said the major obstacle to successful prosecution of apparent lawbreakers was a provision in New Jersey's election statutes preventing prosecutors from extending more than a "self-executing transactional immunity" to witnesses. He said this type of immunity—a broader form than the "use immunity" which the U.S. Supreme Court has declared to be a more sufficient safeguard against violations of the Fifth Amendment process—cloaks a witness with so protective a shield in election law cases that it disrupts rather than advances an effective system of criminal justice.

He described how this immunity provision blocked his office's probe of the North Bergen absentee ballot scandal. Transactional immunity, Mr. Stier noted, not only "immunizes the person who testifies from prosecution on the transaction about which he testifies" but also bars prosecution of such a witness "even though we may come up with independent evidence to show the involvement of that individual in criminal activity."

Mr. Stier pointed out, for example, that "if a clever defense attorney forces us into a position of having to bring the party into a grand jury without knowing precisely what that person is going to say, that person can come before the grand jury and admit personal participation in election fraud and need never fear that there will ever be a prosecution based on the transaction about which he offers testimony."

Other Statutory "Gaps"

Based on his frustrating pursuit of suspected criminality in the Congressional election scandal, Mr. Stier outlined three areas in which "gaps in the laws" obstructed his staff's North Bergen probe:

One is the absence of restrictions on who can transmit an absentee ballot from the board of elections to the voter; that is, how it gets there. If there is a knock on your door and standing outside your door is a worker for a particular candidate, somebody who is closely associated with an administration that you have some reason to fear, the opportunity for intimidation is obvious. The impression is left that somehow this person has arranged to provide you with an opportunity to vote and somehow that person is going to find out how you voted, and you may suffer adverse consequences if you don't vote in the right way.

There is an absence of restriction on who can be present when the vote is cast; what can be communicated to the voter at that time. Obviously, permitting somebody who has some self-interest in the way the vote is cast to be present at the time the vote is cast provides temptation and provides an opportunity to influence the vote.

And, last, and in many ways most important, there are no restrictions on the way in which the absentee ballots are returned to the board of elections from the voter. We found example after example of tampering with votes after they left the voter and before they get to the board of elections; examples of such activities as steaming open the outer envelopes, theoretically to check to see that the certification has been properly executed. But once that envelope gets into the hands of somebody who would steam it open to examine its contents, we can't expect that the temptation to examine the vote, the temptation even to change the vote, won't be satisfied.

Law Promotes Fraud

Mr. Stier pointed out that while the election laws "surround the polling place with a great deal of protection," including insulation against "improper influence" over those who go to the polls to vote in person, these same laws heighten the potential for fraud in the absentee voting process. "The casting of an absentee ballot," said Mr. Stier, "is not surrounded with that degree of protection and insulation." He continued:

Under the laws the way they are written, opportunities for influence, subtle or overt in some cases, are part of the way in which the system has come to operate. I don't think it was intended to operate that way when the laws were written, but the practices that have developed over the years have permitted opportunities for intrusion into the casting of the vote itself by people who have motives, who have strong inclinations to influence the casting of that vote in a particular way.

And we found in the course of our investigation that the kind of people who use absentee ballots are, in many cases, the kind of people who are most susceptible to influences; to pressures. People who cast absentee ballots are very often alone; very often isolated from the rest of the community; in many cases they are ill or infirm. Senior citizens have come to use absentee ballots, many of whom live in public housing where fear is generated by having an absentee ballot brought to their home by somebody that they believe, that they have reason to believe, has the ability to influence whether they can continue to reside in that public housing.

We found that the casting of absentee ballots and the way they are handled is surrounded with subtle fear and intimidation, as the result of which respect for the entire electoral system is reduced and serious questions are raised about the integrity of the electoral process itself.

"Competing" Social Objectives

In conclusion, Mr. Stier said he recognized the presence of justifiable but "competing" social objectives. On the one hand, he said, under the democratic system of government candidates for elective office and their supporters must have "an adequate opportunity to campaign effectively." He was by no means suggesting the enactment of any legislative impediments in this respect—but, he added:

We also feel very strongly, and have been moving toward a system of providing easy access to voters to polling places, to voter registration and to absentee ballots in the hope that that will encourage more people to exercise their right to vote, and we certainly don't intend to urge this Commission to recommend a system that would create more bureaucratic impairment of the ability of a voter to cast his vote. But, on the other hand, those public policies have got to be balanced against the serious opportunities for fraud and improper influence which now exists under the absentee-ballot scheme under which we operate.

It seems to me that there are ways of developing creative legislation which will balance those competing public interests and achieve a state where not only can voters have access to the right to vote and cast their votes in secret, but we can be absolutely sure or, at least, reasonably sure, much more sure than we are now, that the votes aren't being tampered with and that voters aren't being intimidated into voting in a way that they would otherwise not.

I don't want to offer this Commission at this point specific recommendations, because I think that that would be premature. I have tried to point up the general areas of concern that we have. We will be more than willing to cooperate with the Commission and its staff in making more specific recommendations at the appropriate time.

I wish to urge the public to view this problem for what it really is:

A serious intrusion into one of the most fundamental rights that all of us has, into the very integrity of government, and it ought to be dealt with on that basis.

The Absentee Voting Process

To provide an adequate public hearing record on which to base recommendations for legislative and regulatory reforms, the Commission first asked an expert witness to describe the way the absentee ballot process is implemented. This witness was Joseph Brady, who is both the Superintendent of Elections and the Commissioner of Registrations for Hudson County. Although his tenure as County Superintendent of Elections dates back to 1966, his previous tasks also involved the implementation of election laws as far back as 1947. At the time he testified, Mr. Brady was president of the New Jersey Association of Election Officials.

David L. Rhoads, who served as chief counsel during the Commission's hearings, asked Mr. Brady to demonstrate step-by-step the process by which a registered voter votes in absentia:

Q. Now, Mr. Brady, with particular reference to absentee balloting, assume I were a registered voter in New Jersey and I wanted to vote absentee. How would I go about securing—let's say, the first step in this process, what would it be?

A. Initially you would have to make an application for the absentee ballot.

Q. And where would I get an application?

A. An application can be secured from the municipal clerk, the county clerk, my office.

From various locations in the county you could secure an absentee-ballot application; municipal clerk, county clerk, which is the prime source, the county clerk, the—my office has them. Any office that does business in elections would have an application.

Q. Fine. So, in other words, as I see it, then, they're available pretty much from any source?

A. Right.

Q. Is there any receipting for an absentee-ballot application? For instance, if I were to go in and pick it up from, let's say, the county clerk, would I sign anything?

A. None whatsoever.

Q. How many of those would I be allowed to have?

A. Hundreds.

The Initial Step—the Application

Counsel Rhoads displayed an exhibit of an enlarged civilian absentee ballot application form to clarify Mr. Brady's testimony. Anyone seeking to vote in absentia is required to file such an application. The form contains six acceptable reasons for absentee voting, requiring the applicable reason to be checked. The reasons include being out of state on election day, being temporarily or permanently ill or physically disabled, observing a religious holiday, residing at an educational institution, or because of the "nature and hours" of employment. Those who check the reason of permanent or total disability, Mr. Brady said, automatically receive absentee ballots for future elections. This is the only exception to a requirement that an application for such a ballot be filed for each election. Having filed for an absentee ballot, the witness further noted, an applicant can not then vote in person at the polls even if the circumstance that caused him to apply evaporated by election day. An absentee ballot application can be obtained in a number of ways, the witness explained. The looseness of this procedure, as later witnesses were to reveal, led to a number of abuses.

The application forms, Mr. Brady said, could be obtained in person, could be mailed to the applicant or could be transported to him by an "authorized messenger." The witness was asked for more details on the messenger provision:

A. If you're sick or confined, then you can have a messenger pick up an absentee ballot for you, bring the application filled out and signed by the voter to the county clerk's office. Usually the messenger will wait around till it's verified and approved. He'll take it back to the county clerk's office and pick his ballot—the ballot up and deliver it to the voter.

Q. All right. So that authorized messenger, then, at one time or another would come in possession of my ballot, is that so?

A. That's right.

Q. Is there any provision, at least, on the face of this application that tells the voter who must be the authorized messenger?

A. None whatsoever.

Q. In other words, then, as I understand it, I could use a neighbor or, in fact, I could use a candidate?

A. That's right.

Q. And that candidate, if he were to take that application down to the county clerk, presumably would be given my ballot; is that so?

A. That's right.

* * *

Q. Well, let's go back to delivery. Assume I'm a voter and, for one reason or another, I don't want to go down the county clerk's office, so I give—

A. All right.

Q. —it to someone, neighbor or someone, and he delivers it for me.

A. Right.

Q. Is there anything invalid about that process?

A. None whatsoever.

Q. And if this person were to bring my application into the county clerk, would he have to sign or notarize anything down there—

A. Nothing whatsoever.

Q. —showing he brought mine in?

A. Nothing whatsoever.

Q. Now, if you move down, it says, "Print or type your name." "Sign your name as it appears in Registry Book."

Now, what are they referring to when they say the "Registry Book"?

A. That's the registration form that you sign initially when you register to vote, because a comparison is made of the signature here against the signature in the registry book. And if it agrees, they stamp the registration form with a red A and that precludes you from voting in the polling place on election day.

Q. With respect to this line, which reads "Authorized Messenger" below it, who signs that?

A. Either the voter or the messenger.

Q. Either one?

A. Either one.

Q. So if I were to sign it as the voter and put down, for instance, your name as my messenger, and you took that down to the county, there is no signature of you on this application, is there?

A. None.

Q. And would you be, in the natural course of events, challenged by anyone at the county?

A. None whatsoever.

Q. With regard, then, to this area, if I were to write in your name and someone else took it and represented themselves to be you, they'd get my ballot; isn't that so?

A. That's correct.

Q. Well, again, have you studied this portion of the absentee-ballot application with a view toward this problem area?

A. I would suggest that the voter and the messenger both sign it.

Q. In other words, the voter might say something to the effect that "I am designating Mr. Joseph Brady as my authorized messenger," and I sign it as well as you?

A. Right.

Q. And that, of course, will allow a check, I assume,

A. That's right.

Q. Well, sir, once you have the application filled out and it's handed in, and let's for a moment exclude the authorized messenger portion, I fill it out and I send it in, and assume again I have a valid reason ticked off. What's the next step?

A. The next step is that it's compared with the registry, registration form. The form is stamped. The application is returned to the county clerk, and he mails to the voter the ballot, an inner and outer envelope, and in the primary election the names of the county committee persons. In Hudson, they're not printed on the ballot. The cost would be prohibitive. The voter is instructed to write their names in, or the candidates of their choosing rather, of the county committee.

Q. As a voter, if I were to go to the county clerk's office, would I be given my ballot?

A. You would be given your ballot, yes.

Q. Is there any restriction in the statute that actually dictates to the county clerk who it is that he must give that ballot to? By that I mean, assume I don't have an authorized messenger down there and yet someone else were to come into the county clerk and say, "Let me have Mr. Rhoads' ballot." Would it be given to him?

A. None what—not in Hudson it would not.

* * *

Q. Other than mailing it to the voter, how else would it get to the voter?

A. The only other way it would get out of the county clerk's office would be authorized messenger.

Q. Well, Mr. Brady, as I look at this affidavit, I see no provision to have that marked "Witness."

A. I agree with you.

Q. Is it then your suggestion that perhaps that should be put on there?

A. I agree one-hundred per cent.

The Ballot Certificate

Counsel showed the witness an exhibit of the certificate that is attached to what Mr. Brady called the "inner envelope," or the envelope containing the blank ballot to be given in person, by mail or by hand-delivery by an "authorized messenger" to the prospective absentee voter. The witness testified that there is no requirement that the voter himself fill out the certificate:

Q. Now, with regard to this certificate, and again, this, of course, reduced to normal size would be attached to an envelope?

A. Right.

Q. Now, it leaves areas to be filled in. Filled in by whom?

A. Anybody.

Q. Anyone at all?

A. Anyone.

Q. Doesn't have to be me as a voter, does it?

A. That's right.

Q. It says, "I, (print your name clearly)"

A. Right.

Q. As I understand it, anyone could print my name?

A. Anybody.

* * *

Q. Then it says, "DO HEREBY CERTIFY, subject to the penalties for fraudulent voting, that I am a citizen of the United States," et cetera, gives the age requirement, residence requirement and time period in voting with respect to residency, and then in bold print it says, "I am voting this ballot pursuant to application previously filed." What are they referring to now?

A. The initial application that we had is the reason he received the ballot, and that's why he is voting this ballot; pursuant to reasons, out of state, ill, disabled, attendance of religion, school, university.

Q. Now, assume for a moment that I put down out of state and I'm up in Sussex County and I want to vote, and I know I can't get back to Trenton to vote, so I sign my name and send in my ballot.

A. But you are covered by another provision of the act that says that, even though you intended to be out of state and you are in the state on election day, you must vote the absentee ballot.

Q. Now, that's in Title 19?

A. That's right.

Q. However, it's not reproduced anywhere on the certificate, is it?

A. Not on the form, no.

Q. Is it on the ballot itself?

A. None whatsoever.

Q. Was there any information sent to me, as an absentee voter, that would inform me of this provision?

A. None whatsoever.

Q. So I assume, then, if I'm ignorant of that and I want to abide by the law, I'm not going to vote?

A. That's right.

Q. Now, it said, "I marked the enclosed ballot in secret. I certify the foregoing to be true to the best of my knowledge and belief." It says, "Signature of voter"?

A. Right.

Q. The voter must sign that. Is that correct?

A. The voter must sign that.

Q. And then you drop down, "A blind absentee voter shall be entitled to assistance in the marking of his ballot and in completing and signing of the certificate. In such case the person providing such assistance shall add on the face of the certificate," and then it says, "Voter assisted by"?

A. Correct.

Q. Now, assume for a moment I'm not blind, —

A. Right.

Q. —but for some reason or another I'm disabled with regard to writing; I can't sign anything or mark anything. Well, is there any provision that allows me to have someone to help me?

A. Not in the absentee voting law. It does at the polling place, but not in the absentee-ballot law.

Q. In other words, if I were to go into a polling booth and I were unable to pull the levers, would I be allowed assistance there?

A. Of anybody of your own choosing, the same as a blind person.

Q. But, on the other hand, if I am in my house with an absentee ballot, I am denied that assistance, is that so?

A. You are denied it, right.

Secrecy is Voter's Responsibility

In filling out the certification, the voter must declare that he marked his ballot in secret—but only the voter can be held responsible for the truth of that statement. Counsel Rhoads asked Mr. Brady about this:

Q. Where you certify that you voted in secrecy. At whom is that certification directed?

A. It would be to the county board. They're the ones—

Q. Excuse me. What I am saying is, if that provision is violated, who's in trouble, the voter or the person who looks over the voter's shoulder while he fills this out?

A. Let's put it this way: I found out in investigations that the voter is of the opinion that a ballot marked by an outside person is offering them an assistance in marking it and a public service to them. They don't see anything wrong in it. The voter doesn't today.

Q. But the area that I am referring to, the secrecy area, that's directed at the voter, isn't it?

A. That's right.

Q. So if I looked over your shoulder and saw you mark the ballot, I'm not the one in trouble, according to that certificate, am I?

A. No.

Q. It's the voter?

A. It's the voter.

Q. I have this before me and it says, "Official General Election Ballot," and it lists various laws. Now, these laws, as I understand it, are directed to how you mark the ballot, et cetera.

A. That's right.

Q. So that with regard to the areas that we just discussed, there is no instruction on here—

A. None whatsoever.

Q. —to help me as a voter, is there?

A. None whatsoever.

Q. Well, is there any flier or anything of that nature that's sent along with my absentee ballot that informs me of what to do, for instance, if I think I'm out of state and turn out to be in state?

A. In the inner white envelope, which the flap certificate is detached to, is the instructions to the voter. They're all one-line instructions and they're not broadened to an extent to include secrecy or how to mark it or anything else, write the names in.

Q. So, then, with regard to the areas that we talked about, if your application reason changes, there is nothing to tell me—

A. That's right.

Q. —as a voter that I am able to vote anyway; is there?

A. That's right.

Q. So, in effect, if I want to abide by the law, I disenfranchise myself?

A. That's right.

Next, counsel turned to the problem of getting the marked ballot back to the election officials:

Q. Now, sir, assume you have now gotten your ballot, which is before you. You fill it out and you mark it, and I'm staying away from authorized messenger for a moment. How do I get it back to the people who are going to count my ballot?

A. Mail is number one; delivery is number two, which can be in volume or singly, or by the messenger returning it, or bringing it back yourself.

Q. Now, moving down to the area where this is addressed to, assume for a moment I don't mail this, for one reason or another, and maybe it's the reason that you don't provide me with a stamp.

A. That's right.

Q. And you don't, do you?

A. No.

Q. So I've got to come up with the fifteen cents to get this back. Assume I don't want to do that and I hand it to someone and I say, "Will you please drop this off at board of elections," and they do. Is there

any safeguard against identifying the person who drops this off?

A. None whatsoever.

* * *

Q. All right. I have a blow-up of an exhibit of an anonymous voter, obviously. I only say that because a voter, as I understand it, should not identify himself on the ballot.

A. That's right. The ballot will be voided if you can in any way identify the ballot or relate it to a voter.

Q. All right. With regard to this exhibit, I would like you to look at it, and there are certain areas on it that I am going to direct you to. This is one particularly that was submitted in a recent—I shouldn't say "recent"—a June 8, 1976, primary, congressional primary. As you can see, it's Township of North Bergen.

A. 3rd Ward, 6th District, Ballot No. 151.

Q. I will direct your attention to an area which indicates that this block to the right of "Byron Baer" has been in some fashion changed, whether through erasure or going over with pen or what-have-you. An X has been moved to another candidate's name.

A. Right.

Q. Well, just with regard to this area, what would happen with this ballot if someone from the board of elections opens it and looks at it and sees there an erasure and a change?

A. At that moment that ballot was not counted because that was not the only ballot that was discovered in North Bergen at that election where an erasure was made on the congressional candidates, and they held up the tabulation of the absentee ballots and approximately quarter to nine the board of elections came to me and asked me to impound the ballots.

Q. Well, how many, if you recall, did you find where there was some sort of, let's say, tampering with the ballots?

A. I haven't had my records now for approximately two years. They've been down here in Trenton.

Q. Those ballots ultimately were not counted, isn't that right?

A. That's right.

Q. Was there a new election held?

A. There was new primary held in September of that year.

Q. Was that as a direct result of this type ballot being submitted?

A. Right. There was a new election contest, and the judge ordered it.

Q. I direct your attention to Column 1. It's rather obvious there are names printed in here?

A. Right.

Q. Obviously not typed in?

A. Correct.

Q. Is that an unusual circumstance where you see that on a ballot?

A. What happened is, there is a void on the ballot. The reason it's void is, it's only void in the members of the county committee, and, as I said to you prior, in primary elections the county clerk does not print the county committeemen's names on the ballot, or committeewoman's name. He sends it to the voter on a separate slip for each district. He sent those in the 3rd Ward, 6th District of North Bergen, those two names.

The reason that is voided, and again it comes down to inadequacy of instructions to the voter, the voter placed them right alongside of the office title, members of county committee, rather than in the personal choice column.

Q. So the voter put them in here?

A. Right.

Q. And they should have been here; is that so?

A. In the personal choice column right alongside of it.

North Bergen Practices

The Commission next focused its public hearing spotlight on the actual handling of absentee ballots in North Bergen.

The first local witness was Charles G. Carrara, a township construction official, who was accompanied by his lawyer, Samuel R. DeLuca of Jersey City. John R. Dillon, III, of Commission counsel questioned Carrara about his role in the North Bergen absentee ballot vote at the June, 1976, primary election. Mr. Carrara stated that he was active in the political and civic life of North Bergen, as an elected Democratic county committeeman, a member of the township Board of Education, and an appointed member of the local Alcoholic Beverage Control Board. He was familiar, he said, with Joseph Mocco, who was both township clerk and chairman of the Township Democratic organization, the controlling political bloc in the community. It was at Mr. Mocco's home where much questionable handling of certain absentee ballots took place.

Under questioning by Counsel Dillon, Carrara recalled that, as a County Committeeman during the 1976 primary election, one of his tasks was to assist in obtaining applications for absentee ballots in his district. He was vague, however, on what he meant by "helping" voters to get absentee ballots and his testimony was interrupted by the Commission Chairman:

THE CHAIRMAN: I think the point is, Mr. Carrara, you solicited them, they didn't necessarily call for you. Is that the—

THE WITNESS: Oh, no; oh, no. Many of them would call me on the phone and say, "Charlie, I can't get to the polls this particular election because"—

THE CHAIRMAN: Then there were two kinds; those that called you and those that you solicited?

THE WITNESS: Those who called me and people that I know that were in need of them that I would normally go to. It was just a matter of routine.

Mr. Carrara did more than merely pick up application forms. Counsel Dillon questioned the witness at length about his activities after he obtained the applications for various would-be absentee

voters. The witness recalled that there was a problem about ballots at the election. He continued:

Now, that particular election the Hudson County failed to send out the ballots on time through the mail, and when that weekend came around before the election, people that I helped get the application for and bring it down to the county clerk's office didn't receive their ballots and they called me up. And they said, "Charlie, it's Friday afternoon. My ballot isn't here. I want to vote. I have the right to vote. I'm going away tomorrow. I'll be out of state," or "I'll be in the hospital. You told me to get—you told me that the ballot would be here, you know, within a couple of days, and it still hasn't gotten here."

Q. So did you deliver the ballot to them at that point?

A. That's right.

Q. I see. And were you designated on the certification as the authorized messenger for those individuals, or this was merely a gesture on your part?

A. No, I would say that particular election it was a gesture of good will to get the ballot and bring it to them. Otherwise they weren't going to have the right to vote.

Q. Okay. And you stated that you picked up ballots after they had been cast. In other words, after the voter had marked them you picked up the ballot again from their home. Is that correct?

A. That's right.

Q. At any time in this process of picking up the ballots after they had been marked were you present at the time the voter marked the ballot?

A. I don't remember. You see, another problem I have to say, I don't remember because, prior to June election, I was stricken down with a heart attack and I was under medication; I was in the midst of a matrimonial problem at home, and I just can't remember anything as technical as that.

Q. Okay. What did you do with the ballots after you picked them up after they had been cast; where did you take them?

A. What election are you talking about?

Q. I'm talking about the June, '76 primary again.

A. After June, '76, primary that was a particular different—a different procedure that particular election, only because the county failed to mail them out on time that I would have to pick up the ballots late at night, maybe Monday night or Sunday night, or even Tuesday, and get them down to the county. I would drop them off at the clerk's home.

Q. I see. By "the clerk's home," do you mean the home of Joseph Mocco?

A. That's the clerk.

Q. And where is his house located?

A. On 80th Street off Kennedy Boulevard.

Q. I see. How many ballots, approximately, did you take to Mr. Mocco's home?

A. I don't remember.

Q. I see. Well, was it more than five? Twenty? A hundred?

A. It was more than five, but I can't, I can't remember exactly how many. Like I said, that particular, that particular election you're talking about, it was a while ago and I had some problems that I just can't remember.

Q. Was it more than fifty?

A. I can't remember.

Q. How many voters, approximately, do you have in your district?

A. Nine-hundred.

Q. I see. How many of those, if you recall, voted by absentee ballot?

A. I just told you, I can't remember how many I brought Joe's house. Now you're asking how many voted. I don't know. I don't remember.

Q. All right. Who directed you to take the ballots to Mr. Mocco's home?

A. It was common sense because of the fact that the people didn't get the ballots on time and there was the hours of business were closed. I had to get them some place so the people could vote, so the common sense would be, bring them to the clerk's home.

Q. Was Mr. Mocco's home being used for Democratic headquarters in the June, '76, primary?

A. To answer your question, that's exactly what I'm going to do; like I said, I had—I was in the hospital early that spring with a heart attack, and I was using the home myself as a place to relax and recuperate, just to get away from everything.

To say it was used as a headquarters, I can't answer that question because people would come there that were friends of his, like myself, but I can't say it was a headquarters or it wasn't.

THE CHAIRMAN: Well, you did do a certain amount of functioning in that election that you are recalling. Now, the question is: Was Joseph Mocco's home used as a headquarters? Yes or no?

THE WITNESS: I can't answer that.

THE CHAIRMAN: All right.

THE WITNESS: Because I don't remember whether that particular election we were calling it a headquarters or weren't calling it a headquarters, you know.

By MR. DILLON:

Q. Was this Joseph Mocco's principal place of residence?

A. Yes.

Q. Okay. Over what period of time in the June, '76, primary were you delivering ballots to the home of Joseph Mocco?

A. I would take a guess and say that it had to be possibly the Monday night before the, night before the election, because we couldn't get the ballots. Ballots weren't delivered to the voter until, I think, Monday. During the daytime I had to pick them up, get them all Monday night. So I would probably guess to say it was Monday night.

THE CHAIRMAN: Do you specifically recall that every time you picked up and delivered a ballot

to Joseph Mocco's home that it was during the time that the office was closed?

THE WITNESS: It was in the evening after work hours. You're talking about the daytime. During the daytime I was running around picking up ballots from the people that voted, and then, when I had all my ballots collected, that's when I delivered them to the clerk's home.

THE CHAIRMAN: But there were times when you would pick up the ballots while the office was still open, but you would wait till you picked them all up?

THE WITNESS: That's right. Can I answer by saying, that's true. The office is located on 43rd Street. My district is on 80th Street, from 80th to 86th. I would collect all my ballots during the day, and then, when it was done, get them in.

For me to pick up one ballot, say, on 86th Street and run down to 43rd Street and come back to 86th Street again, because people weren't home or if I had to go to a hospital to pick up a ballot, it would be, you know, ridiculous. So you would pick them all up and turn them in all in one shot hoping you got done, you know, at a decent time.

BY MR. DILLON:

Q. Did you have a set of keys to Mr. Mocco's home?

A. I had a key.

Q. I see. How many people had keys to Mr. Mocco's home?

A. Just me and him.

Q. Did you unlock the home so that the election workers, or the people, the committeemen working on these absentee ballots, could gain entry to the home?

A. I'd like to, rather than give you a yes-or-no answer, I would like to explain my answer to you, if it's all right.

Along with having permission to go into Mr. Mocco's home to relax and be a little comfortable, I also helped Mr. Mocco out in a way that he was ill during that period of time, and he is an animal lover who had chickens, and dogs, and some roosters and rabbits, and I would go to the house every day to feed them, and, you know, go in the morning and normally in the evening, and that's what the function was.

Q. Mr. Carrara, I don't think you understood my question.

Did you unlock the home for the purpose of permitting the election workers or committee people to come in and collect absentee ballots?

A. I would go into the home with the purpose of feeding the animals. I recall, I think I recall, Fran Davison being there when I went in; letting her in. I don't know what her function was there.

Q. So you left the home open for these people to come in?

A. No, for Fran.

Q. I see. Did you meet with Fran Davison at night or in the early morning hours, let's say, between 11:00 p.m. and 3 in the morning for the purpose of unlocking the home so that she could gain entry?

A. I would have to say absolutely not to the answer have I met with her at three o'clock in the morning or any ridiculous hours like that. Never. I recall going there at—I think I recall going there and Fran being there and asking me could she get in, she had some work to do, and I believe that was the reason for it.

As far as meeting her three o'clock in the morning, it's absurd.

Q. When you delivered the absentee ballots to Mr. Mocco's home, what did you do with them?

A. I put them there. I think I put them on the floor in a bag. I'm not sure. As I walked in on the right, there was a couch. I dropped them on the couch and I left.

Q. No one directed you to take those ballots there; you took them there, as you say, common sense?

A. That's right, my obligation as a committeeman to get the vote in; allow the people to vote.

Q. Who else was delivering ballots to the home of Joseph Mocco?

A. I don't know.

Q. Well, when you took the ballots to Mr. Mocco—

A. Excuse me. I would presume the rest of the county committee was, like myself, but I don't know any individuals.

Q. When you took the ballots to the home, was anyone present in the home? Was anyone else there?

A. I been there once, like I say, with the ballots that I brought them in. I think Fran Davison was there. I recall seeing her there. That's all. I don't remember seeing anybody else.

Q. Did anyone tell you the purposes for which these ballots, and the other committee people as well, the purposes for which the ballots were being collected at Mr. Mocco's home?

A. No. Like I said, it was just common sense to, you know, the easiest, easiest thing for me to say to a voter is, "Oops, it's four o'clock, we're going home. No more voting. You lost your right to vote." But being the type of person I am, and the rest of the committee are in North Bergen, you just keep working, and working, and working and collecting them. And the common sense thing to do, being that point in time, being the office hours were closed, was to turn them in to Mr. Mocco's home.

THE CHAIRMAN: Mr. Carrara, you keep relying on the common sense, taking it to Joseph Mocco's home.

THE WITNESS: That's right.

THE CHAIRMAN: The question is, did you know, were you advised, or were you aware that there was something else being done with the bal-

lots in Joseph Mocco's home other than using it as a drop before taking them to the clerk's office?

THE WITNESS: No.

BY MR. DILLON:

Q. Mr. Carrara, did there come a time when you went back to Mr. Mocco's home and collected these ballots for delivery to the board of elections or the county clerk's office?

A. Yes.

Q. Do you recall how many ballots you took from Mr. Mocco's home to the Administration Building?

A. There were more than I brought, you know. I couldn't say. Maybe two or three shopping bags full of ballots. I just can't recall.

Q. Well, can you approximate the number of ballots? Were there three-hundred? Were there five-hundred? Nine-hundred?

A. I would say it could have been two, two or three shopping bags. I have no way of knowing how many ballots would fit in a shopping bag.

Q. When you went into Mr. Mocco's home for the purpose of delivering these ballots, did you see any ballots anywhere else in the home?

A. No, I don't remember seeing any. They could have been there, but not where I was standing. I didn't see any.

Q. What did you observe Fran Davison doing when you—

A. Busy typing. Not typing, writing or doing some kind of clerical work that I wasn't really concerned about.

Q. Was Helen Peck there when you delivered the ballots?

A. I don't remember seeing her.

Q. Was Denise Rannou there when you delivered the ballots?

A. I don't remember seeing her.

Q. Was Fran Davison's husband there?

A. I don't remember seeing him. I just remember seeing Fran.

Q. Was Joseph Mocco there?

A. No.

Q. How is it that you know that Mr. Mocco wasn't present?

A. Because I looked out of my eyes and I didn't see him. Like, if he was in front of me like you're in front of me, I say, yeah, you're here.

THE CHAIRMAN: When you looked out of your eyes?

THE WITNESS: If the man was in the basement or a closet, I couldn't see him. If he was in the room where I was, I would have to say, no, I didn't see him.

BY MR. DILLON:

Q. Mr. Carrara, wasn't Mr. Mocco at home recuperating from surgery at this period of time?

A. That's a good question. He was recuperating from surgery. He had this tremendous operation. Whether he was at home or at his mother's house, I never knew.

Like, in Mr. Mocco's house, his bedrooms are downstairs, and my business was with chickens and, you know, going back and forth through the apartment, not down the bedrooms. So, I don't know if he was down there. He was either in the bedrooms or at his mother's house, one of those two places.

Q. I see. All right. With respect to the absentee ballots themselves, did you ever have occasion to make markings on the ballots?

A. No.

Q. Did you at any time during the course of this process of delivering ballots to Mr. Mocco's home observe Fran Davison in the home steaming open ballots?

A. No.

Q. Mr. Carrara, did you ever steam any ballots open?

A. No.

Q. Did anyone ever ask you or instruct you to steam open ballots?

A. No.

A Key Witness

A central figure in the handling of absentee ballots in June, 1976, in North Bergen was Mrs. Frances Davison, the next witness. She was the first to testify directly about certain abuses of the law, including particularly the steaming open of a number of ballots. She was questioned as a witness who had been granted immunity by the Commission. A Democratic county committee-woman, she had supervised the "processing" of absentee votes at the home of Clerk Mocco, by whom she was employed as secretary. At the 1976 primary election she was re-elected to the Democratic County Committee in her township. As a county committee-woman, she testified, she was her party's representative in her district and "in line with that, when a Democratic party is running in any election, I will go out and solicit votes for the Democratic Party, and that includes everybody from the President all the way down, say, for myself." Counsel Rhoads:

Q. Now, with regard to the election process, did you have an occasion to perform any function whatsoever in the home of Joseph Mocco during the period of this election?

A. Yes.

Q. What was it that you were doing in his house at that time?

A. All right. There were many, many problems with absentee ballots. That was only one small aspect of the problems. There were problems that the county had not printed enough ballots; had not printed ballots correctly; was not able to mail ballots out to the people in time. There were many, many problems.

I used the house on 80th Street as a place for people to bring their absentee ballots to me for submission to the county; also, to pick up ballots that the county did not have in time to mail.

Now, do you want me specifically to go into every single thing from A to Z?

Q. Excuse me. I will ask a couple of questions. With respect to picking up ballots, are you saying, from the home of Joseph Mocco, you asked people to pick up ballots?

A. Yes. There were a large amount of ballots that the county was not able to mail. That was the second printing. They had to be delivered to the voters. Some of the people I called and asked them to pick up the ballots at the house at 80th Street for submission to the voters.

Q. Well, for the record, the house on 80th Street is Joseph Mocco's home, is it not?

A. That's where he resides.

Q. That's where he resides. And, of course, he was Democratic chairman at that time, was he not?

A. Yes, he was.

Q. Well, had he directed you to do this?

A. No, he did not.

Q. Well, how did you get into his house, Mrs. Davison?

A. Charlie Carrara had the key. I asked Charlie if I could use the house.

Q. And Charlie let you into the house?

A. Charlie let me into the house.

Q. Now, we have people coming to pick the ballots up from Joseph Mocco's home to, I presume, give to the voters. Is that correct?

A. Yes.

Q. Now, after the voters mark these ballots did anyone pick them up from them?

A. You mean from the voters?

Q. Yes.

A. After they—yes.

Q. What was done with them?

A. They were brought back to the house. There was no time to mail them back to the county. They were brought back to the house for submission to the county.

Q. Particularly, the board of elections to be tallied?

A. Yes.

Q. And yet they're brought back to Joseph Mocco's house. Isn't that so?

A. They were brought back to the house on 80th Street because there was no time to mail. The county didn't have time to get the ballots mailed to the individual voters. How could the voters mail them back to the county in time?

Q. So that it's fair to say, to your knowledge, at least, that you, nor anyone else, told a voter that "We're going to take them to the home of Joseph Mocco before taking them to the county," did they?

A. No, just that they were going to be taken down to the county.

Q. Just as a point of reference, over how many days did this occur in the home of Joseph Mocco?

A. In the June, '76, primary?

Q. Yes.

A. That's what you're asking me about, right. It started on a Friday night and ended on a Monday night.

Q. So Friday to Monday you were actively engaged in this process in Joseph Mocco's home; is that so?

A. Yes.

Q. With regard to the bringing of the ballots back to Joseph Mocco's home rather than to the board of elections, why were they brought back to Joseph Mocco's home?

A. The board of elections is closed on Saturday and Sunday, to my knowledge. It's not open. Also, there were an awful lot of ballots, as I mentioned before, and they were brought down ultimately to the county.

I don't understand your question, your inflection of the question. That's why—

Q. I'm asking, very simply, why are they brought back, other than the fact that it's a Saturday or a Sunday? Why are they brought back to Joseph

Mocco's house? In other words, what was done with these ballots when they're in Joseph Mocco's home?

A. I asked the people to bring them back to me at Joseph Mocco's house, or the house on 80th Street, and I checked them over as far as the technicalities that the county requires.

Q. I have got an exhibit, and this blow-up of an envelope which is presumably to be mailed to the county board of elections, and in this example it so happens to be Mercer County. Are you referring to the address that would appear up here?

A. Yes.

Q. And you say you were checking these envelopes to make sure that the voter put in his address; is that so?

A. Correct.

Q. And you're telling us that, had the voter not put it in, it would be rejected by the board of elections?

A. Yes.

Q. Well, other than checking the address on the outer envelope, what else did you do?

A. Well, on the affidavits, the affidavit is very complicated and many of the voters do not realize the complexity of it. A voter can obtain an absentee ballot for a permanent disability or for illness, whatever the illness may be. Many of the people check off the wrong reason as far as permanent disability or regular disability. I would check the affidavits as far as the correct reason. Also, going back to the—

Q. If I may, I just want to interrupt you for a moment here.

THE CHAIRMAN: Earlier there was some identification of that document, and I think you're making reference to it as an affidavit. Can you describe what that affidavit is that you're talking about?

THE WITNESS: All right. If I may, on the affidavit, as I call it, that's what it is, it's an affidavit, it's the name and address of the voter; how long

the voter lives at the present address; the reason for their applying for the absentee ballot during the June primary. Very complicated, because they had to declare themselves not once, but twice. They had to sign, I believe, twice on that that it was attached to the white, white envelope.

BY MR. RHOADS:

Q. So this would be what's commonly called a certificate? You refer to it as an affidavit?

A. As an affidavit, yes.

Q. Something a voter has to sign, in other words?

A. Yes.

Q. And you would check this affidavit to make sure that it was the same as their application, the reason they put down to vote absentee, in the first place?

A. Yes.

Q. Well, how were you able to do that? How did you have their applications?

A. Their applications I did not have. But before the applications are submitted to the county board of elections, you know, for the people to get, I made a list up of all the people. In other words, the applications that I had gotten down in town all for submission to the county, I typed a list up of all the names of all the people and their addresses who applied for an absentee ballot, and I put a reason next to it as to—you know, 1 would have been this, 2 would have been that. So that's how I was able to know whether or not that person—

Q. As I see it, then, you were able to go down to the county clerk, obtain all the applications of voters in the Township of North Bergen and check their reasons why they were applying; is that it?

A. No, no. You misunderstood what I said. The applications for the absentee ballot—

Q. That's what I said.

A. —that was submitted to the township clerk's office for submission to the county, I typed a list up of the names and addresses; next to the list of names

and addresses, the reasons why. The applications were then submitted with this list, a copy of this list, to the county board of elections. I never saw the applications from that point on.

THE CHAIRMAN: There was, then, a control factor between the time that the application left the voter to a place where you could make this list before it went to the board of elections; is that it?

THE WITNESS: I'm sorry, Mr. Rodriguez.

THE CHAIRMAN: Well, there was an intermediate stop between the voter and the board of elections—

THE WITNESS: Yes, yes.

THE CHAIRMAN: —in his application?

THE WITNESS: Right. In other words, —

THE CHAIRMAN: Long enough for you to make the list?

THE WITNESS: Yes.

BY MR. RHOADS:

Q. Well, having once had this list before you of reasons, assume now that you have got an affidavit before you and the reason isn't the same as what appears on the application for the ballot. What did you do?

A. I would then put in the right reason.

Q. So you would change the certificate, is that correct, the affidavit?

A. As far as the reason was concerned.

Q. You would change it?

A. To insure that, right, that the vote counted.

Ballots Steamed Open

A highlight of Mrs. Davison's testimony was her report on how access was gained to the ballot envelope and attached certificate or affidavit. Counsel Rhoads noted that "all the paraphernalia a voter has" is put into a large envelope for delivery from the voter to the county election board, "where they appropriately belong." In order for Mrs. Davison to get at the certificate, Mr. Rhoads said he assumed she had to open the outer envelope:

Q. Well, how did you manage that?

A. I steamed some of them open.

Q. Where did you do that?

A. I did that in the kitchen on the house on 80th Street.

Q. Well, had any voter at all told you, "Mrs. Davison, I want you to check my ballot and make sure everything is okay"?

A. I don't remember at this point.

Q. You don't remember whether any voter told you to do that?

A. I don't remember at this point.

Q. Well, how many ballots are we talking about in the home of Joseph Mocco over this course of three or four days?

A. There were a lot of ballots, an awful lot.

Q. More than 500?

A. Could be. Could be.

Q. Well, now, you would steam open the outer envelope in those cases which you had to, and I'm assuming. Were there some that you didn't have to steam open?

A. Some of them were not sealed.

Q. They were unsealed?

A. Some of them were unsealed.

Q. Well, had you told any of the people to pick up the ballots from the voters unsealed?

A. No.

Q. By the way, who did tell these people to pick up the ballots from the voters?

A. I don't understand your question. What do you mean?

Q. The people that went out and got the ballots from the voters and brought them back to Joseph Mocco's house so that you could have them to steam them open, who told these people to do that?

A. Well, I told them they could bring the ballots back to the house for submission to the county. I told you that before.

Q. Well, was Charles Carrara one of those persons?

A. Probably, yes. He's a county committeeman.

Q. Do you know a person by the name of Nicholas Sacco?

A. Yes, I do.

Q. Well, did he bring some of those ballots back to Joseph Mocco's house?

A. He probably did, too, as a county committeeman.

Q. Let's make it broader. Are there any names at all, that you can tell us, of persons who carried ballots from voters back to Mr. Mocco's home?

A. I'd have to say, I can't remember all those people. It was a long time ago, and all the county committee people plus their workers were delivering ballots to the house. There were people coming to the house, you know, I don't even know who they were.

Q. How many people?

A. A lot. I mean, we're talking—

Q. Give us a round figure, ball-park.

A. Fifty.

Q. Thirty, forty, fifty people were coming in and out of that—

A. Sure. Not at the same time, different intervals.

Q. I wouldn't assume they were coming at the same time. But over different intervals forty, fifty people were coming into the home delivering ballots; is that correct?

A. Overall.

Q. Joe Mocco. He was the, as we already pointed out, was the, I guess, the chairman of the Democratic

Party in North Bergen. Did he bring any ballots back to his own house?

A. No. Joe was very sick at the time.

THE CHAIRMAN: Was he at the house?

THE WITNESS: During the June primary he was downstairs sleeping. He was under heavy medication.

Steaming Activity Enlarged

Mrs. Davison had conceded that the large brown outer envelopes had been steamed open to get at the certificates attached to the inner white envelopes. She went on to relate how the inner envelopes in which the voters were supposed to place their secret absentee votes were also opened. Counsel Rhoads asked her: "Did you have an occasion to open the inner envelope?"

A. Yes. Many of the people were sealing the white envelope without the ballot inside. That had to be put inside the white envelope.

Q. So what they would do, I assume, — and you stop me if I'm wrong—they would seal the inner envelope, which should have contained the ballot, but not put the ballot in it?

A. Correct.

Q. So you would steam this open?

A. Correct.

Q. To enable you putting the ballot in?

A. Correct.

Q. Well, did you ever steam open any of these envelopes that already had the ballot in it?

A. Yes, I believe I did.

Q. Now, why would you do that?

A. All right. Again, to make sure that—now, this is not on all of them, either. To make sure that at county committee names were properly put in the right place.

Q. In other words, you recall when I referred you to the ballot earlier, and you were referring then to the names, particularly, yours was one of them, I believe, that may have been in the wrong place. You

would steam open the inner envelope, pull out the ballot of a voter to check if they put it in the right place?

A. Yes, on some of them I did, Yes.

Q. Well, who else was doing this? Who helped you do this?

A. As far as steaming open the ballots?

Q. Yes.

A. Nobody, nobody.

Q. Well, Mrs. Davison, isn't it a fact that you had something in the neighborhood of 500 or more ballots in Joseph Mocco's home over the course of three, four days?

A. Yes. But, as I said before, I didn't steam them all open. As I said before, I don't remember exactly how many were there, and no way could I possibly have steamed open that amount of ballots. That's an awful lot of ballots to steam open.

Q. I agree. How many did you steam open?

A. I don't remember at this point. I really don't remember.

Q. Can you approximate for us?

A. A lot. I don't. I don't really remember. There were a lot. But there weren't as many like you're saying, 500 ballots or all the ballots. It wasn't that many.

Q. All right. With respect to the inner envelope which contains the ballot, how many of those did you steam open?

A. I don't think it was a large amount as maybe—I don't remember the amount. I really don't at this time.

Q. Would it refresh your recollection if I were to tell you 274?

A. It wouldn't refresh my recollection. I don't remember.

Q. All right. Mrs. Davison, with regard to the ballot itself, I want to make some allusion to it. This is Commission Exhibit 7 and with these names. Did you find, let's just say, more than one voter's ballot

that either didn't put in the names or put them in the wrong place?

A. Let me explain that, yeah. There were people who were putting on the personal choice county committee names. There were people that were checking them off that little slip of paper I mentioned to you. Rather than writing the names on the ballot, they would just put an X next to the piece of paper that the county sends with the absentee ballot.

Q. Well, how many of those did you find?

A. Oh, there were a lot; there were a lot.

Q. Well, assume, then, that you found a situation where the name is in the wrong place. What did you do?

A. If a name was under personal choice—

Q. Well, wherever. It's in the wrong place. What would you do?

A. All right. Have it written under the correct row.

Q. So you would put it in the correct row?

A. Right. In other words, it would go under the Column A. If that ballot, all right, was written, say the two names that were there were written under personal choice, I would then put them under the Column A, because that's where the county committee people were running, that the people had so designated under personal choice. I don't know if you understand what I am trying to say.

Q. No, I understand, Mrs. Davison. Who helped you do this?

A. Putting in the names?

Q. Putting in the names.

A. Writing in the names. I had two girls helping.

Q. What are their names?

A. Denise Rannou and Helen Peck.

Q. Other than Denise Rannou and Helen Peck, who else helped you do this?

A. To my knowledge, I don't believe I asked anybody else to do that. I'm not sure at this point, but I don't think so.

CONTINUED

1 OF 3

Q. All right. With respect to these ballots that you have now steamed open the envelope containing the ballot and withdrawn the ballot, did any voter ever say to you, when they gave the ballot to you, or, to your knowledge, to any worker, that you may steam open my ballot and check it for, let's say, accuracy?

A. I don't remember a voter saying that you can steam open my ballot. Somewhere along the line some voter did mention to me, as far as, I think, the affidavit was concerned, that they would like it if I could check it, but that's about all.

Q. Well, the fact is, Mrs. Davison, the voters were totally unaware that these ballots were being taken to Joseph Mocco's house and being steamed open. Isn't that so?

A. As far as I know, yes.

Q. They did not know it was going on, did they?

A. As far as I know, they did not.

Q. All right. Now, with regard to the steaming open of the, let's say, inner envelope that contains the ballot, did anyone assist you in doing that?

A. Steaming open the ballot, no.

Q. When did you do this?

A. This was done late at night when everybody had left.

Q. Well, what time at night?

A. When people left. Twelve o'clock, one o'clock, two o'clock. I don't know.

Q. One or two in the morning you're steaming open these ballots?

A. Yes, if that's when people left.

Q. Well, where is Mr. Joseph Mocco during the time you're steaming open these ballots?

A. He's still downstairs.

Q. He's still downstairs?

A. Yes.

Q. How do you know that?

A. How do I know he's downstairs?

Q. How did you know he was downstairs if you're in the kitchen steaming the ballots?

A. I didn't hear him go out, so I assume he's still downstairs.

Q. Did there ever come a time when he did come into the kitchen to observe what you were doing?

A. No, but there was a time he did, once, not when I was doing that, come up and took some pills.

* * *

Q. All right. Well, with respect to the steaming open of the ballot, for whatever the reason may have been, you are in the home of Joseph Mocco; he's the township Democratic chairman. Did you ever go to Mr. Mocco and tell him what you were going to do in his home?

A. No.

Q. You never saw fit to tell him?

A. No.

Q. Well, did you think what you were doing was proper?

A. Yes.

Q. You did?

A. Yes.

Were the Ballots Altered?

Steaming open the inner white envelopes gave the opener access, of course, to the secret ballot. Counsel Rhoads asked Mrs. Davison whether she had ever "changed a vote." She "might have," Mrs. Davison replied, but efforts to ascertain the extent of the ballot alterations were met by vague and uncertain responses. Counsel displayed an exhibit of a blown-up actual ballot cast at the June 8, 1976, primary election. After the name of Congressional candidate Byron I. Baer, Counsel noted, "the little square where you would presumably put a check, and you can see that this has been erased and reconstructed and a check was put in the box of another candidate." Counsel:

Q. Is this what you are referring to when you say you changed votes?

A. Wait. You said to me if I ever changed a vote. I said, I might have, one in my district. As far as—

Q. Are you telling me you did not change any?

A. I said, one, perhaps, in my district. As far as how, I don't remember how that one was changed. I don't remember that at all.

Q. Well, of this one that you changed, the voter never told you to change the vote, did he, or she?

A. I don't remember.

Q. You don't remember whether—

A. I don't remember.

Q. —a voter said to you—

A. I don't remember.

Q. Mrs. Davison, you're going to have to let me finish my questions.

You don't remember whether a voter said to you, "You may open my ballot and change my vote"?

A. I don't even remember why I changed the vote. It's just that it sticks in my mind.

Q. All you remember is that you changed the vote?

A. That's all. I don't remember who it was for.

Q. Well, to your knowledge, did anyone else there that was helping you change any votes?

A. Not to my knowledge.

Q. Well, would it surprise you to hear that there were approximately 270 erasures on ballots submitted from the Township of North Bergen for that primary?

A. Well, people make mistakes, they erase, just like people going to the polls, they press a lever down and then press it for someone else.

Q. So it may be you're speculating perhaps the voter himself made these, maybe 270 voters made all the mistakes?

A. Yes.

* * *

Q. With regard to ballots that were steamed open by you, and the ballot itself completely in front of you, did you ever have an occasion to write your name in as a candidate to enable you to have a vote?

A. I don't remember that.

Q. You don't remember that?

THE CHAIRMAN: Let me ask this way: You receive a ballot and, because they're being changed, in whatever method they're being changed, they're being checked, it finds itself open and exposed to your presence, and the voter has only selected to vote for, say, the top of the ticket and made no selections whatsoever for the committee positions. So it's a voted ballot, but the committee positions are open and blank. On that occasion, do you know if anyone, including yourself, added your name to the column?

THE WITNESS: I don't remember that. That I don't remember.

Q. You don't remember?

A. No, I don't remember seeing that. I don't remember.

Ballots Resealed by Sitting On Them

Counsel next queried the witness about the manner in which the ballots were put back in the white envelopes and resealed:

Q. All right. Now, let's go back to the area where you have testified that you have now made corrections or whatever it is you did with these ballots and you're in the process of putting them back in the envelope. How was it that you were able to get that envelope resealed once it had been steamed open?

A. Which envelope, the outer or the inner?

Q. The inner envelope. I'm talking about the ballot into the inner envelope.

A. Just by wetting it and sitting on it.

Q. Who assisted you in doing that?

A. The girls, I believe, helped me.

Q. Helen Peck?

A. And Denise Rannou.

Q. Denise Rannou?

A. Uh-huh.

Q. Who else?

A. I might have asked other people as they were coming in.

Mocco Also Sat on the Votes

For the first time, at least one part played by Joe Mocco, the township clerk and Democratic chairman, in the ballot handling at his house was revealed. Amidst the swarm of ballots and ballot envelopes in the dining room/living room of his house, he also helped to reseal the ballot envelopes by sitting on them. Mr. Rhoads asked Mrs. Davison to state what Mr. Mocco did:

Q. Let me be specific. Did you ever ask Joseph Mocco to help you in resealing the envelopes?

A. I believe that one time that he came upstairs I was telling you about before.

Q. Correct.

A. I think he came up that time and he took some pills. He was on a lot of pills. He looked around, and he said, "Oh, my. Can I do anything?"

And I said, "Well, if you want to, you can seal some envelopes."

THE CHAIRMAN: What was it that he said to you?

THE WITNESS: He just looked around, you know, something to the effect that—I don't remember exactly. It's three and a half years ago. Like, "Hello. Do you need any help?" or something to that effect. I don't remember the exact words. And I think I asked him if he would like to seal some envelopes for me by, you know, wetting them and sitting on them. That's about it.

Q. And did he?

A. Yeah, he did.

Q. And about how long a period of time did he help you do this?

A. Probably less than an hour.

Q. How much less?

A. I don't know. Maybe a half an hour.

Q. All right.

A. Forty-five minutes.

Q. During this half-hour period when Joseph Mocco was sitting there sealing the envelopes, or re-

sealing the envelopes, I should say, who else was present in the room?

A. Probably Denise and Helen. I'm not absolutely positive. Probably Denise and Helen.

Q. Now, during the time that he is doing this procedure of resealing the envelopes, is this in the area in which you were working on the envelopes and affidavits and ballots and so forth?

A. The dining room/living room area.

Q. And where, specifically, in that room are you working?

A. We're working at a long table that was in the dining area. You see, it's like one big long room, the dining area.

Q. At the time Mr. Mocco is there, this is the time you're working on the ballots themselves and the envelopes and et cetera, certificates?

A. At that time I'm not sure what I was doing. I mean, I'm not sure if that was the time when—I'm not sure.

Q. Be a little more specific. At the time Mr. Mocco was there asking you in sealing or resealing these envelopes, did you have ballots and envelopes, and envelopes containing certificates spread out on this table?

A. There might have been.

Q. Well, do you know whether there were or whether there weren't?

A. I don't remember what was on the table at that point.

(Whereupon, the witness confers with counsel.)

Q. May I have one moment, please.

Mrs. Davison, while I'm looking through this, I want to ask you an additional question. When Mr. Mocco was sitting on them and helping you in resealing these envelopes, did he at any time question you with regard to how it was you had all these envelopes there, these ballots?

A. I don't believe so.

Q. Well, when you asked him to reseal them, did you tell him what he was resealing?

A. Probably. Probably.

Q. Probably. Probably you said to him, "Mr. Mocco," words to this effect, "would you help reseal these ballots, the envelopes containing the ballots?"

A. Probably. I don't know exact words.

Q. Probably. And at that time did he ever say anything to the effect like, "Well, what are you doing with all these here? Why are they in this house? Why aren't they at the board of elections?"

A. I don't think so.

Q. He did not?

A. I don't think so. He was under a lot of medication.

* * *

Q. Mrs. Davison, I previously asked you with respect to when Mr. Mocco came up and aided you and sealed or resealed some of these envelopes whether there were ballots and certificates on the table at that time, and your response was that you don't recall or don't remember. Is that correct?

A. I think so.

Q. All right. I am going to ask you to look at Page 54—this is a transcript of a proceeding wherein you testified November 2nd, 1978.

MR. RHOADS: Counsel, do you have a copy of that?

MR. DELUCA (Counsel to the witness): Yes, I do. What page is that?

Q. I am going to direct you to Page 54. The date is November 2nd, 1978, and I am going to direct you to Lines 13 and 14 and read that, and tell me if that refreshes your recollection.

* * *

Q. Mrs. Davison, you conferred with your attorney. What I am asking you is, you said you don't remember. The fact of the matter is, you testified November 2nd, 1978, and you testified to a similar

question and your answer was: "There were ballots, yes, ballots on the table." And what I have simply asked you is to please read your answer and tell me if that now refreshes your recollection.

MR. DELUCA: If I may suggest, Mr. Rhoads, that is not the similar question asked here.

MR. RHOADS: I believe I said I took it out of context.

MR. DELUCA: That's correct. When you say "the similar question," I think, perhaps not intended to mislead anyone, I'm sure, but I think, perhaps, the public may be misled. We know it's taken out of context.

I would suggest for the witness to answer that question in that fashion, to ask a similar question so then we have some continuity here.

Q. Well, of these people that assisted you, did any one of them ever say to you, "Mrs. Davison, how is it that you've got someone's ballot here?"

A. No, I don't believe so. I don't—

Q. Did any of them ever question that?

A. I don't think so. I don't remember anybody questioning me on that. It was very busy and very hectic.

Q. Well, did you ever tell—

A. It was an election.

Q. Sure, it was an election. These are ballots cast in that election—

A. Right.

Q. —by voters. Well, did any one of these people ever say to you, "Mrs. Davison, how did you even get this ballot out of the envelope? What did you do to get this ballot?"

A. I don't believe so.

* * *

Q. I'll put it another way. Do you recall any of these persons, unidentified persons who brought these ballots to Joseph Mocco's house, ever say, "Mrs. Davison, what are you doing with these ballots? Why

are they open? Why are they spread on the table? Why are you writing on them?"

A. I don't remember anybody saying that.

Mrs. Davison's Helper

The next North Bergen witness, Denise Rannou, also testifying under a continuing grant of immunity, told how she helped Frances Davison "correct" certifications and ballots that were obtained by opening the big folders containing absentee voting materials at Joseph Mocco's home during the days immediately preceding the June 8, 1976, primary election. Miss Rannou, who became an elected Democratic County Committee member in 1977, said she worked on "hundred, two hundred possibly," already opened envelopes. She checked the certified excuses for voting absentee with a "list" of reasons that Mrs. Davison had previously typed up from the applications for ballots, and then changed the certifications to assure that they conformed with the list. Miss Rannou said she would then inspect the marked ballots of the absentee voters to see whether they were correctly labeled Democrat or Republican according to the voter's choices on the ballots. Counsel Rhoads asked her to explain her duties, beginning with the list:

Q. *Who told you to do what it is you did with them?*

A. Well, I think it was Fran that explained that the reasons had to be correct to insure that the vote counted.

Q. *Well, did you ever ask Fran, or anyone else, for that matter, how it came that all these envelopes were unsealed, let's say, a hundred to two-hundred envelopes?*

A. No. I didn't.

THE CHAIRMAN: Was it your impression that the voter had not sealed them?

THE WITNESS: Was it my impression at the time? I really don't remember thinking that. I don't remember. I didn't really think about it.

Q. *Well, let's assume a reason differs from the reason on this list, the application list. What would you do?*

A. Well, I would take a little piece of yellow paper and I'd put the correct reason with maybe a paper clip or something and put them on the side.

Q. *Then what would you do with them once you put them on the side?*

A. I was just—I just put them on the side. I didn't do anything with them.

Q. *Did you ever physically do anything to the certificate itself?*

A. To the certificate?

Q. *The affidavit.*

A. Yes. There was another problem.

Q. *What was that?*

A. The—this was a primary election, and in a primary election the person has to declare his party, Democrat or Republican.

Q. *Where does he declare that?*

A. He must declare that on the affidavit, and he must sign his name to the fact that he's declaring himself, whatever party he's declaring himself to. And there were cases—

Q. *What was the problem with that?*

A. The problem was, if they didn't declare their party, their vote wouldn't have been counted. It would have been discarded.

Q. *And what would you do to correct that?*

A. I would put the words, either "DEM" or "REP" on the affidavit.

Q. *How would you know what to put?*

A. By how they voted on the ballot, whether they voted Democratic or Republican.

Q. *Well, then, as I follow you, you're looking at the affidavit, and the affidavit is attached to what we will call the inner envelope, and inside the inner envelope, presumably, is the ballot. Are you saying, then, that you would go into that envelope and pull out the ballot to see how they voted?*

A. Yes, it would be necessary.

Q. *Well, how did you get the ballot out of the inner envelope?*

A. They were opened. I just took it out.

THE CHAIRMAN: Did you assume the voter had not sealed the ballot in the envelope?

THE WITNESS: I don't know what I assumed.

THE CHAIRMAN: Or were you aware that the envelopes were being opened by another mechanism?

THE WITNESS: No, they were just open. I didn't know.

BY MR. RHOADS:

Q. Well, you would now pull out the ballot. How would you determine to check on their certificate or affidavit that they voted either Democrat or Republican?

A. Well, on one side would be the Democratic candidates and on the other side would be the Republican candidates. If the person checked, they weren't allowed to go on either side. They had to either vote Democratic or Republican. Okay. And if I saw that their checks were on that side, on the Democratic side, I'd put the words "DEM." Otherwise I would put "REP" if the votes were on the other side.

Q. So you would look at their ballots to see how they voted?

A. Yes, I would.

Q. And if need be, you would write the appropriate name of the party on the affidavit; is that correct?

A. That's correct.

Q. Then what would you do?

A. Then I would just put it back in the white envelope.

Q. Have you ever voted absentee?

A. Yes, I have.

Q. And are you aware that on the certificate, or affidavit as you call it, that the voter says he voted in secret?

A. I voted absentee in 1973-1974, when I was away at school, and the affidavit itself was so complicated that to read the whole thing, I don't believe that people read the whole thing.

Q. I'll put it a different way. Did any voter ever give you permission to look at his vote?

A. Yes.

Q. What about the ones that you were doing in Joseph Mocco's home, the ones that you're pulling out the ballots to see how they voted and determine whether you put "Democrat" or "Republican;" had any of those voters told you to do that?

A. Those voters weren't there.

Q. Well, what's the answer to that question?

A. The answer is—

Q. Is it yes or is it no?

A. Oh, it's no.

* * *

Q. Miss Rannou, one last question for you.

Of the ballots that you opened, and I'm referring now to the ones that you—I shouldn't say "opened"—the ones you looked at to determine how they voted and then you would put on the certificate or affidavit either "DEM" or "REP," how many "REP's" did you put on?

A. I don't recall: Hudson County, probably not too many.

Q. You are a Democratic committeewoman, aren't you?

A. Yes, I am.

Clerk Mocco's Testimony.

Joseph Mocco, township clerk of North Bergen and at the time of the June 8 election the township's Democratic chairman, was an elusive witness, particularly with regard to the steaming open of ballot folders and other activities at his 80th Street home prior to the election. He referred frequently to his illness at the time and to his request that a party worker, Charles Carrara, tend to his pets at the house. How his home came to be used for processing absentee votes was Counsel Rhoads's first topic:

Q. With respect to the 80th Street address, did you have an occasion to allow that residence to be used in any political fashion at all?

A. Yes, that's correct.

Q. Whom did you allow to come into your house to use this in some political fashion?

A. Specifically, those people that were involved in the election during that period of time.

Q. Who were those persons?

A. I would say, the different members of the county committee, the people that were working in the campaign.

Q. Can you give us some names?

A. Yes. Fran Davison and other people, you know. Specifically, you could go through the whole roster of those people involved in that election and there would be literature there for them and other paraphernalia that would be used so it could be accessible to them for the campaign.

Q. Well, did you yourself allow these people, again confining to this period of time, to come into your home to use it? And by those people, I mean Fran Davison and committee persons, et cetera.

A. Yes, yes, that's correct.

Q. So Charles Carrara didn't just take it upon himself to use your house, did he?

A. Charles Carrara had a key to my premises. As I said, I was ill at the time and he was taking care of animals that I had, certain animals, and taking care of the premises for me.

Q. So my question is: Charles Carrara didn't just take it upon himself to use your house during this political campaign time, did he?

A. I'll repeat, I had a number of animals that he was caring for for me during that period of time prior and after that period of time as a result of my illness.

MR. RHODES: Mr. Chairman, I don't feel that's responsive to the question I'm asking this gentleman.

THE CHAIRMAN: Mr. Mocco, will you listen to the question again and try to respond directly to the question.

THE WITNESS: Yes, sir.

Q. I am specifically asking you: Did Charles Carrara take it upon himself, meaning without your permission, to just use your residence in a political fashion during that primary?

(Whereupon, the witness confers with counsel.)

A. I would say that he had permission to use my residence in that period, and before and after that period.

Q. So I am assuming the answer to my question is, he did not take it upon himself; he asked you first?

A. Specifically, exactly what he did or didn't do I can't answer for. The fact that I gave him a key to the premises, yes, that's correct, and the fact that he had permission to use the premises, yes, that's correct.

Q. For the political activity? The campaign political activity?

A. I will repeat as I said earlier. He also—I asked him to take care of animals in my home.

THE CHAIRMAN: Mr. Mocco, besides taking care of animals, also included in the permission was the political activity?

THE WITNESS: That's correct.

The Political Activities

Having finally conceded that political activities had taken place at his home, Mr. Mocco next was pressed to explain them. The witness kept insisting, however, that he couldn't remember or recall what took place, although he was often at that house at the time recuperating from his illness. Counsel:

Q. Now, with regard to the political activity that went on in your house, did Fran Davison take advantage of the use of your house during that campaign, to your knowledge?

A. That's correct.

Q. And were you there in the home when Fran Davison was there?

A. Possibly I was downstairs. Specifically, I couldn't state. Possibly I was downstairs in my bedroom; in the bedroom.

Q. Well, for what period of time were they using your house in a political fashion during the June primary of 1976; how many days?

A. I would say, a couple of days.

Q. What were they using it for?

A. Distributing literature and working on the campaign. Campaign work for that specific election.

Q. All right. That's pretty broad. How about, did they pass out any ballots from your house, absentee ballots?

A. I believe they did.

Q. Now, Mr. Mocco, did the people, or different people that passed out these ballots, did there ever come a time they returned ballots to your home?

A. Directly, I, I would have to presume that they did. Specifically, I can't answer that. Generally, I can. Specific-wise, I can only speak for myself, Mr. Rhoads.

Q. Well, when you say "directly," you don't know, but you presume they did, would you expand on that for us, please?

A. I will repeat, at the time that I was incapacitated and I wasn't handling the campaign, campaign as I normally would handle or work on, and I'd have to rely on what information I received secondhand and not information to my own knowledge.

Q. Well, from whom did you receive this information that they were bringing ballots back to your house?

A. Mostly from the media.

Q. Mostly from whom?

A. The media. The newspaper and, also, from what I have heard.

THE CHAIRMAN: This would be after the fact?

THE WITNESS: Yes, sir, that's what I heard.

THE CHAIRMAN: During the fact were you ever made aware that ballots were coming back to your house?

THE WITNESS: It's possible I was made aware, but I don't recall specifics pertaining to it.

BY MR. RHOADS:

Q. Let me get specific. Do you recall a time when you went up to the dining area of your house and, amongst others, Fran Davison was there and you asked her, "Is there anything I can do?" or words to that effect, and, in fact, she asked you, "Would you please seal these envelopes?" and you, in fact, did seal the envelopes? Do you recall that?

A. No, I don't, sir.

Q. You don't?

A. It's possible, but I don't recall it.

Q. It's possible it could have happened? You're not denying it happened; is that correct?

A. I'm saying, I don't recall it. That's what I'm saying to you.

Q. You just don't remember?

A. At that point, I just don't remember. It's possible, but I don't remember. I think that's clear.

Q. Well, do you remember ever seeing Fran Davison in your house during this period of time?

A. I believe I did, but I'm not that clear on it.

Q. Well, if you will, and you can take your time, try and remember what you saw her doing in your house when you saw her there.

(Whereupon, the witness confers with counsel.)

A. I just remember her being there. As to specifics, I don't remember anything specifically in that area.

Q. Well, do you ever remember seeing any ballots, envelopes, certificates on the dining room table of your home?

A. It's possible, but I can't specifically recall.

Q. It's possible you may have, but you can't specifically recall seeing that?

A. Right, that's correct.

Q. Let me just explore that for a moment. Has it happened so many times that you can't recall this specific election, or are you saying you just can't recall anything about the specific election?

A. Periodically, people have dropped off, where a problem has existed in delivering absentee ballots, people have dropped off ballots to me. They have dropped off enumerable number of ballots to the office with the purpose of having them delivered down to the bureau of election because of the time and the tardiness involved in the delivering of those ballots to those people, those voters that have requested absentee ballots.

Q. Well, with regard to those voters that may have dropped some ballots off to you, did they ever communicate to you in any fashion that there may have been some problem with their ballot and would you have it checked for them?

A. Not that I can recall.

Mocco Was Surprised

Mr. Mocco's evasiveness increased as Counsel Rhoads continued to request more specific recollections of events at the Mocco home in connection with the election:

Q. Mr. Mocco, would it surprise you to hear that for a period of perhaps three, four, five days something in the neighborhood of 2 to 3 to 400 ballots were brought into your home, particularly, the living-room area, opened, some written on, maybe one or two votes erased, resealed and delivered out to the board of elections?

A. Yes, that would surprise me.

Q. It does surprise you?

A. Yes, sir.

Q. Do you have any specific recollection at all of ever telling anyone what to do during that primary election? And by that I mean Fran Davison, Charles Carrara, Nicholas Sacco.

A. During every campaign at some point in time, whether it be for the gubernatorial campaign, or senatorial campaign, or whatever campaign, I would instruct and I would inform individuals as to literature, as to campaigning, and as to any way that they can help or work politically for the candidate or party that we're working for at that specific election.

Q. Well, did you do that in the June primary, 1976?

A. During that period of time I was ill at the time and, specifically, I had taken a back seat because I was not—I was incapacitated, the fact that I wasn't able to do what I would normally do in a campaign.

Q. Well, I am a little curious when you say "incapacitated." Didn't you previously testify that there were times when you actually went to work and other times when you either stayed at the 80th Street address or the other address?

A. That's correct.

Q. Well, how incapacitated were you?

A. I was sick. I was under medication at the time. I had gone through an extensive operation, and that's why I wasn't in work on a regular basis, and I believe I stopped in once or twice.

Q. But you did go to work, in fact, didn't you?

A. Just to get out and to go down to where I was employed, that's all. I didn't actually work in the performance of my duties because of my illness.

THE CHAIRMAN: I think the point is, you were able to—you say incapacitated. You were able to get up and—

THE WITNESS: Walk.

THE CHAIRMAN: —at least, walk out of the house—

THE WITNESS: That's correct.

THE CHAIRMAN: —and walk back to the house?

THE WITNESS: Yes, Mr. Chairman.

THE CHAIRMAN: My question is: Do you remember, specifically remember, being in your house—

THE WITNESS: At some point in time, yes.

THE CHAIRMAN: —the Friday night, Saturday and Sunday before the June primary?

THE WITNESS: At some point I was there, yes.

THE CHAIRMAN: Did you see activity in the house when you did come in, other than workers around the house?

THE WITNESS: I must have seen people, yes, that's correct.

THE CHAIRMAN: Did you ever during that time see an exposed voted ballot?

THE WITNESS: No, I didn't, sir.

THE CHAIRMAN: Or did you ever see envelopes that were not sealed?

THE WITNESS: I can't recall specifically to that.

THE CHAIRMAN: Do you ever recall specifically sealing an unsealed envelope?

THE WITNESS: If during the course of a campaign a ballot was turned in where the outer envelope wasn't sticking properly or wasn't sealed, it's possible that it would be sealed and just sent wherever it was to go, you know. That's the best of my recollection of anything in that area of any campaign.

THE CHAIRMAN: Regardless of the explanation, I think the point is, having sealed an unsealed envelope is something you can't say did not happen, for whatever reason it might have been unsealed?

THE WITNESS: I can't—it's possible. I can't say it didn't definitely happen, you're right, yes, Mr. Chairman.

The Chesilhurst Election

This example of the inadequacy of New Jersey's absentee voting statutes centered on the June 6, 1978, Democratic primary election for borough council and county committee members in Chesilhurst. In the course of this election more than a score of ballots cast by residents of the B and J Guest House became the target of prolonged litigation extending almost five months beyond the actual election. A tie-vote by the Camden County Board of Elections on the validity of 21 questioned ballots, all but two

of which had been marked with an "X", led to the rejection of the 19 "X-ed" ballots by Superior Court in Camden county. A subsequent appeal resulted in an order by the Superior Court Appellate Division requiring a hearing on these votes by the trial court. Such a hearing was held at the nursing home in October, 1978, after which all 19 X-marked ballots were rejected. In its post-hearing decision on November 1, 1978, the trial court observed that its previous conclusion that "there is no suggestion of fraud in this record" had to be changed since the hearing "clearly raises the fraud specter."

Deputy Attorney General Janice S. Mironov, who handled the litigation for the Attorney General's office—as required by statute because of the original 2-2 tie vote of the Camden election board—reviewed the issue of the 19 X-marked votes at the Commission's public hearing. Her testimony indicated that most of these 19 voters were unable to comprehend the issues raised by their absentee votes. Commission Counsel Rhoads asked her to recall what took place at the nursing home hearing:

Q. Now, we're talking, as I understand it, of nineteen, I suppose, voters whose ballots were rejected for the reason that an X was put on the certificate. Is that so?

A. Yes.

Q. Now, were all these nineteen voters called?

A. At the time that the hearing was conducted at the nursing home, all nineteen of these individuals were called to testify.

Q. And at any time did you have an occasion to question any one or all of the voters?

A. Yes, I did. In fact, I think I questioned most of the voters.

Q. Now, if I may, what was the purpose of having the voters actually called to testify?

A. The purpose was to set forth on the record whether, in fact, these individuals had voted the ballots. Essentially, that was the thrust of the reason for the hearing.

Q. More or less to identify the X, whether they were the ones in fact put on there; is that so?

A. Right.

Q. Well, was this testimony? Was it the intent of the judge, if you know, to have it sworn?

A. All hearings of court are sworn and that surely was the intent of the judge.

Q. Well, in your observation, was he, in fact, able to swear all nineteen voters?

A. No, he was not.

Q. Did he swear any of them?

A. He swore a couple of them. I think it was approximately four of the voters were able to be sworn and fifteen were not.

Q. Well, then, why was it that these witnesses were not able to be sworn?

A. Upon questioning by the judge at the outset of each of the witnesses coming before him, in response to his questions, their answers were disjointed. On many occasions there were no responses. In essence, they indicated lack of understanding of the questions and complete inability to give responses.

Q. Now, with the witnesses that were not sworn, were questions put to them regardless of whether they were under oath or not?

A. Questions actually were put to all of the witnesses, the ones that were sworn and the ones that were not, yes.

Q. Actually confronted with their certificates and ballots and asked if, in fact, this was their certificate and ballot submitted in the election?

A. Yes, I showed most of the voters that testified on that day before the court their certificates, the applications and/or the ballots.

Q. Could any of these voters that you confronted that day, and I am including all nineteen of them, could any of them with any degree of certainty identify: A, the certificate; and B, the ballot as being the ones they voted in this election? And, by the way, for the record, it was June 6th, 1978. Could any of them do that?

A. No, they could not, with the exception, perhaps of one, one person. But, for the most part, no, they were not able to recognize the applications, the certifications or the ballots.

Q. And yet the fact of the matter is there were ballots submitted ostensibly, at least, on their behalf; isn't that so?

A. Yes, there were.

Q. Well, through this hearing and through the testimony, did you ever come to find out how these ballots were submitted on their behalf or by whom?

A. In some of the cases the witnesses again displayed a complete inability to respond to the questions or their responses were in no way responsive to the questions that were put to them. In the situation with the people that were sworn, a couple of them indicated that somebody else had put the mark there. They referred, several of them, to their Scoutmaster, Brian, who had put the mark on the ballot.

Q. Any other name, whether it be first or last; do you recall?

A. There was some reference to a Michael. There were several references to a Scoutmaster Brian.

* * *

How X-voters Were Assisted

Ms. Mironov referred to Brian and Michael Pollock, two brothers who had become familiar to the nursing home residents as leaders of a Boy Scout group at the home and who also were politically active in the borough. Counsel Rhoads:

Q. Now, through your investigation did you ever come to know who, in fact, was this Scoutmaster and who, in fact, were Brian and Michael?

A. Actually, on the ballots themselves, on the certifications, all of these nineteen ballots were witnessed, even though there is no requirement for that, were witnessed by a Brian and a Michael Pollock. Both of these individuals had, in fact, been called as court witnesses in the initial proceeding that was held before the trial court. Reference assumedly was to those two individuals.

Q. Again, with respect to these two individuals and the ballots, when you talk about being witnessed, are you referring to the certificate that's marked as a witness?

A. Yes, I am.

Q. And they were signed by either Brian or Michael Pollock. Is that so?

A. Yes, they were.

Q. Now, in your experience as a deputy attorney general, particularly along the lines of the election laws, is there anything existent in the statute today that would preclude a candidate for a political office to go into, let's say, an institution such as the B & J Guest House and: A, solicit votes; and B, in some instances actually help voters fill out their certificates or applications for ballots?

A. Would there be anything in the law that would prohibit that, is that your question?

Q. Yes, as it exists today.

A. As it exists today. Currently under Title 19, which is the election law, there is no provision for assistance in filling out absentee ballots except for an individual that is blind. In that case the person indicates that they have assisted the voter and prints and signs their name on the certification. Aside from that, there is no provision for assistance legally.

Q. So nothing would stop a candidate of the office to actually approach someone at the time he's filling out his ballot and say, "Vote for me," much like there is an electioneering law that would preclude a candidate from going, let's say, within, I think it is, 100 feet or 100 yards of a polling booth and saying, "Vote for me"?

A. No, there is not. Nothing whatsoever.

Q. With respect to the actual election, to your knowledge, was there a candidate by the name of Frugone, F-r-u-g, I believe it's o-n-e?

A. Yes, there was. He was a candidate for the office of county committee.

Q. And was there a candidate by the name of Nunley?

A. Yes, there was. He was one of the candidates for the counsel office in Chesilhurst.

Q. Now, did Mr. Frugone win the election?

A. No, sir, he did not.

Q. What was his margin of defeat?

A. Mr. Frugone's margin of defeat was thirteen votes.

Q. What about Mr. Nunley's margin of defeat?

A. Nineteen votes.

Q. So, then, am I correct in assuming that, had those nineteen absentee ballots been counted and had they, for instance, been for Mr. Nunley or Frugone, they would have won the election, would they not?

A. Surely, surely. Those votes would have made the difference and could have made the difference in the election.

EXAMINATION BY THE CHAIRMAN:

Q. Miss Mironov, to clarify one question for the record, you indicated that some of these voters stated that they were assisted by their Scoutmaster. Scouts usually are not of the age to be capable of voting. Can you explain that, for the record, please?

A. The individuals that voted were, in question, were all residents of a nursing home. The ages ranged from twenty up to sixty-five. The individual that they were referring to evidently was someone who had spent some time there and endeared himself sufficiently that he could come in, sit next to them when they were filling out ballots. There was no Scout Troop per se, if that's your question.

Votes Were Solicited

The next witness, Chesilhurst Councilman Michael Pollock, told how he was a political supporter of Frank O. Nunley, a councilman candidate, and Anthony Frugone, a county committee candidate, and that he solicited votes in their behalf among nursing home residents whom he knew as Scouting members at the institution. Commission Counsel:

Q. Now, with regard to Mr. Frugone and Mr. Nunley, did you play any role at all in the organization to have them elected? By that I mean, did you politic on their behalf?

A. Yes.

Q. Well, with regard to the politicking, would you, in fact, let's say, solicit votes from various town residents on their behalf?

A. Yes.

Q. Now, are you familiar with a, I will call it a home, the B & J Guest Home in Chesilhurst, New Jersey?

A. Yes.

Q. And how is it that you are familiar with that home?

A. Well, the home is in Chesilhurst and I am also active in the home with the residents in a Boy Scout troop. My brother and I are members of the committee. My brother's the Scoutmaster and I'm his assistant Scoutmaster.

Q. How often do—let's say, the service you perform there, how often would that bring you in contact with the people in that home?

A. Once, maybe twice a week.

Q. With regard to, let's say, the residents within that home, are they all of voter age?

A. Yes.

Q. And, to your knowledge, are they registered voters?

A. Most of them are registered voters.

Q. Well, with those that are, if you know, did they have an occasion to vote—do they have an occasion to vote absentee in any of the elections?

A. Yes, they always vote absentee.

Q. What's the reason for that?

A. Physical disabilities, mostly, you know. Not being a doctor or anything, that's basically the reason.

Q. In other words, I guess it's such that they're unable to go to the polls for either physical or some other disability. Is that correct?

A. Physical or other disabilities, right.

Q. All right. Now, with respect to the election, the June 6th, 1978, election, to your knowledge, did any of them vote absentee?

A. Everyone there that voted voted absentee, as far as I know.

Q. And again with regard to this population within the B & J Guest House, did you, in fact, politic on behalf of Mr. Frugone and Nunley within the guest home?

A. Oh, yes.

Q. So is it fair to say that the patients would have been aware that you were backing Frugone and Nunley? Is that so?

A. Yes, definitely.

Q. Well, just as an example, how would you make it known to them that you were voting, not voting but backing these two individuals?

A. I had at times, you know, asked them to vote for the individuals that our party was backing, and, also, the candidates campaign there.

Q. All right. Did Mr. Frugone and Nunley campaign there?

A. Yes.

Q. Now, did there come a time when these individuals, and by that I mean the residents of the guest home, did they, in fact, receive absentee ballots for this election?

A. Yes, they did.

Q. And how is it that you are aware that they did?
A. Well, the—after either applications filled out and they received the ballots, and when they receive the ballots, we assisted the ones that wanted to be, to have assistance in voting.

Q. Now, when you say "we," who are you referring to?

A. Myself and my brother.

Q. Now, how would this go about? Assume I see you there and I'm a resident. How would I know that you would help me fill out my ballot?

A. Well, anyone that wanted assistance, you know, we let everyone there know we were there to help if they wanted assistance. A lot of the guys put the ballots on the table if they wanted assistance. We had to

have some type of system. We would pick up the ballot and call the individual.

Q. The ballots would be stacked up and you would just call out the name of the individual and he would come up?

A. Right.

Q. With respect to one of the individuals—obviously, we don't want to refer to them by name. We want to maintain the sanctity of their vote as well as their privacy.

With respect to an individual coming up to the table requiring assistance, what exactly did you do to assist these individuals?

A. Well, a lot of the guys can't read and a lot of them can't write, and what we would do would be to read—first of all, there was a statement that before they sign it, before they put their mark or whatever they do—

Q. Are we referring to the certificate now attached—

A. On the ballot.

Q. On the ballot itself?

A. On the ballot. I would read to them all the information that was on the ballot. Okay. And then, you know, I would ask them, "Well, how do you want to vote?" And they would indicate to me either by saying how they wanted to vote or indicate in some way how they wanted, what their choice was as far as their voting is concerned.

Q. Well, with respect to the ballot itself, am I correct in assuming there were more than just Frugone and Nunley running for these positions?

A. Oh, yeah, yeah.

* * *

Q. Of those voters that you personally assisted were all of them able to give you a definite conclusive choice of whom they wanted to vote for?

A. Yeah, they were all able to indicate to me whom they wanted to vote for or what.

Q. Give me an example of—

A. Or what column they wanted to vote for.

Q. Give me an example of how they would do that. How do they communicate it to you?

A. I would ask someone, well, how do you want to vote, and he would say, I want to vote for Mr. Frugone or Nunley, or I want to vote Column 6, or some, in a couple of occasions where guys can't hear or can't speak too well, the candidates campaigned by making the number 6 or by indicating 6, and I would ask the individual, "Well, do you want to vote 1?" And if there was no response, 2, 3, go all the way down the line till, yeah, that's it. Okay, right.

Q. Now, with regard to voting number 6, these are, of course, the candidates you had backed?

A. Yes.

Q. And I'm assuming this, and you correct me if I'm wrong. These resident voters knew you were backing these people in Column 6?

A. They definitely knew I was backing them, right.

Q. Of all the people that you assisted to vote, did any of them not vote Column 6?

A. I don't—I think that they all voted Column 6. You know, I don't remember exactly, but I think that they did.

* * *

Q. Well, had you ever communicated to these voters that the persons of your choice were in Column 6?

A. Oh, yes.

Q. So that when you got finally to indicating five fingers and one finger, that's Column 6 and that's where you get the nod?

A. Right.

Q. With respect to actually aiding and/or assisting the voter on marking, did you actually have an occasion to mark the ballot itself or were they all able to make the mark?

A. Some of the candidates—"of the candidates"—of the people asked me to mark the ballot for them, you know. Some of them had physical disabilities that prevent them from marking the ballot or from holding the pencil. So, you know.

Q. So you assisted them?

A. But before the ballot was marked we would ask, my brother and myself, "Do you want me to mark the ballot for you?" Before that was done. I'm not going to pick up the pen and start marking the guy's ballot for him.

Absentee Voting in Fieldsboro

Absentee voting improprieties featured the 1978 primary and general elections in the Burlington County community of Fieldsboro. The S.C.I. inquiry, a county prosecutor's investigation and investigative reporting by the press, notably the Trentonian and the Trenton Times, led to a series of court battles even as the Commission's public hearings took place. The Commission noted that Fieldsboro, as depicted in the testimony of a number of witnesses, was a prime example of the numerous ways in which the absentee voting process could be manipulated by politicians to their own advantage. For example, a candidate for mayor, Edward P. Carnassale, who was losing by 2-1 at the polls, was re-elected by means of an absentee vote that favored him by almost 100 per cent. The mayor and Frank P. Hegyi, an influential campaign worker, openly solicited absentee votes for the mayoral candidacy. In addition, many so-called absentee voters were in town on election day, thus confirming that their sworn excuses for voting absentee were false. The mayoral election in this community eventually was overturned by the courts.

In its public hearing review of absentee ballot abuses in Fieldsboro, the Commission first called as a witness the Burlington County clerk, Edward A. Kelly, Jr. His testimony on the manner in which Fieldsboro absentee ballot applications and ballots themselves were obtained and processed illustrated a number of deficiencies in the statute. Mr. Kelly was questioned by Commission Counsel Rhoads:

Q. Sir, now, you have been called, obviously, in a broader scope, and in the more narrow sense, we're concerned with an election, both primary and general, that was held this year in the town of Fieldsboro, particularly, the primary election in June of '78 and the general election this past November 7th, 1978.

With respect to the primary election, do you know a gentleman by the name of Frank Hegyi?

A. Yes, sir.

Q. And how is it that you have come to know Mr. Hegyi?

A. Well, he lives in the county, in Fieldsboro Township, and I think he's held public office in Fieldsboro Township, and just through my official duties as county clerk.

Q. With regard to this primary which obviously was, in a broad scope, a Congressional primary, is it true that there were mayoral candidates running in the town of Fieldsboro at that time?

A. I believe there were, yes, sir.

Q. And do you know one of them to have been a man by the name of Edward Carnassale?

A. Yes, sir.

Q. With respect to Mr. Hegyi, did there come a time when he appeared at your office for the business of obtaining absentee ballots on behalf of voters?

A. Yes, sir.

Q. And what exactly was it that was the nature of his business being there in your office?

A. Well, he came in with X number of applications. I don't know the numbers here. I think we have submitted the exact numbers. And these applications were on behalf of other persons in Fieldsboro Township. We took the applications over to the board of elections and checked them out for their legality to see if they were registered voters, to see if they were properly signed in all respects, and we brought them back after we were satisfied. We approved them. The county clerk would approve or disapprove an application.

And then when we approve them, we then make up the ballots, the package of ballots for each envelope, type up an envelope with the name and address of that person applying for same, and then either mail it out or give it to the person that so requested.

Q. All right. Now, sir, with respect to the ballots in this primary election in Fieldsboro, did there come a time when Mr. Hegyi actually took possession of a various number of ballots?

A. Yes, sir.

Q. And was he, if you recall, on the application of these voters for the absentee ballot, in fact, the authorized messenger?

A. In some cases. I don't remember all of them because we give the application to the board of elections now. Another change in the policy. We used to keep the application. But if we gave him or any person a ballot, we would write that name down that this ballot was picked up by a certain person. We keep a record of who we gave the ballot to.

Q. Sir, I show you what's been previously marked Commission Exhibit 21, and if you will look at this, it's a three-page list of various names on there, and it's signed both on Page 2 and on Page 3. Would you look that over and tell me, is that what you are referring to when you say "a receipt"?

A. Yes, sir; yes, sir.

Q. What is that document you have before you?

A. It's three pages of absentee ballots picked up by Mr. Hegyi June 1st, 1978.

Q. All right. Now, sir, with respect again to the town of Fieldsboro, if you know, do you recall the reasons put down by these absentee voters for voting absentee?

A. No, sir, I don't have them individually. But I would say ninety-nine per cent said they would be out of town on election day.

Q. And, again, are you familiar with the total voting population of Fieldsboro?

A. Yes, sir. It's quite small.

Q. Now, in your experience as county clerk, does that seem to be an inordinate amount of voters being out of town or, let's say, out of state, actually, on election day?

A. I'd have to say yes.

* * *

Q. Mr. Kelly, with reference to the primary, now, where a Mr. Carnassale ran, do you know whether in fact he won that primary?

A. No, I'm embarrassed to say, I don't know if he won it or not, Mr. Rhoads. I only remember that they

had a problem with the absentee ballots; that the ballots were not placed inside of the certificates. That's all I knew about it. Again, once the absentee ballot is—has left my office, I never see it again. They're tallied, the absentee ballots, by the county board of elections. I don't get down into specific towns as to who won or who lost either by absentee or by the machines.

Q. Well, as I understand it, then, if I were to have, let's say, a group of absentee-ballot applications and I were to go to a county clerk and hand this over, I would get the ballots in due course and all I need do is sign for them somewhere; is that so?

A. Yes, if they're approved, yes, sir.

How Mayor Was Helped

The next witness, Frank P. Hegyi, who was finishing the second year of a three-year term as Fieldsboro councilman at the time of the S.C.I. hearing, told how he handled absentee ballots during the local primary campaign as a supporter for Mayor Carnassale. He noted that Mr. Carnassale sought re-nomination in June, 1978—but as a "write-in" candidate since he had failed to file his nominating petition on time. Counsel Rhoads questioned Mr. Hegyi:

Q. With respect to Mr. Carnassale, did you in any way, let's say, politic on his behalf, run his campaign for him or what-have-you?

A. I did not run his campaign, no, sir. I worked for his reelection.

Q. And with respect to your working for his reelection, did you in any instances actually solicit votes on his behalf?

A. Yes, sir, I did.

Q. Again along those lines, did your work involve you in any way with processing or handling absentee-ballot applications for voters within the town of Fieldsboro?

A. Yes, sir.

Q. With regard to those applications, I trust you are familiar with an absentee-ballot application, are you not?

A. I think I am, yes, sir.

Q. What exactly did you do to aid or facilitate the individual voter in getting an absentee ballot?

A. Well, during the campaign when I was going around and people indicated to me that they would be eligible for an absentee ballot, or some of the applications which came into me from the mayor, some of those applications I filled out the entire application, outside of the signature of the voter who had requested the application. I then took them down to the county clerk. The applications were, I assume, legally processed and sometime later I picked up the ballots from the county clerk's office.

Q. Now, with respect to the applications, you say you filled out some of them. Well, what percentage are we talking about when you say "some"?

A. Sir, I honestly don't recall. If I could see the applications, I could tell you exactly.

Q. I'm going to show you what's been previously marked Commission Exhibit C-14, C-15, and a packet, C-16, 1 through 71, and I would ask you to do this: If you will—I'm also showing, in addition, C-13. I don't believe I mentioned that. If you will, I would like to have you look through every one of these and segregate from this stack the ones that you did not fill out.

A. Sir, I filled out all of these except two and one partial.

Q. All right. So of the 1 through 71 and the other three I showed you, it's only two that you did not fill out yourself; isn't that so?

A. And one partial, sir.

Q. And one partial.

A. But I did not sign anyone's names to any of those ballots.

Q. No, I didn't suggest you did.

A. Okay.

Q. The fact is, the voter did; isn't that so?

A. Yes, sir. Well, to the best of my knowledge.

Q. Now, with respect to the applications, where did you fill them out?

A. At my home.

Q. So that you didn't fill them out in the presence of the voter; is that right?

A. No, sir.

The Cheesman Absentee Ballot Application

Witness Hegyi was shown a blown-up exhibit of an application for an absentee ballot in the name of Harold E. Cheesman, who was to testify later on this subject. Counsel Rhoads asked Mr. Hegyi if the printing on the ballot was his handwriting:

Q. You filled it out?

A. Yes, sir.

Q. And I assume you did not, of course, sign "Harold E. Cheesman"?

A. No, sir.

Q. Now, if you will, direct your attention up to here where it says, "Check reason for ballot," and checked in here is, "I expect to be absent from the State of New Jersey on Election Day."

A. Yes, sir.

Q. Well, who checked that?

A. I did, sir.

Q. How did you know that Mr. Cheesman was not going to be in the state on election day?

A. That was one that I did not handle, sir, and I—to the best of my recollection, it was told to me that that would be the case.

Q. In other words, someone else told you that Mr. Cheesman was going to be out of state?

A. Yes, sir.

Q. Who was the someone else?

A. I think it was Mayor Carnassale.

Q. And upon his word, then; you ticked that off?

A. Yes, sir.

Q. Being out of state. You never called up Mr. Cheesman prior to ticking that off, did you?

A. No, sir.

Q. And ask if you're going to be out of state?

A. No, sir.

Q. The fact is, with all the applications you identified, with the exception of one, I believe, they were all ticked off out of state; isn't that fair to say?

A. It's fair to say without checking it.

Q. When you filled these out, had all the voters told you they would be out of state?

A. Sir, the ones I handled, as I said, I handled a certain percentage of them, the ones that I personally handled, it was indicated to me that that would be the reason why they wanted an absentee application ballot.

Q. Well, let's just for a moment stay with the ones you handled. You say it's a percentage of them. What percentage of them?

A. I would say, approximately thirty-five to forty, forty per cent.

Q. Thirty-five or forty. So let's say you handled maybe—I don't know—thirty.

A. Thirty-two, thirty-two.

Q. Let's say thirty you handled. You filled these out out of the voter's presence; is that correct?

A. The applications, yes, sir.

Q. Well, how was it that you were able to remember of those, let's say, thirty applications the individual reason for each one of these voters to be able to vote absentee?

A. That's how I was going to remember, I just remembered, sir.

Q. It wasn't that you just on your own ticked off this reason?

A. No, sir; no, sir.

Q. Mr. Hegyi, did you take any notes when you went around to the voters? By that I mean, if you said to a voter, "Are you going to be out of state?"

Are you going to be ill? Are you going to be working?", et cetera, would you write down notes?

A. No, sir.

Q. Just remembered all that?

A. Yes, sir.

Commission counsel asked what Mr. Hegyi's next step was after filling out the application forms for absentee ballots:

Q. Now, having once filled these out, what did you do with them?

A. I then took them down to the county clerk's office.

Q. And did there come a time when you were actually given the ballots?

A. Yes, sir.

Q. Well, again I'm going to direct your attention to this area of the application, this area in stars, and look below the word "or," and it says, "If you are sick or confined, you may apply to the county clerk during business hours to 3:00 p.m. of the day prior to election via authorized messenger designated." You are not on here?

A. No, sir.

Q. Well, how did you get Mr. Cheesman's ballot?

A. I said it was given to me by the mayor, sir. Oh, the ballot. I'm sorry. I thought you meant the application.

Q. The ballot.

A. I went down the clerk, and the applications which I had taken down, one of Mr. Kelly's employees had a typewritten list with all the names on it and it was a space down there where my name had been typed in—I don't know if it was typed in or not—and I signed for the ballots and I was then given the ballots by one of the workers in Mr. Kelly's office.

Q. But the fact is, Mr. Hegyi, you were not the authorized messenger according to this application, were you?

A. Well, I can't make a determination on that, sir. You're telling me to say something that I don't know

whether I was an authorized messenger or not. I know that in three previous years I had followed the same procedure, and I had no one—or I had not signed as the authorized messenger. It was the same procedure; I would go down and pick up or sign for a list of ballots, the names of people who had requested absentee ballots, and then I would sign for them and I would—

Q. Excuse me, Mr. Hegyi. Without getting into the entire history, the fact of the matter is, on all of those applications you did not appear as the authorized messenger on any of them, did you?

A. No, sir.

Q. Mr. Hegyi, I just want to be completely clear. You would take the application and have the voter sign it, and then you would take it back to either your house or some place and fill it out for them. Right?

A. After they had indicated for me the reason why they wanted to vote absentee.

Q. So the answer to my question is yes, I assume. Right?

A. Yes, after they signed it I took it back home with me, yes, sir, and fill it out there.

Q. Now, having once received the ballots from the county clerk, what did you do with them?

A. I proceeded to give the mayor those that the applicant—applications which he had given me, and then I proceeded to distribute the ballots which I had secured applications for myself.

Q. Now, did you at any time ever go to any voter with the mayor—and by “mayor,” of course, I mean Edward Carnassale, who was a candidate in the primary—and solicit them to vote absentee for reason that Mayor Carnassale was a write-in candidate and that was the only way they’d be able to vote for him was by absentee ballot?

(Whereupon, the witness confers with counsel.)

A. Sir, could you be more explicit with that question?

Q. Sure. Did you ever go to a voter, in the company of Edward Carnassale, and solicit, ask, that voter to vote by absentee ballot because Mayor Carnassale was a write-in candidate and that would be the only way that they’d be able to vote for him?

A. I don’t recall, sir. I may have. I went to—that’s been quite some time ago, sir. I really don’t recall.

Reverend Carthan’s Absentee Ballot

To refresh Mr. Hegyi’s memory, Commission counsel referred to the absentee ballot of Reverend George Carthan, Sr., who also was scheduled to appear later as a witness. Mr. Hegyi said he knew Mr. Carthan as a local voter. Counsel:

Q. Did you, in fact, go to him and solicit him to vote absentee ballot? I don’t care for what reason. Did you ever do that?

A. Sir, I—well, there, in the past years, there was a couple of times that I recall that I was over at his home campaigning.

Q. Are you able to answer my question?

A. Sir, I said—

THE CHAIRMAN: Not that you were there campaigning. The question was: “Were you there for the purpose of soliciting him to vote absentee?”

A. Sir, I recall being there on several occasions, but what the conversation was I don’t recall.

Q. Well, this may refresh your recollection a little bit. This is marked C-15, Commission Exhibit 15, and it’s the application of a George Carthan. And tell me, didn’t you fill that in?

A. Yes, sir.

Q. Now, does that refresh your recollection of the fact that, yes, you were in the presence of Mr. Carthan and asked him to vote absentee?

A. It refreshes my recollection, sir, that I got an application for an absentee ballot from Mr. Carthan. It does not refresh my recollection as to what transpired or what was said, sir.

Q. All right. Did there come a time, prior to submission of the absentee ballots—by that I mean prior to June, I guess, June 8th, or June 6th, 1978—that you went to the home, in the company of Edward Carnassale, the home of Mr. Carthan, when he was about to send in his ballot, and tell him that you will take it to the county clerk, or words to that effect?

A. I do recollect, recollect, sir, that one occasion. I don't know what election it was or when, but it seemed to me he did have an absentee ballot in his hand.

Q. And the fact is you said to him, "We told you to give us that ballot unsealed," or words to that effect, didn't you?

A. I don't recall anything like that, sir.

Q. You don't recall saying that?

A. I don't recall that.

Q. Do you recall hearing it said, perhaps Edward Carnassale saying it?

A. No, sir, I don't recall the conversation.

Q. Do you recall doing something like taking an envelope from Mr. Carthan, sealing it, and saying words to the effect, "It's not in here"? Do you recall anything like that?

A. No, sir.

Q. As a write-in-candidate—by that I am referring to Mr. Carnassale—that would require literally that a voter put his name on the ballot if he wants to vote for him, wouldn't it?

A. You could put on the sticker, sir, or write his name in. It's been my experience that by voting absentee you can do it two ways.

Q. You say putting the sticker?

A. Sticker, an adhesive-type implement with the candidate's name written, printed or whatever on, on the implement, and placed in the ballot and an X placed, X or mark placed behind the candidate's name.

MR. RHOADS: May I have C-12, please.

* * *

Q. And for reference, this is Commission Exhibit 12 and this is the blow-up of that ballot. And, of course, you can't see three-dimensionally, but this is the area we are referring to as stickers.

A. Yes, sir.

Q. Is that correct?

And those stickers, amongst others, had the name Edward P. Carnassale on them?

A. Yes, sir.

Q. Well, at any time prior to the actual date of the primary did you give stickers to voters so that they could put them on here?

A. I don't recall if I gave stickers to voters. I gave—I was speaking about the primary election. I know the mayor mailed out stickers. I had some stickers and I possibly gave voters stickers, yes, sir.

Q. Did you tell them—

A. Again, I don't recall that whether I did or not specifically.

Q. Well, let's assume you did. Did you tell them what to do with those stickers?

A. Yes, sir.

Q. What did you tell them to do with them?

A. Well, if they asked me for instruction, I told them how to vote absentee.

Q. Well, with regard to the stickers, I'm asking you, what did you tell them to do with those stickers with the names on it, Edward Carnassale?

A. I told them, if they were interested in voting for the mayor, they'd put a sticker were it says, "Mayor: Vote for one."

Q. Okay.

A. And mark the box accordingly.

Q. So, for instance, this ballot is interested in Edward P. Carnassale for mayor because there is a check next to his name?

A. Yes, sir.

Q. So you say, in essence, put the sticker here, put a check there?

A. Yes, sir.

Q. All right. Now, Mr. Carnassale—excuse me. Mr. Hegyi, after having delivered ballots to the voters, did you ever have an occasion to actually assist any voters in filling out any portion of that ballot? And by that I mean certificate, envelope, what-have-you, the paraphernalia of the absentee ballot.

A. Sir, in the primary election, it's my recollection that I assisted many voters in some phase of the electoral process.

THE CHAIRMAN: With respect to the absentee ballot, specifically to the question, Mr. Hegyi.

A. Yes, sir, I, I filled in, you know.

Q. During the primary election did you have an occasion to assist any voters, absentee voters, in filling out, let's say, the certificate of their absentee ballot?

A. Yes, sir, a certificate of the absentee ballot, yes, sir.

Q. And with respect to that certificate of the absentee ballot, what was it you would do?

A. Well, if I saw any of them, I could tell you exactly what I did, sir.

I would—if memory serves me right, there's a space at the top that says, "Name and address." I filled in many of those. And I don't know, it seemed to me that—well, that's one specific thing that I remember I did. I filled in the name and address, and above, I think, where the signature of the voter is, I think it says, "Print your name," I think I printed many of them in.

Q. Now, sir, I'm going to show you what has not been marked, and I believe we should have it marked at this point. This would be C-22. This proports to be a certificate of a civilian absentee voter, as well as the envelope.

(Certificate and envelope for Harold E. Cheesman received and marked Exhibit C-22.)

Q. Mr. Hegyi, I'm going to show you what's just been marked C-22. Would you look at that, and I will direct your attention to where it says, "Certificate of Civilian Absentee Voter." The areas that

are filled in there in printing, is that what you are referring to?

A. Yes, sir, plus, in addition to that, under here it says, "Name of party." I wrote in "Democratic" here, sir.

Pleads the Fifth Amendment

Commission Counsel pressed the witness for more particular answers to questions about handling absentee ballots he had obtained for local residents. However, Mr. Hegyi during this portion of his testimony on four occasions utilized his constitutional privilege of refusing to answer under the protection of the Fifth Amendment, on advice of his counsel Martin J. Queenan. The testimony:

Q. Did you ever assist anybody actually in putting any writing on a ballot?

(Whereupon, the witness confers with counsel.)

A. Sir, I submit to this committee that, inasmuch as this matter is under investigation by the Burlington County Prosecutor, and on the advice of my attorney, I plead the Fifth Amendment on that question, sir.

THE CHAIRMAN: In other words, for the record, you feel that the answer that you might give us here this afternoon would have a tendency to incriminate you if you were to respond?

(Whereupon, the witness confers with counsel.)

THE WITNESS: Sir, that is the thrust of the prosecutor's investigation.

THE CHAIRMAN: Well, understanding that we both serve different functions, so that our record is clear, when you say you are taking the Fifth Amendment, you are specifically saying you refuse to answer on the grounds that the answer here might have a tendency to incriminate you; is that correct?

(Whereupon, the witness confers with counsel.)

THE WITNESS: That's correct, sir.

Q. Mr. Hegyi, I want to direct you again to this exhibit that I have had blown up, and I will represent to you that it is an actual ballot submitted. I will direct your attention to the printed word "Fieldsboro," as well as the number indicating "1st Ward, 1st District." Isn't it a fact that you put that on there?

(Whereupon, the witness confers with counsel.)

A. For the reasons outlined before, sir, I plead the Fifth Amendment, sir.

Q. Well, Mr. Hegyi, getting back for a moment to Mr. Carthan, when you—strike that.

Having now gone over the testimony which involves these stickers, does that refresh your recollection as to whether or not you took the envelope containing the ballot from Mr. Carthan, felt it and said, "They're not on here"?

A. No, sir, I don't recall anything like that at all, sir.

Q. Do you recall seeing Edward Carnassale do that and say, perhaps to you, "They're not on here"?

A. No, sir, I don't.

Q. All right. Now, Mr. Hegyi, with regard to the November 7th election—

A. Yes, sir.

Q. —this past November 7th, general election, again, Mr. Carnassale was a write-in candidate for mayor, isn't he?

A. Yes, sir.

Q. Why is he?

A. He decided to run for office, to seek reelection.

Q. He lost the primary, didn't he?

A. He lost the primary, sir, because all the ballots were thrown out.

Q. Why were they thrown out?

A. If the ballots had not been thrown out, he would have been the winner.

Q. So I understand. Why were they thrown out?

A. Because the, I think, the judge ruled that the inner envelopes were not sealed and that the secrecy of the ballot was violated.

Q. Well, it was you, in a great many instances, that brought these envelopes containing the ballots supposedly to the board of elections, wasn't it?

A. I think I brought almost all of them there, sir, in the June primary.

Q. Well, when you got them from the voter, were they sealed?

A. I don't recall, sir.

Q. Well, do you recall ever opening any and looking at the ballot?

A. No, sir, I don't recall. That, as I said before, that election has been, although as you stated it's only June, but in events that have transpired since, that is far off, really, and I'm quite candid about it, sir.

Q. All right. Maybe we will be a little better with the November general election.

A. Yes, sir.

Q. That was just this past month?

A. Yes, sir.

Q. With respect to that election, did you again solicit on behalf of the candidate Edward Carnassale?

A. Yes, sir, I did.

Q. And with respect to the stickers previously alluded to, did you have those stickers?

A. Yes, sir.

Q. Did you, in fact, pass them out to various voters?

A. I think I passed some out. But, again, the mayor did mail them out and he personally passed out stickers himself.

Q. And did you, in fact, solicit people to vote absentee?

A. I didn't solicit them to vote absentee, sir. They indicated to me that they wanted to vote, for one reason or another, absentee and I would secure them an application and a ballot.

Q. So they would solicit you for aid in getting an—

A. Well, during the campaign, sir, when they indicated to, for reasons permitted to vote absentee, I said, "Okay, I can get you an application and we'll get it filled out and then we'll get your ballot back."

Q. Did you fill out applications in the general election as well?

A. Yes, sir.

Q. Is it fair to say about the same amount?

A. No, sir, I don't think so.

Q. More?

A. Oh, a lot less, I think, sir.

Q. A lot less.

A. Yes, sir.

Q. Well, were the reasons again that these people would be out of state?

(Whereupon, the witness confers with counsel.)

A. Sir, I think the reason is that they might be out of state or they expect to be out of state, not that they will be out of state.

* * *

Q. All right. Mr. Hegyi, that's a relatively small town, is it not?

A. Yes, sir.

Q. Approximately what, 350 voters?

A. About 310 voters, sir, and about 650 population.

Q. Isn't it a little unusual to have, say, seventy-four people all leaving Fieldsboro and the state of New Jersey on one day?

A. Sir, I don't think it was a question about all leaving Fieldsboro. They might be out. I knew there were some truck drivers who were subject to call at any hour of the day, and I put the applications in. They were approved by the election board, and subsequently I did pick up—

Q. Okay.

A. —fifty ballots.

Q. You answered the question. I asked you if you thought it was unusual. Obviously, you didn't.

With respect to the general election, now, do you recall ever going to any voter in the town of Fieldsboro and saying to that voter, "Just sign this certificate and I'll take care of this for you," meaning I'll take care of the ballot and filling out the certificate and all the rest of it?

(Whereupon, the witness confers with counsel.)

A. Sir, for the reasons outlined before, I plead the Fifth Amendment on that.

Q. Well, I'll be more specific. Do you ever recall going to—well, strike that.

Along a different vein, do you ever recall going to any voter and promising them anything if they were to vote absentee, and, more particularly, if they were to vote for Edward Carnassale in the general election?

A. For the same reasons outlined before, sir, I plead the Fifth Amendment.

EXAMINATION BY THE CHAIRMAN:

Q. As I understand it, there were 310 registered voters in Fieldsboro?

A. I think that's pretty close figure, sir.

Q. And in that primary—

A. Excuse me. I would implement that with there are, I'll say, around twenty, I think, that should be stricken from the rolls. They've either left town or deceased or whatever. But a more accurate would be around 310, 315.

Q. 310 would be more accurate after you strike off that twenty?

A. Yes, sir; yes, sir.

Q. And of the 310 registered voters, some seventy-six applied for absentee ballots?

A. I think there was eighty-some, sir.

Q. Eighty-some?

A. Yes, sir.

Q. *Eighty-some out of 310?*

A. Yes, sir.

Q. *That's a big percentage of the town that's out of town on election day, don't you think so?*

A. I would say it's a good percentage, yes, sir.

The Mayor's Testimony

Edward P. Carnassale, who was the mayor of Fieldsboro, followed Mr. Hegyi as a witness. Under questioning by Commission Counsel Rhoads, the mayor recalled that he lost the June, 1978, primary election for mayor as a write-in candidate but appeared as a write-in candidate at the General Election in November, 1978. Counsel:

Q. *Did you win that election?*

A. Yes, sir.

Q. *Obviously, you are mayor today.*

A. Yes, sir.

Q. *With respect to your running as a write-in candidate, did you have any mechanical means other than a voter actually writing your name in the ballot?*

A. Yes, sir, stickers.

Q. *Who had the stickers?*

A. Well, I had them. I'd give them out to different people, and I also mailed them out to a number of people in town; say, a hundred people in town, hundred families

Q. *What were the stickers like? What did they look like?*

A. Roughly, one-inch by two-inch with my name on them.

Q. *Did you have them made up?*

A. Yes, I did.

Q. *And you would either hand them out or mail them out to various voters?*

A. Yes, sir.

Q. *With respect to the election, and I'm going to gear my questions now to the primary, during that time did you solicit or otherwise assist anyone in voting absentee?*

A. Yes.

Q. *Who were the individuals that you assisted?*

A. My mother.

Q. *And what did you do by way of assistance for your mother?*

A. Well, I showed her how to vote. See, my mother can't read or write English.

Q. *Well, I'm concerning myself now, if I may, to actually getting the ballot. By that I mean the application for an absentee ballot.*

A. Yes, sir.

Q. *What did you do with respect to that, if anything?*

A. I got her a ballot and had her fill it out.

Q. *The application?*

A. Yes.

Q. *You helped her fill it out?*

A. Yes, I did.

Q. *Anyone else other than your mother?*

A. No, I don't think so, sir.

Q. *Did you ever pass out any applications to voters within the town of Fieldsboro?*

A. People asked me, yes, sir.

Q. *Did you ever collect them from them?*

A. Yes, I did.

Q. *What would you do with it when you collect them?*

A. Give it down to the clerk's office.

Q. *County clerk's office?*

A. Yes, sir.

Q. *Do you know a gentleman by the name of Frank Hegyi?*

A. Yes, I do.

Q. *Was he campaigning on your behalf?*

A. I presume he was.

Q. *Did you give him any applications?*

A. I, I know Mr. Hegyi was going down to the election board, and I gave him down there—gave them to him to take down.

Q. Let me clarify that. Did you give him any applications that the voter had merely signed but not filled out?

A. No, no.

Q. Did you give him any applications that a voter had signed and filled out?

A. Had signed and filled out?

Q. Yes.

A. Yes, sir.

Q. How many?

A. I don't recall, sir. Half a dozen, maybe ten.

Q. May I just have a moment, please.

Sir, I'm going to show you exhibits that have been previously marked. This is C-15, C-14, C-13, C-16, which is seventy-one exhibits within C-16, and I would like to have you go through those and you pick out the ones, then ten or so in there, that the voter himself filled out that you gave to Mr. Hegyi.

A. The first one's my mother's, sir. I filled this out.

Q. I believe you had just testified—and correct me if I'm wrong—that you picked up approximately nine or ten applications for absentee ballots from voters that had been filled out completely by the voter and gave them to Frank Hegyi.

A. I say, I said about a half a dozen, maybe nine or ten. I can't recall.

Q. Well, even a half a dozen. Pick out the half a dozen.

A. I think these are it, sir.

Q. For the record, I count four, and I would like to show you two of them and I want you to look at those carefully again and be certain. Are these two that the voter filled out?

A. I really can't recall, but I know—

Q. Can't recall.

A. I'm just looking for another one in here, sir. Can I see those, sir?

I think it's just these two, sir.

Q. Just those two?

A. I'm not sure about these.

Q. Would you care to change, then, your answer to the question of how many you picked up that were actually filled out by the voter?

A. I thought it was about six, but, you know, I don't see six in there.

Q. Two?

A. These look like—you know, I don't see it. These are the only ones I can tell.

Q. Mr. Carnassale, then, did you pick up absentee-ballot applications that were merely just signed by the voter?

A. I can't recall, sir.

Q. All right. Now, having once gotten however number of applications you did get, what did you do with them?

A. The ones that were filled in, I send in. You know, I had them brought in.

Q. You had them sent down to the county?

A. Uh-huh.

Q. Did there come a time when, let's say, you got a hold of the ballots?

A. Did I get a hold of the ballots?

Q. Yes. Did you ever pick up any ballots to send out to voters?

A. I can't recall in the primary, but I know in the general I did.

Q. All right. Just for a moment, though, we will stay with the primary.

A. Okay.

Q. With respect to the primary, then, your answer is you can't recall whether you actually gave ballots out to voters; is that so?

A. Oh, yes, I gave them out.

Q. That's what I'm asking.

A. I thought you said if I picked them up at the county.

Q. No, I'm not asking you that.
You gave them out to some of the voters?

A. Yes, I did.

Q. About how many?

A. I say, approximately twenty maybe. Ten, twenty.

Q. Where did you get the ballots to pass them out to the voters?

A. I got them from Mr. Hegyi. They were, you know—he brought me some and I gave them out to the voters because I knew the voters, knew who the voters were.

Q. When you went to the voters, what would you say to them when you gave them the ballot?

A. I would ask them to vote for me.

Q. When you would hand them their ballot, you would ask them to vote for you?

A. I would ask them before that, too.

Q. Well, did you do it when you handed them the ballot?

A. I don't recall, sir.

Q. Did you ever have occasion to hand someone a ballot and, along with the ballot, hand them some stickers with your name on it?

A. Yes, and I also, you know, if I thought I didn't mail it to them, or I asked some of them, I know, if they got the stickers in the mail because I mailed them out, and if they didn't have them, I know I would give it to them because I would carry them around with me.

Q. Do you recall ever soliciting any voter? By that I mean going to the voter and saying, "Vote absentee, it's the only way you can vote for me because I'm a write-in candidate."

A. No.

Q. Never did that—

A. No.

Q. —to anyone?

A. I don't recall.

Q. Do you ever recall going to a voter's home in the company of Mr. Hegyi?

A. Yes, I do.

Q. And along those lines, do you ever recall going to a voter's home and attempting to take his ballot from him in order to deliver it to the town clerk?

A. Yes, yes. I, you know, I went to a person's house, and if they had their ballot, you know, I would say I would see that I got it to the clerk. You know, I would take care of that.

Q. And again following that thought, did you ever have an occasion to say to a voter, "You should have given me this unsealed"?

A. No.

Q. Meaning the ballot and envelope.

A. No, sir.

Q. Were you ever in the company of Mr. Hegyi when he said it to a voter?

A. No, sir.

Q. Do you know Mr. Carthan?

A. Yes, sir.

Q. Did you ever say it to him?

A. No, sir.

Q. Did you ever attempt to take Mr. Carthan's ballot or envelope in your hand and feel it?

A. No, sir.

Q. Feeling for the sticker?

A. No, sir.

Q. Do you recall Mr. Hegyi ever doing that?

A. No, sir.

Q. Did you ever have an occasion to actually assist a voter in filling out his, let's say, certificate and ballot?

A. In the primary?

Q. Yes.

A. Yes, sir.

Q. I will show you what's been previously marked Commission Exhibit 17 and Commission Exhibit 17A. I would ask you to look at those two documents, and

tell me, did you ever assist the voter in filling out those two documents?

A. Yes, sir.

Q. For what reason did you assist the voter?

A. Just a minute, sir.

The reason's stated at the bottom where I signed, sir. Want me to read it to you?

Q. Yes, please.

A. "Person assisting blind voter in marking ballot and completing and signing certificate herein sign on"—"sign following statement: Voter assisted by," my name is signed there.

Q. And, of course, you were a candidate for mayor at the time when you were assisting?

A. Yes, sir.

Q. Now, with respect to Exhibit 17, this certificate, if you will, let's keep that one in your hand for a moment. What did you actually do by way of assistance on that?

A. Up at the top where it says, "I," I put Mr. Porter's name in here. "16 Hamilton Street, Fieldsboro, New Jersey. Name of party: Democrat." That's all.

Q. If you will look at the bottom right-hand corner, there is a signature there. Did you put that on there?

A. No, I didn't.

Q. Do you know who put it on?

A. Mr. Porter.

Q. He signed his own name to that; is that correct?

A. Yes, he did.

Q. Now, I'm going to show you 17A. That's the ballot. And will you look at what is the inked printing on that ballot, particularly "Fieldsboro, Ward 1, District," et cetera? Did you put that on there?

A. Yes, I did.

Q. Looking down in the column where it says, "Personal Choice," and "County Committee," and reading down, "Edward P. Carnassale." To the left of that is, "Mayor: Vote for one." Did you write in the name "Edward P. Carnassale"?

A. Yes, I did.

Q. And to the right of "Edward P. Carnassale" is a box with an X on it. Did you put it on there?

A. I don't recall if I put the X in there, sir.

Q. You don't recall if you put it there?

A. I don't recall. I could have and I could have not.

Q. May I just have one moment, please.

Excuse me if I have asked this, but is it fair to characterize Mr. Hegyi as, say, your campaign manager for this write-in election, both the primary and general election?

A. I wouldn't call him my campaign manager, sir. I didn't have no campaign manager.

Q. What would you characterize him as?

A. A person that voted for me, I presume.

Q. Period?

A. Yes.

Q. Didn't do anything more for you than anybody else did for you; is that right?

A. Well, I don't know. I presume, you know, he worked on absentee ballots, getting absentee ballots.

Q. Well, then, would you characterize him, let's say, as a campaign helper?

A. If you would call it that, I guess. You know, if that's what you would call it.

Absentee Voter Testifies

Witness Harold E. Cheesman testified how he voted absentee in then-Mayor Carnassale's kitchen, which adjoins Mr. Carnassale's tavern. Questioned by Commission Counsel Charles E. Blumenstein, Mr. Cheesman said he first asked Mr. Carnassale how to get an absentee ballot application because he was going to "be out of state" on election day. Mr. Carnassale told him Mr. Hegyi had some applications at his home, whereupon the witness went to the Hegyi house and was given an application form.

Counsel Blumenstein showed the witness an exhibit in the form of the Cheesman application and asked him to identify the handwriting on it. Mr. Cheesman said his signature was at the bottom of the application. Counsel:

Q. Now, referring to the other parts of the application which have been filled in by pen, where it says, "June 6," the word "Democrat" in the upper right-hand corner, "Fieldsboro," et cetera, the two addresses, is that your handwriting?

A. No, it's not.

Q. Do you know whose it is?

A. That's Mr. Hegyi's handwriting, I believe.

Q. That would be Frank Hegyi?

A. Correct.

Q. But you said it was your signature, correct?

A. Yes, it is.

Q. Was the application blank at the time you had signed it?

A. No, I really don't recall.

Q. All right. Referring specifically to the mark in the box underneath where it says, "Check reason for ballot," you will notice there is a mark next to the sentence which reads, "I expect to be absent from the State of New Jersey on Election Day"?

A. Right.

Q. Did Frank Hegyi also mark that?

A. I really don't remember, sir.

Q. Well, did you mark it?

Let me put it this way: Did you tell Frank Hegyi that you expected to be out of the state and let him mark it for you?

A. Yes, I believe I did, yes.

Q. That means that you didn't mark it?

A. No, I don't believe so.

Q. Were you, in fact, out of the state on election day?

A. No, I wasn't.

Q. Where were you, in fact?

A. I was in Fieldsboro.

Q. Now, turning to the ballot itself, not the application any longer, did there come a time when you received that actual ballot?

A. Yes, I did.

Q. And by what means did you receive it? For instance, did it come in the mail or did someone hand it to you?

A. It was handed to me.

Q. Who handed it to you and where?

A. Mr. Carnassale at Mr. Carnassale's residence.

Q. At his residence?

A. Right.

Q. Are you sure that he didn't hand it to you at his bar? Or are they at one in the same, in fact?

A. Well, it was in the kitchen. It wasn't in the bar.

Q. All right. Let me ask it this way: Is Mr. Carnassale's home attached to his bar?

A. Yes, it is.

Q. All right. Now, when he handed that to you, it was in a sealed condition. Correct?

A. Correct.

Q. And after he gave it to you did you then take it into the kitchen?

A. I was in the kitchen.

Q. Well, then, did he—

A. I was called, I was called in.

Q. Well, did he leave the kitchen after that?

A. Yes, he did.

COMMISSIONER LANE: I take it the kitchen adjoins the bar; is that right? Adjoins the bar, the next room to it or—

THE WITNESS: Yeah, it's the next room in the back, yes, sir.

Q. Mr. Cheesman, I'm going to show you what's been marked C-22A for purposes of identification, which I represent to you is the ballot that you actually cast in that election, and you also notice that Exhibit C-12, which is displayed on the easel, is an exact reproduction of that ballot. Now, focusing either on the ballot itself or on the exhibit, you will notice there are stickers on there with the candidates' names typed thereon. Do you recognize them?

A. Yes, I do.

Q. Did you place those stickers on there?

A. Yes, I did.

Q. Who gave you those stickers?

A. They were on my kitchen table.

Q. My question was: Who gave them to you?

A. Nobody gave them to me. They was on my table.

Q. Would it jog your memory if I were to tell you that earlier you had testified that Sexton Woodward was the individual who gave them to you?

A. I said he probably did.

Q. He probably did.

A. Yes.

Q. And Sexton Woodward was a candidate in that election; is that correct?

A. Yes, he was.

Q. Now, when you went to Edward Carnassale's bar that day, did you go there with the specific intention to cast your ballot that day?

A. No, not really.

Q. Now, you have testified that, when you received the ballot from Mr. Carnassale, you were in his kitchen and Mr. Carnassale then exited from the kitchen. Correct?

A. Correct.

Q. Was there anyone else in the kitchen then?

A. No, there wasn't.

Q. Now, at that time did you cast your ballot?

A. Yes, I did.

Q. Now, could you explain exactly how it was you went about casting that ballot?

A. Well, I had the stickers from my house.

Q. You brought those stickers with you?

A. Yes, I did.

Q. Did you bring all of them with you?

A. No, all but one. I went back and got that one.

Q. I'm sorry. You brought one or you went back to get one?

A. I went back to get one. I didn't have them all with me.

Q. All right. You placed approximately three stickers on in the kitchen and then you returned home to get the additional sticker?

A. Right.

Q. To be more specific, did you place that sticker on the ballot at your residence or did you return to the bar to put that additional sticker on?

A. At the bar.

Q. So you made a special trip home to get the stickers?

A. Yes, I did.

Q. And then returned to the bar to place that final sticker on?

A. Right.

Q. Would it have been possible merely for you to write in the name of that additional candidate rather than make a special trip home?

A. No.

Q. It would not have been possible?

A. Not since I had the other three on there.

Q. But would it have been possible simply to pick up a pen and write in the name of the final candidate?

A. I didn't do it that way. I went home and got the sticker.

Q. Well, did anyone tell you that you should not write in the name of the candidate?

A. No.

Q. Did anyone tell you that you should use the stickers involved?

A. No.

Q. All right. Turning to the ballot itself and your placing the stickers on there, when you returned with the final sticker, did anyone see you put that sticker on your ballot?

A. No.

Q. In other words, you cast your ballot in absolute secrecy?

A. Correct.

Q. All right. Now we have gotten you to the point where you are in the kitchen for the second time and placed the fourth sticker?

A. Right.

Q. What did you do with it then, the ballot, that is.

A. I put it in an envelope, sealed the envelope.

Q. Could I interrupt you for a second. What was the color of that envelope?

A. It was white.

Q. Now, what did you do with the white envelope?

A. I sealed it and returned it to Mr. Carnassale.

Q. What did Mr. Carnassale do with it?

A. I didn't see it from thereafter.

Q. Did you see what he did with it?

A. No, I did not.

Q. Now, from the time that you received the ballot from Mr. Carnassale in its sealed condition to the time you placed all the stickers on there, including your trip home, to the time you sealed it, the white envelope, that is, and returned it to Mr. Carnassale, did anyone see your ballot?

A. No. The ballot I took with me when I returned to get the other sticker.

Q. I understand. All right. Turning once again to C-22A, which is the ballot we have been talking about, do you see the words "Fieldsboro" and "Democratic" written on there?

A. Yes, I do.

Q. Did you write them on there?

A. No, that's not my handwriting.

Q. Do you know whose handwriting it is?

A. No, I do not.

Q. Well, Mr. Cheesman, if I could see the former exhibit, which is C-12, and this, which is a blow-up of C-13, C-13 being the application you submitted, isn't it true that this handwriting here, "Fieldsboro" and "Democratic," is identical to the handwriting on that application where it also says, "Fieldsboro," and didn't you already testify that Frank Hegyi was the one who filled in that application?

A. They look the same, but I couldn't tell you that they are the same.

THE CHAIRMAN: They do look the same?

THE WITNESS: Slightly, slightly.

Q. Slightly the same?

A. I'm not saying they are the same.

Q. Well, if they are, in fact, the same handwriting, if they are, in fact, both the handwriting of Mr. Hegyi, then it's not possible for you to have cast your ballot in absolute secrecy, is it?

A. I cast my ballot in absentee secrecy.

THE CHAIRMAN: Let me ask you this: Was "Fieldsboro" and the other designation at the top of the ballot at the time you received it in the kitchen?

THE WITNESS: I really don't recall.

THE CHAIRMAN: Was it a clean ballot without any markings on it, do you recall, when you received it?

THE WITNESS: I believe so, Your Honor.

THE CHAIRMAN: You believe so?

THE WITNESS: I'm not quite sure.

THE CHAIRMAN: Now, Mr. Cheesman, —

THE WITNESS: I don't recall seeing "Fieldsboro" or "Democrat" up there.

THE CHAIRMAN: You don't recall seeing that on there?

THE WITNESS: No.

THE CHAIRMAN: Let me ask this: After you put the stickers on did you seal the envelope?

THE WITNESS: Yes, I did.

THE CHAIRMAN: Then do you have any suggestion as to how that printing could have gotten on there after you sealed it?

THE WITNESS: No. I do not.

THE CHAIRMAN: Okay.

Absentee Voter Carthan

Reverend George Carthan, Sr., was another Fieldsboro resident whose vote—on an absentee basis—was actively sought by Mr. Carnassale and his helper, Mr. Hegyi. Mr. Carthan testified next about his experiences during the local 1978 elections. Questioned by Commission Counsel Blumenstein, he recalled that the then-mayor Carnassale and Mr. Hegyi brought his absentee ballot application to him, which he signed in blank. However, he testified, some one else filled out the application, including the "mark" placed alongside the reason for voting absentee—that he would "be out of the state on election day." Counsel Blumenstein:

Q. *Did you put that mark there?*

A. No, I didn't.

Q. *Again, you wouldn't know who put that mark there, would you?*

A. I wouldn't know.

Q. *Did you tell anyone to put it there?*

A. No, sir.

* * *

Q. *Just so I understand you, I understand you to say that both Mr. Hegyi and Mr. Carnassale came to your residence and asked you if you would vote absentee in order that Ed Carnassale could run as a write-in candidate for the primary?*

A. That's true.

Q. *Now, did there come a time when you received the actual ballot for the June 6th primary?*

A. Yes.

Q. *Did they give you any stickers along with that ballot?*

At this point Mr. Carthan testified that "the mayor and Eddie" brought the ballot paraphernalia to him. Counsel sought to clarify his use of the "candidates' stickers" that were part of the package:

Q. *Now, I realize you haven't been here to understand what we're talking about, necessarily. But do you understand what I mean when I say did they*

bring the stickers with them? And on those stickers were the candidates' names typed thereon?

A. Well, I understand what you mean by "stickers," and—

Q. *Well, did they bring stickers with them when they brought the ballot over?*

A. It seemed like, seemed to me like, it seemed like to me like they—it was, they did bring them over, it seemed like.

Q. *And when it came time to cast your ballot, did you place any stickers on this piece of paper?*

A. No.

Mr. Carthan's failure to use the stickers on the ballot he got from Messrs. Carnassale and Hegyi didn't escape the candidate and his helper even though they were not present when he filled out his ballot. Mr. Carthan said he gave the ballot, sealed in a white envelope, to Mr. Carnassale. Counsel Blumenstein:

Q. *Then what happened after you handed the white envelope to Mr. Carnassale?*

A. Well, he picked it up and felt it, just felt it, like, and he told Hegyi that it seemed like it wasn't in there.

Q. *Well, did they say anything before they felt it, that you recall?*

A. No. When they come to get it, they just—I mean, when they come to get it, I just hand him mine and other three were on the table, and I went to get the other and he just felt it. That's all, he felt it, and he told Hegyi that he didn't think it was in there.

Q. *Mr. Carnassale said that?*

A. Yes, to Hegyi. So I didn't know what he meant by "wasn't in there," so—

Q. *Was there—at any time did either of the two people, either Mr. Hegyi or Carnassale, say anything to the effect your ballot should not have been sealed?*

A. Yes, they did tell me that.

Q. *Do you know which one said that, if you recall?*

A. I think it was Eddie. Eddie.

Q. *Carnassale?*

A. Carnassale, yes.

EXAMINATION BY THE CHAIRMAN:

Q. In other words, two things took place when they came back: One, they questioned why you had sealed the envelope. Is that correct?

A. Yes.

Q. And two, they felt and made a comment that it's not in there?

A. That's what the mayor said, yes.

Q. And as a result of that, you took it yourself?

A. I took it down myself.

EXAMINATION BY MR. BLUMENSTEIN:

Q. Do you know what it was they were feeling for?

A. I really don't know. He was just feeling it. I don't know what he was doing.

Q. At that point you simply became suspicious?

A. I got suspicious.

Q. And took it back?

A. Yes.

Another Absentee Voter

The next witness, John R. Porter, told how Mr. Carnassale "helped" him obtain and cast an absentee ballot. Commission Counsel Blumenstein:

Q. Now, referring to the primary election held on June 6th, 1978, not the general election just last month, did you have occasion to vote in that primary?

A. Yes.

Q. And by what method did you vote?

A. Absentee.

Q. Now, Mr. Porter, I show you what's been marked C-14 for identification, which purports to be the application you submitted in that election, and I ask you if you can recognize your signature at the bottom. Take your time.

A. Yes, sir.

Q. That is your signature?

A. Yes, sir.

Q. Now, referring to the printing throughout the rest of the application, is that your handwriting?

A. No, sir.

Q. Do you know whose it is?

A. Mr. Carnassale.

Q. Did Mr. Carnassale fill that in at your request?

A. Yes, sir.

Q. Now, did there come a time when you actually received the ballot?

A. Oh, two or three days after.

Q. And how did you receive it? By hand delivery, mail or—

A. Oh, I received it at his bar or home, whatever. He lives the same place.

Q. You went to Ed Carnassale's bar, in other words?

A. Right.

Q. And he handed it to you there?

A. Correct.

Q. Now, Mr. Porter, I'm going to show you what's been marked C-17 for identification, which purports to be the certificate of civilian absentee voter in that election, and I ask you again if that's your signature at the bottom?

A. Yes, sir.

Q. And throughout the rest of the application whose handwriting is that; do you know?

A. Mr. Carnassale's.

Q. And on the lower left-hand corner where it says, "Person assisting blind voter in marking ballot and completing and signing certificate herein sign following statement: Voter assisted by," and could you tell us whose signature is there?

A. That's Mr. Carnassale's.

Q. And did he fill out the certificate at your request?

A. Yes, sir.

Q. And did he fill out the ballot itself at your request?

A. Some of it and some not.

Q. Mr. Porter, I show you what's been marked C-17A for identification, which I represent to you is the ballot that you cast in that election. Now, if you can see, up above are the words "Fieldsboro." Over here, sir.

A. I can see.

Q. And an abbreviation for Democrat, and below that are the names of several candidates written in there by pen. Did you put those names in there?

A. No, sir.

Q. And words?

A. No, sir.

Q. Do you know who did?

A. Mr. Carnassale.

Q. Were you aware that Mr. Carnassale was a candidate in that election?

A. Yes, sir.

Q. Is it a fair statement to say, then to say, that the candidate himself was the one who assisted you?

A. Yes, sir. For my request, though, sir.

Q. Right, I understand. It's at your request. But the bottom line is that Mr. Carnassale checked his own name on your ballot. Is that correct?

A. He, he asked me each one that I wanted to vote for and he wrote it on there.

Q. But the bottom—but the point is, Mr. Carnassale put his own name on your ballot at your request?

A. At my request, in my presence.

EXAMINATION BY THE CHAIRMAN:

Q. Mr. Porter, do you know how many other people voted that night in that kitchen?

A. Not that particular day, sir.

Q. Are there quite a few that vote in that kitchen, or are you just one that happened to be there?

A. I happened to be there, and that particular day, as long as they did ask that, I did it. Actually, mine was did on the table next to the kitchen.

Q. No. All right. In order to assist you, you end up either in his kitchen or the room next to the kitchen to fill out the application, and then you went back to that same room and voted your ballot?

A. No, sir. I filled out the application on the tables next to the kitchen.

Q. Well, you were in his establishment?

A. Right.

Q. Now, my point is this, Mr. Porter: that on both occasions where you have to do something in order to vote absentee, one, fill out an application, and, two, actually vote the ballot, both things took place within Mr. Carnassale's establishment?

A. Yes, sir.

The Promised Zoning Variance

A promise of a zoning variance marked the absentee voting "assistance" offered to the next Fieldsboro witness, Mrs. Myra Ramirez. She was told by the mayor's campaign helper that after the election, "we can get the variance you want" to permit the conversion of the Ramirez home into a commercial print shop. The promise was not kept, the testimony showed. Commission Counsel John R. Dillon, III, questioned Mrs. Ramirez:

Q. Did you have occasion to vote in the most recent election, that is, the general election of November 7, 1978?

A. Yes.

Q. I see. Did you submit an absentee ballot in that election?

A. Yes.

Q. Would you please explain to the Commission the circumstances surrounding the submission of that absentee ballot?

A. From the very beginning?

Q. Yes.

A. Well, I had gone to Hegyi's liquor store to make a purchase and he asked me where my husband Jose was.

Q. When you say he asked you, you mean Mr. Frank Hegyi?

A. Mr. Hegyi.

Q. Okay.

A. Mr. Hegyi asked me where my husband Jose was. I told him he was outside waiting for me in the car.

As I was coming out, he followed me out, and I noticed he had two cards in his hand, which were the applications for absentee ballot. And he walked over to my husband's side of the car and he told my husband—he gave them to my husband, and he told my husband to just sign them; you know, for us just to them and he would do the rest. And I told him that I did not put my signature on anything unless I filled out everything myself.

Q. When he said he would do the rest, do you mean fill out the remainder of that application?

A. Yes. He just—all he wanted was just our signatures, you know, where it says, "Signature."

Q. On the bottom of the application?

A. Yes. That's all he wanted was just our signatures.

Q. Okay. And—

A. And I told him I did not put my signature on anything; that I would fill it out, you know, we would fill it out ourselves.

So he says, "Well, when you receive your absentee ballot, just sign it and bring it to me," because he says he wanted to put a sticker on it with Mr. Carnassale's name on it.

And we want to get a variance. Right now our house is residential, and we would like to have it turned over to commercial for a print shop. And my husband had asked him for an application for a variance.

Q. Okay.

A. And he told my husband not to worry about it. After elections—you know, he says, "After elections we can get that variance you want." And he said something about depended on what ball game you were in or something.

My husband and I really—we couldn't make out what he meant by it, so we got home and we started

thinking about it and we felt that what he meant by it was either, either for Mr. Carnassale or Mr. Tyler, the other guy running for mayor.

Q. Mr. Tyler was Mr. Carnassale's opponent in the election?

A. Yes. I don't know if that is what he meant, but that's what we thought he meant.

Then he just told us again why didn't we just sign the ballots there, and, you know, save us the—

Q. Sign the ballots or the applications for the ballots?

A. The application. I'm sorry.

Q. Okay.

A. He asked us again that why didn't we just sign the application and it would save us, you know, the bother of going back. But I said, no, that we would do it ourselves.

Mrs. Ramirez then said she and her husband obtained their ballots through the mail and, without reporting back to Mr. Hegyi, "did our own voting" and "mailed it ourselves" to be cast in the election. Counsel:

Q. As of this date you have not received a variance; is that correct?

A. No.

How the Haluskas' Absentee Vote Was Cast

Mr. and Mrs. Joseph Haluska, the final witnesses of the Commission's first public hearing day, testified that their absentee ballots were filled out and cast at the November election in Fieldsboro—but not by them. Counsel Dillon first questioned Dorothy Haluska:

Q. Did you have occasion to vote in the most recent election, that is, the election of November 7, 1978?

A. Yes.

Q. Did you submit an absentee ballot in that election?

A. Yes, I did.

Q. *Would you please explain to the Commission the circumstances surrounding the filing of that absentee ballot?*

A. Okay. Mr. Frank Hegyi came to my door on a Sunday, and he woke me from taking a nap with my children, and asked me to sign a piece of paper. And with being just woken up, I didn't know, you know, what it was, so I just signed it and I figured that it did have something to do with the voting in November. So I signed it, and Mr. Hegyi left and I went back to my nap. Then later on I woke up and I realized that it was the absentee-ballot request.

Q. *How did you come to that realization?*

A. Because I had voted absentee last year in the general election, last year.

Q. *Okay. Mrs. Haluska, I will show you what has been previously marked C-20 for identification, which is a Xerox copy of a civilian absentee-ballot application and a certificate of civilian absentee voter. I direct your attention to the signatures at the bottom of both of those documents, and I will ask you, are those your signatures?*

A. They are my signatures.

Q. *All right. I direct your attention to the remainder of the printing which appears on both those items, that is, the certificate of absentee ballot and the civilian absentee-ballot application, and I ask you, is that your handwriting?*

A. No, it's not.

Q. *Do you know whose handwriting that is?*

A. No, I don't.

Q. *All right. You stated that you were handed the absentee-ballot application, you signed it and you returned it to Mr. Hegyi. And it was not filled in?*

A. Right.

Q. *Did there come a time later on when you received an absentee ballot?*

A. Yes.

Q. *And when was that?*

A. It was on October 31st. I was in the middle of getting dinner and Mr. Hegyi came to the door, and

he said that he had the absentee ballot; he would like me to sign it and he would take it with him. So I signed it. I didn't—I asked him to leave it first, and he said, "Well, it only takes two seconds for you to sign your name to the absentee ballot and I'll fill out the rest for you." So I signed it and he put it back in the envelope and he took it with him.

Q. *Did you express your desire as to which candidate you cared to cast your vote for?*

A. Not to Mr. Hegyi, no.

COMMISSIONER LANE: Did you put anything on the ballot at all; any writing at all except your signature?

MRS. HALUSKA: No, I did not.

COMMISSIONER LANE: At the time you put your signature on was there anything else written on the ballot?

MRS. HALUSKA: Not that I had seen.

COMMISSIONER LANE: All right.

Q. *Okay. Did you come to find out at a time subsequent to when you handed the ballot to Mr. Hegyi how that ballot was voted?*

A. Mr. Hegyi said that night after I had signed it that it would have been for Mr. Carnassale.

Q. *Now, again directing your attention to C-20, with particular reference to the civilian absentee-ballot application, under the series of boxes there, under the title "Check reason for ballot," is checked "I expect to be absent from the State of New Jersey on Election Day." Did you check that ballot?*

A. No, I did not.

Q. *Okay. Did you indicate to Mr. Hegyi that you would be absent on that day?*

A. No.

THE CHAIRMAN: Were you absent on that day?

THE WITNESS: No. I was right in my home.

EXAMINATION OF MR. HALUSKA BY MR. DILLON:

Q. How did you vote in the November 7th, 1978, general election? And when I say that, I mean by what method did you vote?

A. Absentee.

Q. Mr. Haluska, would you please explain to the Commission the circumstances surrounding your obtaining an absentee ballot in that election?

A. Well, everything started back in 1977, the general election back there. Mr. Hegyi came over, wanted me to register to vote, and he had my wife's absentee ballot and I filled out some other cards and everything.

Q. When you say "other cards," you filled out some other cards?

A. Yes.

Q. Were these for the purposes of registering to vote?

A. I don't know what they were. I just signed them and he took care of the rest.

And he came back. He brought my wife's absentee ballot with him, and he told me it was too late for me to register to vote. "So we'll have to try next year," is what he said.

And then I didn't see Mr. Hegyi until Halloween night, October 31st, 1978, and when he brought me a paper over to sign and that was it; just signed the paper.

Q. When you say "a paper," did he bring over an absentee ballot for you to sign?

A. It was a piece of paper. It wasn't no ballot, it was just paper to sign.

Q. I see. Well, was it the same paper that your wife was asked to sign?

A. Yes.

Q. And that she's previously identified as an absentee ballot?

A. Right.

Q. Mr. Haluska, I show you what has been previously marked C-20 for identification, which is a copy

of an application for civilian absentee ballot, and adjacent to that on the same piece of paper is a certificate of civilian absentee voter. I ask you to look at the signatures at the base of both of those documents. Are those your signatures, respectively?

A. Yes, they are.

Q. Now, with regard to the rest of the writing that appears on both of those documents?

A. No, it's not mine.

Q. Mr. Haluska, it's your testimony that you did not file an application for the absentee ballot in the November 7, 1978, election; is that correct?

A. That's right.

Q. Did Mr. Hegyi ever explain to you how he came to have in his possession an absentee ballot for that election?

A. No.

Q. Did you sign that absentee ballot, what you indicated was a piece of paper?

A. The one I think, it was a green paper that he brought over on Halloween night. That's all I signed.

Q. Okay. Did you indicate on that ballot any—did you indicate the candidate of your choice on that ballot?

A. No, I didn't.

Q. Did Mr. Hegyi ever explain to you who that ballot was subsequently voted for?

A. No, he didn't.

Q. Did he instruct you on how the ballot should be filled out?

A. No.

EXAMINATION OF MR. HALUSKA BY THE CHAIRMAN:

Q. As I understand it, Mr. Haluska, then, you don't remember applying for the ballot in that last election?

A. Not this last election, I didn't apply for it at all.

Q. But the ballot showed up?

A. Yes, sir.

Q. Then you signed a paper attached to it and it went away from you in blank?

A. Right.

Q. So if that ballot was voted, it was voted by somebody else?

A. Right.

Q. And you were never asked for your choices in that ballot?

A. No.

EXAMINATION OF MR. HALUSKA BY COMMISSIONER LANE:

Q. And how did that ballot leave you?

A. What do you mean by that, sir?

Q. Did somebody take it? Did you mail it or what?

A. Mr. Hegyi took it with him.

Q. And you're sure at the time you signed the ballot there's nothing written on the whole form?

A. Positive.

Q. Except your signature?

A. That's it.

EXAMINATION OF MR. HALUSKA BY MR. DILLON:

Q. Did you express to Mr. Hegyi a desire to vote at the polls?

A. Yes, I did.

Q. And what did he say to you?

A. He says that they got the absentee ballot for me and I couldn't waste this; I had to vote absentee.

THE TESTIMONY—Second Day

The Commission's final hearing day on absentee ballot abuses, on Friday, December 15, 1978, began with a transitional statement by the then-Chairman of the Commission, Joseph H. Rodriguez:

As you know, witnesses under Commission subpoena testified yesterday on a variety of questionable activities relative to obtaining, distributing, processing and casting absentee ballots—in North Bergen in

Hudson County, Chesilhurst in Camden County, and Fieldsboro in Burlington County. Several more localities—Sea Isle City in Cape May County and Paterson in Passaic County—will come under public hearing scrutiny today.

In essence, the sum of the testimony of these various groups of witnesses from various areas of the state illustrates not only the seriousness of the existing deficiencies in the Absentee Voting Law but also that unscrupulous conduct is by no means concentrated in any one particular county or municipality. No one governmental or political entity holds a monopoly on absentee election law abuse. Rather, the testimony recorded so far, which will be enlarged upon today, indicates a statewide problem of misconduct in this area. The danger this poses to a vital function of our democratic process—an honest election system to which all eligible voters, including legitimate absentee voters, have proper access—will be made increasingly evident during today's final proceedings.

Absentee Voting in Sea Isle City

This municipality's recall election on August 8, 1978, aimed at the seat of Commissioner William Kehner, was marked by various abuses of the absentee ballot privilege—including the utilization of unauthorized messengers, forged signatures and ballots, and other deceptions. The case of Frank A. Emanuele, who had a summer home in Sea Isle but was a permanent resident of Silver Springs, Maryland, was used as an example of the bargain-counter fashion in which absentee ballots were obtained and voted in this election. As Mr. Emanuele noted, he had lived for 30 years in Washington, D. C., and, of course, during that period was automatically disenfranchised along with all other adult residents of Washington. After moving to Silver Springs, he registered and voted in one election there, his first actual voting experience prior to the Sea Isle recall election scandal. Mr. Emanuele and members and his family did "vote" in the Sea Isle recall contest—but by means of absentee ballots which were cast by someone else taking advantage of the Emanuele's lack of knowledge of the electoral process. The Commission's

first witness in this episode was Joseph McCullough, a Sea Isle resident and registered voter and a volunteer worker in Mr. Kehner's campaign to hold his seat.

Under questioning by Commission Counsel Neil J. Casey, III, Mr. McCullough related how he picked up application forms for absentee ballots and brought them back to the Kehner campaign headquarters. Then he and another campaign worker, Jim Rogan, were later given filled-out applications to take back to the County Clerk at the Cape May Court House in order to pick up the ballots. Since the applications had to be signed by such a courier as the absentee ballot applicant's "authorized messenger," Counsel Casey asked how this requirement was complied with:

Q. Didn't you have to sign your name?

A. They were signed over in the—to my memory, they were signed over in the headquarters before we left, sir. That's why I'm confused about the desk.

Q. Okay. Take a look again at C-23. Is your signature on the bottom of that exhibit?

A. Yes, sir.

Q. Now, that's in the bottom portion of the application—

A. Yes.

Q. —which has some stars around it and right above where your signature is on that line, right below it rather, it says "Authorized messenger"?

A. Yes, sir.

Q. Is that your signature?

A. Yes, sir.

Q. When did you affix your signature to that card?

A. If I recall correctly, I think it was in the headquarters.

Q. Who told you to put your name on?

A. That I don't remember, sir.

Q. Somebody?

A. There were several people there.

Q. But you didn't know that you had to put your name on it?

A. No, sir, I did not know it.

COMMISSIONER LANE: Was the applicant who is on that card, named on that card, is that the person who authorized your signature?

THE WITNESS: Positively not.

Q. Now, this C-23, as a matter of fact, is an absentee ballot application for Gloria Capron?

A. Yes, sir.

Q. C-a-p-r-o-n. Do you know Gloria Capron?

A. No, sir, not to my knowledge. I may know her to see on the street or something else.

Q. But it's certainly a fact that Gloria Capron never said for Joseph McCullough to be my authorized messenger?

A. Positively not.

Q. Would you take a look at C-24 for identification which is an absentee ballot application for Susan F. Emanuele?

A. Same answer, sir.

Q. Do you recognize—let me ask the question.

A. That is my signature.

Q. In the authorized messenger slot?

A. Yes, sir; yes, sir.

Q. And is it your continuing testimony that you believe that you affixed your signature to that application at Kehner headquarters?

A. Yes, sir.

Q. At someone's direction?

A. It would have to be, sir, because I did not know what that was.

Q. Someone's direction?

A. Yes, sir.

Q. But not Susan Emanuele's direction?

A. Positively not.

Q. As a matter of fact, you don't know her, do you?

A. No. Not to my knowledge I do not know her.

Q. I would like you to take a look at C-25 for identification which is an absentee ballot application for Jeffrey Capron.

A. Same answer, sir.

Q. Does your signature appear—
A. Yes.

Q. —in authorized messenger—
A. Yes, sir.

Q. —portion? Please let me finish the question before you answer.

When did you put your signature on that? At headquarters?

A. Yes, sir; yes, sir.

Q. Do you know Jeffrey Capron?

A. Not to my knowledge, no, sir.

Q. So if you don't know him to your knowledge he certainly didn't tell you he wanted you to be his messenger, did he?

A. Positively not.

Q. Mr. McCullough, I would like you to take a look at C-26 for identification, which is an absentee ballot application for Joanne Emanuele. I would like you to look at that and—

A. Pardon me?

Q. Now, that particular application does not have your signature on it?

A. No, sir.

Q. Whose signature is on there? Do you recognize it?

A. I think that's James Rogan's signature, sir.

Q. And, as a matter of fact, at the top of that starred block "Jim Rogan" is printed in there, isn't it? Right here.

A. No, sir, I don't think so.

Q. Do you see right here?

A. Oh, yes, sir; yes, sir. Oh, yes.

Q. Did you ever see that application?

A. No, sir.

Q. Take a look at C-27 for identification, which is an absentee ballot application for Frank Emanuele. Would you take a look at that?

A. Yes, sir.

Q. Does that have Mr. Rogan's signature on it, also?

A. Yes, sir.

Q. And, as a matter of fact, "Jim Rogan" is also printed at the top of that starred box, is it?

A. Yes.

Q. Have you ever seen that application?

A. No, sir, not to my knowledge.

Q. Finally—not to your knowledge. Finally, would you take a look at C-28 for identification which is an absentee ballot application for Angelina Emanuele. Would you take a look at that, and does Mr. Rogan's signature appear as the authorized messenger on that application?

A. Yes, sir, it does.

Q. And, as a matter of fact, "Jim Rogan" is printed at the top of that box?

A. Yes.

Q. Isn't that right?

And if you look, once again, at all of the applications in which Mr. Rogan is indicated as the authorized messenger, just taking a look at the portion at the top of the starred box where the "Jim Rogan" is printed, does that appear to you that the same individual printed Jim Rogan on each of those?

A. The printing looks very much the same, sir; very, very comparable, I would say.

Q. Fine.

A. I'm no, you know, expert on it.

Q. No, just by—

A. Yes.

Q. —just by looking at it, it's obvious that the same person wrote it. Right?

A. Yes, sir.

Q. When you got to the clerk's office, you handed the clerk the applications that you had, signed as authorized messenger?

A. Yes, sir.

Q. And did you then—what did you do then? Did you leave? In other words, did the clerk give you a ballot then or did you have to subsequently return to pick up ballots?

A. I imagine she gave me the—the ballots, sir.

Q. At least, it's fair to say that, well, it's the truth, that you did at some point obtain—

A. Yes, sir.

Q. —actual absentee ballots?

A. Yes, sir.

Q. What did you do with those ballots?

A. Brought them back and put them in the headquarters.

Q. Do you recall how many?

A. No, I do not, sir.

Q. Who did you give them to in headquarters?

A. I put them on the desk, sir.

Q. You didn't give them to any particular—

A. No.

Q. —individual?

A. If I did, I don't know who I did give it to, sir. There were always—

Q. But—

A. —many people there.

Q. You didn't give them to Jeffrey Capron, did you?

A. No, sir.

Q. And you didn't give them to Susan Emanuele, did you?

A. No, sir.

Q. And you didn't give one to Gloria Capron, did you?

A. No, sir.

Q. You brought them back to Kehner headquarters?

A. Yes, sir.

Q. Because that's what you were supposed to do?

A. Yes, sir.

* * *

Q. Did anyone at headquarters tell you that you were going to be a messenger for absentee ballots?

A. I don't think directly, sir. I think it was discussed at the meetings.

Q. In a general sense that "We were going to need a number of people to get absentee ballot applications for us"?

A. No, I don't think it was in a general sense, sir.

Q. Well, then, it was in a specific sense?

A. Well, if you are going over, if you would go over.

Q. Certainly, at campaign strategy meetings, or whatever you want to call them, at meetings that had to do with the campaign for Mr. Kehner, the subject of securing absentee ballot applications and absentee ballots was discussed, and it became known to volunteer workers that this was going to be part of the work that had to be done; you had to get the absentee ballot applications, you had to get the ballots. Right?

A. Yes, sir.

Q. And they were supposed to be taken to the headquarters. Did anybody ever say, "Pick up the ballots and deliver them to the voters"?

A. I don't think I ever heard that, sir.

Q. But your total role here with respect to these absentee ballot applications, you were a messenger?

A. Yes, sir.

Q. And you were an authorized messenger because you signed your name in that block on the application; isn't that right?

A. Yes, sir, that's what it says there.

Q. You signed as an authorized messenger?

A. Yes, sir.

Q. You were the authorized messenger not for Susan Emanuele and not for Jeffrey Capron and not for Gloria Capron? You weren't their authorized messenger, were you?

A. Positively not.

Q. As a matter of fact, you were the authorized messenger for the William Kehner campaign, weren't you?

A. I would say, yes, sir.

Mr. Kehner's Campaign Coordinator

How the absentee ballot phase of the recall election was handled by Mr. Kehner's supporters was described—up to a point—by the mayor of Sea Isle City, Dominick C. Raffa, who subsequently asserted his Fifth Amendment privilege to remain silent. Mr. Raffa, the campaign coordinator, was questioned by Commission Counsel Rhoads:

Q. Mr. Raffa, while you have been subpoenaed in connection to a broad-based investigation, your testimony is going to be localized around a recall election which was held in Sea Isle City on August 8, 1978, wherein the incumbent commissioner, a Mr. Kehner, was involved in the recall election. Are you familiar with that election?

A. Yes.

Q. With respect to Mr. Kehner, were you the, let's say, campaign coordinator for Mr. Kehner?

(Witness conferring with counsel.)

A. Yes, sir.

Q. With respect to you being the campaign coordinator, did you have any helpers or organizational assistants that aided you in his campaign?

(Witness conferring with counsel.)

A. Yes, sir.

Q. Just to digress for one moment, would you explain to the Commission what a recall election is?

A. Well, recall election is when you have an election and they have—or you can't have a recall until an elected official is in office for one year. So after the year is up, all they need is 25 percent of the people that voted in the last general election to get on a petition and, for no reason at all, just because you get 25 percent, they can have a recall election. Don't need any cause, but get 25 percent of the people voted in the last election, because they don't like the choice, even though you get elected by 75 percent of the people, 25 percent of the people can say we want a recall election, and have a recall election.

Q. Thank you.

Now, with again specific reference to the August 8th, 1978, recall election of Mr. Kehner, did you have any party headquarters?

A. Talking about party headquarters, we had headquarters for the recall election.

Q. What type premises is that, or structure?

A. It's just a little store front.

Q. Now, with regard to the assistance or organizational helpers that you may have had, how many did you have?

A. Well, it could have gone anywhere from 4 to 50.

Q. Well, with respect to particular individuals that worked for you, can you give us some names of the people that assisted you in this recall election?

(Witness conferring with counsel.)

A. Well, I had two people come forward, said—asked me if they could do anything for me and so forth and so on, and those two people happened to be in the headquarters at the time when I had absentee ballots or applications to be taken to the county and their names were Jim Rogan and Joe McCullough.

Q. Anyone else that aided you or assisted you?

A. We had other people in there at all times.

Q. Do you know any of their names?

A. All right. We had two young girls in there. One was Maryann Wilkins and the other one was Catherine Crisp, were working the telephones.

Q. Now, with respect to the election itself, with regard to the votes that were submitted, are you aware that any of those votes were submitted by means of absentee ballot?

A. Repeat that again, please.

Q. Are you aware in the recall election of the votes that were submitted that some were submitted as a result of absentee ballot?

(Witness conferring with counsel.)

A. Yes.

Q. And with respect to the absentee balloting, as campaign coordinator, did you play any role in either the solicitation or assistance or mechanical process with respect to the absentee ballots?

(Witness conferring with counsel.)

A. Yes.

Q. And what was it?

A. Well, I ordinarily, and I said this before, that I go after absentee ballots for those who wish to vote and don't know how to vote or they're going to be out of town or don't feel like going to the polls and so forth and so on. I had the list of those people that I would ordinarily check with at every election, and I had a list of maybe 35 or 40 and I checked them. I would ask them if they wanted an application for an absentee ballot. I saw they got the applications. If they didn't want to send the application—although I have to say something at this point: In this recall election there was no time for a person to, to mail an application in and get a ballot back in time for election. The ballots were not in the County Clerk's office, only three days before election, the absentee ballot.

Q. All right. Well, with regard to the absentee ballots themselves were there in fact some voters that said, yes, I have a reason to vote absentee?

A. Yes.

Q. And if they were to communicate that to you, what would you do?

A. See they get an application, they give the application to me or they go down to the courthouse, and we'd—that's why we had the runners available, to make sure they were able to get a ballot and get it back the courthouse before the polls closed.

Q. Did any of them in fact give you any absentee ballot applications?

A. Yes.

Q. How many?

A. Oh, I don't know. Approximately 20.

Q. And what would you do with the 20 that were given you?

A. I would send them—the application?

Q. The applications.

A. I would send the application to the courthouse so it would be processed.

Q. By what means?

A. A runner.

Q. Who were the runners or runner?

A. This one point we're talking about is McCullough and Rogan.

Q. Well, with respect to runners, did you more or less designate them as messengers to go down to the courthouse?

A. I did at the time, but they were not there for that purpose. But if they were in the building, I did ask them, if they were going down to the courthouse, if they'd take them.

Q. In other words, if someone were there perhaps working on something else and you see him in headquarters, you would say "I'm going to make you a messenger for the purpose of the absentee ballot." Is that it?

A. Yes.

Q. With respect to Mr. Rogan and Mr. McCullough that's in fact what you did?

A. That's it.

Q. Now, did there come a time when you literally sent Mr. Rogan and/or Mr. McCullough down to the courthouse to retrieve ballots?

A. Yes.

Q. And did they, in fact, go?

A. Yes.

Q. Well, did you hand them the absentee applications?

A. Yes.

Q. Sir, I'm going to direct your attention to a blow-up exhibit. For the record, this is Commission Exhibit 1. And it reads on the top "Civilian Absentee

Ballot Application. I'm going to invite your attention to the bottom. There is a starred-in portion on this application and I'm going to read the section that follows the word "or." "If you are sick or confined, you may apply to the County Clerk during business hours to 3 p.m. of the day prior to the election via authorized messenger designated."

Will you agree with me that this clause is directed to the voter?

A. Yes.

Q. And the voter, if he's sick or confined, will send a messenger down to get his ballot?

A. Right. That's what—that was intended right.

Q. And that messenger, of course, is a messenger of the voter's choice, is it not?

A. Yes, sir.

Q. And the messenger you sent was a messenger of your choice, was it not?

A. Yes.

Q. You never, in fact, even told the voters that you were going to give their applications to Mr. Rogan or Mr. McCullough, did you?

A. No, sir.

Q. Why?

A. You know, I don't know why.

Q. Fair enough. Now, with respect to the ballots that came back, what would you do with them?

A. See that the people got the ballots that asked for them.

Q. Would you personally see to it that they got the ballots?

A. In some cases.

Q. And in cases that you didn't personally do it, what would you do?

A. Give it to someone that was there that knew the people personally, would take them to them and make sure they voted them and we got them back to make sure they got counted.

Q. Sir, I'm going to show you Commission exhibits, and these are absentee ballot applications.

They're out of order. It's C-23, C-27, C-26, C-24, C-25, C-28. So it's C-23 through C-28.

Would you look at those exhibits, please?

While you are looking at them, tell me, are they part of the batch of applications that you sent with either Mr. Rogan or Mr. McCullough down to the county courthouse?

A. Yes, they are.

Q. Now, if you will, look down at where it says "Authorized messenger"? In particular, on three of them, there is penned in the name "Jim Rogan." Did you do that?

A. No, sir.

Q. Who did you direct to do that?

A. I didn't.

Q. Didn't you just testify that you were the one that was in charge of designating messengers to go down and get the ballots?

A. That's right, but whoever put "Jim Rogan" there probably could not understand the signature, so they must have printed "Jim Rogan" to know that that's what it was for. But at no time did I put that on there for to say Jim Rogan there for you. Because when I had the absentee ballot applications, all I did was split them up just so each one wouldn't have too many, and split them up like that and say take these down.

Q. Now if you—

A. First they come and sign as a messenger.

Q. Keep those before you. Did the ballots come back for the Emanueles?

A. Yes.

Q. What did you do with the ballots that came back for the Emanueles?

(Witness conferring with counsel.)

A. They come back in the office, and how they got to Emanueles or in their box, I don't know.

Q. I hadn't asked you that yet.

When they came back to the office, what did you do with them?

A. Oh, when they come back, they come back in probably 15 or 20 ballots. I don't remember.

Q. Well, do you have any specific recollection with respect to the ballots for the Emanueles? After all, we are talking only about 20 ballots, are we not?

A. I know, but on the other hand that wasn't the only thing I was doing on election day.

Q. I appreciate that.

A. This happened on election day.

Q. Do you have a specific recollection of what you did with the ballots for the Emanueles?

A. No, sir.

Q. What did you do in general with the ballots when they came back?

A. I told you if someone was there that knew the person that ballot was for, they would take the ballots.

Q. If you will, take your time, think back to August, was there anyone who came to you and said I know the Emanueles, I'll take them to them, words to that effect?

A. Could have.

Q. Could have. Well, did it happen?

A. I don't know.

Q. You don't know?

A. Or I don't remember.

Q. Do you know a man by the name of Aloysius Zurawski?

A. Yes, I do.

Q. With respect to Mr. Zurawski, is it not he that brought the applications to you for the Emanueles?

(Witness conferring with counsel.)

A. Yes.

Q. Well, does it refresh your recollection, now that you recall Mr. Zurawski brought you the applications, that perhaps it was Mr. Zurawski to whom you gave the ballots?

(Witness conferring with counsel.)

A. It could have been. I don't remember.

Q. Do you have any specific recollection at all whether it was or not?

(Witness conferring with counsel.)

A. Not at this point. I believe I don't remember. I can't remember.

Q. Do you know whether, in fact, ballots were submitted by the Emanueles in the recall election?

(Witness conferring with counsel.)

A. Well, I send the applications down the courthouse and ballots come back to our headquarters.

Q. Ballots came back to you?

A. Yes.

Q. I will ask you again, do you know whether votes on the absentee ballots were actually submitted by the Emanueles?

(Witness conferring with counsel.)

A. Yes.

THE CHAIRMAN: Did the Emanueles vote their ballot? I think that's the question.

THE WITNESS: Yes.

THE CHAIRMAN: And it came back to you?

THE WITNESS: Yes, and we sent them down the courthouse to be counted.

Q. Now, after the Emanueles voted their ballot, why was it that it came back to you?

A. Because we run them to the courthouse because there was no time to mail them. This was on election day.

Q. Who brought them back to you?

A. I don't remember whether they brought them back to me, they were in the headquarters when I got there the following morning, but they were in there.

Q. Would it help for you to take a moment to think?

A. No, they could have been put under the door. They could have been anything.

Q. So you have no idea at all how they got back to you?

A. No.

Q. Well, when they got back to you, what did you do with them?

A. Well, as I say, when we're working there that day with the phones and everything, I say, "All right, we have some ballots to go down to the courthouse. Who wants to take them down?" And I don't remember then who took them.

Q. Is it fair to say that these ballots were not mailed to you?

A. Yes, I would say they were not mailed.

Q. So they would have had—

A. They couldn't have been.

Q. Excuse me, Mr. Raffa. Let me ask the question. They would have to have been dropped off by someone at headquarters; isn't that so?

A. Yes.

Q. Because the ballot that holds the inner envelope—excuse me. The envelope which contains the inner envelope containing the ballot is addressed to the Board of Elections, isn't it?

A. Yes.

Q. Well, how do you know that these are the ballots from the Emanueles? Was there some indication on the outer envelope that they were from the Emanueles?

A. Yes, their name and address is on the reverse side of the outer envelope.

Q. Do you know the Emanueles?

A. Yes.

Q. Do you know Jeffrey and Gloria Capron?

A. I know Gloria a lot better than I do Jeffrey, because Gloria's the—

Q. And did you ever have any conversation with them subsequent to the election involving whether or not they voted in that election?

A. No.

Q. So at least with first hand knowledge from the Emanueles you have no idea whether they voted or not; is that so?

(Witness conferring with counsel.)

A. I don't have firsthand knowledge, no.

Pleads the Fifth Amendment

Mr. Raffa was given certain documents, including applications for absentee ballots and envelopes in which such ballots would have been submitted to the County Election Board. Counsel Rhoads:

Q. Look over those documents that I have just given to you, them to you, and tell me, have you ever seen them before?

A. Not—

(Witness conferring with counsel.)

A. (Continuing) Yeah, I saw the envelopes and then I forwarded them to headquarters, —to the County Board of Elections.

Q. Did you ever see the contents of the envelopes before?

(Witness conferring with counsel.)

A. I have to decline to answer that question because it may intend to incriminate me.

Q. You feel that your response to that question would expose you to some criminal liability?

(Witness conferring with counsel.)

A. Could possibly do so.

Q. Could possibly. May I have the exhibits back, please?

Mr. Raffa, did you ever have any conversation with Mr. Zurawski with respect to the absentee ballots allegedly cast by the Emanueles and the Caprons?

(Witness conferring with counsel.)

A. I can't answer the question on grounds that it may tend to incriminate me.

Mr. RHOADS: Mr. Chairman, in view of that last response, I have no further questions of this witness.

THE CHAIRMAN: Mr. Raffa, the Commission has no further questions of you at this time, but because of the responses that you have given, we will notify you, through your counsel, in the near future as to what action this Commission will take with respect to those responses.

Hospitalized Witness

The next witness in the Commission's review of absentee ballot abuse in Sea Isle City was to have been Aloysius Zurawski, a friend of the Frank A. Emanuele family. However, the Commission announced that it had received word that Mr. Zurawski had been injured the previous night in an automobile accident and was in an Atlantic County hospital. Because of the importance of Mr. Zurawski as a witness, the Commission put into the public hearing record his prior sworn testimony before an executive session of the Commission on November 14, 1978. This was accomplished by Counsel Rhoads repeating the questions from the executive session testimony to S.C.I. Special Agent Kurt Schmid, who in the witness chair repeated Mr. Zurawski's answers from a copy of that same transcript:

Q. "Now, with respect to the recall election, did you play any role in the operation of that recall election? By that I mean did you handle any balloting or have any involvement at all in the election?"

A. "I was not active in that campaign at all."

Q. "Did you have anything to do with absentee ballots that were submitted in that campaign?"

A. "I was requested by a friend of mine, Frank Emanuele, to secure some absentee ballots for him and members of his family."

Q. "Well, what exactly did you do along those times?"

A. "I got absentee—well, you see, Frank had intended to vote at the polls is what he told me. However, late, when it got toward the election, he didn't know if he was going to be called away to his business and that he wouldn't be able to vote at the polls, but may have to vote absentee and I secured the absentee ballots for him and took them to his home."

Q. "How many in number?"

A. "I took a stack, sir. I don't know how many there were altogether."

Q. "Well, when you took them to the Emanuele's home, did they fill them out in your presence?"

A. "While I was in the home they were filled out, yes, by Frank and his family."

Q. "They filled out the entire application?"

A. "There was one item where they had just brought—bought an apartment across the street and I think they were—ah, he wondered if they were registered from their existing apartment cottage or the new apartment, and I assured him that they had—if they hadn't voted in another election, that they should be still in their old cottage. That would be their address for voting."

Q. "Well, did you fill out any part of the application ballot, the application for a ballot for the Emanuele or the Caprons?"

A. "My recollection was that I put the address down."

Q. "Their address on the application?"

A. "The application, yes."

Q. "What about the reason why they were requesting an absentee ballot; did you put that on there?"

A. "No. I didn't indicate any reason because, again, I wouldn't know what to say. Frank wanted to vote in town, but he was afraid he would be called out and I just didn't know what, if there would be a reason, what the reason would be except his late call out of town."

Q. "Now, after they were filled out or by whomever, what did you do with them?"

A. "Well, when I left the Emanuele's house, on my way home I had them in an envelope and I dropped them off at election headquarters, which was very close to my home, and I went into the headquarters and said to someone sitting at a desk, at a phone, 'Here are some requests for absentee ballots.' I put them on the desk and I left and went home."

Q. "Who was running, let's say, the campaign for Bill Kehner?"

A. "Who was running? You mean like the actual campaign chairman?"

Q. "Yes."

A. "Mayor Raffa would be, I think, would be the main force behind the Kehner election."

Q. "Now, when you dropped off these applications, to whom did you give them?"

A. "I laid them on the desk in front of the person at the desk. My recollection was they were on the phone and I dropped them off and left immediately. I didn't stay at all to talk to anyone."

Q. "Well, who is the person that you dropped them off that was on the phone?"

A. "I really don't know that."

Q. "But when you got the applications from the Emanueles and the Caprons and you say you put in at least the address at some point, isn't that so?"

A. "Yes, sir."

Q. "And you looked over their applications; isn't that so?"

A. "Only that they, Frank gave them to me and I don't know if I looked them over to see if they were filled out properly, if that's what you mean. I didn't look over the entire application, no, sir."

Q. "Well, what caused you to put in their address? In other words, why didn't they do it? Why did you do it?"

A. "I thought I was being helpful. Frank was asking me should he put his new apartment address down or should he put his, you know, his regular residence down and I guess I took it upon myself to say, 'Well, you are still registered to vote from this house unless you changed it somewhere else, through city hall or the county clerk's office or wherever.'"

Q. "Then why didn't you give it back to him to put in his address? Why did you put it in?"

A. "I guess I thought I was being helpful."

Q. "Along those lines, when you looked down and it said, 'Authorized Messenger,' did you tell him to give you an authorized messenger or list one there?"

A. "Oh, no, I did not."

Q. "To your knowledge, when you handed those applications in to headquarters there was no authorized messenger, was there?"

A. "No. No, I did not know that."

Q. "The Emanueles, as I understand, and you correct me if I'm wrong, lived at 20 37th Street in Sea Isle City?"

A. "Yes. That would be their residence."

Q. "So with respect to these applications, the address you put in there was the 20 37th Street address?"

A. "37th Street."

Q. "Isn't that so?"

A. "Um-hum."

Q. "That would tell someone at the county that these ballots would be mailed to that address; isn't that so?"

A. "That's correct, yes."

Q. "Unless, of course, someone put down an authorized messenger to pick them up, right?"

A. "I would presume so, yes."

Q. "Now, having once dropped off these applications, how much time was left between the time that you dropped off the applications and the actual election?"

A. "This would have been a Sunday that I dropped them off at election headquarters."

Q. "And when was the election?"

A. "It was the following Tuesday."

Q. "All right. So that leaves Monday and Tuesday for the time for these ballots to come back, be filled out, and sent in. Right?"

A. "Yes, sure, obviously."

Q. "Did you see the ballots when they came back to the Emanueles?"

A. "No, I did not."

Q. "Did you see the Emanueles on August 8 of 1978?"

A. "No, I did not. Well, what was the day? August the 8th?"

Q. "That was the day of the election."

A. "No, I did not."

Q. "You didn't see them?"

A. "I had other business that took me out of town and I hadn't seen them."

Q. "Did you ever see the ballots that were submitted, the absentee ballots that were submitted by the Emanueles and the Caprons?"

A. "No, I did not."

Q. "Do you know who filled them out?"

A. "I had presumed that Frank did."

Q. "You presume that he had filled out all of them or just his or what?"

A. "He and his wife and his family. I don't know how, you know—I don't know who of the family would have done that and I have since learned after the inquiry that they have denied having signed anything or thinking that they had signed a ballot one day when they actually just signed the application for a ballot."

Q. "As far as you know, physically, there is nothing wrong with any of the Emanueles; isn't that right?"

A. "Oh, no, I know that for a fact."

Q. "When you dropped off the applications at this party headquarters, was the mayor there, Raffa?"

A. "No, because if he was I would have recognized him. I know the mayor, but I didn't know the people in the—who was there, and I don't even know how many there were there."

Q. "Where did you actually get the absentee ballot applications?"

A. "I believe I picked them up at city hall and I had been carrying them just as a convenience in case someone ever asked. My daughter votes from my house still and I didn't know if she would be home or working, and if she would have needed one, but I guess routinely I had some in my car. I probably picked them up from city hall or I just don't know. They're usually readily available at a lot of places."

Q. "I'm aware of that. Did you get any from Mayor Raffa?"

A. "Not to my recollection, no."

Q. "Now, did you have occasion to see the absentee ballots that were submitted by the Emanueles and the Caprons?"

A. "The absentee ballots?"

Q. "Right."

A. "No, I did not."

Q. "Did you ever ask the Emanueles if they voted?"

A. "As I say, I presumed that they did because one way or another Frank would arrange to vote at the polls or through the absentee method."

Q. "Mr. Zurawski, specifically what I am asking you is, did you at any time after the election see Frank and ask him, 'Did you get your ballot and did you submit your ballot?'"

A. "Yes, I did."

Q. "What was his response?"

A. "He thought that he had signed something, but what he signed was the application for the ballot and he doesn't remember. He didn't—he said he didn't remember actually signing a ballot."

Q. "What about the rest of the Emanueles, did you ever ask whether they got their ballots and submitted them and voted?"

A. "I talked to Frank mainly, Frank and his wife Angie. I didn't see the others to talk to them."

Q. "What did Angie say?"

A. "Well, Angie said the same thing that Frank had said in my presence."

Q. "The only thing they did was the application?"

A. "Yeah. They thought they were—they thought that they could have been mistaken, but they just weren't sure."

Q. "Did you work at the headquarters at any time during this election?"

A. "Not at all, no."

Q. "Do you know a John McCullough?"

A. "I do not know John McCullough. I know the name as being someone from Sea Isle City, but I do not know him."

CONTINUED

2 OF 3

Q. "How about James Rogan?"

A. "I have learned who Mr. Rogan is since the election. It's a name that should have registered with me because I served on a committee which met only twice to plan for our Memorial Day program, and I only got to know him because I passed a looseleaf book around for the people there to sign because I didn't know who they were and I didn't want to be embarrassed by, you know, not knowing who was on the committee with me, and I wanted to use that for picture purposes and for news release purposes."

Q. "Now, did you ever come to learn that, in fact, the Emanueles did not receive their ballots and did not fill out the ballot and submit it; that in fact someone else did?"

A. "Well, that is, I understand, what this is all about and I, again I thought, I really thought in my heart that Frank had voted one way or another and I did not pursue it beyond that point."

Q. "Why did you feel that?"

A. "Because Frank said he wanted to vote in the election."

Q. "And you just assumed that he did vote?"

A. "Yeah, because, you know, what Frank wanted to know, I figured I had done the best I could to help him vote and then went about my business."

Q. "Did Detective James Brennan speak to you regarding this matter?"

A. "With who?"

Q. "James Brennan from the Cape May County Prosecutor's Office."

A. "Yes, I was called in to talk with Detective Brennan and Detective Nelson quite some time after the election."

Q. "And at that time he informed you that, in fact, the ballots submitted were not those of the Emanueles and the Caprons. Isn't that true?"

A. "The ballots submitted were not"——

Q. "Do you understand what I'm saying?"

A. "They were not those of Frank and his family? Then you mean——"

Q. "Mr. Zurawski, what I'm saying is did Detective Brennan tell you that the ballot submitted in the name of the Emanueles and the Caprons were in fact not submitted by the Emanueles and the Caprons?"

A. "Well,——"

Q. "He told you that, didn't he?"

A. "I guess he did, yes."

Q. "All right. He did tell you?"

A. "I'm sure if he said he did, he did. I don't recall him saying that specifically to me, but I knew—— I guess I knew what he was talking about."

Q. "At this very moment right now, do you think the Emanueles and the Caprons submitted ballots or do you think someone else did it for them?"

A. "After hearing a lot of scuttlebutt, I don't know. I really thought Frank had voted but if Frank says he didn't, then Frank didn't."

Q. "Did you fill out the certificate that's attached to the absentee ballot for Frank Emanueles?"

A. "I don't recall that. I don't know. What is that? I really don't."

Q. "Do you know what an absentee ballot looks like? Have you ever seen one?"

A. "An absentee ballot?"

Q. "Yes."

A. "I never voted absentee. I can't say that I know exactly what you are talking about."

Q. "Speaking of the application for the ballot. Now, you have an application for an absentee ballot?"

A. "Yes, I understand that."

Q. "When you submit that, if everything goes right, you are ultimately given an absentee ballot. You are aware of that, aren't you?"

A. "Yes, I'm sure that's the procedure."

Q. "Well, are you aware of it?"

A. "Am I aware of it?"

Q. "Are you aware of it? Mr. Zurawski, Frank Emanueles contacted you to help him obtain or vote by absentee ballot and that's according to your testimony; isn't that so?"

A. "Yes, that's correct."

Q. "Well, then, why on earth would he pick you out unless you know something about how to do it?"

A. "I guess he knew I would be able to put my hands on a request for an absentee."

MR. RHOADS: Now, at this point the transcript cover areas not relevant. We are going to skip to the following page, which is T22, line 10.

Q. "In the course of that work politically, did you ever come in contact with absentee ballots and how they work?"

A. "No."

Q. "Never did?"

A. "Not in any other election, no."

Q. "In this election?"

A. "Yes."

Q. "The recall. When you filled out the application for absentee ballot, or at least the address of it, and then you took them from the Emanueles and dropped them off at party headquarters, you knew that ultimately a ballot would be sent out, didn't you?"

A. "Yes."

Q. "An absentee ballot?"

A. "Yes. Yes, sir."

Q. "Have you ever seen an absentee ballot? Do you know what one looks like?"

A. "I saw a sample absentee ballot, but I never saw the actual ballot itself."

Q. "Were you ever shown copies of the Emanueles' absentee ballot by Detective Brennan?"

A. "Not that I remember."

Q. "Have you ever filled out a certificate for an absentee ballot? Have you ever done that?"

A. "What's the certificate? That's the request?"

Q. "The certificate is attached to the actual ballot. It's attached to the envelope in which the ballot is placed. Did you ever fill out one of those certificates?"

A. "Is that something the person who is getting the absentee ballot is supposed to do?"

Q. "That's correct."

A. "If that's what I was told I was supposed to do or if it indicated on the thing that I was supposed to sign that I was getting their request for absentee, sure, I would have signed it, but recalling doing that, I just don't. I don't. I don't honestly recall doing that."

Q. "I'm going to show you what purports to be a copy of an application for an absentee ballot and there's two side-by-side. One is in the name of Angelina E. Emanuele and the other is Frank A. Emanuele. Do you recognize those?"

A. "Yeah, I would recognize them as Frank and Angie's name, yes."

Q. "I'm going to direct your attention to the printing up here where it says 'Sea Isle City, 20 37 Street.'"

A. "Oh, yes. Yes, sir."

Q. "That's your printing, isn't it?"

A. "Yes, correct."

MR. RHOADS: Now, at this posture the copies that were shown this witness, and I will represent, were copies of the original documents and specifically I am referring to what has been marked Commission Exhibit 28 and Commission Exhibit C-12, and they were the two documents that were shown this witness and he had identified the portion in the absentee ballot which contains the address to which a ballot should be sent to the voter. He identified that as his printing or writing.

Q. "And to the right again, that's the same thing, that's your printing, isn't it?"

A. "Yes, correct."

Q. "And this is the application we were talking about, isn't it?"

A. "Yes, sir."

Q. "And looking down, there is a signature down here which I read to be James Rogan, although it's rather scrawled. Do you recognize that signature?"

A. "Where is that?"

Q. "Where my finger is pointing."

A. "No, I don't."

Q. "And to the right, a similar signature. Do you recognize that?"

A. "No, I don't."

Q. "Do you know who put it on there?"

A. "No, I don't."

Q. "There is printing above it, 'Jim Rogan'?"

A. "I see that, yeah."

Q. "Do you know who put that on there?"

A. "No."

Q. "Do you know who did?"

A. "No."

Q. "Do you know who put this on here, this printed Emanuele, Frank?"

A. "No, I do not. I didn't do that and I don't know who did."

Q. "This is all you are responsible for, those addresses?"

A. "Just that. Just the Sea Isle City and the 20 37th Street, yes."

Q. "I'm going to show you what purports to be a copy of what reads, 'Certificate of Civilian Absentee Voter.' It says, 'I,' and then above the dotted line, 'Frank A. Emanuele.' Would you look at that document and then tell me do you recognize that?"

A. "I recognize it as what it says, 'Certificate of Civilian Absentee Voter.'"

MR. RHOADS: Now, at this juncture, again he was shown what purported to be a copy and I will represent that that was in fact a copy of the original document which has been since marked Commission Exhibit 29, which is the certificate of civilian absentee voter purported to be that of Frank A. Emanuele.

Q. Continuing on, "Below that is a copy of the actual envelope itself and it says, 'Official Civilian Absentee Ballot.' Did you ever see anything like this in your experience before, before today?"

A. "Does this—I don't remember seeing something like that, no. As I say, I do not handle absentee ballots."

Q. "Now, I'm going to direct your attention to this top portion, Frank A. Emanuele, et cetera, and below Frank Emanuele signed. Did you fill that out?"

A. "No, sir."

Q. "Do you know who did?"

A. "No, sir."

Q. "Did you ever ask Frank 'Did you get your ballot and fill out the certificate?'"

A. "I did and Frank said he remembers signing something, but he wasn't sure what it was."

Q. "All right. I just want to ask a couple of more questions. Are you aware that ballots of the Emanueles, at least in the name of the Emanueles and the Caprons, were rejected by the Board of Elections? Are you aware of that?"

A. "I'm aware that they were questioned after the election. There was a newspaper story stating that there were questions having to do with absentee ballots and the name Emanuele. The Emanuele family was mentioned, yes. That would have been the day after the election, in the *Atlantic City Press*."

Q. "There were stories to the effect that these ballots were rejected?"

A. "I didn't know they were rejected or they were just being questioned."

Q. "You just knew something about the ballots being questioned; is that right?"

A. "That's all I knew, yeah."

Q. "Did you fill out any ballots for the Emanueles?"

A. "No, sir."

The Emanuele Absentee Votes

Frank A. Emanuele was called as a witness to give his version of the absentee ballot transactions described by previous witnesses. He came to Trenton to testify from his home in Silver

Springs, Maryland. He said he had been staying at his summer home in Sea Isle in August of 1978, when the recall election took place. Because almost the entire family was involved in the absentee voting episode, Counsel Rhoads asked Mr. Emanuele to identify his family members:

Q. *And do you have anyone, whether it be wife or daughters, that were residing there with you at that time?*

A. Yes, my wife and my family.

Q. *What's your wife's name, sir?*

A. Angelina Emanuele.

Q. *Do you have any sons or daughters?*

A. I have, the oldest daughter, Gloria Capron. She's married.

Q. *Was she there at the time?*

A. Yes, she was.

Q. *To whom is she married?*

A. Jeff Capron.

Q. *Was he there at the time?*

A. Yes, he was.

Q. *Do you have any other daughters that were home?*

A. Joanne Emanuele.

Q. *Anyone else?*

A. Susan Emanuele, Kathy Emanuele—

Q. *Was Kathy home?*

A. And finally, Frank Emanuele, Jr.

Q. *You've got a pretty good household there.*

A. All of them were there.

Q. *Now, with respect to your being called today, I gave you a generalized scope of what this Commission is interested in, but with relation to your testimony we are concerned with a recall election that was held in Sea Isle City, August 8, 1978. It involved the recall election concerning an incumbent commissioner by the name of William Kehner. Are you familiar with that election?*

A. Yes, I am.

Q. *Now, with respect to that election, was it your intent, at least at one time or another, to vote absentee in that election?*

A. Yes. Yes, we wanted to vote. Billy Kehner—well, we've lived in Sea Isle for 15 years, and he was a young boy and he used to come around the house, a young boy, and I—

Q. *You wanted to vote for him; is that it?*

A. Of course. He's a friend of the family and the children.

Q. *With respect to voting for him by absentee, did there come a time when you actually got an application to fill out or to apply for an absentee ballot?*

A. In the general election or the recall?

Q. *The August 8, 1978, recall election, Billy Kehner.*

A. Yes, I signed to vote for Billy Kehner, right.

Q. *All right. Now, with respect to the application, how did you receive the application?*

A. A very good friend of mine, Al Zurawski, brought them over the house.

Q. *Was that at your request or his request to bring them over?*

A. Well, there was a lot of conversation in Sea Isle about the recall, and I was totally opposed to the recall and I'm not too familiar with the mechanics of voting in Sea Isle, and Al Zurawski, and he said he would bring the applications over the house, and we all sign them.

Q. *All right. Now, just for the record, I'm going to allude to a blow-up exhibit marked Commission Exhibit 1, and it reads, "Civilian Absentee Ballot Application." Is this the form of the application that Mr. Zurawski brought to your house?*

A. Yes, it was.

Q. *Now, when you say you signed it, did anyone else in your household sign any civilian applications?*

A. All that were qualified to vote signed them, yes.

Q. And of the persons that you just enumerated for us in your household, which ones were they that signed for it?

A. My wife signed, Gloria did not, Joanne signed, Susan signed, and I signed. Jeff did not. That's this application here.

Q. Yes, sir.

Now, I'm going to show you again exhibits that were previously marked as Commission Exhibit 23 through C-28. I will ask you to look at these. First, there is one which purports to be an application on your behalf.

A. I signed that.

Q. You did. If you will, will you go through these and tell me, did the members of your household sign the applications?

A. Susan signed that. Ang signed that. Joanne signed this.

These two were not signed.

Q. They were not signed by Jeffrey A. Capron and Gloria A. Capron?

A. Capone.

Q. I'm sorry. Capone.

A. Gloria and Jeffrey Capone.

Q. Do you know who did sign it?

A. No, no.

A. Now, they were filled out at the house. Jeff—

Q. By whom?

A. I don't know. There was a lot of people at the house at the time, which is summertime. But the cards, I believe, were all filled out at the house.

Jeff had taken his exams to become a lawyer. He's—today at 12 o'clock he's being sworn in at the Bar, and I would love to have been there and I have to be here. He decided not to vote in Sea Isle. He wanted to vote in Maryland, and his wife Gloria decided to follow her husband.

Q. Exactly. So they didn't sign?

A. Those two didn't sign.

Q. Now, with respect to the applications again—I'll spread them out before you—I'm going to allude to an area just below where it says "Check one and complete" and then there is an address here, "Sea Isle City, 29 37th Street," et cetera, "Sea Isle City," again, "New Jersey," with a zip code and that appears on all six of these.

A. Uh-huh.

Q. Did you put that in there?

A. Somebody at the house, as I remember, were writing them in as others were signing them.

Q. Well, Al Zurawski, in fact, was the one that put that on there, didn't he?

A. I can't say for sure that he did because I don't know his handwriting. I just—

Q. All right.

A. There were so many people there, that somebody was writing these things in.

Q. You didn't do it?

A. No, it's not mine. It's not mine. Could have been one of the kids.

Q. All right. Now, having once signed the application did you give them back to Al Zurawski?

A. We gave him back all the papers.

Q. And with respect to your daughter, Gloria, and your son-in-law, Jeffrey, they didn't sign any applications. Do you have any idea of how applications on their behalf got in here?

A. I remember it all being on the table. They were all put together and given to Al Zurawski, signed and unsigned, and there were a few totally blank. There were more than what we needed.

Q. Having once given him the applications, did you, in fact, ever receive an absentee ballot?

A. No.

Q. To your knowledge, did anyone in your household, those that applied, did they ever receive their ballots?

A. No.

Q. So the fact is, after once having once signed the application and given it to Mr. Zurawski, that's the last you ever had to do with this election; isn't that so?

A. True. But we—

Q. Yes?

A. —also didn't know that there was anything else involved. We thought we had voted at the time.

Q. Having signed the applications, you thought maybe that was the vote?

A. That was it.

Q. Okay. Now I'm going to show you again various exhibits. Just bear with me for a moment, and I will start with Commission Exhibit 29. For the record, this is a certificate of civilian absentee voter, and it reads, in part, "I, Frank A. Emanuele," and that's in print, "whose home address is 29 37th Street, Sea Isle City, New Jersey, 08243," et cetera, et cetera, et cetera, and then at the bottom there is a signature, "Frank A. Emanuele." I invite your attention to that signature. Is that your signature?

A. No.

Q. How about the printing up here and the rest of the writing?

A. No.

Q. Is that yours?

A. No. None of it.

Q. Well, at the time of the election, the fact is you never even saw this, did you?

A. Never seen it.

Q. Never even got it?

A. Never seen it.

Q. I'm going to ask you to go through the other exhibits. I will hand them to you one at a time to facilitate it. C-32 purports to be of that a Joanne Emanuele. Would you look at that and tell me the signature at the bottom is that hers?

A. No.

Q. I show you C-1, Susan F. Emanuele and again direct your attention to the bottom right-hand corner of the certificate. Is that her signature?

A. No.

Q. C-30, Jeffrey A. Capron and again a signature at the bottom purporting to be that, and is that Jeffrey's?

A. No.

Q. Is that his?

A. No.

Q. C-33, Flora A. Capron, a signature purporting to be hers at the bottom of the certificate. Is that hers?

A. No.

Q. C-34, Angelina Emanuele. Again a signature purporting to be hers. Is that hers?

A. No.

EXAMINATION BY COMMISSIONER LANE:

Q. Your son-in-law being sworn in at 12 o'clock today, is that in Maryland?

A. I believe in Washington, D.C.

Q. But he's residing and continues to reside in Maryland?

A. He bought a home and lives in Maryland.

Q. He and your daughter Gloria?

A. That's correct.

Q. And they have never considered themselves domiciled in Sea Isle, I take it, since they're married?

A. That's correct. They come to our house. Part of my household, correct.

THE CHAIRMAN: For vacations and things like that during the summer they're in Sea Isle City?

THE WITNESS: That's correct.

Could I just raise—you said I was entitled to make a little point, I would like to make.

I am 54 years old. Thirty years of that span of life was in Washington, D.C. I'm born and raised in Washington. I've never had the opportunity to vote because that was the law of the city. When

we moved in Maryland, we voted one time. That was for President Kennedy. Then we've had absolutely no experience in voting, so we weren't very wise as a family in the methods of voting.

In—when the 18-year-olds were given the opportunity to vote in the State of New Jersey, it was brought to my attention that we had a right, as an owner of property in New Jersey, to vote and at that one time the entire family, 18 and over, voted to—registered to vote in the State of New Jersey. So we are—as a family, we have never been affiliated with Democrats or Republicans, or had any real knowledge in voting. So we're as a family, sorry that we didn't follow through the proper procedures to vote.

MR. RHOADS: Well, Mr. Emanuele, on behalf of the Commission, we have come to find that there is quite a few voters that really aren't knowledgeable in this area and we can appreciate the fact that you may be one of them. I'm sure there is hundreds of them.

THE WITNESS: Okay.

THE CHAIRMAN: Mr. Emanuele, for the record and for the Commission, we fully recognize, and at no time would we want to suggest that there is any adverse reflection upon your family or upon the actions that you took with respect to wanting to vote and cast your ballot. We sincerely appreciate your coming forward and being frank and candid and honest with us, so that we can highlight the potential abuses that do exist in the system so that others will not be taken advantage of through a process that should guarantee the democratic right to vote, and for that we sincerely appreciate your coming here from Maryland, and I think we appreciate the fact that your entire family backs you in your appearance here and at no time should it reflect adversely upon you or your family.

THE WITNESS: Thank you. I appreciate that.

The Handwriting Expert

Detective Sergeant Richard Tidey, the officer in charge of the Questioned Document Unit of the New Jersey State Police, was the final witness in the Sea Isle City segment of the Commission's hearing. He was called to testify about his analyses of handwriting on various absentee ballot papers. His expertise in this area was unquestioned, since he had conducted such analyses in more than 4,000 previous cases. Since October, 1969, Sergeant Tidey had testified about 270 times as a handwriting expert in court trials. Counsel Rhoads assisted in the presentation of his testimony:

Q. All right. Now, Sergeant, did there come a time when representatives from the State Commission of Investigation went to your place of business for purposes of asking you to conduct a handwriting and/or printing analyses of certain documents?

A. Yes.

Q. Sir, I'm going to show you documents that have been previously marked by this Commission as exhibits. I'm showing you Commission Exhibit 13—strike that—Commission Exhibit 23 through 28, 29 through 34, and would you look at those and tell me, are they the documents that we submitted to you?

A. Yes, they are.

Q. Now, sir, with respect to those documents, you were requested, were you not, to determine whether, in fact, you could make a comparison between the exhibits which are the applications, that's C-23 through C-28, with respect to the exhibits which are the voters' certificates, which are C-29 through C-34? Is that what we had asked you to do?

A. Yes, sir.

Q. Now, again, along those lines, did you come today with any exhibits from which you'd be able to give us testimony with regard to your handwriting comparison?

A. Yes, I do have photographic enlargements.

MR. RHOADS: May we have those placed on the easel, please.

Q. Now, sir, with respect to the exhibits before you, particularly the area that was used for comparison, and now I am referring to the applications, and that would be the area that says below, "Check one and complete," and I'm specifically referring to an address. And what address appears there?

A. The address is Sea Isle City, and then "20 37th Street, Sea Isle City, New Jersey," with the zip code 08243.

Q. Now, with regard to the other exhibits before you, is the address the same on all those that you have just read to us?

A. Yes, they are.

Q. All right. Now, initially, did you compare those six documents to determine whether, in fact, one in the same person filled them out?

A. Yes, sir, I did.

Q. And did you, or can you refer to the chart that's before you now to tell us how it was, step by step, that you went about making this conclusion?

A. The exhibit that is marked C-35, the photographic enlargement, was prepared by photographing the specific area that were in question dealing with the Sea Isle City address so that the six that are in the exhibit are the six that are in question before me.

In order to conduct a comparison for the purposes of trying to determine whether or not one common author is responsible for any given writing, almost without exception you must have the same letters and/or numbers available for a comparison so that the same letter can be compared.

In this particular exhibit, because the addresses are identical on each one of these, that particular requirement was met.

The next thing that can be compared is the actual writing line that is used to produce all of the writing in each and every one of the addresses.

In comparing handwriting, one area that also must be considered is the fact that there will be a natural or a normal variation in anyone's particular writing and that every time someone sits down to produce a

writing, these variations should occur, provided that they are a normal writing and not an attempt at disguise.

The six addresses on C-35, in my opinion, were all prepared by one person, based on the significant similarities that are present between the six that are in the exhibit.

All the Writing Was by Zurawski

After a technical explanation by Sergeant Tidey about the "natural variations" in the handwriting of one person, Counsel Rhoads returned to the exhibited blow-ups of the absentee ballot applications for the Emanueles:

Q. Thank you, sir. I just want to clear up any possible confusion. The exhibit which has been marked Commission Exhibit 35, these are blow-ups lifted directly from the applications of the Emanuele household; is that correct?

A. Yes, sir.

Q. And, of course, it's one per application. That's why we have six, for the six applications?

A. That's correct.

Q. Now, with respect to the applications, I will represent that evidence has already been adduced that determines that the author on the applications of the examples which you have blown up is Aloysius Zurawski.

With respect to those addresses, did you make any further comparisons to any other documents?

A. Yes, I did.

Q. What were they, sir?

A. A comparison was conducted to other exhibits which are referred to as certificates of civilian absentee voters, and there is combinations of handprinted letters and, also, cursive style handwritten letters that appeared on those six certificates.

Q. Now, sir, with respect to the six certificates, did you make any demonstrative visual aid?

A. Yes, I did.

MR. RHOADS: May we have that put on the board, please.

Q. Now, again, Sergeant, prior to your going into your analysis, so that we risk no confusion at all, this blow-up, reading "20 37th Street, Sea Isle City, New Jersey," and that, of course, is the handwritten portion of it, was taken from where?

A. Each one of the six that are in that exhibit C-36 were photographed from the original, which I have before me, which are exhibits C-29, 30, 31, 32, 33 and 34.

Q. For the record, sir, they are the exhibits which are the certificates which attached to the inner envelope contains the ballots of the Emanueles and the Caprons. Is that so?

A. That is correct.

Q. Sir, with regard to this exhibit, Commission Exhibit 36, the blow-up of the address on the certificate, did you make any analyses to determine whether, in fact, these addresses have a common author, same person wrote them?

A. Yes, I did.

Q. What conclusion, if any, did you reach?

A. In my opinion, the six addresses that are on Exhibit 36 were prepared by one individual.

Q. All right. Now, sir, with regard to Exhibit C-36 and Exhibit C-35, which are the addresses taken from the application, and the addresses taken from the certificate, did you make any conclusion with respect to whether or not they had a common author?

A. Yes, sir, I did.

Q. What was your conclusion?

A. In my opinion, the person that prepared the six addresses on the right on Exhibit 35 is one and the same person who prepared the six exhibits on the left in the photograph marked C-36.

Q. All right. Now, sir, if you will, referring again to the exhibits which are the certificate, and that starts with C-29, I believe, through C-34, with regard to those exhibits, if you will look at the bottom right-

hand corner of, let's just say, C-30 as an example, there is a signature there which purports to be that of a Jeffrey A. Capron. Now, with regard to all those certificates, do they all contain written signatures on them?

A. Yes.

Q. In that same portion I alluded to?

A. Yes.

Q. With respect to those signatures, did you, in fact, attempt to make any comparison between the signature itself and the addresses which appear in the two enlarged exhibits before us?

A. Yes, I did.

Q. Were you able to reach any conclusion?

A. Due to the fact that the letters that appeared in the six different signatures that are on these particular specimens do not contain all of the same letters that appeared on the other exhibit on C-35, in my opinion, I was not able to conduct all of the necessary comparisons that I felt should have been conducted, especially when we are trying to make a particular identification. But in viewing all of the six signatures on the specimens, even though they are different names, there are other similarities that are present between these particular signatures and, in my opinion, I feel that there is a high degree of probability that one person prepared all six of these questioned signatures.

The Paterson Municipal Election

The Commission's last public hearing episode involved a municipal election in Paterson in May, 1976. The only witness was a candidate in that election, Nicholas DeLuccia, III, a Councilman who sought re-election in the City's Second Ward. Mr. DeLuccia won that election by a handful of votes. Therefore, his testimony about handling absentee ballots at the St. Joseph's Rest Home in Paterson illustrated the impact of absentee ballots in elections in which the margin of victory is of a hairline nature. He had been informed that patients at this rest home would support his candidacy, he testified, so he personally brought applications for such ballots to the home and "helped them fill them out and then

they were sent in." Counsel Rhoads asked what happened after the applications were processed:

Q. Now, did there come a time when the patients at this nursing home contacted you again?

A. Yes, they did. The ballots were mailed to them and, when they received them, I received a phone call to go over to help them.

Q. And did you, in fact, go over?

A. Yes, I did.

Q. By the way, how many patients are we talking about at this point?

A. Approximately 12.

Q. And when you went over to help them, what exactly is it that you did to assist them?

A. I helped them fill the flaps out and told them that they should take their ballots and vote and then return them to me.

Q. Now, with regard to the flap, are you referring to the certificate which is attached to the inner envelope?

A. That's correct.

Q. You assisted them in filling that out; is that correct?

A. Yes, that's correct.

Q. What was it that you exactly did with the certificate?

A. I filled out some of the information that was required.

Q. What about the signature of the voter?

A. No, they signed their own.

Q. And when you say "signed," were the voters capable of actually writing out their signature or did they make a mark?

A. Some of them were capable of signing their name and some made it by mark.

Q. Approximately how many had to make a mark?

A. I don't recall. I believe it was four. I'm not sure.

Q. When they completed this operation of filling in the ballot and you assisted them with the certificate, what was done with the ballots?

A. They put them in envelopes and then it was returned to me.

Q. What did you do with it?

A. Then I took them, returned home, and in checking over them, make sure they were properly filled out, the flaps, put them in the outer envelopes, and the ones that did have an X, didn't have a witness and that's when I inserted the name of Sister Rosalie, who was bringing the ladies into the room to vote, in a separate room.

Q. So you inserted her name on the certificate as a witness to their mark; is that correct?

A. Yes.

Q. And then having once done that, what did you do with them?

A. The envelopes were sealed and they were brought to the Election Board.

Q. With regard to the election itself, did you, in fact, win that election?

A. Yes, I did.

Q. What was your margin of victory?

A. Six votes.

The Commission's Closing Statement

The Commission's statement closing its two-day public forum stressed a need to continue the effort to generate a compelling public and legislative demand for reforms that would prevent any future "flagrant disregard for the law" as evidenced by the two days of hearings. The statement continued:

In truth, as that testimonial indictment of the process has demonstrated here, the Absentee Voting Law has not merely been disregarded. It has, in fact, also been twisted, stretched, erased, altered and otherwise blatantly disobeyed—all for the evil intention of electing favored candidates to office no matter whether or not a majority of legal voters wished

these particular candidates to be elected. And this misconduct has plagued every phase of the statute, depending upon the callous political design of the manipulators or on their special capability for more expertly negating one or another of the statutory controls.

These all too numerous revelations of abuses of the Absentee Ballot Law were the result of investigations throughout the state that had various origins. While the Commission was conducting its own inquiry, the office of Attorney General Degnan and several county prosecutors were probing into related allegations of wrongdoing. Because of certain difficulties attributable to the often ambiguous provisions of the law and the indistinct breadth of provisions in the overall Title 19 Election Law relative to criminal violations and sanctions, a consensus developed that these various probes be incorporated into the Commission's projects for a continued fact-finding investigation by our agency leading to a public exposure of the law's deficiencies and its misapplication in local elections. These mutual efforts led to the public forum that has now concluded—and which will generate recommendations for safeguarding the statute against further misuse and disregard.

I want to reiterate at this time the Commission's appreciation for the cooperation and contribution of the Attorney General and his staff and of the prosecutors directly involved with these problems. At all times throughout the Commission's inquiry there was a sharing of investigatory files and tasks that was not only invaluable from the standpoint of the Commission's actions but will undoubtedly be an enormously vital factor in developing proposals for strengthening the statute and in achieving the support of the Governor and the Legislature for expeditious enactment of the necessary recommendations.

Allow me to refer again to that recent survey by Secretary of State Donald Lan's office which demonstrated in part, the close margin of under 100 votes by which almost 200 municipal elections alone were

decided in 1978. The Commission's staff made a rough check of 30 of those communities where local contests were *decided by a mere 10 votes or less*. With respect to the subject of this public hearing, our staff determined through direct contact with the appropriate county boards of election which of these 30 contests could have been decided by absentee ballots alone. This follow-up study revealed that in all but 10 of these 30 municipal contests, absentee ballots—legally or illegally—could have been pivotal in determining the winning candidates.

I also noted in a previous statement the sorry spectacle of increasing public refusal to exercise one of our most critical responsibilities—that is, our privilege of voting by going to the polls or casting an absentee ballot. I renew the Commission's extremely strong concern that, in any light vote situation, each vote that is cast becomes more significant. This throws a sharper spotlight on the need to guarantee by adequate law that every vote is a truly legal ballot reflecting *only* the voter's choice at all elections and under any circumstance.

CONCLUSIONS AND RECOMMENDATIONS

Introduction

As noted in the Commission's statement at the conclusion of the public hearings, the sharing of information and investigative tasks with the Division of Criminal Justice and with prosecutors was invaluable to the S.C.J. in the conduct of both its investigation and its public hearings. This cooperative effort continued during the post-hearing period of drafting statutory and regulatory proposals to proscribe, in the future, the abuses and misuses of the absentee ballot process that the Commission's probe and hearings had exposed.

The Commission's closing statement, in addition to summarizing the two days of public hearing testimony by 22 witnesses, also outlined briefly the most critical problems that the testimony confirmed. These problems were primarily triggered by the loopholes and ambiguities of the absentee ballot law. The Commission pin-

pointed statutory areas of most flagrant misbehavior in obtaining and processing absentee ballots and suggested corrective steps for developing legislative proscriptions against future misconduct. The closing statement said with respect to these concerns:

There was considerable testimony, for instance, indicating that portion of the statute—NJSA 19:57-11—having to do with the delivery of absentee ballots by mail or person—is so unclear as to invite fraud. Presumably this provision delegates this assignment to the county clerk but it does not stipulate by whom hand delivery must be made. This subsection should be more specific as to a requirement for hand delivery by the county clerk or his legal designee to either the voter or to the voter's legally authorized messenger.

Another example of an open invitation to misconduct is NJSA 19:57-23, which has to do with marking and handling of absentee ballots by the voter. Under this subsection, if a completed ballot is not mailed to the county Board of Election, it may be delivered to the board—but it also fails to specify by whom such delivery must be made. In addition, it indicates requirements for assisting a blind voter but is ambiguous on this activity. This subsection should specifically require that anyone assisting a voter who is blind, crippled or otherwise incapacitated must affix his name to the certificate. And if a ballot is received by the Board of Elections by any means other than mail, the person delivering that ballot must be required by the board to record his name with the official accepting the ballot.

Under Subtitle 17 there is a subsection that restricts a candidate or a campaign worker from visiting the absentee voter when he fills out the ballot, similar to other areas of Title 19 which prohibit politicking within a certain distance of a polling place. But nowhere in Subtitle 17 is there any prescribed penalty against anyone who violates the secrecy of an absentee voter, the only safeguard being a requirement that the voter himself must certify that he voted in secret. There is absolutely nothing in the portion of the law that makes it a crime if some one should

later open that ballot, inspect its contents and reseal it.

On the subject of sanctions, the question of whether penalties provided for in other parts of Title 19 also apply to absentee ballot infractions could be settled by housing in a separate subtitle of Title 19 all penalties applicable to the entire Title, absentee ballot provisions included. This revision should, of course, impose stringent penalties against tampering with absentee ballots and against any violation of the secrecy of the ballot with the obvious exception of anyone legally assisting an absentee voter under strictures regulating that often necessary activity.

Again, in connection with a confined or disabled absentee voter, the restrictions against outside political influence on his choice of candidate should be specified. Perhaps certain nonpartisan agents of the Board of Elections should be delegated to aid those in need of assistance in marking the ballot or related forms, particularly in institutions.

There is need, from the standpoint of evidence produced here, for strengthening the newly enacted NJSA 19:57-4.1, a subsection requiring the Secretary of State to issue a standard absentee ballot application form. This provision is unclear as to who should signify on the prescribed line at the bottom of the application the name of an "authorized messenger"—that is, whether the voter should write in the name of such a messenger or the messenger himself. There certainly should be some provision for the voter to sign and specify who that messenger is as well as for the messenger himself to sign it. This not only would insure that the voter has properly designated a duly authorized messenger but also would provide a means of identification for the county clerk when a messenger appears to pick up the voter's ballot.

In addition, relative to the certificate attached to the ballot, there should be clearly provided a space for the signature and address of a person witnessing a voter who marks the certificate with an "X" or some other substitution for a written signature. This

again would enable the Board of Elections to double check the actual circumstances of the marking of such an absentee ballot.

As has been indicated by testimony, there is need for a stronger provision covering a ballot marked by a voter who inadvertently makes a mistake in his candidate choice. There is nothing that clearly protects the sanctity of the ballot while also permitting the correction by the voter of his marking error.

Further, a change in the immunity provision under NJSA 19:34-60 appears essential—that is that the granting of transactional immunity upon any witness should be discretionary and contingent upon advance notice to the appropriate law enforcement agency—for example, the Attorney General, the United States Attorney or the concerned county prosecutor.

The Joint Discussions

A series of discussions began after the conclusion of the public hearings relative to absentee ballot law reforms. The Commission submitted a number of proposed law revisions to the office of the Attorney General. In line with the liaison that had been so effective during the Commission's investigation, counter proposals as well as modifications of the S.C.I.'s recommendations' draft were offered by the Attorney General's staff. A number of joint reviews of various prospective statutory reforms ensued. These reforms, presently being put into legislative form by the contributing parties, are summarized as follows:

1. Title 19, Chapter 57 (Absentee Voting Law).

A. Amend paragraph four of Section 4 as follows (matter enclosed in brackets **[thus]** is intended to be omitted from the law and matter that is underlined is intended to be added):

In the event of sickness or confinement, the qualified voter may apply in writing for and obtain an absentee ballot by authorized messenger **[so designated]** whose printed name and address shall appear on the application in the space provided over the signature of the voter.

The authorized messenger shall be a registered voter of the county in which the application is made and shall place his signature on the application in the space so provided in the presence of the county clerk or his designee. The county clerk or his designee shall authenticate the signature of the authorized messenger by comparing it with the signature of said person appearing on the permanent and registration form. **[The]** After so doing, the county clerk or his designee is authorized to deliver to such authorized messenger a ballot to be delivered to the qualified voter.

Comment

Although the Commission's public hearings disclosed numerous abuses of the "authorized messenger" function, that function would be retained in the joint proposal but with the addition of statutory safeguards against misuse of the procedure. These safeguards would include specific identification of an authorized messenger, whose signature on the application must be witnessed by the county clerk and then compared with the signature of such messenger on the permanent registration card. Only after fulfilling these new requirements would a ballot be delivered to the voter by an authorized messenger. It is believed that these requirements would proscribe the abuses that resulted from the use of unauthorized messengers as depicted by the public hearing testimony.

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B. Amend Section 11 to change the way in which a qualified voter receives his absentee ballot from the county clerk when such a ballot is not sent by first-class mail, as follows (matter in brackets **[thus]** is intended to be omitted and matter that is underlined is intended to be added):

Each county clerk shall forward a military service ballot or a civilian absentee ballot, as the case may be, for use under this act by first-class mail or hand **[delivered]** delivery to each military service voter who applies therefor, and

whose application is approved in any case where approval is required under section 10 of this act, and to each civilian absentee voter whose request therefor has been approved. Hand delivery shall be made by the county clerk or his designee in person to the voter or his authorized messenger or, in the case of a military service voter, to such relative or friend of the military service voter who submit the application in his behalf. Ballots that have not been hand delivered [to the voter] shall be addressed to the voter at the forwarding address given in the application. All ballots to be forwarded to persons at an address located within the limits of the states of Alaska and Hawaii or without the limits of the other 48 states and the District of Columbia shall be forwarded by air mail.

Comment

These amendments would clarify and strengthen statutory control over the hand delivery of an absentee ballot to a voter or his authorized messenger by having the county clerk or an employee of the county clerk deliver the ballot rather than, as the Commission's hearings illustrated, a partisan individual who might affect the independence of the voter.

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C. Amend paragraphs two and three of Section 23, the section which pertains to the marking of an absentee ballot, the sealing of the marked ballot in an "inner" envelope, the completion of the certification attached to the inner envelope, the sealing of the inner envelope with attached certificate in an outer envelope and the transmission of the sealed outer envelope to the county clerk, as follows:

A blind absentee voter shall be entitled to assistance in the marking of his ballot and in completing and signing of the certificate. In such case the person providing such assistance shall add on the face of the certificate "Voter Assisted

by " signing and printing his name thereto. In no event may a candidate for election provide such assistance, nor may any person, at the time of providing such assistance, campaign or electioneer on behalf of any candidate.

Said sealed outer envelope with the inner envelope and the ballot enclosed therein shall then either be mailed with sufficient postage to the county board of elections to which it is addressed or personally delivered by the voter to such board [.] or its designee. Such ballot must be received by such board or its designee before 8 p.m. on the day of the election.

Comment

These amendments seek to (1) prohibit anyone from campaigning or electioneering on behalf of a candidate while assisting a blind or disabled absentee voter in marking his ballot and to specifically bar any candidate for elective office from providing such assistance, and (2) restrict the manner of returning a marked and sealed absentee ballot to the county board of elections to the mails or by personal delivery by the voter himself. These proposed changes reflect abuses aired at the S.C.I.'s public hearings—specifically electioneering by candidates and campaign workers while assisting voters in marking ballots and in the wholesale processing of marked ballots to the county board of elections. Under the present statute, completed absentee ballots may be hand-delivered to the county board of elections by anyone.

NOTE: Relative to the restrictions on assisting a blind absentee voter, which the S.C.I. of course supports, the Commission would also urge that similar safeguards be enacted for "otherwise disabled" absentee voters whose disabilities prevent them from marking their ballots. The S.C.I. would achieve this additional protection by adding to the definitions listed in Section 2 of Title 19, Chapter 57, the following:

"Disabled Voter" means a person who, due to his disability, is unable to mark his ballot."

In line with this, the Commission would further amend Section

23 to include an otherwise disabled voter in the section's provisions for assisting a blind absentee voter in marking his ballot and in completing and signing the attached certificate.

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D. Amend Section 37, which provides for criminal sanctions against violators of the law, as follows:

a. Any person who, knowingly, violates any of the provisions of this act, or who, not being entitled to vote thereunder, fraudulently votes or attempts to vote thereunder or enables or attempts to enable another person, not entitled to vote thereunder, to vote fraudulently thereunder or who prevents or attempts to prevent by fraud the voting of any person legally entitled to vote under this act, or who shall knowingly certify falsely in any paper required under this act, shall be guilty of a **[misdemeanor]** crime of the fourth degree, and upon conviction thereof shall be subject, in addition to such other penalties as are authorized by law, to disenfranchisement unless and until pardoned or restored by law to right of suffrage.

b. Any person who, before, during or after an election, knowingly tampers with an absentee ballot or an absentee ballot application or any other official document used in an election, or interferes or attempts to interfere with the secrecy of voting or the casting of an absentee ballot shall be guilty of a crime of the third degree, and upon conviction thereof shall be subject, in addition to such other penalties as are authorized by law, to disenfranchisement unless and until pardoned or restored by law to the right of suffrage.

Comment

The underlined matter in paragraph (b) above provides for a specific criminal penalty for tampering with an absentee ballot, for interfering with the secrecy of voting or casting of an absentee

ballot, for interfering with the submission of an absentee ballot application, and for unlawfully possessing an absentee ballot. The need for such a specific criminal penalty was emphasized by Director Edwin H. Stier of the Division of Criminal Justice at the outset of the public hearings and by the S.C.I. in its statement formally concluding the hearings. In addition, crimes once classified as misdemeanors or high misdemeanors have been reclassified to conform with the new Penal Code.

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II. Title 19, Chapter 34.

A. Repeal Section 58 through 61 of Title 19's Chapter 34, the chapter that is entitled "Crimes and Penalties—Enforcement," as follows:

R. S. 19:34-58 through R. S. 19:34-61, both inclusive, are repealed.

Comment

The above would repeal Title 19's 50-year-old immunity provisions, which came under particularly severe criticism by the Attorney General's Criminal Justice Director Stier at the outset of the public hearings and by the Commission itself in its closing statement. These strongly condemned provisions automatically immunize all witnesses called to testify in any Title 19 proceedings, thereby frustrating effective investigation of violations of this chapter.

THE NATIONAL ORGANIZATION OF INVESTIGATORY COMMISSIONS

As in previous years, the Commission continued throughout 1978 to respond by letters, statements and personal representation to requests from out-of-state for counsel in resolving organized crime problems. The continuing interest in sharing the Commission's experiences and in exchanging views prompted the S.C.I. in late 1977 to propose the formation of a National Organization of Investigatory Commissions. Such an organization became a reality in 1978 and subsequently elected its first officers, adopted by-laws and authorized a special education program designed to encourage the formation of similar investigating agencies in other states.

The National Organization of Investigatory Commissions elected as its first president Michael R. Siavage, the Executive Director of the New Jersey Commission, which had initiated the call for the formation of a nationwide group of similar agencies. Other officers elected were: Vice president, Ms. Joan Weiner, Executive Director of the Pennsylvania Crime Commission; Secretary, Harris Hartz, Executive Director of the Organized Crime Prevention Commission of New Mexico, and Treasurer, Henry F. Bernhards, Chief Administrator of the Purchase and Procedures (Investigating) Commission of West Virginia. Other members of the national group are the New York State Commission of Investigation, the Illinois Investigating Commission and the Hawaii Commission on Crime.

The stated purposes of NOIC, according to its Constitution, are:

- A. *To exchange information and ideas concerning the administration and operation of the member organizations and to assist the member organizations in matters of professional concern.*
- B. *To establish standards for the procedures attending investigations, hearings, reports and other operational matters of the member organizations.*
- C. *To encourage the establishment, continuation, and improvement of independent professional investigatory commissions and like organizations.*

Since its creation NOIC has met on several occasions around the nation and has undertaken various projects in line with its constitutional purposes. For instance, the Report of the Task Force on Organized Crime of the National Advisory Committee on Criminal Justice Standards and Goals in 1976 stated:

Every State should establish by executive order, constitutional amendment, or legislative act a statewide Organized Crime Investigating Commission with independent, permanent status and the specific mandate to expose the role that organized crime plays in illegal activities, corruption and improper practices in government.

NOIC has undertaken the task of communicating with states that do not have investigatory commissions concerning the possible establishment of such commissions. Additional projects include the formulation of a model code of investigative procedure and a heightened liaison with various federal investigating agencies.

APPENDIX I

MEMBERS OF THE COMMISSION

The Commission's activities have been under the leadership of Arthur S. Lane since February, 1979, when he was designated as Chairman by Governor Brendan T. Byrne after his appointment to a second term as Commissioner. The other Commissioners are John J. Francis, Jr., Lewis B. Kaden and Henry S. Patterson, II.

Mr. Lane, of Harborton, was initially appointed to the Commission in May, 1977, by the Speaker of the General Assembly, a post then held by Senator William J. Hamilton of Middlesex. He was reappointed to the Commission by Senate President Joseph P. Merlino of Mercer in January, 1979. As Chairman, he succeeded Joseph H. Rodriguez of Cherry Hill, who had been Chairman since 1973. A former state and federal judge, Mr. Lane has been a member of the Princeton law firm of Smith, Stratton, Wise and Heher since his retirement in 1976 as vice president and general counsel for Johnson and Johnson of New Brunswick. A graduate of Princeton University, he was admitted to the New Jersey Bar in 1939 after gaining his law degree at Harvard Law School. He served in the Navy during World War II. He became assistant Mercer County prosecutor in 1947, Mercer County judge in 1956 and U.S. District Court judge in 1960 by appointment of the late President Eisenhower. Mr. Lane is chairman of the National Council on Crime and Delinquency.

Mr. Francis, of South Orange, is a partner in the Newark law firm of Shanley and Fisher. From 1961 to 1963 he was an assistant U.S. attorney and from 1963 to 1965 he was an assistant Essex County Prosecutor. A graduate of Williams College and the University of Pennsylvania Law School, he was admitted to the New Jersey State Bar in 1960. Mr. Francis, 44, is the son of former Associate Justice John J. Francis of the New Jersey Supreme Court. He was appointed to the Commission in February, 1979, by Christopher J. Jackman, Speaker of the General Assembly of New Jersey.

Mr. Kaden, of Perth Amboy, was first appointed as a Commissioner in July, 1976, by Governor Byrne and reappointed by the

Governor in December, 1978. A graduate of Harvard College and Harvard Law School, he was the John Howard Scholar at Cambridge University, England. Until January, 1974, he was a partner in the law firm of Battle, Fowler, Stokes and Kheel in New York City. From 1974 to July, 1976, he was Chief Counsel to Governor Byrne. Mr. Kaden is Professor of Law at Columbia University and he is active as a labor arbitrator and mediator.

Mr. Patterson, of Princeton, is president and a director of the Elizabethtown Water Co., chairman of the board of the First National Bank of Princeton and a director of the Mount Holly Water Co. and of United Jersey Banks. He is first vice president, director and executive committee member of the National Association of Water Companies, an honorary director of the American Water Works Association and past president of the New Jersey Utilities Association. He is also president of the Middlesex-Somerset-Mercer Regional Study Council. He was graduated from Princeton University and served during World War II in the U.S. Army. He received his discharge as a first lieutenant in 1946. He was appointed to the Commission in February, 1979, by Governor Byrne.

APPENDIX II

STATE COMMISSION OF INVESTIGATION LAW

New Jersey Statutes Annotated 52:9M-1, *Et Seq.*

L. 1968, C. 266, as amended by L. 1969, C. 67, L. 1970, C. 263, and L. 1973, C. 238.

52:9M-1. Creation; members; appointment; chairman; terms; salaries; vacancies. There is hereby created a temporary state commission of investigation. The commission shall consist of 4 members, to be known as commissioners.

Two members of the commission shall be appointed by the governor, one by the president of the senate and one by the speaker of the general assembly, each for 5 years. The governor shall designate one of the members to serve as chairman of the commission.

The members of the commission appointed by the president of the senate and the speaker of the general assembly and at least one of the members appointed by the governor shall be attorneys admitted to the bar of this state. No member or employee of the commission shall hold any other public office or public employment. Not more than 2 of the members shall belong to the same political party.

Each member of the commission shall receive an annual salary of \$15,000.00 and shall also be entitled to reimbursement for his expenses actually and necessarily incurred in the performance of his duties, including expenses of travel outside of the state.

Vacancies in the commission shall be filled for the unexpired term in the same manner as original appointments. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

52:9M-2. Duties and powers. The commission shall have the duty and power to conduct investigations in connection with:

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

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

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

52:9M-3. Additional duties. At the direction of the governor or by concurrent resolution of the legislature the commission shall conduct investigations and otherwise assist in connection with:

a. The removal of public officers by the governor;

b. The making of recommendations by the governor to any other person or body, with respect to the removal of public officers;

c. The making of recommendations by the governor to the legislature with respect to changes in or additions to existing provisions of law required for the more effective enforcement of the law.

52:9M-4. Investigation of management or affairs of state department or agency. At the direction or request of the legislature by concurrent resolution or of the governor or of the head of any department, board, bureau, commission, authority or other agency created by the state, or to which the state is a party, the commission shall investigate the management or affairs of any such department, board, bureau, commission, authority or other agency.

52:9M-5. Cooperation with law enforcement officials. Upon request of the attorney general, a county prosecutor or any other law enforcement official, the commission shall cooperate with, advise and assist them in the performance of their official powers and duties.

52:9M-6. Cooperation with federal government. The commission shall cooperate with departments and officers of the United States government in the investigation of violations of the federal laws within this state.

52:9M-7. Examination into law enforcement affecting other states. The commission shall examine into matters relating to law enforcement extending across the boundaries of the state into other states; and may consult and exchange information with officers and agencies of other states with respect to law enforcement problems of mutual concern to this and other states.

52:9M-8. Reference of evidence to other officials. Whenever it shall appear to the commission that there is cause for the prosecution for a crime, or for the removal of a public officer for misconduct, the commission shall refer the evidence of such crime or misconduct to the officials authorized to conduct the prosecution or to remove the public officer.

52:9M-9. *Executive director; counsel; employees.* The commission shall be authorized to appoint and employ and at pleasure remove an executive director, counsel, investigators, accountants, and such other persons as it may deem necessary, without regard to civil service; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. Investigators and accountants appointed by the commission shall be and have all the powers of peace officers.

52:9M-10. *Annual report; recommendations; other reports.* The commission shall make an annual report to the governor and legislature which shall include its recommendations. The commission shall make such further interim reports to the governor and legislature, or either thereof, as it shall deem advisable, or as shall be required by the governor or by concurrent resolution of the legislature.

52:9M-11. *Information to public.* By such means and to such extent as it shall deem appropriate, the commission shall keep the public informed as to the operations of organized crime, problems of criminal law enforcement in the state and other activities of the commission.

52:9M-12. *Additional powers; warrant for arrest; contempt of court.* With respect to the performance of its functions, duties and powers and subject to the limitation contained in paragraph d. of this section, the commission shall be authorized as follows:

a. To conduct any investigation authorized by this act at any place within the state; and to maintain offices, hold meetings and function at any place within the state as it may deem necessary;

b. To conduct private and public hearings, and to designate a member of the commission to preside over any such hearing;

c. To administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation; and the commission may designate any of its members or any member of its staff to exercise any such powers;

d. Unless otherwise instructed by a resolution adopted by a majority of the members of the commission, every witness attending before the commission shall be examined privately and the commission shall not make public the particulars of such examination. The commission shall not have the power to take testimony

at a private hearing or at a public hearing unless at least 2 of its members are present at such hearing.

e. Witnesses summoned to appear before the commission shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the state.

If any person subpoenaed pursuant to this section shall neglect or refuse to obey the command of the subpoena, any judge of the superior court or of a county court or any municipal magistrate may, on proof by affidavit of service of the subpoena, payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring him before the judge or magistrate, who is authorized to proceed against such person as for a contempt of court.

52:9M-13. *Powers and duties unaffected.* Nothing contained in sections 2 through 12 of this act [chapter] shall be construed to supersede, repeal or limit any power, duty or function of the governor or any department or agency of the state, or any political subdivision thereof, as prescribed or defined by law.

52:9M-14. *Request and receipt of assistance.* The commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by the state, or to which the state is a party, or of any political subdivision thereof, cooperation and assistance in the performance of its duties.

52:9M-15. *Disclosure forbidden; statements absolutely privileged.* Any person conducting or participating in any examination or investigation who shall disclose to any person other than the commission or an officer having the power to appoint one or more of the commissioners the name of any witness examined, or any information obtained or given upon such examination or investigation, except as directed by the governor or commission, shall be adjudged a disorderly person.

Any statement made by a member of the commission or an employee thereof relevant to any proceedings before or investigative activities of the commission shall be absolutely privileged and such privilege shall be a complete defense to any action for libel or slander.

52:9M-16. Impounding exhibits; action by superior court. Upon the application of the commission, or a duly authorized member of its staff, the superior court or a judge thereof may impound any exhibit marked in evidence in any public or private hearing held in connection with an investigation conducted by the commission, and may order such exhibit to be retained by, or delivered to and placed in the custody of, the commission. When so impounded such exhibits shall not be taken from the custody of the commission, except upon further order of the court made upon 5 days' notice to the commission or upon its application or with its consent.

52:9M-17. Immunity; order; notice; effect of immunity. a. If, in the course of any investigation or hearing conducted by the commission pursuant to this act [chapter], a person refuses to answer a question or questions or produce evidence of any kind on the ground that he will be exposed to criminal prosecution or penalty or to a forfeiture of his estate thereby, the commission may order the person to answer the question or questions or produce the requested evidence and confer immunity as in this section provided. No order to answer or produce evidence with immunity shall be made except by resolution of a majority of all the members of the commission and after the attorney general and the appropriate county prosecutor shall have been given at least 24 hours written notice of the commission's intention to issue such order and afforded an opportunity to be heard in respect to any objections they or either of them may have to the granting of immunity.

b. If upon issuance of such an order, the person complies therewith, he shall be immune from having such responsive answer given by him or such responsive evidence produced by him, or evidence derived therefrom used to expose him to criminal prosecution or penalty or to a forfeiture of his estate, except that such person may nevertheless be prosecuted for any perjury committed in such answer or in producing such evidence, or for contempt for failing to give an answer or produce in accordance with the order of the commission; and any such answer given or evidence produced shall be admissible against him upon any criminal investigation, proceeding or trial against him for such perjury, or upon any investigation, proceeding or trial against him for such contempt.

52:9M-18. Severability; effect of partial invalidity. If any section, clause or portion of this act [chapter] shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and

no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

52:9M-19. There is hereby appropriated to the Commission the sum of \$400,000.

52:9M-20. This act shall take effect immediately and remain in effect until December 31, 1979.

APPENDIX III

CODE OF FAIR PROCEDURE

Chapter 376, Laws of New Jersey, 1968, N. J. S. 52:13E-1
to 52:13E-10.

An Act establishing a code of fair procedure to govern state investigating agencies and providing a penalty for certain violations thereof.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in this act:

(a) "Agency" means any of the following while engaged in an investigation or inquiry: (1) the Governor or any person or persons appointed by him acting pursuant to P. L. 1941, c. 16, s. 1 (C. 52:15-7), (2) any temporary State commission or duly authorized committee thereof having the power to require testimony or the production of evidence by subpoena, or (3) any legislative committee or commission having the powers set forth in Revised Statutes 52:13-1.

(b) "Hearing" means any hearing in the course of an investigatory proceeding (other than a preliminary conference or interview at which no testimony is taken under oath) conducted before an agency at which testimony or the production of other evidence may be compelled by subpoena or other compulsory process.

(c) "Public hearing" means any hearing open to the public, or any hearing, or such part thereof, as to which testimony or other evidence is made available or disseminated to the public by the agency.

(d) "Private hearing" means any hearing other than a public hearing.

2. No person may be required to appear at a hearing or to testify at a hearing unless there has been personally served upon him prior to the time when he is required to appear, a copy of this act, and a general statement of the subject of the investigation. A

copy of the resolution, statute, order or other provision of law authorizing the investigation shall be furnished by the agency upon request therefor by the person summoned.

3. A witness summoned to a hearing shall have the right to be accompanied by counsel, who shall be permitted to advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at a public hearing may submit proposed questions to be asked of the witness relevant to the matters upon which the witness has been questioned and the agency shall ask the witness such of the questions as it may deem appropriate to its inquiry.

4. A complete and accurate record shall be kept of each public hearing and a witness shall be entitled to receive a copy of his testimony at such hearing at his own expense. Where testimony which a witness has given at a private hearing becomes relevant in a criminal proceeding in which the witness is a defendant, or in any subsequent hearing in which the witness is summoned to testify, the witness shall be entitled to a copy of such testimony, at his own expense, provided the same is available, and provided further that the furnishing of such copy will not prejudice the public safety or security.

5. A witness who testifies at any hearing shall have the right at the conclusion of his examination to file a brief sworn statement relevant to his testimony for incorporation in the record of the investigatory proceeding.

6. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the agency or its counsel at such hearing tends to defame him or otherwise adversely affect his reputation shall have the right, either to appear personally before the agency and testify in his own behalf as to matters relevant to the testimony or other evidence complained of, or in the alternative at the option of the agency, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

7. Nothing in this act shall be construed to prevent an agency from granting to witnesses appearing before it, or to persons who

claim to be adversely affected by testimony or other evidence adduced before it, such further rights and privileges as it may determine.

8. Except in the course of subsequent hearing which is open to the public, no testimony or other evidence adduced at a private hearing or preliminary conference or interview conducted before a single-member agency in the course of its investigation shall be disseminated or made available to the public by said agency, its counsel or employees without the approval of the head of the agency. Except in the course of a subsequent hearing open to the public, no testimony or other evidence adduced at a private hearing or preliminary conference or interview before a committee or other multi-member investigating agency shall be disseminated or made available to the public by any member of the agency, its counsel or employees, except with the approval of a majority of the members of such agency. Any person who violates the provisions of this subdivision shall be adjudged a disorderly person.

9. No temporary State commission having more than 2 members shall have the power to take testimony at a public or private hearing unless at least 2 of its members are present at such hearing.

10. Nothing in this act shall be construed to affect, diminish or impair the right, under any other provision of law, rule or custom, of any member or group of members of a committee or other multi-member investigating agency to file a statement or statements of minority views to accompany and be released with or subsequent to the report of the committee or agency.

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