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

REPORT

MADE BY THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

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Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

I. INTRODUCTION

BACKGROUND ON HEARINGS ON PENSION FUND

The Department of Labor began an investigation of the Teamsters Union Central States Pension Fund in late 1975. The Senate Permanent Subcommittee on Investigations examined the Labor Department's inquiry in public hearings held on August 25 and 26 and September 29 and 30, 1980. Thirty-five witnesses testified and 1,049 pages of stenographic testimony were received. Executive session testimony was received as well.

The subcommittee's jurisdiction to conduct these hearings was found in the jurisdiction conferred upon the Governmental Affairs Committee by rule 25 and by Senate Resolution 361, agreed to March 5, 1980.

Section 3 of Senate Resolution 361 authorized the subcommittee to investigate "criminal or other improper practices or activities . . . in the field of labor-management relations."

The subcommittee also was authorized to investigate "syndicated or organized crime" which may operate in interstate commerce, and the operations of the Federal Government.

In terms of assets, the Central States pension fund was the 41st largest pension fund in the Nation and the second largest multi-employer trust organized under the Taft-Hartley Act.

Created in February of 1955, the fund—whose full name is Central States, Southeast and Southwest Areas Pension Fund—had about $2.2 billion in assets as of December 31, 1979. Its membership was comprised of about 500,000 active participants and retired pensioners. Employer contributions totaled about $586 million a

year. Pension payments paid out came to about $323 million a year (p. 63).*

HOFFA DISAPPEARANCE DREW ATTENTION TO FUND

Management of the Central States fund was a source of controversy almost from its creation. Critics of the fund's trustees said far too much of the fund's assets were invested in risky real estate ventures.

It was also charged that the trustees were influenced by organized criminals in their investment decisions. Similarly, law enforcement officers said the loans themselves were frequently made to organized criminals or organized crime fronts.

On July 30, 1975, James R. Hoffa, former president of the Teamsters and a felon whose 13-year sentence had been commuted by President Nixon, disappeared. Hoffa was apparently kidnaped. After extensive investigation, law enforcement officials concluded that Hoffa had been murdered. Officials believed that certain organized crime figures had been involved. But insufficient evidence was developed. No one was ever charged. Hoffa's body was never found.

The mysterious disappearance of Jimmy Hoffa, and the nationwide search that followed, resulted in widespread news coverage. Much of the coverage focused on the details of the investigation, on Hoffa's activities the day he was presumably abducted, on the luncheon he was to have attended at the Machus Red Fox Restaurant outside Detroit with two Teamsters leaders with reputed mob ties, Anthony (Tony Pro) Provenzano, and Anthony (Tony Jack) Giacalone.

But also placed under the media spotlight were the allegations of corruption and high level criminal infiltration that had been leveled at the Teamsters Union for many years. With the focus on corruption and mob influence came added attention to the questionable practices of the Central States pension fund. For example, Hoffa's fraudulent use of the Central States pension fund had been one of the crimes that resulted in his going to prison.

Typical of the kind of press coverage the Teamsters Union and its Central States pension fund were receiving as a result of the Hoffa case was a five-part series of articles syndicated by the Reader's Digest in which longtime labor writer Lester Velie described the events that combined to bring about Hoffa's undoing.

In excerpts from his, "Desperate Bargain: Why Jimmy Hoffa Had to Die," Velie traced Hoffa's rise to power in the Teamsters Union and his use of mob elements to solidify and reinforce his hold on the union's leadership.

Like so many other writers noting Hoffa's ties to underworld figures, Velie cited Hoffa's consistent exploitation of the Central States pension fund as a source of money which was used to finance risky organized criminal enterprises, from gambling casinos to resorts.

Velie pointed out that major crime figures came to view Hoffa as "our connection" with the Teamsters Central States pension fund, the union's richest welfare benefit trust. Velie discussed the "important uses" organized criminals had for money from the fund, money they counted on because of Hoffa's control over the billion-dollar pension fund. "He could pour millions of dollars in loans and finders' fees to gangsters," Velie wrote.

*Refers to page numbers in the printed hearings of the Permanent Subcommittee on Investigations entitled "Oversight of Labor Department's Investigation of Teamsters Central States Pension Fund," Aug. 25-26 and Sept. 29-30, 1980.

That was the Jimmy Hoffa of the fifties and sixties. But many changes occurred during the 4 years he was in prison. For one thing, he was no longer president of the union. Jimmy Hoffa in 1975 was virtually powerless to control the pension fund or the union that had once been his.

No longer president, no longer able to command the allegiance of Teamsters leaders, Hoffa still sought power. He vowed to regain the presidency.

But, Velie said, the prospect of Jimmy Hoffa waging a hard fought struggle to regain control of the union was unacceptable to mob figures and their friends in the union. They were afraid that Hoffa, who had made alliances with organized crime in order to lead the union, might now try to expose those alliances and ride a fury of reform back to power.

Velie said that Hoffa was brutually murdered by mob figures who felt that the former Teamsters boss, in his enthusiasm to regain control, might start speaking out about mob infiltration of the Central States pension fund and other union reserves and resources.

"Thus, Hoffa, who had served the underworld loyally for most of his adult life, was now a threat to it," Velie said, adding that Hoffa "wanted out from his desperate bargain. But from this kind of bargain, as Hoffa found one fateful day in July 1975, there is but one exit—death."

THE DEMING, N. MEX., LOAN

The Hoffa case—with its famous labor leader, the alleged involvement of organized criminals, the abduction in broad daylight, the presumed gangland style killing and the nationwide search for the body—was a media sensation. It was page 1 news throughout the Nation. But it was not the first instance of alleged wrongdoing related to the Teamsters Union and to its Central States fund. News report after news report surfaced in the sixties and in the seventies about corrupt practices in the Central States pension fund.

One such account, based on information from 8,000 pages of trial transcript and extensive interviews, appeared in the Wall Street Journal on July 24, 1975, 6 days before Hoffa disappeared.

The article, written by Jonathan Kwitny, recounted a Federal prosecution that charged seven men with conspiring to defraud the Central States pension fund in connection with more than $4 million in loans made to a company in Deming, N. Mex.

Involved in the case were several reputed organized crime figures with ties to the fund. Also indicted were Albert Matheson and Jack Sheetz, both management representatives on the board of trustees of the Central States pension fund.

The Journal told the story of how the fund poured millions of dollars into a factory in Deming in the form of loans, none of which were repaid and which reportedly benefited the defendants and their associates. It told of the extraordinary efforts Federal authorities had made to prosecute the case, how certain vital evi-

dence had been ruled inadmissible in the trial, and how potential witnesses had been gunned down in gangland style.

The case had examples of how Central States pension fund loans could be diverted and used in ways having nothing to do with their stated purpose.

In bringing the case to trial, the Federal Government hoped, first, to convict the defendants for their part in the alleged conspiracy.

But, equally important, Federal prosecutors hoped that convictions in the Deming, N. Mex., loan case would lead to other indictments and more convictions and, ultimately, that so much public and prosecutorial pressure on the Central States pension fund would result in a house cleaning of the fund and the selection of new, honest leadership.

But, on April 10, 1975, in a Chicago court room, after a 2-month trial and an investment by Federal authorities of millions of dollars and thousands of man-hours, the Federal Government lost the entire case. The defendants were acquitted on all counts.

However, as 1975 wore on, Federal authorities, discouraged by this setback, by their failure to solve the Hoffa case and their continued inability to bring reform to the Central States pension fund, did find something to be optimistic about.

Their optimism was based on approval in 1974 of sweeping and unprecedented pension plan reform legislation. The new law, just then being implemented, would, they hoped, provide the vehicle they needed to end corrupt and questionable practices at the Central States pension fund.

The new pension reform statute, the Employee Retirement Income Security Act of 1974, was known by its acronym, ERISA. The law gave Federal authorities the responsibility to oversee the operations of employee benefit plans and to go to court if there were no other means to rid the fund of mismanagement or corruption.

Equally important, the statute gave the Labor Department unprecedented access to and authority over employee benefit trusts such as the Central States pension fund. It was anticipated that this access to fund operations would be of historic importance to the Justice Department in mounting prosecutions against persons alleged to be guilty of criminal exploitation of pension funds.

Sensitive to the growing public and congressional furor over the Hoffa case and the many more Teamsters scandals, Federal officials planned to use ERISA's investigative provisions for the first time against the Central States pension fund.

At the same time that Jimmy Hoffa's mysterious disappearance was the top newsstory of the day—the summer of 1975—the Labor Department was preparing for a full-scale investigation of the Central States fund.

A team of experienced attorneys, accountants, auditors, and investigators—known as the Special Investigations Staff—was being formed at the Labor Department to conduct the inquiry in coordination with prosecutors at the Department of Justice and with the Internal Revenue Service. Federal officials believed that this investigation would succeed where others failed. They based their hopes on new powers given them by the pension reform act, ERISA.

ERISA WAS HISTORIC PENSION REFORM STATUTE PASSED IN 1974

Signed into law by President Ford on Labor Day, September 2, 1974, the Employee Retirement Income Security Act, or ERISA, affected 35 million American workers and covered most types of employee benefit plans.

With ERISA, Congress wanted to guarantee that "minimum standards be provided assuring the equitable character of such plans and their financial soundness." Congress found ERISA was needed because there was a lack of information available to employees. There were also inadequate safeguards concerning the operation of employee benefit plans. Employees and their families had, in too many instances, been deprived of their benefits.

In general terms, ERISA required that benefit plan participants must be given descriptions of plans they participate in and must have access to plan financial information. These requirements were set forth in the reporting and disclosure provisions of ERISA.

ERISA required that retirement plans meet minimum standards in participation, vesting, and the rate at which benefits could be earned. An automatic method of payment was established.

Plan termination insurance was created by ERISA. Administered by the Pension Benefit Guaranty Corporation, the insurance enabled the Government to guarantee the payment of some benefits if certain types of retirement plans were terminated.

For the purpose of the subcommittee's investigation and this report, the most important provisions of ERISA had to do with fiduciary standards. These standards were established to make certain that those people who conduct a plan's business did so for the exclusive benefit of plan participants.

A fiduciary is a person who occupies a position of trust, one who holds or controls property for the benefit of another person. Regarding employee benefit plans, ERISA defined a fiduciary as anyone who exercised discretionary control or authority over plan management or assets, anyone with discretionary authority or responsibility in the administration of a plan, or anyone who provided investment advice to a plan for compensation or had any authority or responsibility to do so.

According to ERISA, then, a fiduciary was a benefit plan trustee or officer, a director of a plan, a member of a plan's investment committee, and a person who helped select other fiduciaries, or a person who exercised certain discretionary authority with respect to the fund.

ERISA's fiduciary requirements said that employee benefit plans must be established and maintained under a written instrument and that provisions must be made for one or more "named fiduciaries" with authority to control and manage the administration of the fund.

In fulfilling their responsibilities, fiduciaries must meet basic standards imposed by ERISA. A fiduciary must act in the interest of the plan participants and beneficiaries. He must manage the plan assets to minimize the risk of large losses. He must act in accordance with the documents governing the plan.

In addition, under ERISA, the fiduciary must act with "the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a

like character and with like aims." This standard has been called ERISA's "prudent man rule."

Fiduciaries must meet the prudent man rule in all aspects of plan operation, from selecting the individuals or institutions to handle investment of plan assets to setting the investment objectives those assets are expected to achieve.

A fiduciary who violates ERISA's standards is personally liable to make good any losses resulting from his failure to meet his responsibilities and return any profits realized from his actions. Fiduciaries may also be liable for the misconduct of other fiduciaries, if it can be shown that they knew about it. Enforcement of fiduciary standards permits both civil and criminal penalties.

LAWS USED BY JUSTICE DEPARTMENT IN PROSECUTING FUND ABUSE

The Justice Department's interest in the area of employee pension and welfare plans was derived mainly from a number of criminal statutes. These are contained in title 18 of the U.S. Code.

These statutes include 18 U.S.C. 664, which makes it a felony to embezzle or convert the assets of an employee benefit plan; 18 U.S.C. 1954, which makes it a felony for anyone to offer, accept, or solicit anything of value to influence the operations of an employee benefit plan; and 18 U.S.C. 1027, which prohibits the filing of any false documents or statements with an employee benefit plan. The Welfare and Pension Plans Disclosure Act makes it a misdemeanor to willfully violate the reporting and disclosure provisions of that act.

In addition to the specific statutes, many other criminal laws including mail and wire fraud, interstate transportation of stolen and forged securities, and violations of the Federal racketeering statutes may also be applied in the course of investigation into the alleged misuse of benefit plans.

Testifying before the Investigations Subcommittee in 1980, senior Labor Department officials, incuding Secretary F. Ray Marshall and his Solicitor's Office attorneys, insisted that the Labor Department had very limited responsibility in the criminal area and that responsibility related only to ERISA's reporting and disclosure requirements.

Senator Nunn, who was then chairman of the subcommittee, said that, without the Labor Department diligently carrying out its role in detecting and investigating the alleged influence of organized crime on the fund, no thorough and responsible inquiry of these charges could be conducted.

However, at the 1980 hearing, Labor Department officers disputed that view, saying that since there were no criminal provisions cited in ERISA other than reporting and disclosure, the Department was not required to detect or investigate other possible criminal violations in conducting its inquiry under ERISA.

This conflict between the subcommittee members and senior Labor Department officials was never resolved during the hearings.

ORGANIZED CRIME INFLUENCE STUDIED

The Department of Labor's first investigation of the Central States pension fund began in 1975 with the creation of the Special

Investigations Staff (SIS) whose initial assignment was to make inquiry into the fund.

However, while no actual investigation of the fund took place until SIS got into the picture, the Labor Department did gather information about the fund before 1975 and, to an extent, did monitor the fund's activities.

On January 20, 1975, the Labor Department prepared a study summarizing information on the Central States pension fund's reported ties to organized crime. The study was written at the request of J. Vernon Ballard, the Deputy Administrator of Pension and Welfare Benefit Programs.

The study said that there had been congressional requests for information on the status of the fund in light of the new pension reform act, ERISA. Those requests were brought to Ballard's attention by Robert Lagather, the Deputy Solicitor of the Labor Department.

The study said the Department had been collecting information on the fund since 1960. The Department had assisted other Federal agencies which were investigating the fund. "Very extensive" investigations of the fund were conducted by U.S. postal inspectors, the FBI and the Internal Revenue Service, the study said.

The Postal and FBI investigations, the study said, were directed at individual loans made by the fund and "fraud violations have been uncovered and prosecuted." The study said that in the IRS inquiry revenue agents reviewed the minutes of the meetings of the fund's board of trustees and scrutinized each loan, noting the recipient, the terms, the attorneys and accountants involved and the identities of the trustees who voted in favor of making the loan. "This information was made available to the Labor Department and is in our possession," the study said.

The study said the lending policy of the fund had been since its creation in 1955 to make "very large real estate loans to high risk ventures." The fund had been criticized for this practice but continued to do it, even though parties to the loan transactions—recipients, brokers, attorneys, accountants—had been identified as being organized criminals or associates of organized criminals, the study said. One estimate, the study said, was that 30 percent of the fund's real estate loans were delinquent.

Information in the Labor Department's files showed eight recipients of fund real estate loans were now bankrupt. These entities were the Beverly Ridge Estates, Los Angeles, $13 million loan; Kings Castle, Lake Tahoe, Nev., $10 million loan; Seville Hotel, Miami, $1.5 million loan; Henrose Hotel, Detroit, $1.6 million; Truck City, Detroit, $3.5 million; Riverside Hotel, Reno, Nev., $2.7 million; Savannah Inn and Country Club, Savannah, Ga., $2.5 million; and George Harvath of New York, $16.9 million. The study quoted a source as saying that these loans were still carried as loan balances by the fund and were listed as assets. The study pointed out that this list of bankrupt loans did not purport to be the complete aggregate of all the fund's bankrupt loans.

The study said that real estate loans from the fund traditionally had gone to high risk ventures in resort areas. During the late 1950's the loans tended to go to hotels and other ventures in and around Miami Beach. More recently, the study said, many loans were going to entities in and around southern California and Las

Vegas. Most prominent of these loans, the study said, were a $50 million loan to the Rancho La Costa Resort and Country Club near San Diego; and a $150 million loan to the Penasquitas Corp., a land development enterprise in San Diego.

In addition, the study said, eight loans were made to hotels, casinos and other developments in Las Vegas—$8 million to the Landmark Hotel, $22 million to Circus Circus, $20 million to Caesar's Palace, $1.5 million to Chris Jo, Inc., $2.4 million to Carousel Casino, $3 million to Aladdin Hotel, $75 million to Argent Corp., representing both the Stardust and the Fremont Hotels, and $6 million to the Dunes.

Morris Shenker, identified by the study as a "well known St. Louis attorney who is a millionaire as a result of his dealings with the pension fund," was reported to own controlling interest in the Penasquitas Corp. and the Dunes.

According to the study, Shenker recently informed the Nevada Gaming Control Board in Las Vegas that the Central States pension fund promised to provide him $17 million. These additional funds were to enable Shenker to take complete ownership of the Dunes, the study said.

The study cited certain major prosecutions of persons who were connected to the Central States pension fund. Investigation revealed that a 10 percent finder's fee was paid on loans made by the fund, the study said.

The first major prosecution discussed by the study had to do with James R. Hoffa, former president of the Teamsters International, who, with seven other defendants, was convicted of mail fraud and wire fraud stemming from abuse of the Central States pension fund.

Hoffa was charged with violating his duty as a trustee of the fund by making false and misleading statements to the other trustees and by using his influence to obtain approval of 14 loans from the pension fund. The loans totaled $20 million, of which $1 million was reportedly diverted for Hoffa's personal benefit.

The convictions followed extensive investigation by the Justice Department, FBI, postal inspectors, IRS and Labor Department compliance officers. Following the 1964 conviction, Hoffa was sentenced to 5 years in prison. This sentence was made consecutive to an 8-year term Hoffa was given in 1964 for jury tampering in Tennessee. It was the 5-year sentence which prevented Hoffa from trying to retake the Teamsters presidency from the incumbent president, Frank Fitzsimmons, the study said.*

The second major Federal prosecution cited by the study was that of Allen Dorfman, who was described as an insurance executive and a close friend of James Hoffa. Dorfman was convicted in New York of accepting a kickback on a loan made by the fund to George Horvath. This was the same George Horvath who, representing three corporations, received a $16.9 million loan from the fund for a real estate transaction. The loan was since declared bankrupt, according to the study. Dorfman served as a special consultant to the Central States pension fund until 1974.

The study said Allen Dorfman "was considered the primary mover of pension fund loans." While Hoffa was in prison, the study

*The study was written 6 months before Hoffa's disappearance.

said, "it was well known that Dorfman carried out the wishes of Hoffa in directing the placement of loans from the fund."

Following his conviction, Dorfman served 1 year in prison. The study said Dorfman was not currently directly associated with the fund but that he still had a say in the fund's lending activities. Alvin Baron, a former assistant to Dorfman in fund matters, was currently in charge of the fund's lending policy, the study said.

A third major prosecution related to the Central States pension fund in the late 1960's, the study said, involved many defendants with organized crime connections. A finder's fee was a central issue in the case, as was a $1 million loan to the Mid City Development Corp. of Detroit.

The case revealed a dispute between organized criminals in Pittsburgh and New York over which faction would receive the finder's fee. Several defendants were acquitted, but two, Sam Berger and James (Jimmy Doyle) Plumeri, were convicted. Plumeri was later slain in a gangland style killing, the study said.

Allen Robert Glick was a mystery man in the pension fund's lending program, the study said. Only 32 years old, Glick had come out of nowhere and in 5 years had taken over the Stardust and Fremont Hotels and the Beverly Ridge Estates and controlled property worth more than $100 million, the report said, adding, "Little is known of his background."

Glick and Morris Shenker had become the principal recipients of Central States pension fund loans in recent years, the study said. The study said Shenker was Jimmy Hoffa's attorney in appeals of his convictions in Tennessee and Chicago and that Shenker represented many other well known defendants.

The study said Morris Shenker became a partner with Irvin J. Kahn several years earlier in land development in San Diego. The fund loaned Shenker and Kahn $150 million for the Penasquitas venture in San Diego, the study said, explaining that Shenker became the sole stockholder in this project when Kahn died.

The study said Shenker was presently spending most of his time planning for the expansion of the Dunes Hotel in Las Vegas, a project which he expected to finance with a $6 million already executed loan from the fund and with an anticipated new loan from the fund of $17 million.

Late in 1974, in proceedings of the Nevada Gaming Control Board, charges were made that Shenker was associated with persons of questionable repute. The study said these associations raised questions about Shenker's suitability to operate a casino in Las Vegas. The study also noted that Shenker's wife was serving as general manager of the Murietta Hot Springs project, a part of the Penasquitas venture in San Diego.

The appointment of Daniel Shannon as administrator of the fund was noted by the study. When, in February of 1973, Shannon took the job, it was hoped that the fund would stop making loans to questionable persons for high risk ventures.

Shannon, a certified public accountant, had been president of the Chicago Park District and president of the Warner Kennelly Moving and Storage Co. He had also been a star football player at Notre Dame.

But with Shannon as administrator, nothing at the fund changed, the study said, pointing out:

> Events . . . indicate that there will be no change in the operation of the fund, since the lending policies have not changed. In spite of the scandals, criminal prosecutions, bankruptcies and widespread involvement of criminal syndicates in the operation of this fund, it continues to operate as before. It would appear that the continuation of the lending policies, the makeup of the trustees, and the continuing presence of people such as Allen Dorfman, Al Baron, Morris Shenker, etc., will guarantee that the funds intended for the pensions of the Teamsters members will be in jeopardy.

The study recommended that investigation of the Central States pension fund by the Labor Department have as its goal the placing of the fund in receivership.

The study said receivership was the only vehicle that would safeguard the funds and insure that its money was managed in such a way as to benefit the Teamsters members and their families. "It is obvious," the study said, "that the persons responsible for [the fund's] administration in the past 15 years have consistently breached their fiduciary responsibilities, and they will continue to do so in the future unless the Federal Government intervenes."

The study recommended that the Labor Department discuss with the Justice Department the possibility of using the Organized Crime Control Act of 1970 in this instance. The study said the statute enabled the Government to take certain criminal and civil actions against businesses involved in racketeering.

THE DECEMBER 11, 1975, BRIEFING BY JAMES HUTCHINSON

In late 1975, amid growing reports of widespread corruption in the Teamsters Central States pension fund, the Senate Permanent Subcommittee on Investigations considered beginning an inquiry into the fund.

At the same time, the Senate itself considered a resolution offered by Senator Robert P. Griffin of Michigan to create a select committee to look into the national problem of labor-management racketeering, including allegations of wrongdoing in the Central States pension fund.

Meanwhile, the Department of Labor was mounting what promised to be a full-scale investigation of Central States benefit plans and the benefit plans of other unions. The Labor Department investigation would be the first ever undertaken under the recently passed pension reform act, ERISA, the Employee Retirement Income Security Act.

To discuss what its own course of action should be, to evaluate Senator Griffin's proposal and to receive a briefing on the Labor Department's investigation, the Investigations Subcommittee met in executive session on December 21, 1975. Also invited to attend were Senator Griffin and Senator Harrison Williams of New Jersey, chairman of the Labor and Human Resources Committee. Senator Griffin attended but Senator Williams, who was out of town, could not.

The subcommittee was briefed on the Labor Department investigation by James D. Hutchinson, Administrator of Pension and Welfare Benefit Programs in the Department. Hutchinson had general supervisory and policy authority over pension reform programs in the Labor Department.

Hutchinson's responsibility under ERISA included enforcement authority over the fiduciary standards of the new law. Allegations that the trustees of the Teamsters Central States pension fund had violated their fiduciary trust were his responsibility to look into.

Hutchinson's section also had the authority to initiate civil litigation against a fund alleged to have violated ERISA and to refer evidence of possible criminal wrongdoing to the Justice Department.

In light of the comprehensive investigation the Labor Department was launching, Hutchinson said, he hoped the subcommittee would take into account the "inherent" problems that could arise if a concurrent Senate inquiry were begun into the same Central States pension fund.

These problems, he said, included delays, the possible granting of immunity to each other's witnesses and conflicts between the government and the legislative branch. Hutchinson said these problems and others need not necessarily occur but the potential for them did exist. On the other hand, he said, it was not his department's position to oppose a Senate investigation.

Hutchinson went on to describe how the Labor Department decided to conduct this investigation and what kind of investigation it would be. The existence of the new pension reform law, ERISA, was an important factor weighing in favor of the department's decision to go forward with the investigation.

Because of ERISA, he said, there were standards of performance that benefit plan fiduciaries had to meet. It was the department's responsibility, he said, to insist that the standards were satisfied.

During the summer of 1975, Hutchinson said, the Labor Department made an analysis of a variety of public charges against the fund. Some of these allegations were long standing, he said, adding that the pre-ERISA statute, the Welfare Pension Plan Disclosure Act, also administered by the Labor Department, did not give the department sufficient tools to protect workers' pension plans. The old law was primarily a recordkeeping statute, he said, and contained inadequate enforcement procedures.

What was needed, he said, and what ERISA promised, was "a national overall review" of the fund. ERISA offered the Government new tools it did not have before, "effective remedies such as the ability to bring civil litigation with different standards of proof than you have in the criminal area," Hutchinson said.

ERISA established personal liability for the fiduciaries and permitted the courts to order removal of trustees found to have violated their fiduciary trust, Hutchinson said, adding that one provision of ERISA asserted that it would now be possible to seek whatever relief a court might deem appropriate.

Hutchinson said he hoped this provision would enable the Labor Department, for the first time, to seek reform of a pension fund's day-to-day operations when alleged abuses were proven.

In June of 1975, Hutchinson discussed this provision of ERISA with Labor Secretary John T. Dunlop. It would require a major commitment of Department resources to carry out this ERISA provision, Hutchinson said, and he felt the department should either make the commitment or do nothing.

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It would, he said, come to no good if the Department sought to carry out this provision of the law but did not invest the needed resources. "My opinion was that either we did it fully, professionally, or we didn't do it at all, because I thought that what we did not need was any minor skirmish without a commitment of resources and energies," Hutchinson testified.

The person selected to be the first Director of SIS was Lawrence Lippe, an attorney with 20 years of experience in Justice Department investigations, having served as an Assistant Chief of the Fraud Section and an Assistant U.S. Attorney for the District of Columbia.

Selecting a staff of auditors, accountants, investigators, and attorneys to serve under Lippe was also a painstaking process, Hutchinson said. The Special Investigations Staff was funded for 20 persons now and 12 to 15 persons actually at work at the moment.

Hutchinson said he could not predict how large the SIS would become. He did say the investigation of the Central States fund could be completed in a matter of months or could last years.

Hutchinson said that during the summer of 1975 the Department gathered from its own files, from the Justice Department and from IRS information related to the Central States pension fund.

Hutchinson sent a directive to the 25 Labor Department field offices asking them to send back information on the fund. This was a massive amount of information. He said the documents piled on top of one another rose 50 feet in the air.

To read and collate this data, he said, the Department assigned six accountants and auditors fulltime and several attorneys from the Solicitor's Office. This task was close to completion. Difficult though it was, he said, it was essential that it be done before any investigation of the fund itself could be begun.

Along with selecting a group leader, assembling a sound staff under him and digesting the Government's information on the fund, the Labor Department set out to assure good cooperative working relationships with the Justice Department and the IRS. Hutchinson said the investigation could not succeed unless these three agencies, Labor, Justice, IRS, cooperated and coordinated their efforts.

Hutchinson, whose previous job was at the Justice Department where he was Assistant Deputy Attorney General, said the Labor Department had formalized its operating procedures with Justice and IRS for the fund investigation. He said the Labor Department did not want to overlap with the other agencies or in any way conflict with their own objectives.

As an example of the kind of teamwork needed, Hutchinson cited a hypothetical instance in which the Justice Department planned to convene a grand jury or one of its organized crime strike forces planned to issue subpenas.

Both planned actions would affect the Central States pension fund investigation. Under such a set of circumstances, he said, the Department of Justice would take no initiative until it had informed the Labor Department of its plans "to find out whether it is really consistent with the overall strategy we are developing."

Hutchinson gave the subcommittee a copy of a December 1, 1975, memorandum of understanding agreed to by Labor and Justice. Signed by Deputy Attorney General Harold Tyler and Labor Secretary Dunlop, the three-page document attested to the creation of an Interdepartmental Policy Committee whose objectives would be to avoid conflicting purposes and duplication as the investigation went forward.*

The memorandum of understanding said responsibility for prosecuting criminal violations would be with the Justice Department. Labor would litigate civil cases. The Interdepartmental Policy Committee would "review such questions as when and where particular proceedings should be initiated and whether in a given case civil or criminal cases should be brought."

The Committee would decide whether civil or criminal proceedings should be initiated in those instances in which both opportunities were available to the Government, the memorandum of understanding said.

The Central States investigating team, currently comprised of Labor Department attorneys and investigators, would be expanded by the addition of Justice Department lawyers, the memorandum said, adding:

> It is intended that this direct, operational level coordination will insure that those who are investigating the fund will on a daily basis be communicating with each other and coordinating their efforts.

The memorandum of understanding went on to say that the SIS Director, Lawrence Lippe, would have operational control of the investigation but that Lippe was to consult with the Justice Department attorneys serving on his staff "so that full consideration of the civil and criminal aspects of any actions can be reviewed and so that all matters which warrant discussion or review by the Policy Committee can be referred for its consideration."

It was agreed that investigators for SIS would assist the Justice Department in general criminal and organized crime investigations whenever they came across relevant information or documentation.

The memorandum said the Justice Department would keep SIS and the Interdepartmental Policy Committee informed of all actions, planned or in motion, affecting the Central States fund taken by U.S. attorneys or organized crime strike forces.

In his briefing of the subcommittee, Hutchinson discussed how SIS, working within the agreements reached in the memorandum of understanding, would handle evidence of criminal behavior that was developed in the investigation.

Hutchinson said Labor Department officials had assured the Justice Department that when matters of a criminal potential came up, Justice would be informed "of those leads and indeed we will probably pursue the investigation to completion, and then refer it to them for litigation."

These words by Hutchinson are emphasized because they have significance as the investigations subcommittee's hearings resumed in 1980, 5 years later. As will be noted later in this report, several Labor Department witnesses, including the Secretary, F. Ray Marshall, and his Associate Solicitor, Monica Gallagher, denied that

*The Labor Department's representatives on the Committee would be Hutchinson and the Department's Solicitor, William J. Kilberg. Representing Justice would be Rex E. Lee, Assistant Attorney General for the Civil Division; Richard L. Thornburgh, Assistant Attorney General for the Criminal Division; and Samuel K. Skinner, U.S. attorney for the Northern District of Illinois, which included Chicago, headquarters of the Central States pension fund.

their department had any responsibility to pursue investigative leads of a criminal nature.

Hutchinson asserted the Labor Department's desire in the fund investigation to work with the Justice Department, particularly in those instances wherein a link was established between the Central States fund and organized crime.

He said it was possible such a link would be found and that, of course, the Justice Department would wish to know about it. "I think that the evidence that we produce in this investigation may well be helpful in terms of general effort in dealing with organized crime and this particular fund," Hutchinson said.

These words by Hutchinson are emphasized because information developed by the subcommittee demonstrated just the opposite. In the subcommittee's 1980 hearings, it was shown that Labor Department investigators were instructed not to alert the Justice Department when the names of organized crime figures were identified with the Central States fund transactions, except in those instances in which the reputed organized crime figures were found to have violated a provision of ERISA.

Senator Jacob Javits of New York, a member of both the investigations subcommittee and the Labor and Human Resources Committee, raised the issue of cooperation between Labor and Justice again. Did Hutchinson feel the working agreement between the two departments was the best that could be achieved? Senator Javits asked. It was the best, Hutchinson said, adding that he could understand if the Senator were skeptical about this claim since Government agencies frequently had a difficult time cooperating with each other.

But this agreement was unique, Hutchinson said. It would succeed because both departments very much wanted it to. As will be noted in this report, Senator Javits' skepticism was well founded. By late 1978, SIS personnel were under instructions to not even discuss the Central States pension fund case with the Justice Department.

Senator Jackson raised a related issue, asking if Labor and Justice could really work together when their jurisdictions were different. Hutchinson said that made no difference. He said this investigation was unlike any other and that objectives of both departments, in this case, were similar.

Hutchinson said that was "one of the reasons we became so closely tied with the Department of Justice in terms of their participation in our task force. This is, it is contemplated that our effort to collect information is going to be nationwide. It will involve all organized crime strike forces, all of the 90-plus U.S. attorneys offices and all of the local offices of the Department of Labor."

Hutchinson gave the subcommittee no formal agreement with IRS such as the memorandum of understanding signed by the Justice and Labor Departments. But Hutchinson did wish for Senators to understand that procedures of cooperation and coordination were being worked out with IRS.

He said that during September and October of 1975 the Labor Department negotiated a "normal disclosure arrangement" with IRS relating to 6103(g) of the Internal Revenue Code, a section having to do with the sharing with another agency of tax information. Such an arrangement, Hutchinson said, "was a necessary step before they can disclose information that they obtain under the tax laws."

While not saying so directly, Hutchinson seemed to be suggesting that the Central States pension fund itself was cooperating with the Labor Department. He said that on October 31, 1975, the executive director, Daniel Shannon, had come to Washington to meet with Labor officials.

Hutchinson said Shannon was informed that the inquiry was beginning and that the fund's cooperation was hoped for but that even if that help was not forthcoming the department would go forward, utilizing subpena power and other enforcement tools.

Hutchinson said his department intended to invoke that provision of ERISA that enabled the Government to obtain the fund's records and books without cause once a year. However, that did not preclude the use of subpenas or any other available tool needed to compel the fund to respond, Hutchinson said. ". . . we are now engaged in developing what I consider to be a preliminary and complete audit plan and development of legal positions if we have to engage the compulsory enforcement of our investigatory tool, be it subpena or otherwise," he said.

In the second week of November of 1975, Hutchinson said, a six-member lawyer-investigator team was sent to Chicago. They spent two days reviewing the fund's recordkeeping procedures and its data entry system. Several fund officials were interviewed.

Such preliminary work was needed, Hutchinson said, so that the Labor Department could develop an overall strategy and audit plan. Without proper preparation, he said, investigators end up "barging in willy-nilly" with no sense of what information they want or what to ask for.

As for the target areas of investigation, Hutchinson said, the Special Investigations Staff would be examining the fund's investment practices and policies; its payment of fees, expenses and other disbursements to fiduciaries, consultants and officers; and how the fund paid benefits to members.

He wanted to determine if the fund operated in the best interest of its members, Hutchinson said, pointing out that in the early stages of the inquiry the Department would be trying to obtain a comprehensive view of the fund and not isolate any one area for special study.

When Hutchinson's briefing was completed, he was excused from the hearing room. Senators continued their discussion. There was a consensus that Hutchinson had been an articulate, effective representative of the Labor Department and the feeling that the department's investigation was, at this stage, being carefully and thoroughly planned.

There was a sense that for the subcommittee to embark on its own investigation of the Central States pension fund could duplicate and complicate the Government inquiry. No vote was taken at that time, although the point was made that should a select committee be set up the subcommittee could cooperate with it by making available personnel and other resources.

On March 25, 1976, the subcommittee, meeting in executive session, decided against conducting its own investigation of the Teamsters Central States pension fund. The subcommittee felt it would

duplicate the work of the Labor Department and might otherwise adversely affect the Department's inquiry. The subcommittee did vote to monitor the progress of the Labor Department's investigation of the pension fund.

The subcommittee also agreed to continue its investigation into specific instances of alleged questionable practices in the labor-management field. Subsequently, investigations were conducted into employee insurance programs and three reports were issued by the subcommittee on this subject.

SIS CREATED IN LABOR DEPARTMENT IN DECEMBER OF 1975

The Special Investigations Staff (SIS) was created in the Department of Labor in December of 1975.

At its creation, SIS was organizationally within, and was expected to report to, the Labor Department's Pension and Welfare Benefit Programs Division. The official who was designated to oversee SIS was PWBP Administrator James D. Hutchinson.

SIS was unique as an investigative unit in that it had the dual duty to investigate alleged wrongdoing and then to litigate it as well. Reflective of this dual responsibility was the appointment of the first SIS Director, Lawrence Lippe, an attorney with experience in both criminal investigation and litigation. Lippe was to supervise investigations and direct the preparation and litigation of civil cases.

Cases in which SIS developed evidence of criminal wrongdoing were to be referred to the Justice Department for possible prosecution.

In exercising its investigative and litigative responsibilities, SIS was to be staffed by lawyers, auditors, accountants, and investigators. There was also to be a support staff.

Close cooperation between SIS and the Justice Department was anticipated, indicating that there was an assumption in both departments that evidence of criminal wrongdoing would be developed.

The first assignment given SIS was to investigate the Teamsters Central States pension fund.

From the very start, SIS faced an uphill battle to carry out its mandate. As the following chapters of this report will show, virtually every procedure, every objective laid down by Hutchinson in his briefing to this subcommittee was thrown out.

The Internal Revenue Service, whose cooperation Hutchinson had called essential and necessary if the inquiry was to succeed, declined to join the Labor Department inquiry. IRS then went off on its own, revoking the Central States pension fund's tax exempt status without notifying SIS beforehand.

The result was disarray, confusion, the loss of valuable investigative time and a clear signal to the pension fund lawyers that the Government was incapable of mounting a concerted investigation. Fund lawyers exploited the Government's lack of orgnization, converting the fund's apparent weakness—the loss of the tax exemption—into its strength in negotiations with Federal authorities.

Gradually, vital investigative tools were stripped from SIS. Taken from SIS were its ability to conduct planned investigations in the field, its subpena authority, its independent status as an investigative unit.

Eventually, SIS, which was supposed to work in close harmony with the Justice Department, was under instructions from the Solicitor's Office not to share investigative leads with the Criminal Division of Justice. Inevitably, SIS became an investigative support arm for the Solicitor's Office.

The SIS Director, Lawrence Lippe, resigned in frustration.

The last straw in the misfortune that befell SIS was the appointment in 1977, following Lippe's resignation, of Norman E. Perkins as its chief. During the 2½ years he led SIS, Perkins worked under the impression that the Labor Department had made a secret agreement with the pension fund in which the Department promised it would not investigate certain areas of alleged abuse, including criminal wrongdoing.

Labor Secretary F. Ray Marshall and his senior aides in the Solicitor's Office denied that any such agreement existed. Unfortunately, they neglected to tell the man heading up the investigation.

Finally, on May 5, 1980, SIS was abolished.

II. Problems With the Internal Revenue Service

IRS WOULD NOT COORDINATE ITS INVESTIGATION WITH LABOR

For the Labor Department investigation of the Central States pension fund to succeed, Labor's efforts would have to be coordinated with the Internal Revenue Service. That was the opinion of James D. Hutchinson, Administrator of Labor's Pension and Welfare Benefit Programs, and the Department official in charge of the inquiry.

But the Labor Department investigation got off on the wrong foot early in the case when the IRS said it would not coordinate its investigation, begun in 1968, with that of Labor. IRS and the Justice Department were invited to participate in the Labor Department's investigation late in 1975.

The Justice Department agreed, entering into an agreement with Labor on December 1, 1975. This was the memorandum of understanding cited in his December 11 briefing to this subcommittee by James D. Hutchinson.

But the IRS did not choose to join forces with the Labor Department. IRS officials said they wanted to continue their separate investigation of the pension fund.

The U.S. General Acounting Office, which was asked by this subcommittee to evaluate the Labor Department's investigation of the pension fund, was critical of the IRS for refusing to participate in the investigation.

As GAO pointed out in a preliminary report submitted to the subcommittee at its hearings of August 25, 1980, the IRS decision to take a go-it-alone approach came "despite the fact that IRS was looking into basically the same areas as Labor, such as prudence of loans and whether other fiduciary standards of ERISA were followed." (p. 65).

Officials of the pension fund were troubled by the overlapping and duplicative investigations by both the Labor Department and the IRS. Fund lawyers tried to mediate an agreement between IRS and Labor, according to GAO. The lawyers apparently felt it was preferable to respond to one Federal investigation of their client rather than two.

But, GAO found, IRS officials were opposed to Labor's entrance into the general area of the fund investigation and they told the pension fund that the Labor Department would not be a part of IRS's audit. IRS did agree to provide Labor with certain tax data. (p. 65).

The unwillingness of IRS to cooperate to the extent James Hutchinson had hoped altered the original concept of how the Labor Department inquiry was to proceed. It had been Hutchinson's strategy to establish a one-Government-term approach to the case. "Thus," GAO said, "the investigation would be viewed as an overall Government effort and not the individual efforts of the various Government agencies." (p. 66).

Hutchinson said that without IRS support, his concept of a unified investigation of the fund was destined to fail. The wisdom of that judgment was seen in the next decision IRS made.

IRS REVOKED FUND'S TAX EXEMPT STATUS

The pension fund enjoyed tax exempt status. On June 25, 1976, IRS revoked that status. IRS took this action without giving advance notice to the Labor Department, the Justice Department or the fund. The revocation was retroactive to February of 1965.

The IRS explanation for its action was that the tax exempt status was revoked because the fund was not operating for the exclusive benefit of plan beneficiaries and the investment policies and practices of the fund were imprudent.

GAO said the IRS revocation surprised the Labor and Justice Departments and fund officials as well. The IRS action, GAO said, "had an immediate and devastating effect" on the fund's financial operations because some of the 16,000 employers withheld their contributions and others threatened to place the money in escrow accounts.

Daniel J. Shannon, who was then executive director of the fund, said that six banks which were handling several hundred million dollars in fund assets began to have doubts about the legality of their investing the fund's money. Shannon said this resulted in a reduced return on investments.

Even IRS recognized that its revocation action could have grave consequences for the fund. GAO said IRS officials knew that had the provisions of the retroactive revocation been fully implemented, the fund's 500,000 participants and beneficiaries could have been required to pay taxes on past returns. (p. 66).

Not only did the revocation come as a surprise to Labor and Justice Department officials, but also they reportedly had both been assured earlier by IRS that no such action would be taken. According to GAO, IRS told the Labor Department in January of 1976 that "there is no way the fund will be disqualified." (p. 66).

Again, on June 20, 1976, 5 days before the revocation order came down, an IRS official informed SIS Director Lawrence Lippe that a decision on revocation of the fund's tax status would not be made for several months, Lippe claimed (p. 143). IRS denied that Lippe was told that (p. 209).

GAO quoted Labor Department officials as saying the IRS action created a "chaotic situation." Investigative work going on in the pension fund offices in Chicago came to a halt because fund officials believed that "the Federal Government's act was not in

order" and that the fund was not dealing with the Government as a whole but was instead confronting an assortment of departments (p. 66).

Fund officials became less willing to cooperate. Labor Department investigators and officials said they spent more time trying to smooth things over with the pension fund because of the tax action than they did on their case (p. 66).

IRS tried to cushion the severe consequences of its action. Beginning on July 2, 1976, IRS granted the fund a series of relief measures removing the retroactive features of the revocation (p. 66).

IRS ENTERED SEPARATE NEGOTIATIONS WITH FUND

Next, IRS, against the wishes of the Labor Department, negotiated with the pension fund a series of actions which the fund trustees would take in managing assets and payments benefits.

The Labor Department protested the IRS's entering into negotiations with the fund. Labor Department officials felt that IRS's acceptance of preliminary or partial reforms could bind the entire Government and jeopardize the Labor Department's investigation and its negotiations with the fund (p. 66).

Having two separate Government agencies negotiating with the fund was precisely the kind of situation which James Hutchinson, in setting up the investigation, had wished to avoid.

Accordingly, on August 17, 1976, Hutchinson wrote to IRS to say that if the Service accepted proposed reforms by the fund at that time it would undermine the Labor Department inquiry.

Hutchinson said that if IRS continued on this course it could compromise the Labor Department's ability to achieve more equitable relief against the fund and its trustees. The new pension reform law, ERISA, gave the Department the opportunity to bring about sweeping reform of the fund. What troubled Hutchinson was that IRS, with its go-it-alone attitude, could preclude the successful application of ERISA.

In response to Huchinson, IRS changed its policy. Although a year of hoped-for cooperation had been lost, the Service now agreed to coordinate further actions with the Labor Department (p. 66).

LIPPE TESTIFIED ON REVOCATION OF TAX STATUS

Lawrence Lippe, the first Director of SIS, testified that no one had ever given him a satisfactory explanation of why IRS refused to participate in a joint investigation of the pension fund with the Labor Department.

Lippe said that the announcement of the revocation of the tax status took him by complete surprise. It was a double shock to him, he said, since on two occasions shortly before revocation he had been assured by IRS officials that no such action would soon occur.

On June 20, 1976, 5 days before the revocation order, James Durkin, "a fairly high ranking official" in the Chicago IRS office, told him that no revocation order would be given in the near future, Lippe said (p. 143).

In that same time frame, Lippe said, Charles Miriani, IRS District Director in Chicago, told him that, while revocation was an option the Service was considering, it was not an action that would be taken in the near future (p. 143).

Another IRS official, Assistant Commissioner Alvin D. Lurie, explained to him why the Service's policy had changed so abruptly and why the revocation order went in such a short time from an option under consideration to a reality, Lippe said.

Lippe, who wrote a memorandum about his August 24, 1976, discussion with Lurie, testified that the Assistant Commissioner told him the revocation order came through because of pressure from two points in Washington—Congress and the Internal Revenue Commissioner, Donald Alexander.

To IRS's insistence that the decision was not made in Washington but in Chicago by regional officers, Lippe observed:

> Sir, the exact words that Mr. Lurie used in his conversation with me are obviously inconsistent with the representation that it was strictly [a] local action (pp. 210–143).

Lippe said it was not rational for the IRS to revoke the fund's tax exemption without first talking it over with SIS (p. 143).

RYAN, SEIDEL GAVE SIS VIEW OF REVOCATION

Lester Seidel and Lloyd Ryan, Jr., who worked in SIS at the time the fund's tax exemption was revoked, told the subcommittee that the action had a negative impact on the Labor Department's investigation.

Ryan, a former staff attorney with the Securities and Exchange Commission who specialized in developing and litigating cases involving fraud and securities violations, said the revocation had devastating effects on the SIS effort. It diverted SIS resources from their own investigation and tied up accountants, auditors and supervisors with work that did not directly relate to their case.

Ryan kept abreast of the negotiations between IRS and pension fund lawyers. Ryan said he worked fulltime during these negotiations writing analyses of legal issues that arose as they progressed. Observing IRS in the negotiations, Ryan said, he was disappointed in the revenue agents. He felt that, in revoking the fund's tax status, IRS had shown a bad sense of timing, had not done its homework and had thoughtlessly wasted a great opportunity to reform the pension fund.

Ryan explained:

> The threat of IRS revocation could have been one of the most effective tools in the investigation. But it was employed as little more than a bluff. It soon became clear to all involved in the negotiations that the IRS had taken its action without being prepared to accept the consequences of a final revocation. There might have involved a Teamsters strike, and other economic consequences (p. 89).

Ryan added:

> Moreover, it appeared that the IRS action had been taken on the basis of an investigation superficial at best. This made it impossible to adequately define what was at stake or the requirements for requalification. Thus, the true issues could not be weighed against the consequences of not requalifying the fund to arrive at a cost-benefit analysis (p. 89).

Like Ryan, Lester Seidel was also an attorney. Seidel was Deputy Director of SIS and was also special counsel to the unit. Seidel previously had worked in the Office of the U.S. Attorney for the District of Columbia where he prosecuted fraud, white-collar crime and organized crime cases.

Seidel testified that the decision to revoke the fund's tax status was a major setback to SIS's inquiry. Frequently, Seidel said, both he and Lippe were taken from their main work—the investigation of the fund—to respond to problems that resulted from the IRS action. Seidel said that Lippe and he were beginning to take depositions from trustees of the fund when the IRS decision to revoke was made. These depositions were important to their case, Seidel said, but other demands on their time—meeting with IRS, preparation for congressional testimony and other requirements caused by the revocation—diverted their attention and slowed progress.

Seidel said the investigation "in terms of development of new cases almost came to a halt or floundered, began to flounder because in a sense the head was cut off for awhile [because] Mr. Lippe was lost to the investigation for quite a while. I was lost for some time for the reason that this created a whole set of problems, circumstances, almost a conundrum, which took our attention away from the investigation." (p. 120).

THE USERY SPEECH TO TEAMSTERS CONVENTION

Former SIS Deputy Director Lester Seidel said he thought the event that triggered the IRS decision to revoke the Central States pension fund tax exemption was the speech that Secretary Usery made at the Aladdin Hotel in Las Vegas before the international convention of the leadership of the Teamsters Union on June 14, 1976.* The revocation order was given by IRS 11 days later—on June 25. At this convention, held every 5 years, the Teamsters leaders elected their international president and other executives.

In the speech, Usery said:

> Let me assure you that even though I don't have a Teamsters card, I belong to this club because I believe in it.

It was Seidel's view that this remark—and other statements Usery made in Las Vegas—spent the patience of Internal Revenue Commissioner Alexander, who personally issued the order to revoke, feeling the Labor Department, under Usery, could not be counted on to approach the Teamsters investigation in a vigorous, objective manner.

Usery's comments ignited a nationwide uproar. Commenting editorially, the New York Times said:

> In fact, the only puzzle in Las Vegas was whatever possessed Secretary of Labor W. J. Usery, Jr., to go to the convention and declare, "I belong to this club because I believe in it," when the Department he heads was conducting an investigation of that very same pension fund.

*Speech of William Usery contained in the hearing record of the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, July 1, 1976.

In its news columns, the Times quoted Congressman J. J. Pickle, of Texas, who was chairman of the House subcommittee overseeing enforcement of ERISA, as saying:

> When the investigators' bossman breaks bread with and gives a toast to the targets of an investigation, my commonsense tells me such an action hurts the morale of the investigators. The remarks at the Teamsters convention are not only untimely but regrettable.

Testifying on July 1, 1976, before the Senate Labor Subcommittee,** Usery did not even wait to be asked about the Las Vegas speech, but instead included in his prepared testimony a strong defense of his remarks, his need to keep open the avenues of communication with all unions and his firm commitment to seeing to it that the Department's investigation of the pension fund went ahead objectively and aggressively.

Senator Javits, a member of both the Labor Subcommittee and the Investigations Subcommittee, cited another quotation from the same speech in which Usery said:

> I was delighted when my friend and your president, Frank Fitzsimmons, asked me to take part in the convention of the International Brotherhood of Teamsters. I have had several opportunities over the years to work closely with Fitz and a number of other leaders of Teamsters. Many over a period of time have become close personal friends. I can tell you I have enjoyed those experiences. I have enjoyed them because I found when it comes to representing their members Teamsters' leaders are always prepared and professional.

An underlying assumption of the Labor Department's investigation was that the Teamsters—particularly the Teamsters Central States pension fund of which Frank Fitzsimmons was a trustee—could not be trusted to prudently and professionally represent the membership and Senator Javits asked Usery if, in light of the Las Vegas speech, it might be beneficial if he resigned.

Usery replied that he did not intend to resign, that he intended to stay on and carry out his duties fairly and to the best of his abilities.

Senator Javits did not demand that Usery step aside. But another member of the Labor Subcommittee, Senator John A. Durkin of New Hampshire, came close to it.

Senator Durkin told Usery that his Las Vegas speech "showed poor judgment and poor taste" and had drained the American people of whatever diminished amount of confidence they had left in the ability and willingness of the Federal Government to achieve reform of the Teamsters Union.

Senator Durkin said:

> Can you tell me how the people in New Hampshire and the people of this country can have confidence in your investigation when you are out there acting as cheerleader at Frank Fitzsimmons' reelection soiree or whatever you want to call it?

** Hearing record of the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare. July 1, 1976.

Usery characterized himself as an honest and conscientious public servant and said he resented anyone questioning his integrity. Senator Javits broke in to advise Usery that if Senator Durkin's comments were "phrased sharply" it was because they "need to be phrased sharply," that the burden of proof was now on Usery to take steps not only to convince Senators but to persuade the entire Nation that his Las Vegas speech did not reflect his true feelings about the need to investigate the Teamsters Union.

One remark from the Las Vegas speech that was not quoted by Senators made Usery more vulnerable to the accusation that he was not keeping an arm's-length distance from Fitzsimmons, who, as a trustee of the pension fund, was a principal subject of the Labor Department's investigation.

That statement came at the beginning of the speech in response to Fitzsimmons, who, in introducing Usery, referred to him as "Bill." The use of his first name led Usery to announce:

> It is an honor and privilege for me to stand at this podium to address you this morning. Fitz said he would call me Bill, sometimes Willy, sometimes Mr. Secretary. He also says "Willy-boy" sometimes. He also says "Billy-boy." And whenever he calls for me, I can tell how he feels depending on what he calls me, you understand.

IRS officials strenuously denied the idea that the Usery speech caused IRS headquarters to seek immediate revocation of the fund's tax exempt status.

IRS FELT QUICK ACTION AGAINST FUND WAS NEEDED

The subcommittee asked the Internal Revenue Service for its explanation of the decision to revoke the pension fund's tax exempt status. Testifying on behalf of IRS were S. A. Winborne, Assistant Commissioner for Employee Plans and Exempt Organizations; Lester Stein, Deputy Chief Counsel; Charles Miriani, now Regional Commissioner for the Midwest Region; Donald Bergherm, Director of the Chicago District of IRS; Ira Cohen, Director of the Actuarial Division; and Edward Brennan, Deputy General Counsel.

Winborne said the IRS began to examine the pension fund in 1968, starting with the tax year of 1966, and eventually extended the inquiry through 1975. When ERISA became law in January of 1975, the IRS examination of the fund was taken over by the Employee Plans and Exempt Organizations Division of the Chicago District. Winborne said the IRS examination focused primarily on the fund's compliance with the exclusive benefit rule under the Internal Revenue Code.

Pointing out that the Labor Department's investigation studied fund operations after January 1, 1975, the day ERISA went into effect, Winborne said that there was cooperation between the Department and IRS.

Beginning in September of 1975, he said, in response to a request from James Hutchinson, the IRS "began to provide the Department with significant information regarding the Service's examination of the fund." (p. 200).

Winborne said officials of both Labor and IRS consulted regularly. "By June 1976," he said, "the Chicago district had identified the substantial and continuing dissipation of fund assets. The Service

perceived a pattern of management showing a reckless disregard of participant welfare and considered it imperative to take decisive action." (p. 200).

Revoking the fund's tax exempt status was a vehicle that enabled the IRS to move quickly against the fund, Winborne said. He said IRS advised the Labor Department early in 1976 that the fund was in danger of losing its tax exemption. "Then, of course, as we know, on June 25, 1976, the Chicago district office [of IRS] notified the fund that its qualification was revoked," Winborne said (p. 200).

The IRS action denied tax benefits to the fund's contributing employers and participating employees, Winborne said. "To limit these severe consequences," he said, the IRS began, on July 2—a week following the revocation—a series of actions to grant relief to the employers and participating employees "who were innocent of the conduct that caused the fund's disqualification." (p. 200).

REVOCATION MAY HAVE BEEN TOO STRONG A RESPONSE

During the 1980 hearing Senator Nunn said the revocation action was such a powerful weapon that IRS was reluctant to use it. It punished not only the fund trustees but the employers and the beneficiaries, both of whom would have lost tax benefits stemming from their participation in the fund, Senator Nunn said, noting:

> It is like going after an infantry platoon with an atomic weapon. Nobody thinks you are going to use it . . . it doesn't have the credibility (p. 204).

That was why, Senator Nunn said, it would have made more sense to have a less severe tool—such as a written agreement enforceable by a court—that would have given the Government the opportunity to demand compliance with proposed reforms. Then the threat of resorting to "that ultimate sanction"—revocation—would not have been needed, hc said (p. 203).

Having used the revocation weapon, IRS then found itself in the position of "scrambling around trying to find a way out of it," Senator Nunn said. For that reason, he said, a court-enforced consent decree would have been more effective in bringing about reform of the fund (p. 204).

REVOCATION SAID TO BRING "WORTHWHILE CHANGES"

Assistant Commissioner Winborne did not disagree with the assertion that the consent decree approach would have been preferable to revocation.

But he did say that he and his colleagues at IRS thought the revocation weapon "really caused some very worthwhile changes in the fund that had not [previously] been put into effect." (p. 204).

Lester Stein, Deputy Chief Counsel of IRS, said he did not want the subcommittee's hearing record to indicate that IRS has no other options but revocation. "There may be other possible remedies, civil in nature," he said. "I would not want to say here now that this is our sole limitation." (p. 204).

Generally speaking, if the tax status revocation was considered too strong a penalty, Stein said, IRS could have turned over its information to the Labor Department in the hope that the Department would have been able to bring civil suit action against the trustees, "without damaging the employees and the employers." (p. 204).

Charles Miriani, the IRS Regional Commissioner in Chicago and, reportedly, the man who made the decision, on his own, to revoke the tax status, recalled the difficult position the pension fund had put IRS in with its poor management of fund assets.

But, in saying this, Miriani put himself at odds with Lester Stein on the question of whether tax exemption revocation was the only weapon IRS could have used against the pension fund in 1976.

By June 1976, Miriani said, IRS was aware of the growing dissipation of fund assets and the fact that, "We needed to do something which would give us an immediate remedy, and the only remedy that we had was revocation. So we revoked."

Miriani said that from what he knew of the Labor Department's investigation it would be some time before the Department would have been in a position to take strong action to protect the fund's assets. But the need for action was immediate, Miriani said, asserting, "We needed to do something and to do something quick." Tax status revocation, he said, was the "quickest action" and "it was the only action." (p. 210).

DIFFERENCES OVER WHAT IRS TOLD LABOR ABOUT REVOCATION

Senator Percy referred to the testimony of former SIS Director Lawrence Lippe, who said that on about June 20, 1976 an IRS official, James Durkin, told him that revocation was an option that the IRS might consider later but that it was not something the Service would do in the near future (p. 143).

Five days later IRS revoked the fund's tax exemption. Senator Percy asked if Lippe's had been an accurate recollection and, if so, why had IRS changed its policy so quickly? Senator Percy also wanted to know if IRS might have deliberately misled Lippe because of fear that if Lippe knew about the revocation plans he would tell his superiors in the Labor Department and they would tell the Teamsters Union.

Miriani said Lippe's testimony was wrong. Miriani said, "I have talked to Mr. Durkin and Mr. Durkin states that this is not correct." Senator Nunn said, "So this is inaccurate testimony." Miriani replied, "In my opinion, it is, yes." Miriani also denied there was any intention to mislead Lippe or the Labor Department (pp. 207, 209).

Miriani referred to a memorandum he wrote of a telephone conversation between himself and Lippe of June 23, 1976.

> My records indicate that Mr. Lippe did ask with respect to the progress of the fund, and I advised Mr. Lippe that I didn't feel comfortable discussing this with him since we had not clarified the disclosure aspects. But I did not tell Mr. Lippe that we were not going to revoke (p. 208).

ROLE OF IRS WASHINGTON OFFICE WAS DISCUSSED

Marty Steinberg, Subcommittee Chief Counsel, read from a memorandum written by former SIS Director Lawrence Lippe on August 24, 1976. In the memorandum, Lippe recalled that both James Durkin and Charles Miriani told him on June 20, 1976 that

IRS would not decide for or against revoking the fund's tax status until the fall.

The memorandum, reporting on a conversation he had with IRS Assistant Commissioner Alvin D. Lurie, went on to say that Lippe expressed his disappointment that the IRS had revoked the exemption when it did. According to Lippe's memorandum, "Lurie responded that a number of factors intervened during that 6-day period [from June 20 to 25] among which were 'Congressional heat' as well as 'Commissioner views'" (p. 208).

Steinberg read from a January 1976 memorandum from Edward Daly, a Labor Department enforcement official, to James Hutchinson, Administrator of Pension and Welfare Benefit Programs. Daly's memorandum, quoting IRS officials, indicated:

> IRS hopes to complete by April its analysis of benefits. It hopes to complete the entire audit by Labor Day. Durkin said if this was any fund other than Central States, IRS would disqualify the fund. He then noted that it was highly unlikely that IRS would deny tax qualifications to the fund. To do so would have serious impact on the national economy. "There is no way the fund will be disqualified." (p. 208).

In the memorandum, Daly added:

> IRS is now concentrating on actuarial assumptions and the control of loans with emphasis on imprudence. Durkin gave the impression that he hopes DOL [Department of Labor] will be in some position to take some action against the fund so IRS will not be forced into a decision of removing the tax qualification status of the fund. Any decision relating to the tax qualified status of the Central States fund will be made at the IRS national office (pp. 208, 209).

The suggestion that the decision to revoke the tax exempt status was made in Washington, D.C., was rebuked by Charles Miriani. "I made the decision to revoke," he said. Senator Nunn asked, "Are you saying that this was your decision at the Chicago office, that this was not a national decision?" Miriani replied, "The delegation to take this action is delegated in the field. It was a decision out in the field. I made the decision in Chicago, yes, sir" (pp. 207, 210).

Miriani said he made his decision to revoke based on recommendations from his team examining fund operations in Chicago. He said that he did brief his superior, but it was he, Miriani, who made the decision to revoke.

Miriana said it would have been "easier" to have briefed the Labor Department ahead of time on what he planned to do. But he decided against it for two reasons—the prohibitions against sharing sensitive tax information with another agency and because the time frame the IRS was examining in its inquiry included tax years prior to the 1974 enactment of ERISA and Labor's primary interest was in the period beginning on January 1, 1975 (pp. 206, 207).

NEGATIVE IMPACT ON LABOR'S INQUIRY WAS NOT ANTICIPATED

Charles Miriani testified that he had no idea the IRS revocation action would have a negative impact on the Labor Department's

investigation. He said he heard that such a negative impact had occurred for the first time in testimony given at the subcommittee hearing (p. 216).

The only impact he anticipated from the revocation would be upon the fund, which would apply for a new tax exemption with the understanding that desired reforms would be put into place, Miriani said. He added, "We didn't feel as though the action we took would have an effect on the Labor Department's investigation." (pp. 211, 216).

Miriani's testimony differed from the testimony of witnesses from the General Accounting Office and the Labor Department.

While Miriani said he never thought for a moment the revocation would have an adverse effect on the Labor Department's case, GAO and Labor Department officials testified that the revocation had been especially detrimental. Senator Nunn pursued this apparent conflict in testimony in the following exchange with Miriani:

> Senator NUNN. All the testimony yesterday from GAO and from all the Labor Department investigators said it had a devastating effect.
>
> MIRIANI. I said I was aware of that testimony but until I heard that testimony nothing has come up.
>
> Senator NUNN. Nobody ever came to you after you took this action, nobody in the Labor Department [in] subsequent meetings or conversations ever complained to you about not notifying them?
>
> MIRIANI. No; there were differences of opinion with respect to the reforms that we wanted to take in connection with requalification and we considered whatever we would do and the impact that it would have on future labor actions, but no, not with respect to revocation.
>
> Senator NUNN. Nobody in the Labor Department, ever until this day, has ever personally complained to you about not being notified of that action?
>
> MIRIANI. Yes; they have. They have complained about not being notified but not from the standpoint that it caused chaotic conditions within the Labor Department and things such as that.
>
> Senator NUNN. The first time you ever heard it was yesterday, that it caused chaotic conditions?
>
> MIRIANI. Yes.
>
> Senator NUNN. Why did they complain about not being notified? What did they say was the cause?
>
> MIRIANI. We really didn't get into any substantive discussions with respect to that.

Miriani said that in 1975 IRS and the Labor Department agreed that their investigations of the pension fund would proceed separately, with IRS's efforts focusing on the plan's benefits and the department's aimed primarily at fiduciary standards.

Paradoxically, however, the IRS letter of April 25, 1977 restoring the fund's tax exemption cited a lack of fiduciary standards by the trustees. Miriani said the references to fiduciary standards were coordinated with the Labor Department before the requalifying letter was sent out (p. 218).

Senator Nunn commended IRS for working with the Labor Department in restoring the tax exemption but suggested it might

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have been equally advantageous for this kind of cooperation to have taken place before the revocation occurred.

Miriani replied that "it would have been better" to have done it that way but, again, the "gross improprieties" in the fund's management had so occupied his attention that "the only action that I could see that we could take was revocation." (p. 218).

IRS BLAMED DISCLOSURE LAW FOR NOT BRIEFING LABOR

Senator Nunn raised the possibility that similar circumstances might develop again. Would IRS revoke the fund's tax status without telling the Labor Department beforehand? IRS Assistant Commissioner Winborne said no, that procedures had been changed on how this sort of action was accomplished. "It would not occur again is the bottom line of my statement in that regard," Winborne said (p. 210).

IRS counsel Lester Stein elaborated on Miriani's remark that one of his reasons for not briefing the Labor Department before the revocation had to do with disclosure laws prohibiting IRS from sharing sensitive tax information with other agencies (p. 211).

The disclosure procedure allowing for the exchange of this information had not been completed. Therefore, requests for information—SIS Director Lippe's request, for instance—could not be granted, Stein said. A more formal request would have had to be made, in writing, from Secretary Marshall to Internal Revenue Commissioner Donald Alexander (p. 212).

Miriani added that the paperwork had already been begun to waive the disclosure prohibition but it had not yet been approved. Eventually, the Service was able to share such information with the Labor Department, Miriani said (p. 212).

Senator Nunn pointed out that the subcommittee had several documents indicating that IRS had shared information with the Labor Department regarding its plans in the pension fund inquiry—and these were prior to the June 1976 revocation action. IRS counsel Stein told Senator Nunn that it was a very fine technical distinction in Federal disclosure law that may have allowed for the sharing of tax data in certain instances and the prohibition against it in other instances (p. 214).

Mindful of an earlier subcommittee investigation in which he and other Senators had charged that the IRS used the disclosure provisions of Federal law as a justification for not cooperating with the Justice Department in major narcotics cases, Senator Nunn said this was another instance of the Service "hiding behind" the disclosure rules. "You all have the greatest hiding spot I have ever seen in the history of my governmental experience," Senator Nunn said, adding that no matter what the situation IRS could invoke disclosure prohibitions to justify what it did (p. 214).

DISCLOSURE RULES DID NOT STOP DISSEMINATION OF INFORMATION

IRS used the disclosure provisions of the tax code to justify the decision not to tell the Labor Department that it planned to revoke the fund's tax exempt status.

But, Senator Nunn pointed out that in a 1979 subcommittee hearing the IRS maintained in its defense of the disclosure provisions of the Tax Reform Act of 1976 that prior to its enactment

there had been "loose dissemination" of tax information and that the new Tax Reform Act of 1976 was needed to tighten such distribution and establish strict procedures on the release of tax information. Thus, IRS claimed that prior to January 1977, the effective date of the 1976 Tax Reform Act, dissemination of information between IRS and other Government agencies was extremely loose. Apparently, in the 1979 hearing concerning the Teamsters investigation IRS had altered its opinion and decided that the pre-1977 disclosure laws were tight enough to even prevent disclosure to the Labor Department of their intent to revoke the tax exempt status of the Teamsters fund.

IRS's refusal to tell the Labor Department that it planned to revoke the fund's tax status showed that IRS was selectively adhering to a strict interpretation of disclosure procedures even before the Tax Reform Act of 1976 was passed, Senator Nunn said.

LABOR DEPARTMENT MUST NOW CONCUR IN UNION TRUST REVOCATIONS

Senator Percy was puzzled as to how the disclosure law could possibly have been construed to prohibit IRS from telling the Labor Department that it intended to revoke the pension fund's tax exemption. Was the IRS actually saying that to have merely notified the Labor Department would have constituted the illegal disclosure of tax information?

That was exactly what IRS was saying, according to Lester Stein, Deputy Chief Counsel of IRS. In the broadest interpretation of the law, which was the interpretation IRS made, to tell the Labor Department of the intention to revoke a tax exemption would have been illegal, Stein said (p. 212).

Stein added:

> Any steps taken by the Service leading to a revocation of a tax exempt status would constitute protected information (p. 212).

In summary, then, Senator Nunn asked, to have told Labor or SIS about the revocation ahead of time would have broken Federal law? Yes, said Stein (pp. 212, 213).

Subcommittee chief counsel Marty Steinberg pointed out to the IRS witnesses that the subcommittee had obtained copies of many memoranda in which officials of the Service and the Labor Department discussed their pension fund investigation.

Steinberg said the memoranda contained considerable information about how IRS was approaching the pension fund and the options available to the Service, including that of tax exemption revocation.

Steinberg said:

> Among the matters discussed as far back as January 1976 is the possibility of revocation and every time IRS was asked about it, or heard something about it, our memos reflect that IRS said there would be no revocation (p. 218).

Finally, after imprecise responses, Charles Miriani admitted that IRS had discussed with the Labor Department matters relating to its investigation of the fund and that these discussions took place

prior to revocation. After these discussions with the Labor Department, IRS began to have second thoughts, Miriani said (p. 218).

IRS was worried that these discussions might have been illegal, Miriani said. With these worries in mind, IRS quit discussing its case with the Labor Department, Miriani said. And with these worries in mind, IRS revoked the fund's tax status without giving the Labor Department advance notice, Miriani said.

IRS Deputy Chief Counsel Lester Stein said that, while it was correct to revoke without telling the Labor Department, the Service would not disqualify the pension fund again without first telling officials of the Department of Labor.

Stein said the Tax Reform Act of 1976, which contained very strong language aimed at preventing unnecessary disclosure of tax information, did have a section saying that the Labor Department was entitled to any information with respect to enforcement of ERISA, the pension reform act.

"We construe that to mean just what it says, and we will give the Labor Department whatever we have to the extent permitted under the law," Stein said (p. 213).

In addition, Assistant IRS Commissioner S. A. Winborne, calling attention to the President's Reorganization Plan No. 4 of 1978, said this decree required the IRS to obtain the concurrence of the Labor Department before revoking an employee benefit trust's tax exempt status.

> Under this provision the Labor Department must, in effect, be in agreement with the IRS before disqualification would become a reality (p. 225).

Recalling the 1976 tax status revocation of the Central States pension fund, Winborne said that if IRS wished to take similar action now the Service would have to notify the Labor Department in writing.

The Department would have 90 days to object. If it didn't, the revocation could be handed down, Winborne said (p. 226).

To insure that the Labor Department and IRS cooperate in the future, an interagency agreement was drawn up in November 1978 and affirmed by the Commissioner of Internal Revenue, Jerome Kurtz, and the Assistant Secretary of Labor for Labor-Management Relations, Francis X. Burkhardt, Winborne said.

Winborne explained:

> The agreement not only promotes the efficient use of Government resources but also reduces the burden imposed on the private sector by the activities of the ERISA agencies by minimizing the number of cases where both agencies examine the same plan at or about the same time (p. 225).

III. Early Stages of SIS Investigation of Fund

Fund records were requested, not subpenaed

Along with the problems caused by the IRS go-it-alone attitude and the IRS decision to revoke the pension fund's tax exemption, other significant developments occurred in 1976, the first year of the SIS investigation of the pension fund.

One such development was a policy the department implemented in which it decided that SIS would not subpena records from the Central States pension fund. Instead, it would request that the fund give them up voluntarily.

ERISA gave the Labor Department the power to use administrative subpenas to obtain pertinent records. Choosing not to exercise that power, the Department directed SIS to ask the fund for them. For its part, the fund agreed to turn over the desired records upon request. Thus, the investigation came to depend for its success on the cooperation of its target.

In its evaluation of the investigation, the GAO said the Labor Department justified its decision to rely on the fund's cooperation rather than subpenas on the grounds that it would save time. Using the voluntary approach, the department felt SIS could avoid having to go through the procedure of drafting and then serving the subpena. It was believed that SIS could simply ask for needed documents and would immediately receive them.

From an investigator's point of view, the major shortcoming in that system was that it was based on 100-percent willingness of the fund to cooperate with the Labor Department. But that degree of cooperation was not always forthcoming. As GAO noted, "* * * under this [voluntary] approach, the records were not authenticated or obtained under oath, and despite the offer of voluntary cooperation, the fund did not give Labor all of the records it requested." (p. 67). Later in the investigation, in fact, the pension fund trustees made it a formal policy not to turn over any records to the Labor Department (p. 69).

SIS directed to investigate real estate only

According to GAO, SIS investigators turned up widespread instances of alleged abuse and fiduciary violations in the fund's activities. This information developed from the fund's books and records included alleged breaches of fiduciary trust as described in ERISA.

Records indicated that loans had been made to companies on the verge of bankruptcy. Additional loans were made to borrowers who had been delinquent in the past. Loans were found to have been given to borrowers who used the money to pay interest on other loans from the fund and the fund recorded this return as interest income. SIS discovered the fund using inadequate controls over rental income.

According to GAO, the SIS investigation revealed that the fund failed to properly manage real estate and other investments. The fund seemed to be in a poor liquidity position and its administrative expenses were high.

SIS found the fund's management of fees received from borrowers was poorly handled. SIS felt there may have been criminal violations in the manner in which the trustees were paid allowances and expenses. SIS raised questions about the amount of money the fund paid firms which provided services. There were allegations of improper practices in the payment of pension benefits and determination of eligibility.

After establishing what they believed were clear patterns of abuse, GAO said, SIS investigators wanted to go ahead with a full scale audit and more inquiry. But SIS's plans were vetoed by the

Labor Department. The Department ruled that the inquiry be narrowed to only one area, the fund's real estate mortgage and collateral loans.

The department focused exclusively on real estate because of the large amounts of money involved—close to a billion dollars—and because the single overriding objective the Department had set in the investigation was to "protect and preserve the fund's assets."

GAO was critical of the Labor Department in making this its only objective, saying:

> Labor's approach ignored other areas of alleged abuse and mismanagement of the fund's operations by the former trustees and left unresolved questions of potential civil and criminal violations and alleged mismanagement raised by its own investigators (p. 7).

GAO added:

> Labor made no significant analysis, nor did it complete its review of or pursue other potential areas of abuse (p. 67).

SIS DID NOT RECEIVE FULL STAFF COMPLEMENT

It was the view of the General Accounting Office that SIS was never given sufficient employee strength. The original concept of SIS required a staff complement of 45. That was the required number the Labor Department requested in budget proposals submitted to the Office of Management and Budget and to Congress. In August 1976, SIS was authorized 45 positions.

SIS never came near its authorized hire of 45. Its permanent staff never numbered more than 28. There were several reasons given in the GAO evaluation as to why the staff did not fill out.

GAO was told that qualified people were hard to recruit. Standards were said to be too high. Reportedly, civil service competitive examinations stopped SIS from bringing in needed personnel. It was alleged that SIS itself procrastinated, delaying the hiring of new accountants and investigators because other objectives were perceived to have a higher priority (p. 69).

Whatever the reasons for the inadequate staff size, it was a handicap to SIS. Personnel were competent enough, GAO said, but there were too few of them. GAO said:

> Labor officials told us that SIS could not investigate the patterns of alleged abuse and mismanagement its investigators found * * * because of staffing shortages. Had SIS filled the 45 authorized permanent positions, we believe that it would have been able to review some of the unresolved areas and complete more third party investigations (p. 70).

WORK ENVIRONMENT AT FUND OFFICES WAS UNDESIRABLE

SIS auditors reviewing the Central States pension fund files in Chicago worked in a conference room in the fund building at 8550 West Bryn Mawr Drive.

Security was very questionable in the conference room. Teamsters fund employees could walk in and out of the room at their leisure. Locks on the SIS files were easy to pry open. What security

the locked files provided was compromised when someone left the keys on the cabinets overnight.

Installed on the ceiling of the conference room were several microphones. The microphones were there to record meetings of the fund's trustees. But SIS auditors had no way of knowing whether these microphones were turned on and every word they said was being taped.

The overhead microphones, the easy access by fund employees to their work area and the lax file security system combined to create a doubtful environment for the investigation to go forward (pp. 113–114).

This recollection of what working for SIS at fund headquarters was like was given the subcommittee by Raphael Siegel, an accountant who joined SIS in 1975 following service with the New York State Insurance Department, where he examined pension and welfare plans, and with the Manhattan and Brooklyn organized crime strike forces, where he was detailed from the Labor Department.

IV. SIS Was Ordered To Stop Third Party Investigation

THIRD PARTY INVESTIGATION PLANNED BY SIS

In 1976, the fund's investment totaled about $1.4 billion. Of this amount, $902 million was real estate and collateral loans, consisting of 500 loans made to 300 borrowers. SIS set out to examine 82 of these loans, with a total value of $518 million. The overwhelming majority of the loaned funds—$425 million of the $518 million—went to seven entities, which were largely controlled by Morris Shenker, Allen Robert Glick, and Alvin Malnik. Law enforcement officials believe all three have organized crime connections.

SIS found that on many loans the trustees had not followed basic safeguards that a prudent lender would have. The trustees approved loans without knowing fundamental information about the borrower. Then, once the loans were made, the trustees did not monitor them. Nor did the trustees exercise rights over the borrowers as vested in the fund by the terms of the loan contracts (p. 68).

SIS spent about 1 year reviewing the 82 loans from documents made available to them at the fund offices in Chicago. But this was only the first step in what SIS hoped would be a thorough review of the loans. What remained to be done was what investigators believed was an equally important aspect of the review of the loans—third party investigation.

Third party investigation is that phase in any case when investigators move beyond the original records (p. 267). For example, there is a limit to what can be learned from studying the contract of a given loan, reading the minutes of the trustees meeting when they approved the loan and interviewing trustees and fund officials about their recollections of why the loan was made. The next step is to go into the field and interview the borrower and other persons who have knowledge of the loan and the project which the loan financed and obtain records about their operations. That is third party investigation.

It is important to note that third party investigation is essential in the preparation for both civil as well as criminal cases.

According to GAO, Lawrence Lippe, the SIS Director, was ready late in 1976 to send his men into the field to begin third party investigations. They had gathered information from the fund itself on the 82 loans. Lippe planned to make investigations of 75 to 100 third parties in early 1977. Lippe wanted information from such persons as the borrowers' associates and those lenders who previously had refused to make loans to these borrowers.

To support the third party investigative phase of the case, Lippe planned to issue investigative subpenas to obtain records and to take sworn depositions from fund trustees and principal third parties with knowledge of the 82 loans.

With the third party investigation, Lippe's goal was to "close the circle," to find out as much as possible about each loan transaction. GAO said Lippe hoped to establish what efforts the trustees had made to find out what uses the borrowers were making of the fund's money (p. 68).

DEPOSITION OF PENSION FUND TRUSTEES

The problems with the Internal Revenue Service caused SIS difficulties. But, even with these difficulties, the SIS effort was still moving forward. This was the opinion of Lester B. Seidel, Deputy Director of SIS and its special counsel. Having begun its on-site examination of the fund records at its headquarters in Chicago, the SIS inquiry was branching out into another area of inquiry, the taking of depositions from the fund trustees.

Seidel recalled for the subcommittee the trustee depositions. "I called up the fund attorneys and I said, we want to depose the trustees," Seidel testified. The attorneys wanted to have the interviews in Chicago, SIS wanted them in Washington (p. 121).

Subpenas would be needed for the trustees, a requirement easily met at this point in the investigation because James Hutchinson knew what SIS was doing, approved of it and had signed subpenas in blank for the unit, Seidel said (p. 121).

In addition to the trustee subpenas, SIS had also begun to subpena persons who were to give depositions as part of the third party investigation, which SIS Director Lippe had already started preparing for, Seidel said. He said that Lippe and he had conducted some third party investigations in San Diego and Los Angeles in connection with the Morris Shenker loan group. Subpenas were served on Shenker loan group borrowers, on a Beverly Hills bank and three bank officers, Seidel said.

Seidel cited a development that occurred in the trustee deposition phase that revealed the lack of sound procedures the pension fund followed. The trustees had adopted guidelines for the granting of loans, including one provision relating to loans made under emergency circumstances.

Unfortunately, there was little agreement on the board as to what constituted an emergency. Seidel said seven trustees were asked to define emergency and five trustees gave different answers and the remaining two involved the fifth amendment. "So I would assume that an emergency to one person wasn't an emergency to the other," Seidel said. "So we thought they were dead on the [ineffectiveness of the] the general asset management procedures" (p. 121).

In the deposition of trustee William Presser of Cleveland, Presser invoked his Fifth Amendment right not to respond because he might incriminate himself. Using the legal theory that the Fifth Amendment privilege did not apply to a pension fund trustee when he is asked questions pertaining to his fiduciary conduct, SIS interpreted William Presser's refusal to answer as evidence that he was unsuitable for continued service on the board of trustees. Seidel said Lippe demanded that William Presser resign—and he did (pp. 123–125).

SIS's demonstrated ability to force William Presser to resign as a trustee was a factor in leading the other trustees to decide it might be better to stage a mass resignation as a bargaining strategy rather than fight to retain their membership on the board against long odds, Seidel said, explaining, "So that particular procedure remained viable but we could pick them off one by one. I think they kind of knew we were going to pick them off one by one. We would bring them back and bring them back. So that is why they offered the mass resignations" (p. 125).

While it was the last time William Presser would resign from the board of trustees, it was not the first. Presser, a vice president of the Teamsters International and having been convicted of obstruction of justice and Taft-Hartley violations had left the board for about a year in 1975–76 because of his criminal convictions (p. 126).

When he stepped down, he was replaced by his son, Jackie Presser, also a Teamsters Union official. Seidel testified the selection of the younger Presser was a blatant instance of one trustee leaving the board only to be replaced by a trusteee he controlled—so blatant, in fact, "there was no attempt to hide it." "* * * strawman is a kind word, a kind description for that," Seidel said (p. 127).

Jackie Presser, in a deposition he gave SIS, insisted that in the year he was on the board of trustees he had no conversations with his father about the pension fund. "I will let others judge the credibility of that comment," Seidel said (p. 128).

As the trustee depositions had already been fruitful, Seidel said, also fruitful had been the startup of third party investigation. Especially productive was the inquiry into the Morris Shenker grouping of loans that demonstrated the highly questionable $40 million loan commitment the pension fund had made to Shenker on behalf of the Dunes Hotel and Casino in Las Vegas.

Seidel said SIS told the pension fund that the Labor Department would go to court to stop this loan if the trustees tried to live up to the commitment. Faced with the certain prospect of litigation, the trustees rescinded the commitment, Seidel said (p. 121).

INDEMNITY ISSUE WAS FREQUENTLY PUT FORWARD BY FUND LAWYERS

Former SIS Deputy Director Lester B. Seidel testified that lawyers for the fund stubbornly held to an idea that the fund be allowed to indemnify those trustees who were found to be responsible for losses.

In other words, it was the lawyers' view that should civil litigation result in certain trustees having to return money to the pension fund that this money would come from the fund itself.

Seidel said he rejected this concept. He told them often that it would never happen. In fact, the idea was still very much a possi-

bility at this writing. There was nothing prohibiting the indemnification system. The Labor Department has not taken steps to prevent indemnification.

Pointing to the futility of repaying the fund with money from the fund, Senator Nunn said, "the net effect is zero" if the indemnification system is applied (pp. 134–135).

THIRD PARTY INVESTIGATION STOPPED

The value of third party investigation was demonstrated in the third party investigation into the fund's commitment to loan $40 million to Morris Shenker.

But third party investigation by SIS was stopped by the Solicitor's Office and other senior Labor Department officials. Their decision was made in December 1976 and was frequently reasserted from then on. In December 1976 it became Department policy to have SIS prepare exclusively for the filing of a civil suit against the fund's trustees. Preparation for the civil suit eclipsed all other SIS activity (pp. 68, 209).

Secretary Marshall defended this policy in his 1980 appearance before the subcommittee. His primary concern, he said, was to preserve and protect the fund's assets. Senator Nunn pointed out that in the proper preparation for civil cases third party investigation was also required.

Reviewing SIS files and records in the Solicitor's Office of the Labor Department, GAO accumulated documentation revealing how the Department's new civil litigative strategy had completely cutoff Lippe's hoped-for third party investigation.

SIS and Solicitor's Office files showed that Lippe prepared a list of 80 third parties he wanted interviewed and who were to give sworn depositions and were to be subpenaed to produce records in connection with 19 targeted loans. But, GAO said, only 14 of the 80 third parties actually gave depositions or were subpenaed.

GAO said many of the depositions and subpenas were dated in September and October 1977. By this time the civil litigative strategy was in full force and SIS operations were redirected to work in support of the civil case and under the supervision of the Solicitor's Office (p. 68).

By that time, SIS's original mission was canceled. Morale was sinking at SIS. Lippe's deputy, Lester Seidel, quit in September. Lippe resigned in October. Serious disputes and bureaucractic infighting broke out within SIS and between SIS and the Solicitor's Office.

The demise of the third party investigation was the end of SIS as originally organized. It also signaled trouble ahead in the Labor Department's ability to assure the public and the Congress that it was capable of conducting a thorough investigation of the Teamsters Central States pension fund.

As GAO said:

> We believe Labor lost an opportunity during the investigation when it failed to complete the third party investigations as planned by [Lippe]. This may have precluded Labor from obtaining valuable information for its own [civil] investigation as well as [for] potential criminal violations (p. 69).

Subcommittee Chief Counsel Marty Steinberg said that without third party investigations there was no practical way to pursue persons who benefited most from the questionable pension fund loans—the borrowers.

Steinberg said that because there was no third party investigation it was unlikely that borrowers like Morris Shenker, Allen Robert Glick, and Alvin Malnik would ever be held accountable for their actions in obtaining the loans and in using the money gained from them.

Steinberg said the Government cannot succeed in civil or criminal cases without adequate third party investigation (p. 267).

MARSHALL'S ASSURANCES ABOUT THIRD PARTY INQUIRY WERE WRONG

In July 1977, Labor Secretary Marshall testified before the Investigations Subcommittee. He said that the department's investigation of the pension fund was shifting from a review of fund records to a search for evidence in the possession of third parties.*

In the 1980 hearings, evidence was developed that clearly demonstrated that third party investigation was not allowed to go forward, that third party inquiry had actually been cut short even before Marshall's July 1977 appearance before the subcommittee.

Senator Nunn recalled that Marshall's 1977 testimony had been specific on the intention of the Labor Department to do third party investigation.

At the 1977 hearings, Marshall said:

> At this time our investigative activity is shifting from a review of fund records and documents to a search for evidence in the possession of others such as individuals associated with the fund.

But third party investigations, as originally planned by SIS, were never carried out. With few exceptions, the only third party inquiry that was ever done occurred after the filing of the civil suit on February 1, 1978, and that exercise was severely limited in that it was done in the civil discovery phase.

Raymond J. Kowalski of GAO testified that, even in July 1977, when Marshall made the assertion before the subcommittee there was no certainty within the Department that third party investigation would ever be performed (p. 32).

BOTH CIVIL AND CRIMINAL CASES REQUIRE THIRD PARTY INQUIRY

In the fall of 1976, SIS, under Director Lawrence Lippe, was embarking on its planned third party investigation, according to Lippe's Deputy, Lester Seidel. Another attorney in SIS, Lloyd F. Ryan, Jr., prepared from 50 to 100 subpenas and SIS plans called for their service in November and December.

Seidel said the service of the subpenas—the entire third party investigative strategy—was essential to successful inquiry, whether it was leading to civil or criminal cases. To demonstrate this point, he cited an investigation SIS wanted to make of a loan of some $20 million from the pension fund to Argent Corp. Representing

*Hearings before the Senate Permanent Subcommittee on Investigations, "Teamsters Central States Pension Fund," July 18, 1977, 95th Congress, 1st session, at p. 15.

Argent was Allen Robert Glick, who wanted the money for improvements to the Stardust and Fremont hotel-casinos in Las Vegas.

To borrow this money, the borrower needed about 10 percent of the principal, Seidel said. A corporation called G & H, which was to supervise the general contractor, was paid 10 percent of the construction loan. Seidel said the G & H Corp. was a corporation in name only and didn't do anything to earn its fees.

Such an arrangement, Seidel said, was questionable in several respects, not the least of which was that the 10 percent paid to the G & H Corp. was possibly being siphoned away from the project itself. In addition, a fund lawyer was involved in approving aspects of the construction, Seidel said, noting that this was a possible conflict of interest.

Altogether, the Stardust-Fremont loan raised more questions than it answered and, Seidel said, third party investigation was called for quickly. Of additional significance was information SIS had indicating that Allen Robert Glick, a reputed front for crime syndicates, was actually representing a Chicago organized criminal who wished to conceal his ownership of several Las Vegas properties, Seidel said.

Seidel said that third party investigation into the Stardust-Fremont loan was called for whether the end result of the inquiry was civil or criminal. It was his view that what mattered was that the investigation be conducted, the third parties deposed, subpenas served and vital documentation obtained. Once the third party investigation was completed, it could then be decided what use to make of the information.

However, third party investigation on the Stardust-Fremont casinos loan was called off, just as other third party investigations into the other loan groups were sidetracked, Seidel said. (pp. 128–130).

Senator Percy asked Seidel if, in place of the planned third party investigation, a worthwhile investigative substitute was given SIS. From November and December 1976, when the third party investigation was ended, until August 1977, when he quit SIS, a number of substitute tactics were proposed in lieu of third party investigations, Seidel said. But, he said, "none of them [made] much sense from an investigative standpoint."

Senator Percy asked why were the third party investigations called off when it was so apparent to anyone who had knowledge of the case that they were essential. It was, Seidel said, "a turf problem in terms that SIS was a new creature in the Labor Department" and its presence and techniques frightened the Solicitor's Office, which, in a bureaucratic sense, had the most to lose should SIS succeed. (pp. 130–131).

In its style of investigation, the Solicitor's Office approached problems differently than did SIS, Seidel said. Senator Percy asked Seidel, an attorney, to explain what he meant and this exchange ensued:

> SEIDEL. Heaven forbid that investigators should talk to lawyers, or that lawyers should act as investigators. That was anathema to the Labor Department. The Justice Department was doing it for years. The SEC [Securities and Exchange Commission] does it every day, a hundred times a day. It was never accepted [at Labor].

> Senator PERCY. Yet the principle was accepted by the highest authority in the Labor Department. The Secretary established it and gave SIS a clear mandate. As the mandate was being implemented, you are testifying, the turf problem developed, there was rivalry and jealousy by the Solicitor's Office and for that reason you were prohibited from going ahead. Is that the sole reason, do you suppose, just professional rivalry?
>
> SEIDEL. Senator, I am a native Washingtonian. I am 36. I read the papers a lot, work for the Government a lot. It is not the first instance in which an executive mandate with a transitory official is slowly but surely eroded by the bureaucracy that lives on and that is not to knock the bureaucracy but it is not the first time that has happened (pp. 130–131).

Because of the decision not to conduct third party investigations, Seidel added, it was more likely that culpable third parties will escape liability for alleged improper dealings with the fund (p. 132).

COLLAPSE OF INVESTIGATION AS RYAN SAW IT

Lloyd F. Ryan, Jr., an attorney Lawrence Lippe hired for SIS in June 1976, was optimistic about the Central States pension fund investigation when he first started work. But his hopes were dashed as policy changed and SIS's original mandate was rewritten (p. 99).

Lester Seidel, the special counsel for SIS and Lippe's deputy, was Ryan's immediate supervisor. Ryan testified that his and Seidel's assignments included the conducting of any court litigation resulting from the SIS investigation.

Pointing indirectly to the potential jurisdictional conflict that could breakout between SIS and the Solicitor's Office, Ryan said in all other matters at the Labor Department the Solicitor's Office handled litigation. The one exception would be ERISA where SIS would have the duty (p. 88).

One of his first duties, Ryan said, was to prepare the rules of procedures for SIS, setting down the unit's legal authority and its lawful basis for carrying out its mission. This paper was to show, among other things, the right of SIS to issue subpenas and take investigative depositions.

Lippe approved Ryan's treatise in August 1976 and the document was forwarded to the Solicitor's Office. There it was to receive the imprimatur of the Labor Department. But, Ryan said, the Solictor's Office did nothing. SIS turned to James Hutchinson, who, as administrator of pension and welfare benefit programs, gave Lippe's organization temporary authority to issue subpenas, Ryan said (pp. 88, 89).

SIS was building a staff in 1976 for the inquiry that had already begun, Ryan said, noting, however, that resources were limited, the professional personnel who were hired were given no formal instruction in ERISA and that, while there were informal briefings on what the new pension law was about, the lessons were sketchy. Too few staff members were assigned cases with too little knowledge of ERISA (p. 89).

Ryan stressed that the pension fund case called for financial investigation—and financial investigation required third party investigation. When third party investigation, central to the SIS strategy, was ended, the SIS effort, in effect, was ended too (p. 96).

By November 1976, Ryan said, SIS had done most of the preliminary examination of records from the fund's files. Now SIS was ready to go on to the most important parts of the inquiry. "A vigorous third party investigation is the core of any complex financial inquiry," Ryan said. "An accurate picture can be obtained only by piecing together and weighing the information of many witnesses" (p. 89).

Witnesses must be identified, located and interviewed, Ryan said. These third parties are essential, particularly when investigating an organization like the Central States pension fund where records were incomplete—perhaps deliberately so—and misleading information continued to turn up. Ryan said there was evidence of possible violations of Federal and State laws, both criminal and civil, and alleged involvement of reported organized crime figures (p. 90).

Chronological summaries and analyses of loans and other transactions were prepared from pension fund records, Ryan said. SIS wrote factual summaries of the targeted loans, spelling out those transactions that appeared to violate ERISA. From all this preliminary work, SIS came up with a seven-step investigative strategy.

Now that the first phase, analysis of the fund records, was complete, it was to be followed by step two—the gathering of documents from borrowers and other third parties who knew about the loans and the people who were involved in them. Ryan said step two called for investigative subpenas, compelling persons to cooperate.

Third, Ryan said, SIS wanted to waive the voluntary cooperation agreement with the fund at this point. What was needed now, he said, was service of an investigative subpena on the fund as well as on third parties.

Next, the fourth phase was to include the taking of investigative depositions—sworn interviews—from third parties and fund employees. "By this point in the plan," Ryan said, "the details of the investigation would be dictated primarily by the results of the investigation to that point. Accordingly, the plan for further investigation was indicated only in general terms." (p. 90).

Ryan went on to say—

> The fifth step was to be the completion of an analysis of the documents produced by the witnesses and the testimony of the witnesses. The sixth step would be the taking of further investigative depositions of old or new witnesses as indicated by the analysis to that point. The seventh step would include a reconsideration of the entire preliminary SIS audit of the fund's financial condition and operations in view of the investigation (p. 90).

Sixty subpenas were prepared, Ryan said, as SIS readied itself for step No. 2, the opening of the third party investigation. But there wasn't going to be any step two. Ryan said he got his first indication that their third party inquiry would be stopped in late December 1976. "Mr. Lippe informed me that there was a good possibility that our third party investigation was to be postponed

indefinitely," Ryan said, adding, "At that time, no specific explanation was given." (p. 90).

During this same period—from late December 1976 to early January 1977—Ryan said he received another signal that the SIS investigative strategy would never be implemented. SIS was assigned the task of preparing papers for a briefing to be given for the Labor Department's Associate Solicitor, Steven J. Sacher; for his colleague in the Solicitor's Office, Monica Gallagher, who would, in November 1977, replace Sacher; and for other Solicitor's Office personnel. Ryan said the briefing was designed to fill in the Solicitor's Office on the SIS review of the Central States loan files, on the SIS legal positions and the SIS investigative strategy.

At the briefing, Monica Gallagher was "scathingly critical" of SIS, Ryan said. She demanded answers to questions SIS could not possibly reply to until its investigation went further, Ryan said. Monica Gallagher told the SIS briefers that their investigative strategy was inadequate and that she could devise a better one, Ryan said.

Afterward, Ryan talked about the briefing with Lippe and Seidel. The three men concurred that Monica Gallagher and Steven Sacher, representing the Solicitor's Office, "had assumed control of any potential litigation" and would control all further investigation. Ryan said it was clear that SIS would no longer be allowed to do anything of consequence without the permission of the Solicitor's Office (p. 91).

SACHER, CHADWICK SAID TO HAVE STOPPED 3RD PARTY INVESTIGATIONS

Lawrence Lippe, who was Director of SIS in 1976 and the first half of 1977, testified as to how and when he was ordered to halt third party investigations.

The orders were from Steven J. Sacher, the associate solicitor, and William J. Chadwick, the administrator of pension and welfare benefit programs, Lippe said.

Lippe said Sacher and Chadwick met with Lester Seidel and him in mid-December 1976 and gave them the word. SIS was to abandon third party investigations and devote itself exclusively to supporting the Solicitor's Office in preparation for the civil suit, Lippe said.

Chadwick, who, as successor to James D. Hutchinson, was Lippe's boss, and Steven Sacher listened while the SIS Director protested their directions.

Asked to describe his objections, Lippe testified—

> I stated that in my judgment, it would be much more beneficial to continue the course of action on which we had been embarked—which was, on one hand, to begin hammering out with the pension fund's counsel a set of rational procedures by which the fund would govern its asset management activities and, on the other, and more importantly, simultaneously to commence forthwith the third party investigations to keep the momentum going and to get the other side of the picture, if you will, on the many loans which we had targeted. We felt that these transactions could form the predicate for ultimate litiga-

> tion. We further believed that we should conduct this fact finding in the context of the ERISA subpena powers, which we had and which were far more effective tools for getting witnesses in and developing facts than were the procedures for discovery under the Federal rules of civil procedure.

"Unresponsive" was Lippe's word to describe Sacher and Chadwick's reaction to his plea. They would not be swayed. Lippe said, and, having lodged his complaint, there wasn't much else he could do. Chadwick was his boss and Sacher and Chadwick were of one mind.

Neither Sacher nor Chadwick sought to justify or provide evidence in support of their decision to Lippe. Lippe added that he did not care to speculate as to whether or not a more senior department officer might have instructed Sacher and Chadwick to give these orders (pp. 146, 147).

MRS. GALLAGHER INFORMED SIS OF HOW TO PROCEED

SIS personnel learned of the changes in how they were to proceed from the Solicitor's Office, and frequently, the information came to them from Monica Gallagher, an attorney who became associate solicitor in November 1977 and who took over operational control of SIS that year.

There were sharp differences between Monica Gallagher and SIS as to how best to conduct the pension fund investigation. Nowhere were these differences more apparent than in three meetings Monica Gallagher had with SIS personnel in the first half of 1977. At these meetings, investigative techniques and philosophy were discussed. The meetings were held in February 1977, on April 13, 1977 and on May 4, 1977.

LIPPE, RYAN RECALL FEBRUARY 1977 MEETING

Lawrence Lippe, Director of SIS at the time of the February 1977 meeting, testified that it was held in the office of Robert Lagather, the Deputy Solicitor of Labor. Lippe said Mrs. Gallagher announced that she had assembled a list of 50 to 75 names and 50 to 75 pension fund loans. She told Lippe that she wanted these individuals subpenaed and that each of them was to be interviewed under oath in connection with the loans, Lippe testified. He asked her why these particular names and loans had been selected. Gallagher replied that she had selected them from the minutes of the meetings of the pension fund board of trustees, Lippe testified. Gallagher's instructions were that SIS, armed with her list of names and loans, should "then go after them in what would be a quick roadshow fashion," Lippe testifed.

Mrs. Gallagher's intention was to create the illusion of a criminal investigation, an exercise with high visibility, something that could be cited as evidence that the Labor Department was making progress in developing information of a criminal nature, Lippe testified (pp. 147, 148).

Lippe told the subcommittee that Gallagher's plan was unsound and unprofessional. He said, "I protested vigorously for all the obvious and logical reasons that any experienced investigator and prosecutor would protest."

Lippe said he pointed out to Gallagher that SIS had been investigating clusters or groups of loans such as those loans which had involved Allen Robert Glick, Morris Shenker and Alvin I. Malnik. He explained that his investigators were now ready to go into the field and interview, subpena and obtain sworn depositions from recipients of questionable loans. The SIS inquiry was ready to be moved from the examination of Central States documents to the most promising stage of the endeavor, third party investigation, Lippe said (p. 148).

Lippe said that he told Gallagher that it would be a mistake—an irreparable blunder—to obtain sworn depositions from the persons whom she recommended without first doing the necessary background investigation on each of the subjects. Merely selecting them from the minutes of trustees' meeting did not constitute sufficient preliminary investigation.

Lippe said he told Monica Gallagher that not even the "newest investigator or prosecutor would have the temerity to begin questioning borrowers involved in complex financial transactions without knowing anything about the transactions, other than what you might read about in a few sketchy fund minutes and at best fund minutes in many instances were sketchy. No investigator or trial attorney wants to question a witness who knows 100 times more about the transaction than he does" (p. 148).

In addition, Lippe said, what Gallagher was proposing could have a long term negative impact on the entire Central States inquiry. Poorly prepared questions based on incomplete information could undercut future civil or criminal investigations of a more procedurally sound foundation. Her concept was simply bad investigative practice from every standpoint, Lippe explained, saying, "in short, I told Mrs. Gallagher that I thought this was sheer and absolute irresponsible madness." (p. 148).

His objections were not well received. Lippe said Mrs. Gallagher rejected them and held to her original idea of obtaining the sworn depositions. A major concern of hers was to appease Congress, Lippe said, and she would not be persuaded Congress could be appeased any other way (p. 148).

Lloyd F. Ryan, Jr., an attorney in the SIS organization, was with Lawrence Lippe in the February 1977 meeting in Robert Lagather's office when Monica Gallagher put forward her plan to obtain depositions from persons whose names she selected from the minutes of the trustee's meetings.

Ryan's recollection of the meeting was that Monica Gallagher and Lagather convened it for the purpose of fashioning a response to demands from Congress that the Teamsters Central States fund investigation make more progress. Ryan said Gallagher did most of the talking. "She recommended that in response to congressional interest, we should put on a quick, high visibility show to get Congress off our back," Ryan testified (p. 92).

Gallagher's strategy, Ryan said, was for SIS to take a large number of sworn depositions "to create the appearance of activity in the investigation." Ryan added, "I understood the full substance of her remarks to advocate that the Department of Labor put on a false show of activity for the sole purpose of deceiving Congress concerning the progress of the Central States pension fund investigation." (pp. 92–93).

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As an attorney, Ryan said, he was appalled by Gallagher's plan. He testified that he objected to what she had to say and then told her the dictates of legal ethics made it impossible for him to participate in her strategy. He said her proposal constituted a "sham show" and he would have no part of it (p. 93).

Annoyed and angry with him, Gallagher said nothing more to Ryan in response to his criticism of her directive, Ryan testified. She ignored him, he said, for the remainder of the meeting. Afterward, Ryan told Lippe that he wanted no more of this kind of situation and asked for a transfer to a new assignment.

SEIDEL WAS TOLD TO GO ON VACATION AFTER FEBRUARY MEETING

Intrusion into the affairs of SIS annoyed the Deputy Director, Lester B. Seidel, to such an extent that he made no attempt to conceal his feelings.

Seidel testified that he protested what was happening to a once promising investigation to anyone who would listen to him. The Deputy Director could not be silenced so the Solicitor's Office directed him to take some time off.

Seidel testified that Robert Lagather of the Solicitor's Office told him to "take a vacation and get lost for a couple of weeks." This was in February of 1977.

Seidel said he was given these instructions at a time when he was being highly critical of what he called the Labor Department's deliberate "non-policy" on the pension fund investigation and he was making his criticism known to senior officers of the department.

Seidel said he and Lippe made no secret of their dissatisfaction with "the general aura and atmosphere of non-policy."

One of the manifestations of the non-policy, Seidel said, was seen in the fact that there was no one clearly in charge. He said that in February of 1977 Lippe and he reported to a variety of persons, including Eamon Kelly, a consultant in Secretary Marshall's office; Robert Lagather of the Solicitor's Office; and Francis X. Burkhardt, Assistant Secretary for Labor-Management Services.

Seidel said he did leave town, going to San Diego where he conducted third party investigation regarding the Shelter Island Hotel which had gone into bankruptcy. He then went on a 10-day vacation in Mexico. He was away from Washington for 17 days.

When he returned to the office on March 20 to 21, he found the inquiry was at a standstill. Most of the SIS investigators were in Chicago working 24 hours a day photocopying fund records, Seidel said.

Seidel said Lippe had him visit Chicago and look in on SIS personnel there. Seidel said he found morale to be very low among SIS personnel (pp. 133–134).

BARBATANO DESCRIBED APRIL 13, 1977 MEETING

Following the February meeting, the next conference was held the afternoon of Wednesday, April 13, 1977. Attending were Monica Gallagher; Thomas J. Bauch, a consultant to the Labor Department; and four SIS employees, Lawrence Lippe, the director; Lester Seidel, his deputy; Lloyd F. Ryan, Jr., an attorney; and Salvatore A. Barbatano, an attorney.

Barbatano wrote a memorandum for the record about the meeting and, at the subcommittee's request, swore to an affidavit on September 26, 1980 (pp. 476–480).

Barbatano's memorandum indicated that Monica Gallagher announced at the meeting that the Department of Labor "has no intention of pursuing 'parallel proceedings' in conjunction with the Department of Justice." Gallagher said the Labor Department was to take no further action on investigative leads of a criminal nature. These leads should be referred to the Justice Department, Gallagher was quoted as saying. Gallagher said SIS was not to be involved in joint Labor-Justice investigation, according to the Barbatano memorandum.

It was Mrs. Gallagher's intention, Barbatano wrote, to draw up a list of persons associated with the pension fund and have them interviewed in sworn depositions taken by SIS. The depositions would be referred to the Justice Department, as evidence that the Labor Department had fulfilled its obligation to come up with information of a criminal nature and send it to Federal prosecutors.

Monica Gallagher presented the SIS men with the names of 81 persons. She wanted depositions taken from these subjects, Barbatano recalled in the memorandum, and she wanted this action taken without any preliminary investigation. In other words, the 81 sworn depositions were to be conducted by SIS personnel without the SIS people having the opportunity to find out more precisely what information they were to seek and without having sufficient background on the subject from whom they were seeking it.

Mrs. Gallagher had developed the list of 81 names after a review of a large volume of minutes of several meetings of the board of trustees, Barbatano wrote, adding, "It is anticipated that at the time said persons are deposed, information upon which the depositions are taken will have been derived primarily, and in some instances, solely, from minutes of trustees' meetings." (p. 480).

In his affidavit, Barbatano recalled the April 13, 1977, meeting and the impact of Monica Gallagher's instructions on the SIS inquiry. "At this meeting," Barbatano said—

> Ms. Gallagher informed us that the Department of Labor's primary concern for the foreseeable future would be the identification of potential criminal violations arising from fund transactions and the referral of such information to the Department of Justice. Ms. Gallagher further informed us that the Department of Labor did not intend to pursue parallel civil proceedings related to the identified transactions or to formulate its own investigative plan beyond a review of the minutes of the meetings of the fund's trustees. The practical effect of this decision by the Department of Labor was the cessation of the Central States fund investigation. During the remaining 2½ months of my employment with SIS, there was, to my knowledge, no meaningful investigative effort conducted by anyone on behalf of the Department of Labor with respect to the Central States pension fund (p. 478).

Barbatano, who joined SIS in November of 1976 and quit in June of 1977 said in the affidavit filed with the subcommittee that the conflict between the Solicitor's Office and SIS was an "ongoing

internecine dispute" that went on the entire time of his employment.

Barbatano's affidavit said the dispute resulted in "the complete frustration and subversion of the investigation of the Teamsters Central States pension fund. This bureaucratic wrangling has done an enormous disservice to the government and the public. It has, in effect, perpetuated the looting and irreparable depletion of a $2 billion pension fund. There are many victims of the scenario; but those suffering the greatest injustice are the Teamsters Union members who will be deprived of pension benefits because the Labor Department failed in its mission" (p. 477).

Barbatano's affidavit stated that he had gone to work for SIS because he believed the job would give him the opportunity to advance in his legal career and, at the same time, enable him to make a contribution to the public good. Neither objective was realized, Barbatano said, pointing out that he quit the Labor Department "in disgust, convinced that a concerted effort had been made by persons within the Labor Department, and elsewhere, to destroy the investigation undertaken by SIS. My views on that subject have not changed." (p. 477). Barbatano added—

> With the passage of time, the outrage and indignation which I felt at the time of my resignation have given way to a sense of profound sadness and regret. Yet this process has also permitted reflection upon the failure of the Central States fund investigation and the reasons for that failure. Accordingly, I believe it appropriate to conclude this statement with a summary of those thoughts.
>
> It is apparent that a decision was made, at some level above the Solicitor, to utilize the Solicitor's Office in orchestrating the subversion and ultimate collapse of the investigation. To my knowledge, no one in the Solicitor's Office had the authority or the political strength to undertake such an effort without support and direction at much higher levels, either within or outside the Department of Labor.
>
> It is my considered belief that a decision was made which called for dramatic, albeit ultimately harmless gestures . . . designed to improve the Department's enforcement image. This decision was, I believe, tempered by a companion decision to terminate the investigation in order to avoid the political turmoil which could be wrought with the exercise of the Teamsters Union's political and economic strength (p. 478).

Barbatano's affidavit also said that the Labor Department was not capable of conducting a comprehensive investigation of the Central States fund. He said the Labor Department did not have the technical expertise to conduct such an inquiry and even if it had the knowhow it would fail anyway because the Department did not desire to succeed in such an endeavor.

Terming the Teamsters one of the Labor Department's most important constituents, Barbatano's affidavit concluded that—

> The Department is for better or worse, the chief governmental spokesman for the interests of the labor movement. As such it must coexist and cooperate with the Teamsters on a daily basis. To assume that the Department can accomplish this admittedly difficult task while simultaneously conducting an intense investigation of the fund is naive (p. 479).

SHEVLIN'S RECOLLECTION OF MAY 4, 1977, MEETING

Edward F. Shevlin, an SIS investigator, testified that he learned of Monica Gallagher's decision to obtain sworn depositions from 81 persons as an alternative to conducting the third party investigations in the spring of 1977. Shevlin said Gallagher wanted to begin a 60 to 90 day "high visibility investigation. She had selected 81 persons that she wanted us to take depositions from without the SIS staff having done any preliminary work on the persons named by her" (p. 104).

Shevlin said he warned Lawrence Lippe that if SIS carried out Gallagher's directive it would ruin hopes that in the future a procedurally sound investigation by the Justice Department might succeed.

A meeting was held on May 4, 1977. In attendance were Monica Gallagher and Steven J. Sacher, representing the Solicitor's Office, and Lippe, Lester Seidel, Shevlin and Salvatore Barbatano. The discussion quickly centered on Gallagher's plan to have SIS obtain sworn interviews from the 81 persons.

Shevlin said the SIS people told Mrs. Gallagher that SIS did not have sufficient information and substantive data on many of the 81 subjects. According to Shevlin, Mrs. Gallagher did not agree. It was her view that many of the persons SIS planned to obtain depositions from were familiar figures already under investigation. Shevlin said Mrs. Gallagher claimed to have come up with her list of 81 names in about 3 hours' time.

One of the persons on Gallagher's list was Richard Kleindienst, the former Attorney General. Here is what Shevlin recalled Monica Gallagher said about how to handle the Kleindienst deposition:

> She said that she would ask him how much money he offered as a bribe in connection with a certain loan. [Lester] Seidel pointed out that the loan she had reference to had never been disbursed. She commented she would ask him [Kleindienst] if he thought the loan would have been approved if he, Kleindienst, offered more bribe money. It was incredulous. I could hardly believe my ears. I never heard anything quite so professionally irresponsible concerning an approach to a witness (p. 104).

Shevlin said that following the May 4, 1977, meeting SIS spent the rest of the summer gathering, reviewing and summarizing information on the 81 persons on Gallagher's list and the loans they were involved in. This project prevented SIS from following its own schedule of continuing work on the loans it had targeted.

SIS's work was further complicated by the fact that Mrs. Gallagher had selected loans from the minutes of trustees' meetings, Shevlin said. In so doing, she had neglected to check the files to determine whether sufficient documentation existed on the loans to support inquiry, Shevlin said. As a result, he said, many of the loans she chose were insufficiently documented. Shevlin said Gal-

lagher was not satisfied with SIS summaries of the loans. She claimed they lacked details. They did lack details, Shevlin said, but that was because Labor Department files did not contain much information about them.

Shevlin said the loans which SIS had originally wanted to examine in third party investigations did not suffer from a lack of documentation. SIS attorneys and investigators had selected loans which were well documented in government files. But that was not the case with the loans Gallagher had selected. "What we had been asked to do was investigate an arbitrary list of individuals in which no preliminary groundwork had been done," Shevlin testified (p. 105).

It is not known if congressional interest in the investigation was satisfied by Monica Gallagher's strategy. But, in a substantive sense, not much came of it. Lawrence Lippe saw to that. He said SIS went through the motions of carrying out Gallagher's instructions. But the effort was half hearted.

Since he considered the Gallagher strategy to be "ridiculous at the very least" and "certainly improper," Lippe had no difficulty in deciding to go against her wishes. "So long as I was there, Mr. Chairman, that [Gallagher] inquiry was not going to proceed in any meaningful way," Lippe testified (p. 149).

THE "HIGH VISIBILITY ROAD SHOW" ALLEGATION

One of her major concerns about the subcommittee's investigation, Monica Gallagher testified, was the frequency with which witnesses had taken out of context remarks she had made and completely misconstrued her intent.

Mrs. Gallagher said this had happened to her comments about cooperation with the Justice Department. And, she said, it happened again in statements she had made about the so-called high visibility road show investigative effort allegedly created to appease Congress.

It was "totally wrong and misleading" to say—as witnesses from SIS said—that she had tried to set up a high profile investigation to deceive Congress into thinking the Labor Department was making criminal inquiry, Gallagher testified (p. 462).

What actually happened, she said, was that, in the spring of 1977, when the holdover trustees had agreed to resign and an independent assets manager was taking over investments, Secretary Marshall wanted to consider new directions for the investigation.

Gallagher said the "department's highest officials" had concluded that SIS lacked an "overall investigative plan" and was, therefore, ill-prepared to make the kind of examination needed regarding loans the pension fund had made (p. 462).

Lawrence Lippe was told to come up with alternative proposals as to how the SIS investigation could be redirected, Gallagher said. Lippe either did not make any proposals or his proposals were unsatisfactory, Gallagher said. In any event, she said, other proposals were invited (p. 462).

A meeting was held attended by Steven Sacher, Eamon Kelly and herself, Gallagher said. Sacher, the Associate Solicitor, was her boss. Kelly was a consultant to the Labor Department who worked

directly for Secretary Marshall on matters related to the Teamsters Central States investigation.

At this meeting, Gallagher said, it was decided that the department needed to quickly "survey and categorize the other asset management activities so as to identify those meriting further immediate attention" (p. 462).

One approach to making such an assessment, Gallagher said, was to take administrative depositions from persons not associated with the fund but who would have firsthand knowledge about fund loans (p. 462).

Gallagher was given the assignment of preparing a list of persons who, in giving sworn depositions, could make "some better informed judgments" about which loans warranted investigation, she said. She prepared such a list. It had 81 names on it (pp. 462–463).

Lippe was briefed, orally and in writing, on why the list of 81 names was assembled, Gallagher said. But, she added, Lippe apparently did not pass this information on to his staff. As a result, there was a misconception that SIS was to thoroughly investigate the loans with which the 81 persons were identified, Gallagher said. She said—

> While the Department recognized, and certainly I recognized, that a failure to redirect the investigation effectively would be negatively perceived by Congress and the public, I want to make clear that the purpose of the deposition project as I understood it always was to provide some real direction to the investigation and to help prepare for the litigation which followed (p. 463).

BACKGROUND ON HOW LIST OF 81 NAMES WAS CONCEIVED

Monica Gallagher expressed no doubts about her strategy to have SIS obtain depositions from 81 persons whose names she had culled from the minutes of the trustees' meetings. She reportedly selected the names after one reading of the minutes. Lippe and other SIS personnel objected, saying they should not have been directed to interview these 81 persons without the opportunity to do more investigation.

Senator Nunn asked Gallagher if she still thought her idea was a good one. She replied, "I am not an investigator. If I had been running this investigation from the outset, I would have tried to become an investigator. I am sure I would have come out differently from Mr. Lippe since we came out differently on many things."

Mrs. Gallagher, who, before joining the Labor Department, was an attorney in the Civil Rights Division of the Justice Department, an instructor at the Georgetown University Law Center and a counsel for the pension fund of the United Mine Workers, went on to say, ". . . I am not certain that it would have been a total waste of time to inquire from persons who were in a position to know what they knew about this plan's loan transactions. It was something that was never done. So I don't think we can assess whether it would have worked well or badly" (p. 482).

Then Gallagher added, "Certainly, if the investigative staff had been totally prepared and had examined all the loan files and had been ready to take these depositions with full preparation by that

time, that would have been a far better situation. It doesn't take an investigator to know that."

In stating that SIS was not prepared to conduct investigation of targeted loans, Mrs. Gallagher failed to point out that SIS Director Lippe had already targeted numerous transactions and had prepared subpenas which were to be served in the opening round of the third party investigative strategy, a strategy which was stopped by Steven J. Sacher, who preceded Mrs. Gallagher as Associate Solicitor, and by William Chadwick, whose job was Administrator of Pension and Welfare Benefit Programs (pp. 146–147).

Senator Nunn asked Mrs. Gallagher if her professional experience included managing an investigation. She said, "My litigation experience has involved me in work which might be called investigatory in nature. I have done records analysis. I have gone out and interviewed witnesses. I have done the things that investigators do. I haven't had any formal training as an investigator" (pp. 482–483).

Senator Nunn asked her if she had actually directed an investigation before. Gallagher said, "I am not sure how to answer that question. I have been in charge of a project which involved major investigations and which became litigation; yes" (p. 483).

As for the idea of obtaining 81 depositions, Mrs. Gallagher said she wanted the list of persons divided into three categories—those who could be investigated for potential civil cases, those who might figure in criminal cases and those who showed no potential for civil or criminal. "Obviously," she said, "that would leave a bunch that we didn't know enough about yet, but those were the three categories" (p. 483).

It had been alleged that Mrs. Gallagher told SIS that the strategy in wanting to do the 81 depositions was to provide a flurry of fifth amendment witnesses. This development would be used to demonstrate that the Labor Department was, indeed, doing criminal investigation. Gallagher denied planning such a strategy (p. 483).

WHAT MRS. GALLAGHER HAD IN MIND WITH KLEINDIENST DEPOSITION

Monica Gallagher did not categorically deny telling SIS that former U.S. Attorney Richard Kleindienst should be asked, if, in a hypothetical situation, he would have offered a bribe.

Asked about the Kleindienst matter, Mrs. Gallagher replied this way:

> That conversation—the report of that conversation has just enough truth in it that I think the only way to deal with it is to describe it and it may look worse rather than better. But in the course of trying to advance these dozens of arguments about why the program that Mr. [Eamon] Kelly and the Secretary [Marshall] wanted to have initiated couldn't be initiated, one of the arguments made was that they [SIS] couldn't possibly think of anything to ask these people such as, for example, what would we ask somebody like Mr. Kleindienst?
>
> And I think I would have said to that something like ask him what he knows about this loan application. You understand, Mr. Senator, that Mr. Kleindienst had represented a prospective borrower with respect to the fund as well as being involved in a number of other fund transactions, it turns out. So some of them, opposed to the project, would say, "Well, but the loan wasn't made. How could we ask him about the loan?"
>
> I would say something like, "Well, ask him if it would have been made, if there had been a kickback involved."
>
> It was one of those conversations of frustration, Mr. Senator. It was my attempt to say I am sure if you put your heart into this effort, you could find a way to make it a productive effort on the part of the Department of Labor to figure out what is happening in this plan's asset portfolio (pp. 481–482).

Senator Nunn pointed out to Mrs. Gallagher that surely she would want some evidence, some background, something more than a hunch, before asking a former Attorney General to respond to a hypothetical question based on the premise that he would give a bribe.

Senator Nunn put it this way:

> Would you think without any more evidence than that that a former Attorney General of the United States would be willing to answer that kind of question and give you meaningful information, [a question like] "Would the loan have been made if you gave him a bribe?" There is no background, no evidence, no nothing.

Mrs. Gallagher replied—

> We are aware, Mr. Senator, that in at least one case, one of the prospective borrowers from the fund was told that if he made a kickback he would get the loan. I am not saying that is what happened in Mr. Kleindienst's case. I don't have any idea whether that happened in Mr. Kleindienst's case. I don't have any idea whether that happened in any other case, but I am saying if you asked witnesses what happened, under compulsory process, some of them may tell you what happened. And that would put us ahead of the game in our investigative efforts from where we were (p. 482).

Senator Nunn said her reply suggested "sort of a strange investigative technique" (p. 482).

INVESTIGATIVE TECHNIQUE SAID TO BE EAMON KELLY'S IDEA

As for the idea itself—that of obtaining the 81 depositions—it wasn't hers anyway, Gallagher said, asserting that it was one of several possible approaches that she proposed to Eamon Kelly, who, as a Labor Department consultant, was reporting directly to Secretary Marshall on pension fund matters. "Mr. Kelly chose that approach," Gallagher said. "I was the messenger who apparently got all the 'miscredit' for this being my plan." (p. 480).

Gallagher denied saying what was desired was a high visibility road show. When they heard her orders, SIS personnel first used words like "high visibility" and "road show" to describe Eamon Kelly's and her strategy in a pejorative way, Gallagher said. Then, she explained, once they had used these words to express their

contempt for the list of 81 strategy, she "may very well have thrown it back at them." But it was the SIS men who used the language first, not she, Gallagher said (p. 480).

However, SIS witnesses may have been correct when they said her primary goal with the strategy was to appease Congress. Yes, she said, "* * * it is conceivable that I would use language of that type." (p. 480).

Mrs. Gallagher said Lippe and Lloyd Ryan were preoccupied with going forward with their investigation of the six loan groups which had borrowed much of the pension fund assets. Because of their strong desire to go on as they were, they pointed out to her that to obtain depositions from her list of 81 persons would ruin future civil or criminal proceedings involving any of the 81, Gallagher said (p. 481).

CONTROL OVER SIS WAS DENIED BY MRS. GALLAGHER

Mrs. Gallagher said that as Associate Solicitor she was responsible for the civil litigation brought by Secretary Marshall against the Central States pension fund trustees. She said she made the recommendation to bring these actions and that her recommendation was approved by the Solicitor, Carin A. Clauss, and by Secretary Marshall (p. 460).

But, in an assertion that was contrary to the preponderance of testimony from Lawrence Lippe, Lloyd Ryan and other SIS employees, Mrs. Gallagher denied having had any responsibility or control over SIS or its employees prior to May of 1980 (p. 461).

It was only then, in May of 1980, she said, that she had responsibility over investigators. Only indirectly was this control over SIS anyway, she said, since it was a temporary assignment that she had now. This assignment was to serve as Acting Director of the Special Litigation Staff, a unit created to provide assistance to the Solicitor's Office in connection with the civil suit. SIS was abolished on May 5, 1980. Gallagher said she expected someone else to be selected to relieve her of this temporary assignment (p. 461).

SUBPENA AUTHORITY WITHDRAWN IN SPRING OF 1977

In the spring of 1977—at that point in SIS's history when it was losing virtually all its investigative independence—the authority to issue subpenas was taken away. SIS could no longer issue subpenas without the approval of the Solicitor's Office.

Lester B. Seidel, special counsel to SIS and Lawrence Lippe's deputy, said the unit's authority to issue subpenas began to be eroded late in 1976 and that in the spring of 1977 SIS was simply told to serve no more. From then on, Seidel said, subpenas had to be approved by the Solicitor's Office (pp. 121–122).

Seidel testified that he could never understand why the Solicitor's Office had taken away the subpena authority. He said Lippe and he were very experienced in drafting subpenas but the Solicitor's Office didn't want them initiating them anymore. "There was really no reason for that," Seidel said (p. 122).

In his testimony before the subcommittee, former SIS director Lippe addressed the subpena issue. He said that early in 1977 his authority to issue subpenas had been diluted to such an extent that

no subpenas could go out of SIS without the approval of Monica Gallagher or Steven J. Sacher of the Solicitor's Office (p. 140–141).

Gallagher and Sacher's insertion of themselves into the subpena process was contrary to the original concept of SIS, Lippe said, pointing out that he was hired to head SIS precisely because he knew how to manage investigations that used tools such as subpenas. "One of the principal reasons I was asked to assume this position," Lippe said, "was because of my background and experience as a Federal prosecutor, which spans some 20 years of continuous service with the Federal Government, during which I had extensive experience in the drafting and use of investigative and trial subpenas of all types, including in particular those involving so-called white-collar crime or complex financial investigations * * *." (p. 140).

Lippe said James D. Hutchinson, who hired him to head SIS, felt the unit should have subpena authority. Hutchinson respected the judgment of the senior attorneys at SIS—himself, Lester Seidel and Lloyd Ryan—and was confident of their ability to handle responsibly the subpena authority, Lippe said (p. 140).

THE SUBPENA AUTHORITY WAS DISCUSSED

SIS Director Lawrence Lippe did not understand that Labor Department policy had always required that subpenas be approved by the Solicitor's Office, Monica Gallagher said. That system assured that, should there be lack of compliance with a given subpena, the Solicitor's Office was committed to enforcement, Mrs. Gallagher said (p. 464).

James D. Hutchinson routinely cleared his subpenas through the Solicitor's Office, Mrs. Gallagher said, and Lippe simply did not know the established procedure when he took over SIS. "Once that misunderstanding became apparent, it was cleared up," Gallagher said. "There was never a time when the subpena authority possessed by the Special Investigations Staff was changed as far as I am aware. There was merely a clarification of policies which exist throughout the ERISA program." (p. 464).

However, later in her testimony, Gallagher gave more information on the question of SIS issuing subpenas. Senator Nunn asked her if subpenas were issued after the February 1, 1978 civil suit. She said no, recalling that the Solicitor's Office informed SIS that no more subpenas would be served.

She explained that the Solicitor's Office did not think it would be "proper, or at least that we did not want to test the limits of propriety of using administrative process to obtain information." She said the Solicitor's Office believed the civil discovery mechanism was adequate and "that is the way we wanted to proceed." (p. 485).

Mrs. Gallagher thought that the service of administrative subpenas would somehow compromise the civil suit when she said, "I know that we wanted to present ourselves in this litigation as beyond reproach. We want this litigation not to focus on any of the million side issues which can distract a court from the central theme. We need to try this case on the merits of the fiduciary violations involved and I don't want to spend my time worrying about whether we went beyond the call of what was proper in

using an administrative deposition when we should have been proceeding to civil discovery." (p. 485).

Marty Steinberg, the Subcommittee Chief Counsel, asked Mrs. Gallagher if the filing of the civil suit precluded the Labor Department from issuing subpenas in areas outside the lawsuit. "Absolutely not," Gallagher replied (p. 485).

Then why, Steinberg asked, were subpenas not issued by SIS? Gallagher said—

> The department adopted a policy of making litigation and support of the litigation its highest priority. To the extent that investigators desire to do other things inconsistent with that priority, I am sure they were told to put their desires to one side. Certainly there was no legal impediment to their issuing subpenas in areas not relating to the lawsuit.

Independent inquiry by the Subcommittee staff indicated that the Labor Department could have made much more extensive and effective use of administrative subpenas in the pension fund investigation. The subpena authority was exercised only sparingly early in the investigation and then not at all following the February 1, 1978 filing of the civil lawsuit.

Instead of the administrative subpena, the Labor Department chose civil discovery pursuant to the civil lawsuit as its means for gathering evidence. This decision limited the Labor Department to acquiring evidence related only to the parties named and the issues pleaded in the lawsuit.

The parties named and the issues pleaded were the 17 former trustees, the one former fund official and the 15 specific loans they were involved in. Any subject beyond is not appropriately the subject of an investigation through discovery.

That meant that persons outside the lawsuit, such as third parties—third parties like Morris Shenker, Allen Robert Glick, Alvin Malnik and other potential culpable borrowers—could not be investigated in the discovery process, except in connection with the issues presented in the suit.

Shenker, Glick, Malnik and the other potential culpable borrowers were, in effect, also immune from third party investigation through the administrative subpena process. Their "immunity" was set in motion in mid-December of 1976 when third party investigation through administrative subpena process was curtailed by the Labor Department.

It was the view of the Subcommittee staff that Labor Department strategy, as made manifest by the Solicitor's Office, satisfactorily protected Morris Shenker, Allen Robert Glick, Alvin Malnik and other potential culpable borrowers from investigation.

Moreover, the administrative subpena enforcement issue raised by Mrs. Gallagher was academic in connection with SIS. She said the Solicitor had to approve all SIS subpenas because the Solicitor might have to enforce them should the fund not comply. In the entire course of the pension fund investigation, the Solicitor's Office rarely enforced an administrative subpena. Nor did the Solicitor's Office initiate any action beyond a subpena to compel the pension fund to live up to its commitment to supply records to the Labor Department on request (pp. 486-487).

SEIDEL DEFENDED SECRETARY MARSHALL IN DECISIONMAKING

Lester Seidel's objections to Labor Department decisions in the pension fund inquiry were severe and deeply felt. Seidel said he eventually quit his post as SIS Deputy Director because, in good conscience, he could not carry out directives that he so strongly opposed.

Through it all, however, he said, he did not believe that Labor Secretary Ray Marshall was ever a fully briefed participant in the decisionmaking process. Seidel said that he always found Secretary Marshall to be attentive to facts and sensitive to policy development. Seidel went on to state that it was thus his belief that the attempt at "nonpolicy" in the Teamsters investigation could not be laid at the feet of Marshall (p. 119).

Seidel said he could only conclude, therefore, that Secretary Marshall was poorly served by his advisers. Seidel said these advisers had engaged in a deliberate attempt to render the SIS inquiry ineffective (pp. 118-119).

SHEVLIN SAID NONE OF LOANS WAS FULLY INVESTIGATED

Edward F. Shevlin, an investigator with SIS, pointed out an irony in the Labor Department's decision to focus exclusively on the civil ligitation strategy.

Shevlin testified that SIS had targeted a number of loans for third party investigation in 1976. Then, in 1977, the Solicitor's Office prevailed in having these third party investigations stopped. On February 1, 1978, the civil suit was filed.

From then on, third party investigation could no longer be conducted according to the tactic used previously by SIS—that is, through the administrative subpena authority granted the department by ERISA.

Once the suit was filed, SIS was then required to conduct third party investigation under the structures of the Federal rules of civil procedure.

The irony of all this, Shevlin said, was that the civil suit was based largely on loans which had been originally targeted by SIS in 1976. Far more information would have been available on the loans in 1978 if SIS had been permitted to complete its administrative subpena investigation in 1976 and 1977.

As it turned out, civil discovery investigation was extremely limited. And, as a result, Shevlin testified, none of the loans was fully investigated (p. 106).

MONICA GALLAGHER SET, DEFENDED LOAN INQUIRY POLICY

Gerald Kandel, an auditor with SIS, testified before the subcommittee in executive session that he was anxious to begin investigating loans when he joined the organization in March of 1978. But the pension fund inquiry was moving very slowly, he said, and the first year he did little investigative work. Kandel said, for instance, that he and other SIS investigators were not allowed to conduct necessary inquiry in the field.

Disappointed in the progress the inquiry was making, Kandel was even more disappointed that crucial investigation of third parties was not going on, particularly with reference to the princi-

pal borrowers—Morris Shenker, Allen Robert Glick, and Alvin Malnik.

In fact, Kandel said, he was working on the Malnik grouping of loans and could not understand why he was not allowed to interview Malnik. Instead, Kandel said, SIS had to content itself with interviewing persons who were only remotely connected with the Malnik loans.

It seemed that the Labor Department was interested in the loans themselves but not in the persons who received them, Kandel said.

Kandel said the only explanation he ever received as to why Malnik, Shenker and Glick were not being interviewed was that these men had been involved in many loans and the department did not want to interview or investigate them until investigation of all their loans was completed, Kandel said.

Kandel thought Robert Gallagher of the Solicitor's Office made the decision not to interview or investigate Shenker and the other principal borrowers until all their loans had been fully examined.

Actually, it wasn't Robert Gallagher who made that policy. It was Associate Solicitor Monica Gallagher. Mrs. Gallagher testified that she decided against interviewing any borrower until all his loans had been investigated because she "didn't think it would make any sense to try to depose somebody who was going to be involved in several major pieces of the litigation about one of these pieces until we knew what all the pieces would be" (p. 489).

Senator Nunn pointed out to Mrs. Gallagher that 45 to 50 percent of the questionable loans went to six persons or entities, including Shenker, Glick and Malnik. Didn't it make more sense, the Senator asked, to take a deposition from Morris Shenker, for example, in connection with each loan? That way the information would be obtained in a timely fashion. Otherwise, to investigate all the loans before taking a deposition might cause delays of several years before the major borrowers were ever interviewed (pp. 489–490).

Mrs. Gallagher did not agree. She did not see the relevance of the question. She didn't accept the statement that half the questionable loans had gone to six persons or entities. She didn't agree that her policy might cause delays of several years before depositions were taken from the principal borrowers (pp. 489–490).

In summary, she said, she stood behind her decision to delay depositions until loan investigations were complete (p. 490).

Then Mrs. Gallagher went on to acknowledge that a deposition was taken from Morris Shenker. She acknowledged that all the investigations were not completed on the Shenker loans. Senator Nunn suggested that in permitting a Shenker deposition Mrs. Gallagher had departed from her own policy. Mrs. Gallagher did not agree.

Mrs. Gallagher apparently did not understand the question. However, eliciting responsive answers to questions from Mrs. Gallagher was frequently a difficult and frustrating experience for members of the subcommittee as can be seen by the following exchange:

> Senator NUNN. In a case where there are a small number of persons involved in numerous potential abuses, wouldn't it be wise to complete each investigation in a timely fashion rather than to wait until all the potential abuses are reviewed to complete any of them?
>
> Mrs. GALLAGHER. I am having a little trouble with the hypothetical. I guess I function better in a more concrete situation. In this case, we don't have numerous, I can't reconstruct your words—if you could restate the question. But it doesn't seem to me we have what you were talking about.
>
> Senator NUNN. My words were in a case, in the case where a small number of persons are involved in numerous potential abuses, isn't it wise to complete each investigation in a timely fashion rather than wait until all the potential abuses are reviewed to complete any one of them?
>
> Mrs. GALLAGHER. My answer is I don't know, but that is not the situation we have here.
>
> Senator NUNN. You don't know—we have a couple of negatives in there. I am not sure where that comes out.
>
> Mrs. GALLAGHER. I don't know the answer to your question, but I don't think your question presents the circumstances of the Central States litigation.
>
> Senator NUNN. You are aware that there are people in your Department who feel strongly that they should not be required to wait to investigate a particular loan until all loans of a particular individual are investigated, are you not?
>
> Mrs. GALLAGHER. I don't—I am not aware of anybody remaining in the Special Litigation Staff who feels that they are being prevented from carrying on a constructive litigation support function. I am aware that there are people in the Labor Department elsewhere than in the Special Litigation Staff and outside the Labor Department who don't like the way it is being done (pp. 491–492).

Senator Nunn said there were employees in the Special Litigation Staff who did not agree with her policy. One such employee was Gerald Kandel.

Kandel testified before the subcommittee as to those aspects of the Labor Department's investigation which he found objectionable.

Beyond the very slow pace of the inquiry—he once said that he could retire on this one investigation—and the fact that, even though he was working on the Alvin Malnik grouping of loans, he and his colleagues were not allowed to interview Malnik himself. Kandel also objected to being given very little opportunity to do what he was trained to do: auditing and financial investigation. Even when he did get to do financial investigation, it was stopped before he could complete it.

Kandel cited one loan which was deserving of further inquiry. But he was not permitted to pursue it. He wanted to continue his work on this promising loan, he said, but an attorney in the Solicitor's Office, a new employee named Richard Carr, wrote a memorandum to him to say no further inquiry on the loan would be conducted. Carr's reason was that the fund had not lost money on the transaction, Kandel said.

Kandel did not think it appropriate to decide which cases to investigate on the basis of whether or not the fund had lost money. With the rapid rise in the value of real estate in recent years, it may be unlikely that very many of the fund's investments would lose. Kandel pointed out that a real estate loan 10 years old might have been a loser initially but, with the passage of time and inflation, might not be in the red currently but that didn't take away from the fact that it was a bad investment to begin with.

Similarly, Kandel said his instructions on joining SIS had not had anything to do with only examining those loans that had resulted in losses to the fund. What he thought he was supposed to do was show transactions in which fiduciaries, as defined under ERISA, had violated the trust vested in them by pension fund beneficiaries and Teamsters Union members.

This was "fiduciary breach," Kandel said, and that was what he was supposed to be looking for. If fiduciary breach occurred, a loss might be suffered in the future. But even if the loss were not felt, he said, the proving of the existence of the fiduciary breach was the primary objective, or so he had thought.

This loan investigation was one of many in which promising cases were stopped or not even begun, Kandel said, explaining,"I think because of a lack of attorneys assigned to the staff, there were many time restrictions, and, therefore, many loans, which had either been started or should have been started, were never completed."

Solicitor's Office attorney Richard Carr's directing him to stop an investigation for the wrong reason was not the only time Kandel questioned the judgment of the lawyers. The investigation of the pension fund would never succeed until the level of competence in the Solicitor's Office was improved, Kandel testified, saying, "I guess it is my lack of confidence in the Solicitor's Office. I still don't see the caliber of attorney that I think should be assigned to this high priority case. . . ."

Kandel cited another instance in which he wanted to investigate further a loan that it appeared the pension fund had made to conceal a questionable transaction entered into several years before. A Solicitor's Office attorney, Robert Gallagher, refused to allow the investigation to go forward, even though Kandel was not asking for a subpena. "The third party would have let us into their office without even using the subpena," Kandel said.

But Robert Gallagher held to his position—there would be no further investigation until the pension fund turned over the records. Kandel said he had waited for the records for more than a year, and he was still waiting.

V. Government Failed To Attain Enforceable Agreement

CONSENT DECREE DISCUSSED AT SPICKERMAN DEPOSITION

SIS and the Labor Department generally objected to the IRS decision to revoke the pension fund's tax exempt status in June of 1976. Critics of IRS said the revocation was ill-timed, that it was done hastily and without proper preparation and that it left the Government with no leverage in future negotiations. It was alleged that once the ultimate weapon, the revocation order, was handed

down, the Government was under pressure to restore the tax exemption.

However, despite its shortcomings, the revocation order did have the effect of impressing upon the fund that the Government was serious in its efforts to bring about reform. And, once IRS agreed to forgo its go-it-alone attitude and join forces with the Labor Department, negotiations between fund lawyers and the Government began to progress.

During 1976, SIS formed a strategy that was aimed at having the fund enter into some kind of an enforceable agreement, a binding contract under which the fund would agree to carry out certain specified reforms in its operations. One such enforceable agreement would have been a court-enforced consent decree.

As noted earlier in this report, Senator Nunn said that a court-enforced consent decree would have been more effective in June of 1976 in assuring reform of the fund, rather than revoking its tax exempt status (p. 204). Now, as will be shown, in the summer of 1976, a consent decree was being pursued by SIS.

In a court-enforced consent decree, the fund, without admitting or denying guilt, would have agreed to implement a series of reforms put forward by the Government. A consent decree would have prescribed the manner in which the trustees could manage existing assets and make investments.

It is important to note that the entering into a consent decree would have in no way jeopardized or hindered the ongoing investigation of the fund by SIS.

Lester B. Seidel, Deputy Director and Special Counsel in SIS, testified that he was taking a deposition from a trustee, John Spickerman, in July of 1976 when a casual conversation led to a very real possibility that the consent decree approach would succeed.

During a break in the deposition session, Seidel was talking to Spickerman's lawyer. Seidel said the lawyer raised the issue of general asset management procedures of the fund and then remarked, "Look, why don't you try to work something out, some type of settlement on that issue?" (p. 122).

Seidel said he turned to the fund's lawyers, also present for the deposition proceedings, and asked them what they thought of the idea. They replied they would get back to him on it, Seidel said (p. 122).

As a result of these brief discussions at Spickerman's deposition, a meeting was held on July 30, 1976 in Chicago attended by two fund attorneys and by Seidel and two other Labor Department officials. Having conferred with senior Department officials in Washington before the meeting, Seidel was able to present the fund's attorneys with Labor's position on what kind of a settlement would be acceptable to the Government. What was required, Seidel said, was a consent decree, a court-enforced procedure whereby the fund would abide by new asset management procedures and face a contempt of court citation if it didn't (p. 122).

Seidel said it was obvious to him that the fund was willing to accept a consent decree. The key to the consent decree strategy, Seidel said, was the Labor Department's insistence that the agreement entail a commitment from the fund, something the fund could not reneg on later. "What we were essentially looking for is

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an agreement which had teeth in it," Seidel said. "What I mean by teeth is something that is enforceable." "We were unwavering in our position," he said (pp. 122–123).

The consent decree continued to be discussed between SIS and the fund lawyers and, as late in the investigation as September 20, 1976, Seidel was convinced that the consent decree was a realistic goal. "It is my belief that we could have gotten that, yes," Seidel said (pp. 123–124).

He pointed out to the subcommittee, however, that the consent decree negotiations were not all the SIS effort. "As soon as the discussions started we energized our investigation even more because we wanted to negotiate from a position of strength," Seidel said (p. 123).

It was made very clear to the fund attorneys that a consent decree had only to do with asset management procedures—and that, consent decree or no, the SIS investigation would continue, Seidel said. "The consent decree [was] the only settlement we were prepared to make at that time. . . . ," Seidel said. "Any other things that we wanted to throw in that would be beneficial to us, we would have done, but we weren't about ready to stop our investigation" (p. 124).

Among the provisions of the proposed consent decree, Seidel said, was SIS's insistence that the jurisdiction be under the U.S. District Court in Washington, D.C. Fund attorneys wanted venue to be in Chicago (p. 125).

Seidel said SIS believed venue should be in the Nation's Capital because the investigation of the pension fund was a national case with nationwide implications. Equally important, he said, was the likelihood that the Labor Department could demand strict adherence to the terms of the consent decree if the affected court were in Washington (p. 125).

Venue was a crucial consideration, to Seidel's point of view, because it was the court that ultimately would enforce the new management asset procedures. The last thing the pension fund lawyers wanted was to find their client in contempt of court for violating the consent decree. Where enforcement is exercised from can make the difference, Seidel said, explaining, "If we thought they were in violation, we could walk across the street from our main office and set enforcement of the consent decree proceedings in motion, rather than having to go out to Chicago on their home turf, with all the implications that has, and seek enforcement there away from home" (p. 125).

By late September, Seidel said, the consent decree seemed more and more likely. But pension fund lawyers, who were, he said, competent and thorough advocates for their clients, were still hesitant about the consent decree because, "they didn't want the contempt power hanging over their head." Accordingly, the fund came up with a counter proposal (p. 124).

CONSENT DECREE ABANDONED FOR MASS RESIGNATION OFFER

SIS Deputy Director Lester B. Seidel described the counter proposal put forward by fund lawyers to substitute for the consent decree. The idea was a mass resignation of the trustees and a restructuring of the board.

Surprised by this proposal, Seidel and Lippe replied that they would take the matter to their superiors. "* * * we thought it was a little late in the day, the consent decree was going to be approved," Seidel said, adding, "It was clear that they didn't want a consent decree no matter how much they found it attractive, as opposed to contested litigation at that point" (p. 124).

Seidel said that, while they were taken aback by the mass resignation proposal, it was of too much significance for the two SIS men to respond on their own. They reported to Labor Department officials, who found the mass resignation substitute an appealing one because it was "a dramatic act" and it "would not hurt the investigation" (p. 125).

Unlike the consent decree concept, the mass resignation proposal did not have a court-backed enforcement mechanism. But, Seidel said, it did have an enforceable provision, spelling out that the fund would have to be reformed in specific ways under new trustees.

However, the asset management aspect of the mass resignation idea got lost along the way, Seidel said. Ultimately, the mass resignation action was only that—a resignation of trustees. In fact, Seidel said, "a certain fear" was current among senior Labor Department officials who were concerned that the trustees would resign anyway, thereby taking away an "attractive remedy from us and we won't get any type of enforceable agreement" (p. 126).

Moreover, as indicated earlier in this report, Seidel felt an adequate procedure had already been established to remove trustees from the board. The technique was perfected by Lawrence Lippe and Seidel when SIS took a sworn deposition from trustee William Presser.

William Presser refused to answer certain questions about his conduct on the board of trustees. Upon being questioned about his fiduciary duties, he invoked the fifth amendment. SIS demanded he resign, saying, in effect, the Constitution did not give a fiduciary the right not to testify because of self-incrimination when the questions had to do with his conduct as a fiduciary.

It was Lester Seidel's view that SIS could go about the task of testing other trustees on the same fifth amendment principle and, ultimately, remove them from the board systematically, as if to "pick them off one by one." The trustees knew what was coming and quickly offered to resign en masse, thereby hoping to win concessions from the Labor Department for an action they were going to take anyway.

The strategy worked. The Labor Department went along, abandoning the consent decree, which was the one binding commitment the fund did not want to be saddled with. Consent decrees are written, they are specific and they are enforceable. But even in agreeing to the mass resignation, the Labor Department did not force all the trustees off the board. Only 11 trustees resigned, 12 counting William Presser, who had resigned earlier. That left four of the most influential trustees still on the board.

Still serving and representing the labor side were Frank E. Fitzsimmons, president of the Teamsters International, hand picked for the job by Jimmy Hoffa before he went to prison; and Roy Lee Williams, an international vice president of the Teamsters and the most powerful Teamsters officer in Kansas City. Continuing to

represent employers on the board were Andrew G. Massa, of the Motor Carriers Employers Conference, Central States; and John F. Spickerman, Sr., of the Southeastern Area Motor Carriers Labor Relations Association.

If the mass resignation was an effective tactic for persuading the Labor Department to drop the consent decree strategy, the pension fund's leaving the four powerful trustees—Fitzsimmons, Williams, Massa, Spickerman—on the board was even more ingenious. Now it became a major focus of Labor Department policy to do something to force the four "holdover" trustees to resign.

As will be noted in more detail in this report, the Department spent the next 6 months trying to force the holdovers to step down. When finally they did, it was only after long difficult negotiations. The negotiations themselves were tainted by a rumor that would not die.

The rumor was that the Labor Department, under its new Secretary, F. Ray Marshall, had entered into a secret agreement with the pension fund. The alleged agreement, known as the "phantom agreement," was that Fitzsimmons, Williams and the others agreed to resign only after they had extracted a pledge from Marshall that all future investigation of the pension fund would be limited, and that one of the self-imposed constraints on the Department would be that SIS would investigate nothing at the fund, or in connection with the fund, that might result in criminal prosecution. It was also agreed that the fund would turn over management of its assets to an independent investment firm for 5 years.

Marshall denied he or his aides ever agreed to any secret accord. But there was an unfortunate gap in communication at the Labor Department. Norman Perkins, the man Marshall put in charge of SIS, believed there had been a so-called phantom agreement. He ran SIS accordingly.

The subcommittee could never establish for certain whether or not there was a phantom agreement. But the subcommittee did establish that certain areas of inquiry were not pursued including no further criminal investigation by SIS and that no information developed by SIS formed the substance of any criminal prosecutions by the Justice Department.

In addition, the fifth amendment approach to removing trustees from the board as envisioned by Lester Seidel was not tested again. But one of the most prominent of the former trustees, Roy Lee Williams, did turn out to be another fifth amendment witness.

LIPPE MEMORANDUM ON ABANDONMENT OF CONSENT DECREE STRATEGY

Information on how and why the Labor Department abandoned the consent decree strategy was contained in a memorandum of January 31, 1977, from SIS Director Lawrence Lippe to Eamon Kelly. Kelly was a consultant to the Labor Department who had been engaged by Secretary Marshall and whose duties included overseeing the investigation of the Central States pension fund. Kelly's previous position had been with the Ford Foundation.

Lippe's memorandum said that in July of 1976 SIS obtained sworn depositions from six pension fund trustees. These depositions demonstrated, Lippe said, that the fund was making investments

and managing assets without following prudent procedures and without knowing what was being done with its money.

On the basis of this information and other evidence assembled by SIS, the investigative unit put forward the concept of seeking a consent decree. A court-enforced consent decree would have stipulated that certain specific reforms in asset management would have to be implemented immediately. Demonstrated failure to do so would result in contempt of court.

In the meantime, as the fund's assets were managed according to the terms of the consent decree, the SIS investigation could continue. Both goals would be achieved—the fund assets would be preserved and the investigation would go forward.

Lippe said James D. Hutchinson, Administrator of Pension and Welfare Benefit Programs, and William Kilberg, the Solicitor of Labor, agreed that the consent decree strategy was worth pursuing.

Accordingly, on July 30, 1976, SIS informed fund lawyers of the consent decree proposal. Lippe said the pension fund authorized its attorneys to negotiate the possibility of a consent decree.

However, during late September and early October of 1976, the fund presented a proposal in place of the consent decree, Lippe said, explaining that instead of a consent decree—

> The fund would restructure its board of trustees and enter into negotiations with the Department of Labor and the IRS for a non-judicial undertaking which would be addressed to the same procedures as the earlier proposed consent decree. Importantly, the restructuring of the board would involve resignations of [75 percent] of the then sitting trustees.

James Hutchinson had resigned in September of 1976, returning to private law practice. His replacement, William Chadwick, and the Solicitor, William Kilberg, and the Associate Solicitor, Steven J. Sacher, told him, Lippe said, of the need for "dramatic action" in the fund investigation.

In light of the reported need for "dramatic action," Lippe said, Chadwick and Kilberg authorized SIS to accept the fund's counterproposal. The consent decree strategy was out.

During the last week of October of 1976, 11 of the 16 trustees resigned. the board of trustees was reduced to 10 members and six new trustees were appointed, Lippe said. A 12th trustee, William Presser, had already resigned.

Lippe said a meeting was held on December 14, 1976, to discuss a proposed "procedural undertaking" that was to stipulate specific reforms the fund would agree to. At the meeting, Lippe said, William Chadwick, who had replaced Hutchinson, and Associate Solicitor Steven Sacher took decisive action on their own.

Lippe said Chadwick and Sacher threw out the idea of the procedural undertaking—that is, the proposed step-by-step process of procedural reform—and they abandoned this concept "without any discussion."

Chadwick and Sacher were now proposing the concept of a court-appointed firm that would take over the fund's investments, Lippe said. This idea, if implemented, "would have given a complete liability wash to fund fiduciaries," Lippe said, adding that the idea was dropped after a week of discussion.

Next, Chadwick and Sacher came up with the concept of "neutral trustees," Lippe said. Central to the "neutral trustees" approach, Lippe said, was the Labor Department's having a veto over their appointment. Neutral trustees would be appointees who would represent neither the union nor the employers.

At a meeting in the first week of January of 1977, the neutral trustees concept became the Labor Department policy, Lippe said. Chadwick and three other officials approved the approach embodied in the proposed procedural undertaking and one official abstained, Lippe said.

Lippe said Chadwick, backed by Sacher, continued to promote the neutral trustees approach in briefings before the Justice Department and the Senate Labor Committee. Later this strategy too was dropped.

KILBERG, CHADWICK REPORTEDLY REJECTED CONSENT DECREE STRATEGY

Raymond J. Kowalski, who headed the General Accounting Office's inquiry of the Labor Department's investigation of the pension fund, testified that in September and October of 1976 the discussions between the department and the fund lawyers were heading toward a consent decree.

Then lawyers for the fund made a counteroffer. The attorneys wanted the consent decree dropped. In its place, they proposed to restructure the board of trustees, with all but 4 men on the 16-member board resigning.

Kowalski said the decision to accept the counteroffer, thereby dropping the consent decree, was made by William Kilberg, who was then Solicitor of Labor, and by William Chadwick, who was then Administrator of Pension and Welfare Benefit Programs (p. 46).

VI. Labor Department Policy Inadequate

MARSHALL WANTED TO AVOID LITIGATION

A new President of the United States, Jimmy Carter, was sworn in on January 20, 1977. His Secretary of Labor, F. Ray Marshall, after reviewing the pension fund case, felt that long and bitter litigation was likely.

Wishing to avoid that, Marshall directed that his Department work with the fund's attorneys in achieving desired reforms without litigation. It was Marshall's policy that the Labor Department's main responsibility was the "protection and preservation of the fund's assets." All other considerations paled in comparison. Marshall's phrase, "protection of fund assets," was used repeatedly to answer charges about the Department's shortcomings in the investigation.

Labor and IRS drafted the Government's demands that the fund would have to meet before the tax-exempt status would be restored. The fund would have to persuade the four holdover trustees—Fitzsimmons, Williams, Massa, Spickerman—to resign; and the board would have to be restructured so that neutral professionals would outnumber the union and employer representatives.

Next, the fund was informed that the Government was prepared to go to court to remove the four holdover trustees and to take the

new trustees out of the day-to-day management of the fund's assets. The Government said it was also ready to initiate court action to force the fund to comply with ERISA and with IRS rules on tax exemptions.

The Government's demands were put forward on February 16, 1977. The next week, the fund agreed to comply with ERISA. But the fund proposed that the trustees would continue to manage noninvestment affairs but that investment authority would be turned over to a committee of independent, neutral professionals.

By that time the Government had backed down from most of its original demands, even though Government officials felt that these were the minimum acceptable standards. Negotiations continued into April of 1977. Fitzsimmons, Williams, Massa, and Spickerman resigned. On April 27, IRS restored the fund's tax exemption. However, eight conditions would have to be met by the fund. If they were not, the exemption would be revoked again (p. 72).

EIGHT CONDITIONS PRESENTED BY GOVERNMENT

In an April 26, 1977, letter to the pension fund, the Internal Revenue Service spelled out eight conditions the Government was requiring for the fund to qualify as a tax-exempt trust.

The first condition was that the trustees amend the fund's trust agreement so that the fund would conform to standards set forth in the Internal Revenue Code and in ERISA.

Second, the fund had to have in operation by the end of 1977 a data base management system that would insure that union members who had participated in the fund at some point since its inception in 1955 would receive "credited service" commensurate with the extent of benefits due them.

Next, the Government said the fund had to review all benefit applications that had originally been rejected. This requirement was to insure that recipients were receiving benefits due them.

Condition No. 4 handed down by the Government was that the fund, over the next 12 months, examine all its loans and other financial transactions from February of 1965 to April of 1977 to determine whether the fund had any enforceable causes of actions or other recourse as a result of the transactions.

Fifth, the Government called upon the trustees to write a statement noting investment objectives once a year for the guidance of the fund's investment manager.

The sixth requirement was that a qualified internal audit staff be assembled to monitor fund affairs and No. 7 on the condition list was that the fund publish a CPA-certified annual financial report in a newpaper of general circulation.

The last condition was that the fund's assets be turned over to an independent, outside investment firm of established reputation for integrity.

In its letter, IRS also required the fund to allow the Service to have access to fund records and documents. The letter did not stipulate such ready access for the Labor Department, although the Labor Department was apparently under the impression that its access to records was insured by its informal agreement with the fund. In addition, the fund was instructed to submit reports to IRS each month on the progress it was making in satisfying the eight conditions (pp. 72–73).

According to the General Accounting Office, after the fund agreed to comply with the Government's eight conditions, the Labor Department said it would end that portion of its investigation that focused on the fund's asset management procedures.

In May of 1977, the Labor Department ended its onsite investigation in fund offices in Chicago and shifted to its civil litigative strategy (p. 73).

The new strategy called for a redirection of investigative resources. SIS no longer had the dual function of investigating and then litigating civil cases and working with the Justice Department on matters for criminal prosecution.

SIS was now working exclusively in preparation for the civil action which the Department of Labor planned to bring against former trustees of the fund. In this role, SIS was to become an investigative support arm for the Solicitor's Office in the Labor Department.

IRS OFFICIALS TESTIFIED ABOUT NEGOTIATIONS

The fund asked for restoration of its tax-exempt status on September 20, 1976. To win restoration of its status, the fund would now have to show that its plan was amended to conform with ERISA and that it had safeguards to protect the fund assets and properly pay benefits to pensioners (p. 200).

The fund, IRS and the Labor Department, after extensive negotiations, agreed to eight "corrective steps" which the fund was to take, according to S. A. Winborne, Assistant IRS Commissioner for Employee Plans and Exempt Organizations. Then, in April of 1977, a letter restoring the tax-exempt status, subject to the eight conditions, was sent to the fund.

One of the conditions the fund agreed to was the turning over of fund assets to an independent investment firm, Winborne said.

He said IRS considered seeking a consent decree as an alternative to the corrective steps strategy. He said the "conditional requalification letter approach" was considered preferable to the consent decree strategy for three reasons. First, he said, the Government's "principal objective of protecting the benefits of participating employees was achieved with the transfer of the great bulk of the fund's assets to independent asset managers." (p. 201).

The second advantage to the conditional requalification approach was the prompt action it would inspire, Winborne said, asserting that the "delay that would have been experienced in any lawsuit against the fund was avoided."

The third advantage, he said, was that the conditions in the requalification letter did not preclude the Labor Department from bringing suit against the trustees for their alleged poor management of fund resources. "And, as you know, the department did initiate such a suit," Winborne said (p. 201).

"CONTRACT BY PRESS RELEASE" WAS DISCUSSED

Commenting on several of the shortcomings of the Labor Department's handling of the pension fund case, the former Deputy Director of SIS, Lester Seidel, said, "The one that is most troubling to me of all of those is the lack of an enforceable agreement. I understand that there is no written agreement with the exception

of a press release arising from the * * * January to April 1977 negotiations. I find that particularly troubling because the starting point of all those events was the specific aim of having some type of enforceable agreement" (p. 134).

Seidel added, "Even if it weren't a consent decree * * * as long as certain specific criteria were set, the most important [objective] is to have something that is enforceable. How else is the public interest going to be served? How do you enforce what the GAO talked about was a phantom agreement or nonagreement?"

Senator Nunn asked, "You never brought a lawsuit to enforce a press release?" "Amen," Seidel replied (p. 134).

Senator Nunn asked Assistant IRS Commissioner S. A. Winborne about the agreement of April of 1977 in which the fund regained its tax exemption by agreeing to eight conditions laid down by the Government. Senator Nunn recalled the fact that a joint press release was issued by the Labor Department and IRS but no signed contract or other such binding document was effected.

Winborne said he had heard the April agreement referred to at the hearings as "a contract by press release" but that was the first time he had known it to be so characterized. He said the circulation of a press release announcing decisions IRS has made or actions it will implement "is a normal thing" the Service frequently did (p. 203).

The press release was not intended to be a substitute for a signed contract, Winborne said. Only if the fund was found to be complying with the eight conditions would the requalification still apply, Winborne said. If the fund failed to live up to the conditions, it would be disqualified again as a tax exempt trust, he said (p. 203).

Winborne went on to state that there was a requalification letter which listed the eight conditions and was sent by IRS to the fund. Winborne acknowledged that this was not an agreement by the trustees, however, and admitted that no such agreement was reduced to a written contract (p. 203).

UNLIKE GOVERNMENT, EQUITABLE SIGNED ENFORCEABLE AGREEMENT

Of all the agreements that were reached in April of 1977, only one of them was in the form of a written contract. That was the agreement between the Equitable Life Assurance Society and the pension fund.

The Government had promoted the idea of the fund turning its assets over to an independent manager. But neither the Labor Department nor IRS nor any other Government component was a party to the contract itself.

Under the terms of the contract with the independent asset managers, the trustees agreed to turn over management of most of the pension fund's investment assets to Equitable and other outside investment firms for a period of five years. This was an enforceable contract. It expires in 1982.

All other agreements were between the fund and the Federal Government. And all of them were strictly oral agreements. Nothing was committed to writing in the form of enforceable contracts. The most prominent written documents were a press release announcing the accords and a letter from IRS listing eight conditions for requalification (pp. 44–45).

Senator Nunn pointed out, a press release is not enforceable. The lack of a written, enforceable contract became an important consideration in the months ahead when the pension fund began violating its part of the agreements and the Labor Department and IRS found themselves with no leverage to force the fund into compliance (p. 47).

TRUSTEES' SPIRIT OF COOPERATION DID NOT LAST LONG

Once their tax exemption was restored, the trustees became even less enthusiastic about cooperating with the Government. They stopped giving SIS access to records. They tried to compromise the two principal independent firms managing investments. They stopped reporting on progress they were supposed to be making in living up to the eight conditions. And they gave the appearance of opening up the fund to renewed influence of former trustees.

In the fall of 1977, some 4 months after IRS restored the fund's tax exemption, the trustees refused to provide records which SIS requested. In March of 1978, the trustees formally notified the Labor Department that the era of voluntary cooperation had officially ended (p. 69).

March of 1978, 6 months after the fund's investment authority was taken over by the Equitable Life Assurance Society of the United States and the Victor Palmieri Co., the trustees passed a series of resolutions aimed at compromising the independence of the investment managers. The resolutions said the trustees could fire Equitable and the Palmieri Co. for cause without the aproval of the Secretary of Labor; and that the board of trustees had to be given at least 30 days' notice before the managers could sell assets worth more than $10,000. The Labor Deparmtment informed the trustees that neither resolution was enforceable (p. 75).

Next, the trustees set up their own staff of real estate analysts to make independent inspections of all assets under the management of the Palmieri Co. In addition, $72.7 million to $100.5 million in real estate assets were actually managed by these same fund analysts (p. 76).

Then the trustees tried to reduce the Palmieri Co.'s management fees. The Labor Department informed the trustees that the Palmieri fees were reasonable, that they had to be paid and that under any circumstances neither Equitable nor the Palmieri firm could be fired without the approval of the Secretary of Labor (p. 76).

According to GAO, the trustees failed to meet several conditions of requalification as a tax-exempt trust. In August of 1979, the trustees notified IRS that they would no longer be submitting monthly reports on their progress in implementing the conditions for requalification (pp. 78–79).

IRS NOTED DECLINE OF FUND'S SPIRIT OF COOPERATION

IRS Assistant Commissioner S. A. Winborne also noted that the pension fund's spirit of cooperation "began to deteriorate" in 1979. The fund sent a letter to IRS barring the Service from conducting further audits at fund offices on August 24, 1979. Winborne said this prohibition "was a serious limitation on our ability to monitor the fund." (p. 201).

On September 10, 1979, the fund submitted a new application for tax exemption based on recent changes to the plan, Winborne said. But, he added, this application was incomplete.

In banning onsite audits and in filing an incomplete exemption request, the fund led IRS to conclude cooperation had declined to such a low level that more severe action was justified, Winborne said.

The IRS issued subpenas on fund records for both the pension fund and the Central States health and welfare fund on November 19, 1979. Winborne said the health and welfare fund answered the subpena adequately, but the pension fund's response "was wholly unsatisfactory" (pp. 201–202).

From December of 1979, when the pension fund failed to respond adequately to the subpena, until early March of 1980, the IRS "reevaluated the ongoing examination of the pension fund," Winborne said, adding that, "Throughout this period, there was continued coordination and exchange of information between the Service and the Department of Labor" (p. 202).

IRS met at length with fund lawyers and decided more subpenas were needed to compel the fund to cooperate. Winborne said two more subpenas were served on the pension fund on April 14, 1980. On May 13, 1980, the Justice Department, on behalf of IRS, filed suit in Federal district court in Chicago to enforce the subpenas, Winborne said.

It was apparent, then, that, without recourse to an enforceable agreement, the Government's only option was to begin a new investigation. In 1980, both IRS and the Labor Department began new investigations of the Central States pension fund (pp. 80–81).

FIVE OF EIGHT CONDITIONS STILL NOT MET

IRS Regional Commissioner Charles Miriani provided the subcommittee with an IRS summary of the degree to which the fund failed to comply with the eight conditions it had promised to meet to gain restoration of its tax exempt status.

Miriani's summary indicated that three conditions—Nos. 1, 5, and 8—were fully met. These had to do with revising the fund plan to meet ERISA; adopting a specific written investment policy; and an agreement that assets be turned over to outside managers.

On the outside investment managers condition, the IRS summary said the fund "was permitted to retain assets that are reasonably necessary" for the payment of plan benefits and administrative expenses. This was the benefits and administration, or B & A, account.

The IRS summary said the Service was studying the question of how much money the B & A account could contain. The fund sought to circumvent the outside managers by trying to make a $91-million loan to Morris Shenker with money from the B & A account. After the proposed transaction was called to their attention by the court, Equitable and the Labor Department protested the loan and it was stopped in court.

Condition No. 2 required that the fund develop improved statistical information to assure that eligible workers received benefits due them. The summary said IRS was reviewing the improvements.

Condition No. 3 required the fund to use its improved information system to reexamine previously rejected pension applications.

The IRS summary said $950,000 in retroactive payments had been paid out as a result of this condition.

Under condition No. 4, the fund was directed to review past loans to try to find whether former trustees or third parties were liable for any losses. In January of 1978, the fund stopped this review, pointing out that before fulfilling this commitment it wanted to find out if the exercise were "cost-justified." The fund ended efforts to comply with this condition in August of 1979.

After a 1-year delay, the fund began efforts to implement condition No. 6, the initiation of an internal audit by its own staff.

Condition No. 7 called for the fund to publish its financial statement in a general circulation newspaper. The fund complained about the expense. So IRS agreed that the fund need merely issue a press release to satisfy this requirement.

The first such public accounting of its finances was made in a press release of July of 1977. However, in August of 1979, the fund trustees voted to terminate the policy of making public the financial statement through a press release.

According to the IRS summary, then, the fund complied with condition Nos. 1, 5, and 8; partially complied with Nos. 2, 3, and 6; and did not comply with Nos. 4 and 7.

The General accounting Office said the fund failed to live up to four of the eight conditions. GAO said the fund did not fully satisfy condition Nos. 2, 4, 7, and 8 (p. 79).

IRS DID NOT REQUIRE TOTAL COMPLIANCE

When it became apparent that the fund was not living up to the eight conditions, the IRS studied the situation, but took no enforcement action to compel compliance.

As of August of 1980, no action of any kind had been brought against the Central States pension fund for its having failed to comply fully with the eight conditions of requalification.

Senator Nunn asked IRS representatives why, after a period of 1 year in which it was demonstrated that the fund was not going to comply, the Service took no enforcement action.

Assistant Commissioner Winborne conceded that no lawsuit was brought. Charles Miriani and Donald Bergherm could not point to a lawsuit.

UNLIKE GOVERNMENT, FUND INSISTED ON SIGNED AGREEMENT

IRS and the Labor Department did not require that the fund enter into a signed agreement to uphold its part of the April 1977 accords.

But when the IRS certified that, following the restoration of the fund's tax exempt status, the fund had zero tax liability, this was certified in writing. In fact, all the fund's trustees were required to sign it.

Marty Steinberg, subcommittee chief counsel, asked why IRS let the fund agree to the eight conditions without signing anything but committed the zero tax liability certification to writing.

S. A. Winborne and Charles Miriani said the trustees were required to sign because a Tax Code provision indicated that such signatures had to be obtained. Winborne said there was no requirement in the Tax Code for obtaining signatures attesting to the

commitment of the trustees to live up to the eight conditions (pp. 235–236).

It was apparent, then, that the trustees obtained a signed agreement when it was beneficial to them but the Government did not demand signed agreements to protect the beneficiaries and the public's interest.

ALLEGED "PHANTOM AGREEMENT" REPORTEDLY OCCURRED IN APRIL OF 1977

It was alleged by those in the Department of Labor who believed in it that the "phantom agreement" embodied an agreement by the Labor Department to limit its investigation in exchange for the resignations of the four holdover trustees and the appointment of independent asset managers.

No document was found attesting to such an agreement. Labor Secretary F. Ray Marshall and other senior officers of the Department denied vehemently that such an agreement was ever made. But Norman Perkins, who headed SIS for 2½ years and worked in SIS for a total of 4 years, believed that there was a phantom agreement, or some such understanding, as did other Department of Labor employees (pp. 439–440).

In an interview Perkins gave two Labor Department investigators on March 5, 6, and 7, 1979, Perkins said he did not know why the four holdover trustees resigned in April of 1977 but that he believed that their resignations were tied to the alleged phantom agreement.

The two Labor Department investigators—Richard Crino and John Kotch—summed up Perkins' views regarding the phantom agreement in their 21-page report of interview. They said—

> The result of this alleged agreement is interpreted by Perkins as excluding from investigation all administrative expenses and all trustee expenses—that these areas are not to be investigated. SIS may look into the imprudence of loans; but only as they relate to the resigned trustees and not to the fund itself. Thus Perkins feels that the fund has now been given a clean bill of health (p. 441).

Supporting his belief that there was a phantom agreement, Perkins told the investigators, Kotch and Crino, that "SIS has never done criminal work" and, in Perkins' words, "had better not." (p. 277).

In his testimony before the subcommittee—both in executive session on September 25 and in public session on September 30, 1980—Perkins said he had been under the impression there had been a phantom agreement.

However, while acknowledging that in the 2½ years that he headed SIS he had believed in the phantom agreement, Perkins told Senators in the public hearing that recently he had been convinced by Carin A. Clauss, the Solicitor of Labor, and other persons that the phantom agreement never existed (pp. 437–438).

Clauss, who was Perkins' boss in his new job in the Special Litigation Staff, would have had to have convinced him quite recently, in fact. He testified in executive session on September 25, 1980 that he had believed in the phantom agreement. Five days

later he said he once believed in it—but didn't anymore. But he did believe that there was something that was agreed to.

In the public session of September 30, Senator Nunn asked Perkins if he believed in the phantom agreement. Perkins answered this way:

> Mr. Chairman, I know I testified to this in executive session. However, I would like to state that upon reflection, and after considering that I have been informed over the years by people whom I respect at the Department, Ms. Clauss and other persons, that there is no such agreement, and I never saw any such agreement, and I do believe that at this point there was no agreement—however, I believe, if I might state, that agreement is not the word but maybe an understanding or a difference in interpretation between various persons that there would be no further investigation outside of the areas of loans (pp. 437–438).

This exchange then ensued between Senator Nunn and Perkins:

> Senator NUNN. You still believe there was that kind of understanding, but probably not formalized?
>
> Mr. PERKINS. Understanding, a misunderstanding among the parties, yes, sir.
>
> Senator NUNN. So basically you would rather use the word understanding than agreement?
>
> Mr. PERKINS. Understanding, or misunderstanding, sir.
>
> Senator NUNN. Was that the general view of the people working in this investigation, that there has been that kind of understanding limiting the scope of the investigation in exchange for certain steps that the pension fund trustees took? Is it just your impression or were there many other people that had that impression in SIS?
>
> Mr. PERKINS. I would hate to speculate on what other people in SIS thought. A few members of the staff had made those representations to me, and I would speak to those persons, but not as to what people who did not make any statements to me would feel.
>
> Senator NUNN. Up to the point of your testimony, September 25, 1980, in executive session, it was your view at that time, was it not, that there had been some agreement that limited the scope of this investigation?
>
> Mr. PERKINS. Again, as I said earlier, Mr. Chairman, upon reflection, I would prefer that we say that there was either an understanding or a misunderstanding as to what the arrangements were (p. 438).

In executive session, a scant 5 days earlier, on September 25, 1980, Norman Perkins' position with regard to the so-called phantom agreement was illustrated by the following exchange:

> Mr. STEINBERG. Did the Solicitor's Office ever challenge this agreement in court to your knowledge?
>
> Mr. PERKINS. I have no knowledge that they did.
>
> Mr. STEINBERG. Did you tell Mr. Kotch and Mr. Crino that the results of this alleged agreement as interpreted by yourself excludes from investigation all administrative expenses, all trustees expenses, these areas are not to be investigated. "Perkins feels that the fund has now been given a clean bill of health."
>
> Mr. PERKINS. Yes, sir, I believe I said that.
>
> Chairman NUNN. Is this still your view? Have you had anything that would change your mind on that?
>
> Mr. PERKINS. With regard to the old trustees, those that resigned prior to April 30, 1977, no sir. There is nothing.
>
> Chairman NUNN. That would still be your view regarding them?
>
> Mr. PERKINS. The old trustees, those that resigned April 30, 1977.
>
> Chairman NUNN. That would remain your view as to them?
>
> Mr. PERKINS. Right, but not as to the new trustees.
>
> Mr. STEINBERG. Apparently from what you have stated and other SIS members, there was strong feeling in SIS that there was such as agreement made, there was an equally strong feeling about lawyers who represented the trust fund that such an agreement had been made. Is that correct?
>
> I think that gives the tenor. Was that your testimony as reflected in the transcript?
>
> Mr. PERKINS. Yes sir.

Thus it was that the Acting Director of SIS, Norman Perkins, ran the investigative unit for 2½ years with the assumption that there had been a phantom agreement limiting the inquiry.

As Senator Nunn said, this was a "crucial point. The man heading up the investigation of the Teamsters pension fund was under the direct impression during his tenure as Acting Director that there were certain excluded areas and, of course, I think that is extremely important as to what happened in this overall investigation and what has not happened." (p. 440).

SIGNIFICANCE OF "PHANTOM AGREEMENT" ISSUE

The debate over the alleged phantom agreement went on throughout the subcommittee's investigation and hearings. It provoked strong protestations from Secretary Marshall and his senior colleagues in the department. They denied its existence vehemently.

The confusion and uncertainty stemmed from the fact that the accords of April of 1977 were not spelled out in a written, court-enforceable agreement or contract. The only document specifying the features of the agreement was a press release. Press releases cannot be enforced.

The decision to stop third party investigations, for example, the decision to take away SIS's subpena authority, the decision to place SIS under the supervision of the Solicitor's Office—all of these decisions not to investigate certain alleged abuses, including alleged crimes, were questionable.

Because they could not point to an enforceable, written agreement between themselves and the fund, Secretary Marshall and his key aides were never able to dispell allegations that a phantom agreement had been struck. For those who believed there had been

a phantom agreement, powerful evidence was found in the fact that from 1977 forward the Labor Department's policy was to prohibit its own investigators from seeking to develop information that could be used to mount criminal prosecutions against former trustees and the most prominent third party borrowers.

Associate Solicitor Monica Gallagher was asked if a written agreement stipulating to the precise terms of the April 1977 accords would have been useful in putting to rest rumors of the phantom agreement. Wouldn't a written agreement have been preferable to the press release, which was the only document attesting to what had occurred?

Mrs. Gallagher didn't think so. She said people at the Labor Department who believed in the phantom agreement did not accept the word of Secretary Marshall and his highest aides when they denied the existence of such a compact. Mrs. Gallagher said a written agreement might not have been received as a credible document by Labor Department doubters.

That led Senator Nunn to ask, "How does the Labor Department have such a degree of mistrust by its own key people?" Mrs. Gallagher replied, "I sure wish I knew that." (pp. 465–466).

FUND CITED UNWRITTEN AGREEMENT FOR NOT COOPERATING

Former SIS Director Lawrence Lippe said that once pension fund representatives stopped voluntarily cooperating with SIS, spokesmen for the fund always gave the same justification for their conduct. They cited unwritten agreements with the Government (pp. 158–159).

The fund's reference to unwritten, undocumented accords reinforced the widely held belief that a secret or phantom agreement did exist between the Labor Department and the fund.

Lippe said fund officials would deny requested documentation and would say the lack of cooperation was agreed to in the accords that resulted in the resignation of the four holdover trustees and the installation of the independent investment managers.

Lippe said he checked with Labor Department officials to determine just what had been agreed to. The Labor Department's response was to say the fund was wrong about the existence of additional agreements. But, Lippe said, it was also impressed on him that the department did not want to do anything to upset fund representatives because the negotiations were at a particularly sensitive time.

Lippe said senior Labor Department officials were vague. They claimed fund spokesmen were wrong in their characterization of the agreement but they never explained to him how the fund's interpretation of the agreement was wrong, Lippe said. Nor was the question answered as to why, if there were no phantom agreement, the Labor Department did not simply subpena the desired records or use some other device to compel cooperation from fund representatives.

Lippe said that at the time the Government entered into its agreement with the pension fund he had every intention of going forward with the SIS inquiry as originally planned, including third party investigation. Lippe said he had no reason to believe the scope of the SIS inquiry had been limited by the April 1977 accords (pp. 158–159).

GOVERNMENT ORIGINALLY PLANNED ROLE IN TRUSTEE SELECTION

Of the eight conditions the fund was to meet in order to win restoration of its tax exempt status, none included the requirement that the Government have a role in the selection of new trustees.

But originally such a role for Government in trustee selection had been planned. Labor Department and IRS officials believed that unless the Government had a hand in the selection process, the new trustees could run fund affairs just as the old trustees had.

On January 7, 1977, the IRS notified the Labor Department of six minimum requirements the fund would have to meet before its tax exempt status would be restored. Four of the requirements had to do with the composition of the board of trustees and with trustee selection. But, for reasons unknown to the subcommittee, none of these four trustee-related requirements were included in the final eight conditions that comprised the agreement.

In the January 7, 1977, memorandum for the Labor Department, IRS said, first, the fund would have to provide access to all records; second, control of all assets would have to be turned over to independent financial managers; third, the board of trustees would have to be restructured so that the majority would be neutral trustees; fourth, the Federal Government would have to play a role in the selection of the new trustees; fifth, the Government would set up criteria for trustee selection; and sixth, the Government could reject selected trustees.

On January 13, 1977, William Chadwick, Administrator of Pension and Welfare Benefit Programs, reiterated the principle that minimum requirements would have to be met (p. 228).

But neither the Labor Department nor the IRS held firm to the minimum requirements. The initial requirements were eroded. Ultimately, only two of the six were included in the final agreement restoring the fund's exemption. These two requirements called for the fund to turn over asset management to an outside investment firm and give the Government access to its records.

Of these two, the fund lived up to only one. The fund stopped giving Government access to its records. The fund did adhere to its commitment to turn over its assets to an independent investment firm for a limited period of 5 years, expiring in 1982.

But the fund tried to compromise the investment managers' independence. It set up its own financial advisory team to examine the decisions of the asset managers. The fund tried to require advance notification of most transactions by the managers. The fund tried to reduce the fees charged by the managers. And the fund tried to amend its agreement so that it could discharge the managers without the approval of the Labor Department.

In each of these attempts to compromise the investment managers, the fund was unsuccessful.

GOVERNMENT REQUIRED NO VETO POWER OVER NEW TRUSTEES

Labor Secretary Marshall was of the opinion that the resignations of the four "holdover" trustees—Fitzsimmons, Williams, Massa, Spickerman—was an achievement of some consequence.

The resignations of the holdover, coupled with the earlier resignations of 12 trustees, meant the Government was in a position to

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insist that the new fiduciaries be completely cut off from the personal relationships, traditions, and practices of the past.

But the Government played no role in the selection of new trustees; nor did it exercise a veto power over which trustees were selected.

Marty Steinberg, the subcommittee chief counsel, asked former SIS Deputy Director Lester Seidel if the Labor Department could have made better use of the trustee resignations had it demanded having a role in the selection of new trustees.

Seidel said the Labor Department refused to become involved in the selection process, which was, he said, a mistake. Involvement in the process of selecting new trustees would have strengthened the Department's position as it sought to achieve lasting reform of the fund, Seidel said.

Steinberg asked Seidel how the Labor Department could hope to insure that the new trustees would be more prudent than the old trustees if the Department refused to take part in the selection. Seidel said that as long as the Department stayed out of the selection process, there was no assurance of what kind of new trustees the fund would have (pp. 125–128).

Seidel said that at least a veto power by the Department would have helped. But no veto power was demanded by the Department. At the minimum, Seidel said, it would have been useful to have each new trustee's name run through an FBI check. "It would have been very bad to have a trustee appointed who maybe at that time is the subject of an FBI investigation," Seidel said. "We didn't think there was anything wrong . . . to be able to have a veto power over a trustee." (p. 126).

THE CARIN A. CLAUSS MEMORANDUM ON CONDUCT OF NEW TRUSTEES

Lester Seidel faulted the Labor Department for not insisting on a veto over the selection of new trustees. He feared the new crop would be no different than the old.

Seidel's fears may have been realized. Allegations arose that the new trustees were found to be cut from the same mold. This was attested to in a February 1, 1980, memorandum from Carin A. Clauss, the Solicitor of Labor, to Secretary Marshall (pp. 49–50).

Clauss said the new trustees had shown a "significant disregard" for the interests of the participants and beneficiaries of the fund and "a determination to frustrate" the efforts of the Labor Department in its ERISA enforcement activities.

Clauss said the new trustees had conducted themselves in such a way as to lead her to conclude that the former trustees were still exerting influence over the operations of the fund.

Clauss said the new trustees, who took office in 1977, had shown "disdain" for the Labor Department. She said the trustees formally announced that their cooperation with the Department ended in January of 1978.

Clauss said the new trustees tried to repudiate the role of the Labor Department in overseeing the relationship between the fund and the outside investment managers who controlled most of the fund's assets.

The new trustees, she said, had shown "similar disdain" for the Internal Revenue Service. The eight conditions which the fund had

agreed to meet if its tax exempt status were restored had not been met, Clauss said. The agreement on the eight conditions was entered into in April of 1977, the same time the tax exemption was restored. Less than a year went by, Clauss said, and it was apparent that the fund was not complying with the conditions.

IRS informed the trustees that at least five of the eight conditions were not being met. On August 24, 1979, the trustees responded, telling IRS that the fund would not honor IRS's demand for further compliance, Clauss said.

Clauss described a maneuver the trustees had adopted to try to cover up bad investments. The fund bought two foreclosed properties which it held the mortgages on. Clauss said the trustees paid too high a price on the properties. This enabled the fund's books to show no loss on the original transactions, Clauss said.

Clauss said the new trustees tried to compromise the independent, outside managers of fund assets and also attempted to have their contract terminated.

In addition, Clauss said, the new trustees attempted to require the asset managers to notify them in advance when they planned to buy or sell a property worth more than $10,000.

The new trustees also sought to take part in the routine operations of the asset managers, Clauss said.

The influence of the old trustees—the group that included Frank Fitzsimmons, Roy Lee Williams, Albert Matheson, and others—on the new trustees was cited by Clauss.

Clauss said former trustees were openly involved in the routine operations of the fund. She said the fund's annual report disclosed that former trustee A. G. Massa was paid by the fund for labor relations services and delinquent accounts management.

Another former trustee, Albert Matheson, was a lawyer whose firm had been retained to represent the fund in several legal matters, Clauss said.

Clauss said that Thomas Duffey, another onetime trustee, was retained by the fund on several matters, including one that concerned Jimmy Hoffa's former attorney and a longtime third party in fund transactions, Morris Shenker.

Duffey's services in the Shenker matter had to do with the trustees' attempt to circumvent the investment managers in a loan for the Dunes Hotel and Casino in Las Vegas, Clauss said.

The General Accounting Office, in its preliminary report to the subcommittee, provided details on how the new trustees attempted to sidestep the investment managers and ERISA in the Morris Shenker-Dunes casino deal.

GAO RECOUNTED TRUSTEES' EFFORTS TO LOAN SHENKER $91 MILLION

According to GAO, in January of 1975, the trustees approved a $40 million loan commitment to the Dunes Hotel and Casino in Las Vegas. The loan was never made because it was declared a "prohibited transaction" under ERISA. The commitment was rescinded. On behalf of the Dunes, Morris Shenker sued the fund to reinstate the loan and receive an additional $100 million in damages.

Shenker's suit continued for about 3 years. In September of 1979, the new trustees, serving on the restructured board, voted to settle out of court with Shenker by making a new loan of about $91 million.

Knowing that they could not make such a loan because of Equitable and Palmieri's control of investment assets, the trustees tried to loan the money from the benefit and administration, or B & A, account, money the trustees did control.

But, as GAO pointed out, this money was never meant for loans. It is used to pay retirement and other benefits and the costs of administering the fund itself. At the request of a Federal district court monitoring the matter, the Labor Department and Equitable reviewed the proposed $91 million settlement. Equitable and the Labor Department then objected to the transaction and it was stopped.

According to law enforcement sources, Morris Shenker and Nicholas Civella, reputed leader of the organized crime syndicate in Kansas City, teamed up in an effort to persuade the fund trustees to get Shenker the loan he had been promised.

ROY WILLIAMS LINKED TO ORGANIZED CRIME*

Roy Lee Williams, president of the over-the-road truck drivers, Teamsters Local 41 in Kansas City, Mo., and a vice president of the Teamsters International, had frequently been mentioned as the man most likely to succeed the former Teamsters president, Frank Fitzsimmons, who died on May 6, 1981.[1]

Williams, secretary-treasurer and director of the 700,000 member Central Conference of Teamsters, had also directed the 20,000 member Teamsters Joint Council 56, making him the undisputed chief of Kansas City's largest union for the last 25 years.

In addition, Williams served as a labor representative on the board of trustees of the Central States pension fund from 1955 to 1977. Williams was one of the four "holdover" trustees who were forced to resign in April of 1977 under pressure from the Labor Department. The original trustees resigned in 1976 due to Labor Department actions at that time.

In leaving his position on the board of trustees of the pension fund, Williams retained his other Teamsters posts in Kansas City and with the international.

Williams had brushes with the law. Three Federal grand juries indicted him. But he was never convicted.

In 1962, Williams was charged with conspiracy with six fellow Teamsters officials to steal union funds by inflating expenses. He was acquitted. Four subordinates were convicted.

In 1972, Williams was charged with embezzling from the union, allegedly by paying himself a $16,000 bonus without proper authorization from the union. He was acquitted.

In 1974, Williams was indicted on a charge of fabricating minutes of a union meeting authorizing a dues increase for local 41. The Government said the meeting never occurred. The case was dismissed.

A Government memorandum, which has been authenticated by the Department of Justice, identified Roy Lee Williams as being controlled by Kansas City's reputed mob leader, Nicholas Civella.

*This section was released on May 20, 1981 as the "Interim Report of the Permanent Subcommittee on Investigations on Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund."

[1] Williams was elected president of the Teamsters Union at the international's convention in Las Vegas in June of 1981.

The memorandum, portions of which were reprinted in the June 6, 1978 hearing record of the Oversight Subcommittee of the House Ways and Means Committee, was verified as being "substantially the same in content as a memorandum written at Justice [Department] at least 7 years ago."

This authentication was given the House Subcommittee on July 14, 1978 by David Margolis, Deputy Chief of the Organized Crime and Racketeering Section of the Criminal Division of the Justice Department. The Department of Justice never located the original report, according to Margolis.

The memorandum said that in 1961 the Organized Crime and Racketeering Section was investigating reported thefts of Teamsters Union funds by Teamsters officers.

During the investigation, it was learned that Roy Lee Williams and Sam Ancona were associated with Nick Civella.

The memorandum said that Ancona, former president of Teamsters Local 951 was Nick Civella's representative at the Teamsters hall.

Roy Williams, the memorandum said, "was under the complete domination of Civella." It added, "Williams will not act contrary to the wishes of Civella apparently because of both self-interest and fear."

Williams' rise to preeminence in the Kansas City Teamsters Union began when the onetime top Teamsters official in the area, Floyd R. Hayes, promoted him, the memorandum said.

As an officer in an insignificant Teamsters local in a small town, Williams came to the attention of Hayes. Williams was popular with his members and enjoyed the reputation for being able to persuade his men to carry out his wishes.

Seeing this leadership quality, Hayes brought Williams to Kansas City and installed him as president of the union while Hayes took over as secretary-treasurer.

Williams and Hayes got the same salary and were to share authority equally, the memorandum said, pointing out, however, that Williams eventually took over management and Hayes ended up with virtually nothing to do.

The memorandum said Sam Ancona, under orders from Nick Civella, was promoting Williams as the man to take complete control of the union and Teamsters affairs in the area.

Civella wanted Williams in control because Williams was in his control, the memorandum said.

Hayes, who, the memorandum asserted, had been stealing funds from the Teamsters, had nonetheless resisted the Civella group's efforts to infiltrate the union. Reportedly Hayes did not want to share his illicit profits with the mob.

But with Williams firmly in charge, the influence of Civella began to be felt. The memorandum said Civella forced a health plan on the union, a plan Teamsters officers objected to.

The plan provided outpatient medical care for union members. Treatment was administered by an osteopath, who was reportedly paid $1 a month per union member.

Civella had other proposals which the union accepted, including a plan that required union agents to rent cars from a certain rental agency rather than be reimbursed for the expense of driving

their own automobiles. The memorandum said the owner of the car rental business was an organized criminal.

The memorandum said Kansas City mobsters gave orders to have Floyd Hayes murdered. Hayes' wife was also to be killed. Hayes died in a shooting but his wife recovered. She disappeared from sight and was thought to be in hiding.

Several of the criminal allegations in this Government memorandum were not the subject of Federal prosecutions. However, these allegations and others formed the basis of questioning of Roy Williams at his appearance before the investigations subcommittee.

In addition to the memorandum, the subcommittee obtained more information on the alleged financial links between Las Vegas casinos and the Kansas City crime syndicate and Roy Williams' ties to it.

Acting under authority of search warrants, Federal agents searched the homes of Carl "Cork" Civella and Carl "Tuffy" DeLuna on February 14–15, 1979.

Among the documents seized in Carl Civella's home were handwritten notes that spelled out how proceeds were divided up among Kansas City crime figures and their associates.[2]

After independent investigation, analysis of FBI affidavits already made public and evaluation of other information, the subcommittee staff concluded that the handwritten notes represented the formula by which Kansas City mob figures were to share individually in proceeds from a Las Vegas skimming operation that had surreptitously extracted money from one or more gambling establishments.

The distribution sheets identified persons by initials, nicknames, code names, or first names and code numbers. Fifteen hundred dollars was designated for "Rancher," a code name for Roy Lee Williams, according to law enforcement authorities. One thousand dollars was listed for "S. A.", initials for Kansas City Teamsters leader Sam Ancona.

A column of first names, Nos. 1 though 13, showed "Nick," "Cork," "Carl," "Pete" and nine other designations, all representing Kansas City mob figures. For example, "1 Nick" stood for Nicholas Civella; "2 Cork" represented Carl "Cork" Civella; "3 Carl" was Carl "Tuffy" DeLuna; "4 Pete" was Peter Tamburello; "5 Charlie" was Charles Moretino; "6 Willie" was William "Willie the Rat" Cammisano; and so forth.

In another column, the numbers were matched with percentages of the corpus, believed to be about $70,000. For example, at the top of the list was written "1–20%," which meant Nick Civella was to receive 20 percent of the money.

Beside Nos. 2 and 3 were 15 percent signs, indicating 15 percent each for Carl Civella and Carl Deluna. Peter Tamburello, No. 4 and Charles Moretino, No. 5, were down for 10 percent; William "Willie the Rat" Cammisano was in for 7½ percent; and four others were included in diminishing percentages of the take down to 5 percent.

[2] During the Permanent Subcommittee on Investigations hearings, Williams was asked about documents seized in the homes of alleged organized crime figures in Kansas City which indicated he received money. Williams refused to answer. Subsequent to these hearings, Federal law enforcement authorities filed some of the search results in Federal Court which indicated that the documents seized in these searches revealed how the syndicate was sharing skims believed to have been obtained on a monthly basis from a Las Vegas casino. These seized documents showed that in one particular monthly skim, $1,500 and other proceeds went to a person known as "Rancher," a code name for Roy Lee Williams, according to law enforcement officials (p. 176).

Nos. 11, 12, and 13 were grouped together beside the heading of "Misc.," which, when juxtaposed with the first column of names, indicated Williams, Ancona, and "Dick" were to receive cash amounts of $1,500, $1,000 and $500, respectively.

The seized skim distribution documents indicated that of the approximately $70,000 corpus about $3,000 was to be set aside for other purposes, leaving a net of about $67,000 for immediate distribution among mob figures and Teamsters officials. The seized documents indicated that the mob figures expected that the skim distributions would be made on an average of once a month.

In another distribution equation, persons identified only as "Truck & Tud." were designated to receive "2½," or $2,500, which was the exact amount stipulated in the first distribution equation as being for Teamsters officials Roy Lee Williams and Sam Ancona—$1,500 for Williams, $1,000 for Ancona.

In addition to the equations according to which the illicit proceeds were divided up, the seized documents included a kind of running commentary detailing events leading up to the delivery of the cash.

In the commentary, reference is frequently made to "ON," who is believed by law enforcement to be the boss of the Kansas City "Outfit," Nick Civella.

Reference is also made to this skim distribution as being the first since the "moratorium." Law enforcement sources believed this was a reference to the fact that no skim distribution has been made for a period prior to that time while gang leaders, including Nick Civella of Kansas City and Joe Aiuppa of Chicago, reached agreement on how the illicit profits should be divided.

The subcommittee staff learned that Roy Lee Williams, Allen Dorfman and certain organized crime figures met on several occasions in 1979 and 1980 in Kansas City and Chicago. The purpose of these meetings was to fashion a strategy for enabling crime syndicate bosses like Civella in Kansas City and Aiuppa in Chicago to reassert their influence upon the Central States pension fund.

The subcommittee staff learned that one such meeting was held on April 23, 1979 in the home of Philip Simone, who lived near Nick Civella in Kansas City. Simone a terminal manager for a trucking line, is a relative of Carl "Cork" Civella.

The investigations subcommittee developed further information concerning Williams and his alleged associates in hearings it conducted on "organized crime and use of violence" on April 28–30 and May 1, 2, and 5, 1980.

For example, the subcommittee received testimony based on FBI affidavits of wire intercepts and other sources that Nick Civella had the ability to control the Teamsters Central States pension fund.

To provide details on how this information was developed, Jack Key, the subcommittee's chief intelligence officer, testified. Key, a veteran of 16 years in law enforcement, served with the Organized Crime/Racketeering Section of the Miami Federal Organized Crime Strike Force and as a bureau supervisor and special agent with the Florida State Department of Law Enforcement (pp. 170–190).

Recalling testimony from the April and May 1980 subcommittee hearings on mob violence, Key said that from May 1978 to Febru-

ary 1979 court-authorized electronic surveillance intercepts were used on the "core membership" of the Kansas City crime syndicate.

A series of telephone and microphone intercepts revealed how "The Outfit" planned to murder someone. Also revealed were details of secret illegal interests the Kansas City mob had in several Las Vegas hotels and casinos.

Key said FBI affidavits which he had reviewed indicated that reported Kansas City crime boss Nicholas Civella influenced the pension fund and that this influence led to "The Outfit's" obtaining interest in Las Vegas hotels and casinos. The affidavits were filed in Federal district court.

Those targeted in the court-authorized electronic intercepts included Morris Shenker, Nicholas Civella, Joe Agosto, Carl Angela DeLuna, Carl James Civella, Peter Tamburello, Charles Moretino, Carl Caruso, Carl Thomas, and Anthony Chiavola.

Key said the FBI affidavits revealed that on August 8, 1978, Joe Agosto, allegedly the Kansas City mob's principal management agent in Las Vegas, called Carl "Tuffy" DeLuna. DeLuna was supposedly affiliated with the Kansas City crime family. The two men talked about the loyalty of certain figures to "The Outfit." They then discussed payments due the Central States pension fund and the physical assets of the Stardust Hotel and Casino, Key said.

Nicholas Civella came on the line and spoke with Caruso,[3] Civella told Caruso to contact another person and to advise him that "Mr. Quinn" was waiting for word from him. With Civella on hold, Caruso placed another call, this one to Morris Shenker who owned the Dunes. Caruso told Shenker to call "that party at Mr. Quinn's office."

Shortly thereafter, Morris Shenker called Nick Civella. Shenker referred to Civella as "Mr. Quinn" but, Key said, the two men seemed to be well acquainted.

Civella told Shenker that a group of people were at Rancho La Costa, the country club and resort near San Diego that had been financed in part by a $50 million loan from the Central States pension fund.

Civella told Shenker that a "local fellow" was going to try to make contact with Shenker. Civella instructed Shenker to go to La Costa and meet with the "local fellow."

Law enforcement sources stated in sworn affidavits that the "local fellow" was believed to refer to Roy Lee Williams.

Following his conversation with Shenker, Civella called La Costa and tried unsuccessfully to reach Sam Ancona.

On October 12, 1978, Shenker and Roy Williams were both at La Costa. This apparently was the meeting Nick Civella sought to arrange to have Shenker discuss with Williams the possibility of manipulating the benefits and administration account of the trust fund to complete the loan to the Dunes which had previously been blocked in Federal district court. Following this meeting, according to a GAO study, the new trustees did, in fact, attempt to manipulate the B & A account to get $91 million to Shenker. The next day Roy Lee Williams and Sam Ancona returned to Kansas City, arriving together in a private plane that took off from the San Diego area.[4]

[3] Key said another affidavit reported that on Oct. 10, 1978, Peter Tamburello called Carl Caruso. Caruso was identified by the FBI as the organizer of free round-trip transportation for gamblers from Kansas City to Las Vegas. These so-called junkets were sponsored by the Dunes.

A November 10, 1978 FBI affidavit said that Nick Civella and his Kansas City gang held secret interests in several Las Vegas casinos, Key said.

He said that an FBI affidavit of September 24, 1978 indicated that the Civella organization and Allen Dorfman had a strong voice within the Central States Teamsters pension fund and controlled a portion of the kickbacks for loans from the fund.

According to the affidavit, Key said, loans of questionable merit, including a pension fund loan to the Dunes casino, had been approved through the influence of Civella and Dorfman.

In the same September 1978 affidavit, it was asserted that the Kansas City organized crime group headed by Civella had a hidden interest, concealed by Morris Shenker, in the Dunes.

Jack Key of the subcommittee staff went on to say that law enforcement officers placed Nick Civella under surveillance in 1974 when he was free on pretrial bond travel restrictions in Missouri. Key said Civella was in Las Vegas from August 6 through 9, 1974. FBI and Nevada Gaming Control Board investigation established that Civella stayed at the Dunes, which was owned by Morris Shenker.

Civella used a fictious name and address. A notation was written on his registration card saying "* * * this man can get anything he wants." Civella's expenses were paid by the hotel management.

Key testified that State officials later fined the Dunes $10,000 for furnishing complimentary accommodations to a person forbidden by State regulations from being in a gambling establishment because of his hoodlum notoriety.

Having discussed the FBI affidavits concerning the court-authorized wiretaps, Key then went on to testify about Fred Harvey Bonadonna, who had been a principal witness during the subcommittee's investigation of mob violence in Kansas City.

Bonadonna, whose father had been a member of organized crime in Kansas City, testified about his experience with the Kansas City "Outfit" and violent acts perpetrated by that organized crime group.

Government witnesses before the subcommittee said they considered Bonadonna to be a very reliable witness. They cited his prior testimony in trials that led to the convictions of "Outfit" members and his supplying information to the FBI which was corrobated by independent investigation.

In Bonadonna's testimony before the subcommittee on May 1, 1980, he referred to an unnamed Teamsters official who was controlled by the Kansas City "Outfit."

Jack Key of the subcommittee staff testified at the August 1980 hearing on the Central States pension fund that he had several conversations with Bonadonna.

Key said these discussions with Bonadonna had occurred before and after the mob violence hearings of 1980.

[4] The B & A Account, a corpus of tens of millions of dollars, was used to pay benefits and administrative costs. After the 1977 agreement with the Government, the B & A Account was excluded from those fund assets put under the direct control of the independent asset managers. Thus, the B & A Account remained under the control of the fund trustees.

Key said in all these meetings Bonadonna described Roy Lee Williams as the Teamsters officer who was controlled by the Kansas City mob headed by Nick Civella.[5]

Bonadonna told Key that he had known Roy Williams since Williams and he were boys. Bonadonna said the young Roy Williams ran errands for the "Outfit." Williams, Bonadonna said, would play an Italian card game called Pitch with mob members.

Bonadonna told Key that as a boy he heard his father, the late David Bonadonna, and other mob members say that the Kansas City "Outfit" was grooming Williams to become a Teamsters Union leader.

F. Harvey Bonadonna told Key the mob figures were counting on Williams to rise to a senior position in the Teamsters where he would be able to provide organized criminals access to union funds.

Bonadonna, whose testimony about mob violence in Kansas City revealed operations of the Nick Civella crime group, is living with his family under an assumed name and with a new identity in an undisclosed city under the witness protection program.

Because of his cooperation with law enforcement and with this subcommittee, organized criminals vowed to murder Bonadonna and his family. Based upon this and his extensive previous cooperation, the subcommittee did not call him as a witness for the hearings on the Central States pension fund.

But the subcommittee did call Roy Lee Williams. Under subcommittee subpena, Williams testified in open session on August 26, 1980. He was accompanied by his attorneys, Thomas J. Wadden, Jr. and William Krebs (pp. 190–198).

Senator Nunn explained why Williams had been called as a witness.

The subcommittee's jurisdiction includes labor racketeering and operations of the Federal Government. This inquiry concerned the Labor Department's handling of its investigation of the reportedly corrupt Central States pension fund.

Senator Nunn said in exercising its oversight jurisdiction of labor racketeering and government operations the subcommittee wanted to evaluate the Labor Department's investigation of the fund.

More specifically, in the instance of Roy Williams, the subcommittee wanted to determine the influence of the former trustees of the fund on the fund's current operations.

As a former trustee who served on the board for 22 years, Williams was in a position to provide considerable information.

Additionally, Senator Nunn said, the subcommittee was gathering information about the fund which would be used in the drafting of legislation to protect employee benefit trusts from illegal exploitation (pp. 192–193).

Marty Steinberg, subcommittee chief counsel, told Williams that in April and May of 1980 the subcommittee received testimony from the FBI based on wire intercepts that Nick Civella, described as the head of the organized crime syndicate in Kansas City, controlled the Teamsters Central States pension fund.

[5] A full recital of Bonadonna's recollections about Roy Williams were not included in his testimony in May of 1980 because the subcommittee was then investigating mob violence in Kansas City. That inquiry was not about the Central States pension fund.

However, since this investigation did have to do with reported corruption and organized criminal influence in the Central States pension fund and because Roy Williams was for 22 years a trustee of the fund, it was decided to make Bonadonna's allegations public.

Steinberg said additional information received in public session was that Roy Lee Williams was an organized crime mole operating at senior levels of the Teamsters Union and exercising great influence with the Central States pension fund.

Having informed Williams of these allegations, Steinberg asked, "Do you personally know Nick Civella?" Williams replied, "On the advice of my attorney, I respectfully decline to answer that question on the grounds that my answer may incriminate me or tend to do so" (pp. 193–194).

It was pointed out to Williams that the General Accounting Office had revealed a manipulation of the Central States pension fund that was designed to bring about a $91 million loan from the fund to Morris Shenker. Steinberg said FBI wiretap affidavits revealed that Nick Civella told Morris Shenker to fly to the La Costa resort in San Diego and meet with Roy Williams to work out the details of this planned manipulation of the pension fund. Steinberg asked Williams if on October 10, 1978, Nick Civella told him to go to La Costa and meet with Shenker, the purpose of the meeting being to arrange the $91 million loan to Shenker. Williams refused to reply, invoking his fifth amendment right (p. 194).

Williams was asked if he met with Shenker at La Costa on October 12, 1978. Williams invoked the fifth amendment privilege (p. 194).

Steinberg asked Williams if he did try to manipulate the fund in such a manner as to enable it to loan Morris Shenker $91 million. Williams invoked the Fifth Amendment privilege (p. 194).

Roy Williams was asked about the information the Subcommittee developed from law enforcement sources indicating that Williams, Allen Dorfman and Nick Civella met at the home of Phil Simone on April 23, 1979. Did Williams attend such a meeting? Steinberg asked. Williams invoked the fifth amendment privilege.

Steinberg asked Williams if, before driving to Simone's home, he had met Dorfman in a shopping center. Williams invoked the fifth amendment privilege (p. 195).

Steinberg asked Williams, if at the meeting at Simone's home, he had declared that he would be succeeding Frank Fitzsimmons as president of the Teamsters and, as president, would regain control of the Central States pension fund. Williams invoked the fifth amendment privilege (p. 195).

Williams was asked if, following the meeting at Simone's home, he then began taking steps to pressure the trustees of the pension fund to protest the actions of the fund's investment managers. Williams again invoked the ffth aendment privilege (p. 195).

Steinberg asked Williams if he and Nick Civella discussed a meeting Civella had in April of 1979 with a representative of Chicago gang leader Joe Aiuppa to talk over the desire of the Chicago gang to use Williams to gain access to the Central States pension fund. Williams invoked the fifth amendment privilege (p. 195).

Williams was asked if, acting under order of Nick Civella, he arranged for John Dwyer to resign as executive director of the Central States pension fund. Williams invoked the fifth amendment privilege (p. 196).

Williams was also asked if he put Nick Civella's relatives in Teamsters Union jobs. Williams invoked the fifth amendment privilege (p. 196).

Williams was asked if he played any role in the selection of trustees for the pension fund. In addition, Williams was asked if he directed the trustees or influenced their decisions. To both questions, Williams invoked the fifth amendment privilege (p. 196).

Williams was asked if, on September 19, 1979, 2 years after his own resignation from the pension fund board of trustees, he told the successor trustees to "worry about their own business and keep their nose out of the pension fund business." Williams invoked the fifth amendment privilege (p. 196).

Steinberg cited searches of the homes of two reputed members of the Kansas City crime syndicate—Carl "Cork" Civella and Carl "Tuffy" DeLuna. Pointing out that certain records were found in these searches, Steinberg asked Williams if he had any knowledge of them. Williams invoked the fifth amendment privilege (p. 196).

Williams was asked if he knew anything about records which show the receipt of money by him. Williams invoked the fifth amendment privilege (p. 196).

Williams was also asked if he had received money or something of value from Nick Civella or Allen Dorfman or any of their associates. Williams invoked the fifth amendment privilege (p. 196).

Altogether, Williams invoked the fifth amendment privilege 23 times.

The same court-authorized electronic intercepts that formed the basis for the information about the role of Kansas City organized criminals in Las Vegas casino operations and their reported links to Roy Lee Williams were also the foundation for questions asked of William Cammisano of Kansas City during the subcommittee's organized crime and use of violence hearings.

Cammisano, an alleged high-ranking Kansas City mob member and according to materials seized by the FBI in Kansas City also a recipient of skim proceeds, was asked questions which were similar to those asked Roy Lee Williams.

On May 1, 1980, Cammisano was brought before the subcommittee from the Federal Penitentiary in Springfield, Mo., where he was serving a 5-year sentence for extortion.[6]

The subcommittee advised Cammisano that it had information indicating that he was a member of the Kansas City organized crime syndicate headed by Nick Civella. He was asked if that were true.

Cammisano was asked if he, Nick Civella, or Carl DeLuna received income from skimming operations of the Tropicana Hotel and other Las Vegas casinos.

Cammisano was asked if in February of 1972 he met with Nick Civella and others to discuss plans to have the Kansas City mob become secret owners of several Las Vegas casinos.

To these 5 questions, and to 26 other questions, Cammisano invoked his privilege under the fifth amendment of the Constitution not to respond because his answers might incriminate him.

When it became apparent that Cammisano intended to invoke the fifth amendment to all questions. Senator Nunn informed him

[6] Hearings, Senate Permanent Subcommittee on Investigations, "Organized Crime and the Use of Violence," May 1, 1980, Part 1, pp. 224–233.

that the subcommittee had petitioned the U.S. District Court for Washington, D.C. regarding his appearance.

In the petition, the subcommittee asked that Cammisano be given immunity from use in any criminal prosecution of his testimony. Judge George L. Hart, Jr., U.S. district judge for the District of Columbia, granted the petition on April 18, 1980.

By immunizing Cammisano in this manner, the court's action had the effect of rendering invalid a refusal to testify on the fifth amendment grounds that his answers might incriminate him. Since he had been given a grant of immunity, he could not incriminate himself and would have to testify. Since Cammisano had been convicted of some of the events he was asked about, and was currently incarcerated, the subcommittee, after consultation with the Department of Justice, felt it appropriate to petition the court for immunity for Cammisano.

Cammisano testified that he understood the judge's order which required him to testify. But, when he was questioned again about his involvement in the activities of the Kansas City crime syndicate, Cammisano again refused to answer, invoking his fifth amendment privilege, asserting that Judge Hart's order was "void and invalid" and citing a plea bargaining agreement connected with his current prison sentence.

The Investigations Subcommittee, the Governmental Affairs Committee and the full Senate then voted to enforce Cammisano's duty to testify. The court ultimately ruled that Cammisano was in contempt.

Upon final judgment, Cammisano's current prison sentence will be interrupted and he will begin serving a term that will extend from the time of his refusal to testify until the end of the 97th Congress.[7]

Imprisonment under the contempt of court citation would be ended if Cammisano should agree to testify.

NO CRIMINAL VIOLATIONS CITED BY IRS

IRS began its investigation of the Central States pension fund in 1968. Senator Nunn asked IRS witnesses how many criminal convictions had resulted from that investigation in that 12-year period.

At the hearings, no IRS witness could recall how many successful tax cases resulted from the Service's pension fund investigation.

Following the hearings, IRS searched its files and reported to the subcommittee that one criminal conviction had been obtained in connection with the fund investigation since 1968. Alvin Baron, who had been a fund official, was convicted of solicitation of a bribe, filing a false income tax return and five counts relating to a scheme to defraud by wire (pp. 228–229).

REPORTING PROCEDURE WAS NEVER USED

Carin A. Clauss, the Solicitor of Labor, said the Department was under no obligation to investigate traditional crimes in union trust funds, crimes such as embezzlement and kickbacks.

[7] Cammisano's appeal was denied by the U.S. Federal Court of Appeals serving the District of Columbia on May 13, 1981. Cite: In the Matter of the Application of the United States Senate Permanent Subcommittee on Investigations. Nos. 80-2382 and 81-1037, May 13, 1981.

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She said the only violations that ERISA spelled out as being crimes to be investigated by the Department were reporting and disclosure infractions.

Clauss said that since ERISA became effective in January of 1975 the Labor Department had never investigated any alleged instances of violations of the reporting and disclosure provisions.

Senator Nunn asked if, in the 5 years of SIS's life, the Labor Department had ever discovered a reporting violation. The answer was no. "If they ever did, I never heard that," Associate Solicitor Monica Gallagher said. "No one ever came and said, 'We have this reporting violation alleged. Shall we investigate or not investigate?' It seems to me that's a likely thing they would have done being aware of the difficulties that we have had in the jurisdictional area" (p. 500).

Should the Department in its ERISA enforcement turn up information indicating a crime like embezzlement, Clauss said, a procedure was in place to investigate it. She asked William Hobgood, the Assistant Secretary for Labor-Management Services, to explain.

Hobgood said evidence of such crimes would be referred to the Office of the Inspector General in the Labor Department. A decision would then be made as to whether or not the alleged infraction should be pursued along civil lines or criminal. This decision would be reached after consultation with the Justice Department.

Senator Nunn requested documents from the Department to determine how many times it had followed its own procedures in referring criminal matters to its Inspector General. Hobgood said no such referrals had been made to the IG's Office in connection with the pension fund inquiry (p. 501).

VII. Criminal and Civil Jurisdiction

Criminal investigation under ERISA

As cited earlier in this report, Monica Gallagher of the Solicitor's Office and Lawrence Lippe of SIS disagreed over what constituted appropriate cooperation by the Labor Department with the Department of Justice.

The Gallagher-Lippe debate reflected a long-standing dispute over what responsibility the Labor Department had to investigate criminal wrongdoing under the ERISA statute. This debate was central to the subcommittee's investigation.

In its work in the labor-management field, this subcommittee strongly endorsed the concept that the Labor Department had the clear and unequivocal duty to investigate criminal wrongdoing in employee benefit plans.

Under the direction of Secretary F. Ray Marshall, who took office in January of 1977, the Labor Department insisted it has no obligation to pursue this criminal activity with respect to employee benefits plans.

Testifying on September 29, 1980, Secretary Marshall stated the Labor Department policy on this issue when he said, ". . . the objective of the Department of Labor is to investigate possible violations of ERISA; if these investigations generate possible criminal cases as well, they are referred to the Department of Justice. It is not the objective of the Department of Labor to use its investigative authority to investigate violations of the criminal code, and we

believe that we would be on dubious legal grounds if we attempted to do so" (p. 391).

Marshall's remarks were not abstractions over a fine legal point. Instead they represented a concrete, unwavering policy at the Labor Department, a policy that said, in effect, that investigation of employee benefit plans by the Department was to be aimed exclusively at detecting civil violations of ERISA, not criminal violations of the Federal code.

The end result of Marshall's policy was that, even under the most cooperative relationship between Labor and Justice, the flow of information to Federal prosecutors would be limited.

The subcommittee protested Marshall's policy for several years. The subcommittee tried to convince him that the Labor Department was primarily responsible for detecting and investigating criminal as well as civil violations under ERISA. It was the subcommittee's opinion that if the Labor Department failed to try to detect criminal activity in employee benefit plans, a great opportunity would be lost because no other agency has such broad authority and immediate access to information.

In 1978, the subcommittee asked the Library of Congress and the U.S. General Accounting Office to study the Labor Department's responsibility to investigate criminal activities in employee benefit plans such as pension and health and welfare funds.

In a report issued on March 1, 1978, the American Law Division of the Library of Congress informed the subcommittee that the pension reform statute, ERISA, vested in the Labor Department the authority and the obligation to try to detect and investigate criminal wrongdoing in employee benefit plans.

The Library of Congress report said:

> This means that, while the Attorney General is responsible for the prosecution of those who illegally used the assets of labor organizations and pension and welfare funds, it is the responsibility of the Secretary of Labor to take the initial action to see that such alleged violations as fraud, embezzlement, misapplication, conflict of interest and other criminal acts involving those assets are exposed and brought to the attention of the Attorney General for prosecution.

The Library of Congress said the Labor Department, which had the initial statutory access to welfare benefit plans, was charged with identifying crimes. The Justice Department could not further investigate or prosecute crimes until they were first detected the Library report said.

In a report issued on September 28, 1978, GAO said that the Labor Department was primarily responsible for detecting and investigating criminal as well as civil violations under ERISA. But, unfortunately, according to GAO's report, the Labor Department's policies and practices had the effect of neglecting the Department's responsibilities to detect and investigate criminal wrongdoing in the operation of employee benefit plans.

On November 26, 1979, the subcommittee, in a report on corrupt practices in the sale of insurance programs to union welfare plans, underlined again the importance of the Labor Department living

up to its obligation to pursue criminal wrongdoing in its audits of pension funds and other benefit plans. *

The subcommittee found that the Labor Department took "an unduly narrow view" of its duty to detect and investigate Federal crimes related to ERISA.

The subcommittee went on to say that the Labor Department should draft a comprehensive program to identify Federal crimes in employee benefit plans. Once the alleged criminal activity was detected, it was the Department's responsibility to conduct at least preliminary inquiry before the matter was referred to the Justice Department.

Without this preliminary effort by the Labor Department, the subcommittee said, it was likely that many crimes and criminals would not be detected. However, the subcommittee concluded its findings on this matter on a pessimistic note, observing that Labor Secretary Marshall was aware of the subcommittee's philosophy in this regard and still refused to adopt it as his own.

Marshall's Labor Department was still not committed to the principle of "vigorous enforcement of the criminal and civil laws relating to labor unions and employee benefit plans," the subcommittee said.

In conducting its examination of the Labor Department's investigation of the Central States pension fund in 1980, the Department of Labor still lacked a commitment to pursue criminal investigations.

Encouraged by the legal opinions of his Solicitor, Carin A. Clauss, and his Associate Solicitor, Monica Gallagher, Marshall simply refused to recognize the possibility that there might be some wisdom in the subcommittee's belief that the department was responsible for a substantive measure of preliminary investigation regarding alleged criminal actions in the operations of the Teamsters Central States pension fund.

The General Accounting Office disputed the Labor Department on this. Raymond Wyrsch, a senior attorney at GAO, said ERISA was specific on the point that the Labor Department is to play a key role in investigating both civil and criminal abuses (p. 58).

Marshall, Clauss and Monica Gallagher would not relent in their view, nor would the subcommittee members. In 4 days of public hearings and months of investigation, the dispute remained unresolved.

DEBATE OVER CIVIL AND CRIMINAL JURISDICTION

Tension existed between the Solicitor's Office and SIS in 1976 when Monica Gallagher and Steven J. Sacher became increasingly involved in the investigation of the Central States pension fund. Gradually, SIS fell under the supervision of the Solicitor's Office.

By the summer of 1977 SIS had lost all semblance of autonomy. But, even though the Solicitor's Office was in charge, the tension between the two organizations remained.

Frustrated and angry over the incursion of the Solicitor's Office into the SIS mission, Lawrence Lippe and his deputy, Lester Seidel, quit in the fall of 1977. Steven J. Sacher, the Associate Solicitor,

* Report, Senate permanent Subcommittee on Investigations, "Labor Union Insurance Activities of Joseph Hauser and His Associates," November 26, 1979, pp. 35, 36.

also left, returning to the service of Senator Harrison Williams of New Jersey as general counsel to the Senator's Labor and Human Resources Committee.

When Sacher resigned from the Department, Monica Gallagher replaced him as associate solicitor in November 1977 (p. 85).

A description of how the SIS-Solicitor's Office rift persisted was given to the subcommittee by Raphael Siegel, who swore to his account in an affidavit on August 21, 1980 (pp. 113–117).

An auditor, Siegel conducted financial investigations for 15 years for the New York State Insurance Department and served from 1971 to 1975 with the U.S. Labor Department on assignments to organized crime strike forces. He joined SIS in 1976.

Recalling that in the early days of the SIS effort the focus was on examining the pension fund's financial transactions, the flow of money in and out of accounts, reporting and disclosure, book entries, and responsibility for transactions, Siegel said these evaluations were laying the foundation for a more broadly based inquiry that would include intensive audit and field investigations.

Irregularities in the management of the fund were showing up frequently, Siegel said. Preliminary findings suggested criminal as well as civil wrongdoing, Siegel said, explaining, "Although the primary SIS mission was the detection and litigation of civil violations of ERISA, the findings in many cases gave rise to strong implications of serious criminal violations."

Siegel said it would have been a mistake for SIS to draw an arbitrary distinction between criminal and civil violations. "It should be pointed out," he said, "that while most civil violations of ERISA probably would not involve criminal offenses, nearly all criminal offenses regarding employee benefit plans involve civil ERISA violations. To engage in or to conduct criminal activity with fund assets is hardly a prudent use of those assets solely in the interest of fund beneficiaries. And a case that can be proved criminally beyond a reasonable doubt can certainly be proved civilly by preponderance of the evidence."

Convinced that it was "neither feasible nor desirable to separate the civil element from the criminal element" in his analyses of fund activities, Siegel set out to "fully develop areas of possible criminal violation in conjunction with my analysis of civil ERISA violations." (p. 115).

Siegel's sense of how to investigate the fund ran counter to policy coming from the Solicitor's Office where attorneys drew a sharp line between civil and criminal violations. Siegel said this became most apparent after Lippe and Seidel quit and SIS was made a support arm for the Solicitor's Office as it prepared for the civil suit against fund trustees.

Placed in charge of a team of auditors and investigators, Siegel was under a group of attorneys in the Solicitor's Office. None of these attorneys was adequately familiar with the facts of the fund transactions which his team has been analyzing, Siegel said. He said the Solicitor's Office attorneys were totally lacking in the background necessary to understand complex financial accounting and investigative problems such as those presented by the Central States pension fund case.

Perhaps because they lacked the training in financial investigation, the Solicitor's Office lawyers did not try to familiarize them-

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selves with what he and his team of auditors were doing, Siegel said.

Because the lawyers were not informed, they went about their task of preparing for the civil suit "without full knowledge of facts relevant to their areas of inquiry and without utilizing the developed expertise of SIS staff members," Siegel said (p. 116).

Two attorneys from the Solicitor's Office, Robert Gallagher and Richard Carr, told Siegel frequently that he and his team were to concentrate exclusively on civil matters and that "no mention was to be made of any criminal implication of any transaction in any SIS report," Siegel said (p. 116).

Concluding his affidavit, Siegel summed up his feelings about his tenure at SIS this way:

> It was unlike anything that I had ever experienced in my professional life * * * we were not permitted to proceed in a professional manner with a well defined plan of action and full and timely follow through.
>
> One very unusual and disturbing factor was our inability to conduct a proper field investigation. It has been my professional experience that no complex financial matter of this sort can be properly investigated without extensive field work. We were not permitted to undertake even limited follow-up field work to fill in gaps in our initial analysis of fund loans. As a result, some key areas of those analyses necessarily contained gaps and assumptions, and possible distortions and limitations.
>
> Of course, the most distressing thing was my inability to promptly and thoroughly investigate the loans assigned to me in accordance with the approved investigative plans. Nothing at all was done during 1977, and with the filing of the suit against the pension fund in 1978, further investigative efforts would have been bogged down in court discovery rules. I am not, however, aware of any significant attempts to proceed with discovery since the suit was filed. In my opinion, every attempt should have been made to avoid bringing matters under investigation into any suit until the investigation was completed. In my opinion, this was not done (p. 117).

CULPABLE THIRD PARTIES MAY NEVER BE PROSECUTED

The February 1, 1978, civil suit brought by the Labor Department named only trustees and fund officials as defendants.

Borrowers who had been involved in allegedly imprudent loans—borrowers such as Morris Shenker, Allen Robert Glick, and Alvin Malnik—were not named as defendents by the Labor Department.

Senator Nunn raised the possibility that borrowers like Shenker, Glick and Malnik would no longer be liable either civilly or criminally even if the loans they received are shown to have been transacted imprudently.

Senator Nunn asked, did it now appear that Shenker and other borrowers had effectively avoided any possibility of being held accountable, civilly or criminally, for their questionable dealings? Senator Nunn was particularly interested in the possibility that the statute of limitations would expire on many potential cases.

Raymond Wyrsch, GAO senior attorney, replied that there was "a real possibility" that borrowers like Shenker and other borrowers like him would never be brought to justice (p. 41).

Wyrsch also noted:

> I believe that to the extent that the ongoing civil lawsuit does not encompass the potential violations, and that the current investigation by the Department of Labor does not cover prior violations, that the statute of limitations will run on those potential violations (p. 30).

Wyrsch's reference to the current investigation not covering prior violations had to do with the fact that the Labor Department, when it started a second investigation of the fund in 1980, arbitrarily set the date of January 1977 as the time beyond which no past transactions could be examined.

Anything that happended in fund transactions before January 1977 would not be investigated. The overwhelming majority of the fund transactions that were considered questionable—the millions upon millions of dollars in loans that led to the department's investigation of the fund back in 1975—all took place before January 1977.

Senator Nunn asked GAO's Raymond Kowalski why the Labor Department used that cutoff date. Kowalski said he didn't know because Labor Department officials were refusing to discuss any aspect of the new inquiry with GAO (pp. 29–30).

LABOR DEPARTMENT POLICY ON CRIME INQUIRY TERMED "CONFUSING"

Senator Nunn said there were differing opinions as to the role of the Labor Department in criminal investigation. "We have a rather confusing picture," Senator Nunn said, pointing out that sometimes the Department seemed to be saying it had no responsibility in the criminal investigative field and, at other times, it seemed to be not only accepting this responsibility but attesting to it in public declarations.

As early as the summer of 1977, Monica Gallagher, testifying before the subcommittee, denied the Department had responsibility in the criminal field. She said there was no requirement that the Department investigate criminal matters under ERISA.*

However, it was the same Moncia Gallagher who, also in the summer of 1977, came up with the idea of obtaining sworn depositions from 81 figures in connection with Teamsters Central States pension fund loans.

Norman E. Perkins, who headed SIS from the fall of 1977 to May 1980, said it was the practice of his organization not to investigate criminal matters and that it "had better not."

In contrast with Perkins' view was the Federal Register which in 1976, 1977, 1978, and 1979 carried this announcement:

> The principal function of the special investigations staff [SIS], pension and welfare benefit programs, pertains to the enforcement of the criminal laws. It conducts investigations to prevent and detect violations of laws which bear

*Subcommittee hearing, July 18, 1977, p. 25.

> criminal penalties, which investigations in appropriate cases will result in criminal prosecutions (p. 496).

Even though this public declaration was published for 4 consecutive years, Labor Department spokesmen said the announcement should not have been promulgated and the fact that it was printed at all was because it was the work of an SIS dissident.

Associate Solicitor Monica Gallagher said the announcement was incorrect. Lloyd F. Ryan, Jr., an attorney in SIS, placed the announcement in the Federal Register without clearing it with the Solicitor's Office, Mrs. Gallagher said. She said Ryan was "dissatisfied" with the way things were being managed and "did not go through channels."

Carin A. Clauss, the Solicitor of Labor, said it was the duty of the Solicitor's Office to pass on such announcements before they got into the Federal Register. It was her understanding that now, 5 years after it ran for the first time, it was being corrected.

Robert Gallagher, also of the Solicitor's Office, said it was he who informed Clauss that the announcement would be corrected, but he wasn't sure of whether it had actually been corrected or would be corrected in the future. "I have not checked the Federal Register myself," he said (pp. 497–498).

Senator Nunn pointed out that the memorandum of understanding of 1975 between the Labor Department and the Justice Department indicated that the Labor Department had the responsibility for investigating ERISA violations, including investigations of certain criminal matters.

Senator Nunn referred to Secretary Marshall's testimony of July 18, 1977, in which the Secretary indicated that his Department would be developing evidence for possible use in criminal prosecutions.

Senator Nunn quoted from ERISA, 29 U.S.C. 1136, that:

> The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law (p. 496).

The quotation from ERISA contrasted, though, with this statement Secretary Marshall made to the subcommittee in the September 1980 hearings:

> It is not the objective of the Department of Labor to use its ERISA investigative authority to investigate violations of the criminal code, and we believe that we would be on dubious legal grounds if we attempted to do so.

Addressing Secretary Marshall, Senator Nunn said:

> So I don't know whether you understand our perplexity in trying to deal with this in light of what we see as very contradictory policies relating to law, to the regulations, to previous statements, and to your present statement and seemingly your present policy.

Secretary Marshall said the Labor Department's jurisdiction in criminal matters differed, depending on whether one was referring to the Labor Management Reporting and Disclosure Act or to

ERISA. Senator Nunn said all his references were to ERISA and Marshall agreed with that. Other Labor Department witnesses then raised related issues and neither Secretary Marshall, nor any of his aides, addressed directly the charge that the Department had a confusing and confused policy regarding criminal investigation (pp. 496–497).

VIII. Labor Department Cooperation With Justice Department

MARSHALL ASSURED CONGRESS OF COOPERATION WITH JUSTICE

> We have periodically turned over to the Justice Department evidence that may warrant prosecution under Federal criminal statutes. We will continue to do this." *

That assurance was given the Senate Permanent Subcommittee on Investigations by Labor Secretary F. Ray Marshall in testimony of July 18, 1977.

Marshall's remarks were in keeping with the original concept, spelled out before the subcommittee 18 months earlier by James D. Hutchinson, in which the Labor Department, through SIS, would work in close harmony with the Criminal Division of the Justice Department.

Virtually everybody who was informed about Federal investigative practices assumed that cooperation between Labor and Justice would be a high priority in the inquiry.

Raymond J. Kowalski, who led the GAO's examination of the Labor Department's investigation of the pension fund, testified that the key to successful criminal prosecution in the pension fund case rested with the Labor Department.

Kowalski cited the December 1, 1975 memorandum of understanding between Labor and Justice as evidence that Labor was the "focal point of the investigation."

Since Labor officials had first and ready access to fund records, Kowalski said, Justice Department prosecutors looked to Labor for information indicating potential criminal violations (p. 15).

COOPERATION SAID TO HAVE BEEN INADEQUATE

The first year of SIS's existence there was cooperation between SIS and the Justice Department. But after that SIS never measured up to the ideal of having a good working relationship with the Justice Department (pp. 13, 70).

In establishing SIS, James D. Hutchinson told the Investigations Subcommittee that a smooth exchange of information between Justice and Labor was essential. Without it, he said, the investigation would not succeed.

Hutchinson envisioned a one-government approach to the Central States pension fund, with the Labor and Justice Departments and IRS working closely together, in a spirit of teamwork and harmony.

IRS refused to join the effort in any meaningful fashion. The Internal Revenue Service later did agree to cooperate.

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* Hearings, Senate Permanent Subcommittee on Investigations, "Teamsters Central States Pension Fund," 95th Cong., 1st Sess., July 18, 1977, p. 15.

Cooperation between Labor and Justice, spelled out in the December 1, 1975 memorandum of understanding signed by senior officials of both departments, left much to be desired. GAO felt that cooperation in 1976 had been adequate but that in 1977, when the Labor Department began to implement its civil litigative strategy, the flow of information from SIS to the Justice Department declined. The litigation strategy, GAO said, "resulted in changes in Labor's philosophies in handling the investigation, which were not always fully atuned to Justice's needs." (p. 70).

GAO said the Labor Department put off most third-party investigations because of the litigative strategy. Third-party investigations could have resulted in information revealing criminal conduct that would have been referred to the Justice Department. With no third-party investigation, however, this potential source of information was never realized.

Even where potential evidence of crime was available—such as in the files of the Central States pension fund headquarters in Chicago—the flow of information was still inadequate, at least from the point of view of the Justice Department. The Labor Department felt that investigative summaries prepared by SIS were internal drafts and, therefore, they were not referred to the Justice Department. By denying Justice this documentation, the Labor Department made it difficult for Federal prosecutors to learn about potential criminal violations. Officials in the Criminal Division of the Justice Department told GAO that the Labor Department's attitude and actions on the subject of the referral of information were counter to the spirit of full cooperation which both Departments had pledged at the start of the investigation (p. 70).

Disagreements between the Labor and Justice Departments as to how best to cooperate were supposed to be reconciled by the interdepartmental policy committee whose members included senior officials of both Departments. Established in December 1975, the committee was cited by James Hutchinson in his assurances to this subcommittee that appropriate mechanisms had been set up to insure cooperation. But, according to GAO, the interdepartmental policy committee seldom met once the investigation began and never met once the information referral problems surfaced. "Nonexistent" was how GAO described the committee (p. 71).

The "nonexistent" committee was replaced in the summer of 1977 by an informal interagency work group composed of mid-level officials of both Departments. The work group, officially established in December 1978, was to meet every 2 weeks.

GAO said that this new group did not solve the communications problems. Even the most fundamental information was still not given to the Justice Department's Criminal Division.

One Justice Department official pointed out that the Criminal Division was not told when the civil suit would be filed until the day before it happened—and then the information came not from the Labor Department but from the Civil Division of the Justice Department, GAO said (p. 71).

KEENEY'S MEMORANDUM TO CIVILETTI

Cooperation between SIS and the Justice Department started off in good fashion. But relations deteriorated. Before long some SIS members were not even supposed to talk about the case with the Justice Department.

This evaluation was made by John Keeney, Deputy Assistant Attorney General in the Criminal Division of the Justice Department. His remarks were in a memorandum to his boss, Benjamin R. Civiletti, who was then the Assistant Attorney General in charge of the Criminal Division (pp. 12–14).

In his memorandum, dated January 31, 1978, Keeney said that during the first 18 months of the SIS investigation—from December 1975 to late summer of 1977—cooperation was excellent. "Labor's investigative staff was in daily contact with our people," Keeney said, "matters were referred to us for criminal investigation; and we were kept apprised in advance of any major civil remedy to be demanded by Labor."

However, Keeney said, the relationship between the two Departments began to go downhill. Personnel changes were taking place in SIS and, as a consequence, the unit now lacked leadership and manpower. No one at the Department of Labor would brief the Justice Department on the size and composition of SIS or what it was doing, Keeney said. He went on to say that the pension fund was no longer giving SIS access to its records, a development Labor was slow in reporting to Justice.

Making the Labor Department even more of a mystery was the fact that Secretary Marshall ordered a 45-day review of the SIS effort, Keeney said. But the Justice Department was not informed of what the review examined or what its findings were.

Instead of keeping the Criminal Division informed of the review and its results, it was Secretary Marshall's plan to discuss the matter personally with Attorney General Griffin Bell, Keeney said.

Reflective of the breakdown in communications between the two Departments was the fact that SIS members were instructed not to discuss their investigation with Justice, Keeney said.

In the memorandum, Keeney raised two additional problems with the Labor Department. First, he said, the Labor Department planned to reduce the number of investigators assigned to organized crime strike forces from a budgeted level of about 70 to 15. He pointed out that this reduction in detailed investigators—or compliance officers as the Labor Department referred to them—could cause concern in Congress. Keeney said the problem should be reconciled before it came to light in public in a congressional hearing.*

The second problem Keeney cited had to do with what he termed Labor's failure to refer evidence of criminal and civil misconduct to the Justice Department. Keeney said ERISA granted the Secretary of Labor authority to investigate civil and criminal violations and to file civil suits subject to the direction of the Attorney General.

Keeney said ERISA also obliged the Labor Department to furnish Justice "any evidence which may be found to warrant consideration" for criminal prosecution. Unfortunately, the Labor Department could no longer be counted on to make such referrals to Justice, Keeney said, adding that Labor's unwillingness to cooper-

*The Investigations Subcommittee held such a hearing in April 1978, the result of which was that the Department of Labor reconsidered its proposed reduction in strike force personnel. Instead of reducing the number from 70 to 15, the Labor Department assigned about 90 investigators to the strike forces.

ate was contrary to the memorandum of understanding between Justice and Labor that was agreed to in December 1975.

LABOR MADE 11 REFERRALS TO JUSTICE WITH CRIMINAL INQUIRY POTENTIAL

John Keeney of the Criminal Division at Justice said the Labor Department was not referring very much information of a criminal nature from SIS to the Justice Department. Just how slim such referrals were was seen in data assembled by GAO. In the 5 years from the start of the case in 1976 to 1980, Labor made 11 formal loan information referrals that had potential for criminal investigation (p. 71).

In 1977, Labor made five referrals. Five more were made in 1978 and one went over in 1979. None of the 11 referrals resulted in a criminal indictment. One was still under investigation as of August 18, 1980. Six of the referrals were being pursued in connection with other investigations.

Other Justice Department investigations involved 15 loans made by the Central States pension fund. Of these 15 cases, 1 ended with a conviction. For three others, criminal indictments were secured, but two resulted in acquittal or dismissal and the third was the subject of a trial just then beginning. For the remainder, seven were still under investigation and four were closed out without indictments.

Labor also referred information to Justice on an informal basis. Justice Department officials told GAO that most of this information was of no value in their criminal investigative efforts, including use in organized crime strike force programs.

STRONG LANGUAGE USED IN DISCUSSING COOPERATION WITH JUSTICE

James D. Hutchinson, the administrator of pension and welfare benefit programs, made a good impression on Senators when he briefed the Investigations Subcommittee on the Central States pension fund inquiry on December 11, 1975.

Hutchinson envisioned the special investigations staff as a cadre of attorneys, auditors, accountants, and investigators which would operate within the Labor Department but which would also have some degree of independence.

Patterned in part after organized crime strike forces and the fraud sections of U.S. Attorney's Offices, SIS was given subpena power and was expected to conduct thorough investigations in a comprehensive manner. Close cooperation with the Justice Department would be essential, Hutchinson said.

That hoped-for cooperation was not achieved. Nor did SIS ever become effective in its investigation. SIS lost out in a bureaucratic struggle with the Labor Department's Solicitor's Office. Accustomed to being the Department's legal arm, the Solicitor's Office stripped SIS of its subpena power, countermanded its investigative strategy, and eventually took complete control of SIS and the Central States investigation.

Gradually, the flow of information from SIS to the Justice Department stopped. James Hutchinson, who had presided over the creation of SIS and had believed it could succeed, resigned from the Labor Department. Key SIS personnel either quit or asked to be

transferred, concluding it was futile to try to investigate the pension fund as long as the Solicitor's Office was in charge.

One of the especially irksome aspects of SIS, as far as the Solicitor's Office was concerned, was the desire on the part of several senior SIS officials to work in close harmony with the Justice Department. The following anecdote is instructive.

In the summer of 1977—a year and a half after SIS was created—Edward F. Shevlin, an SIS investigator, warned Monica Gallagher of the Solicitor's Office that directives she had given SIS could damage the ability of the Justice Department to prosecute persons who had criminally abused the fund.

"——— Justice," was Monica Gallagher's response, Shevlin testified in his August 25, 1980, appearance before the subcommittee (p. 105).

More precisely, what she probably said was, "Let Justice go ——— itself," Monica Gallagher herself testified before the subcommittee on September 30, 1980 (p. 141). But, she said, such comments by her should not be interpreted as reflecting hostility toward the Justice Department.

Nor, she said, should her use of such language directed against the Justice Department give anyone the idea that she did not fully support the goal of cooperation between the Labor and Justice Departments. In fact, she said, it was inexcusable for anyone who heard her say, "Let Justice go ——— itself," to interpret her strong language as suggesting that she opposed cooperation with the Justice Department (p. 462).

Gallagher said she used such obscenities occasionally—

> * * * in the context of a conversation with some Labor Department employee who, without authority or adequate justification, was invoking the name of the Department of Justice to influence a course of action under consideration by the Labor Department. If one of them advocated that the Labor Department take action which was inconsistent with its interests and mission to protect employee benefit plan assets, solely on the basis that the action might be in the interests of the Justice Department, I could well have been provoked to make such a remark to express my dismay with this line of argument.

But, Gallagher added:

> I absolutely deny that any such remark was meant to express any intention to interfere with or not cooperate with the Department of Justice (p. 461).

Senator Nunn suggested that a reasonable person hearing her direct such language at the Justice Department would conclude that Gallagher did not wish to cooperate with Justice.

Mrs. Gallagher replied:

> That would be true if the Department of Justice had actually said the thing that was being alleged that they had said. When in fact the name of the Department of Justice is being invoked by some Labor Department employee who doesn't want to do his job, and who is saying that the reason he doesn't want to do his job is because the Department of Justice doesn't want him to, it seems to me

> one appropriate kind of response is to say the kind of thing which I said, which is a way of saying I just don't believe that (p. 461).

Another senior SIS official said Mrs. Gallagher used "strong invective" frequently on the subject of sharing information with the Justice Department. She and her colleague, Associate Solicitor Steven J. Sacher, were against cooperation with the Justice Department, according to the testimony of the SIS Director, Lawrence Lippe. He said Sacher and Mrs. Gallagher told him not to cooperate with Justice (p. 150).

Lippe said that there was a satisfactory flow of information from Labor to the Justice Department from January 1976 until early 1977 when that flow began to dry up.

Lippe said the decline in information sent to the Justice Department became more and more apparent from March to May 1977 until it virtually stopped altogether.

Lippe said:

> It just was ever increasing. From time to time, strong invective was used by both Mr. Sacher and Ms. Gallagher in describing their views toward the Department of Justice * * *. They both, from time to time, would suggest that the Justice Department engage in sexual activity with themselves, although they used different words to make that suggestion (p. 150).

Lippe cited the pressure to stop cooperating with the Justice Department as but one of the impediments to SIS. There were others, he said, equally obstructive, equally demonstrative of the fact that SIS could not succeed.

Lippe said the obstacles that confronted SIS occurred gradually. There was a consistent erosion of authority, he said, an intermittent chipping away at the functions and responsibilities of the investigative-litigative unit.

In the 22 months he was its Director, SIS lost its subpena power, its authority to litigate civil cases, its authority to conduct third-party investigations, and its authority to communicate with the Justice Department was undermined, Lippe said, adding that, in addition neither he nor his associates were included in Labor Department discussions of how to proceed in the Central States case.

TWICE SIS WAS TOLD NOT TO COOPERATE WITH JUSTICE

Monica Gallagher was asked about Lawrence Lippe's testimony that she and Steven Sacher told him not to cooperate with or give information to the Justice Department. Gallagher denied she ever gave Lippe such general orders.

But there were two specific developments that did cause her to give such directions to Lippe. In neither case did the order apply to across-the-board cooperation with Justice, only to the specific instance, she said.

One such order had to do with a meeting between Secretary Marshall and the Attorney General. "* * * my instructions were that the communication would be at the top level and that there was to be a temporary halt at the staff level communication about the litigation," she testified. That order she gave to someone at SIS but she wasn't sure if it was Lippe or another SIS officer (p. 484).

The second occasion—and on this one she was certain it was Lippe to whom she spoke—for the directive regarding no cooperation with Justice had to do with what Gallagher called "a series of drafts." She felt these drafts prepared by SIS contained "unreviewed, inaccurate" information and she did not want them referred to the Justice Department for fear, she said, of their "ending up in bad hands." But Lippe, she said, "was all for" sending this documentation to the Justice Department until she put a stop to it (p. 484).

PURPOSE OF SIS, ACCORDING TO GALLAGHER AND CLAUSS

Monica Gallagher made clear her opinion of SIS as being an inferior organization led by persons whose legal and investigative judgment was suspect. She was also of the opinion that SIS was a kind of temporary unit whose director was never intended to be more than an assistant to attorneys in the Solicitor's Office.

She made these assertions in response to Senator Nunn, who asked her if it was her understanding that SIS was only to investigate, but not to litigate. She said:

> It was my understanding that the SIS was an experimental creation and that the director of the SIS, as a matter of personal prerogative, was to be a special assistant to the Solicitor and was to be permitted to participate in major litigation involving the Central States case (pp. 485–486).

Gallagher went on to say:

> It was also my understanding that the SIS was not to have any other personnel functioning in a way which could be characterized as the practice of law. So it was always my understanding that there would be a role for the attorneys in the Solicitor's Office in any litigation under ERISA (p. 486).

Carin A. Clauss, the Solicitor of Labor, appeared with Mrs. Gallagher. Clauss added this thought to the discussion:

> I might just say what the agreement contemplated was that Mr. Lippe would participate under the direction and control and as an employee of the Solicitor's Office, as a special assistant, and the Solicitor, both Mr. Kilberg and myself, would assign him and use him in the way we thought best. We certainly intended to use him (p. 486).

William J. Kilberg was Solicitor of Labor from April 1973 to January 1977. Clauss became Solicitor in March 1977.

CRIMINAL, ETHICAL IMPLICATIONS OF NOT WORKING WITH JUSTICE

Lester B. Seidel, who was Deputy Director of SIS, said the Labor Department's failure to turn over information on possible criminal conduct to the Justice Department violated the December 1, 1975, memorandum of understanding agreed to by the two Departments.

But, Seidel said, the unwillingness of the Labor Department to work with Justice was more serious than the reneging on the memorandum of understanding. It was, Seidel said, unwise, unethi-

cal and possibly illegal and "a direct violation of any ethics of a Government attorney." (p. 132).

LACK OF COORDINATION CAUSED SERIOUS MIXUPS

The Labor Department's preoccupation with the civil suit led the Department into a situation in which virtually no criminal investigation was conducted.

The civil litigation so eclipsed every other consideration that the Department was guilty of an embarrassing lack of coordination with the Justice Department.

An example of this occurred when the Labor Department named former fund Executive Director Daniel J. Shannon as a defendant in the civil suit.

But, because the Labor Department steadfastly refused to check with Justice, Labor did not know that Daniel Shannon was already planning to serve as a witness for the Government in a criminal case the Justice Department was prosecuting.

Shannon, upset by being named in the civil suit while cooperating with the Government, responded by saying he would not testify in the criminal case. Raymond J. Kowalski of GAO said it was only 1 hour before the criminal trial was to begin that Shannon relented and agreed to be a Government witness (p. 15).

Shannon was later dropped as a defendant in the civil suit.

LABOR DEPARTMENT DID NOT MONITOR B. & A. ACCOUNT

In his July 1977 appearance before the subcommittee, Labor Secretary F. Ray Marshall assured Senators that his Department was working in close harmony with the Justice Department in the pension fund investigation. He frequently referred to the pension fund inquiry as a "joint Labor and Justice Department investigation."

As revealed in the subcommittee's hearings of 1980, this cooperation existed to an extent in the early phase of the Department's investigation. In January 1977, cooperation between his Department and the Justice Department began to decline.

By the fall of 1977, cooperation between the Labor and Justice Departments hardly existed in relation to the pension fund case. Matters grew worse and by 1978 Labor Department investigators were under directions to not even speak to personnel of the Justice Department's Criminal Division. Thus, Marshall's assurances to the subcommittee were shown to be inaccurate.

Similarly, Marshall and his senior aides in July 1977 assured the subcommittee that the Labor Department was closely monitoring the benefits and administration, or B. & A. account.* Again, these assurances were found to be inaccurate.

The B. & A. account was the one corpus of pension fund assets that was not turned over to the management of independent, outside investment firms. It was crucial, to the subcommittee's point of view, that the B. & A. account be under the watchful eye of the Government. If not, continued abuse of the fund would go on because the investment managers had no authority over it.

It has already been shown in this report how the trustees tried to loan $91 million to Morris Shenker for the Dunes Casino in Las

*July 1977 subcommittee hearings, pp. 48, 49.

Vegas by taking the money from the B. & A. account. That transaction was stopped.

Raymond J. Kowalski of the General Accounting Office testified that the Labor Department did not properly monitor the B. & A. account (p. 51).

Kowalski said four-fifths of all money coming into the pension fund went through the B. & A. account. In 1979, for example, declared contributions to the fund were $585 million, all of which went to the B. & A. account, while only $151 million was investment income.

Kowalski said the trustees, in fact, controlled even the income from investments because the contract with Equitable specified that if the trustees asked to have the income from investments it would revert to them.

Recalling Secretary Marshall's July 1977 appearance before the subcommittee in which Senators were assured that the Labor Department would monitor the B. & A. account, Senator Nunn asked Kowalski to comment. Kowalski said he was aware of what Labor Department officials had said in 1977 but noted:

> Contrary to the Secretary of Labor's and other official's testimony, we found that Labor did not adequately monitor the B. & A. account (p. 54).

Another misstatement by Marshall was alleged by Kowalski. Senator Nunn cited Marshall's testimony before a House Ways and Means Subcommittee that it was the responsibility of Equitable and the other outside assets managers to determine how much money the fund could keep in the B. & A. account.

But Kowalski again testified to the contrary, asserting that the contract between Equitable and the fund specifically stated that the outside investment managers had no responsibility for the B. & A. account (p. 54). The same point—that the investment managers had no authority over the B. & A. account—was made at the July 1977 subcommittee hearings by Labor Department consultant Eamon Kelley, who was testifying alongside Secretary Marshall at the time.*

Kowalski said a study conducted in 1979 by the Labor Department acknowledged that the outside investment managers had no control over or responsibility for the B. & A. account and that the trustees could request any amount desired from the investment managers and they were required to honor the request (p. 54).

In his March 1980 House Ways and Means Subcommittee testimony, Marshall said the B. & A. account did not have an unreasonably large amount of money in it, the corpus cited by Marshall being $65 million as of June of 1979. But there was a more recent figure Marshall could have used in his March 1980 testimony. On December 31, 1979, the B. & A. account was found to have $142 million, more than double the amount cited by Marshall (pp. 54–55).

Secretary Marshall acknowledged to the Investigations Subcommittee in the 1980 hearings that his Department had not determined what was a reasonable amount of money to be maintained in the B. & A. account (p. 516).

*July 1977 subcommittee hearings, p. 49.

But the Secretary did say, however, that the Labor Department was monitoring the B. & A. account (pp. 509, 516). The Secretary's assertion conflicted with the statement of Norman E. Perkins, Acting Director of SIS from the fall of 1977 to May of 1980, who said the Department did not have access to records of the B. & A. account and, therefore, could not monitor it.

FORMER TRUSTEES DON'T HAVE MEANS TO PAY EXPECTED JUDGMENT

Even if the Government wins the civil suit and the former trustees are held liable for losses the fund suffered under their stewardship, the pension fund cannot be made whole. The reason is that the trustees' financial resources are not considered to be large enough to pay off the anticipated judgments should the trustees be held liable.

Labor Secretary Ray Marshall explained the predicament this way:

> We expect, after trial, to obtain a judgment in the millions of dollars, judgment which will probably exceed the amounts which are recoverable from the combined assets of the defendants and their insurance (pp. 290, 310).

IX. The Kotch-Crino Report of Management Review

LABOR DEPARTMENT HAD DOUBTS ABOUT ITS OWN INVESTIGATION

The Labor Department had doubts about its own investigation of the Central States pension fund. These doubts were triggered in part after a GAO inquiry was initiated in 1978 at the request of this subcommittee (pp. 64, 259, 372).

In the spring of 1979, Labor Under Secretary Robert Brown directed that a review be made of the manner in which the Department's pension fund inquiry was being conducted.

Two experienced investigators were given the assignment. Their inquiry resulted in a report that was highly critical of the Labor Department and the investigation of the fund. The report not only corroborated GAO's findings but the testimony before the subcommittee of witnesses who criticized the Labor Department's investigation of the pension fund.

The report told how the SIS mandate was eroded until finally it ended up a support arm for the Solicitor's Office. The report described the breakdown in communication between the Labor Department and the Criminal Division of the Justice Department.

The report indicated SIS was under directions not to pursue information of a criminal nature and described the demise of the third-party investigative strategy.

Also cited were unprofessional working conditions within SIS. Personnel didn't like or trust one another, had no respect for their leaders, felt their colleagues to be incompetent, and doubted the value of what they were doing.

The report contained allegations that included violations of law and employee misconduct. The allegations included sexual misconduct, obstruction of justice, and that certain personnel were associated with organized criminals.

The Department's response to the report was not to have any of the allegations checked out. Instead certain Department officials attempted to have the report destroyed.

The subcommittee, learning that such a report had been written, asked for a copy. Department officials insisted there were no copies. The subcommittee issued a subpena. It was the first time in the subcommittee's history that it had used its subpena authority to obtain a document from the executive branch of the Government (pp. 271–282).

EXPERIENCED INVESTIGATORS WERE GIVEN ASSIGNMENT

John Kotch of Pittsburgh and Richard Crino of Cleveland were deputy area administrators for the Labor Department field offices. Both experienced investigators, Kotch and Crino were summoned to Washington, D.C., on February 4, 1979. They were directed to conduct a management review of the Special Investigations Staff (SIS) and its inquiry of the Central States pension fund. They received this assignment from Rocco Charles (Rocky) DeMarco.

DeMarco was Acting Inspector General of Labor when he gave Kotch and Crino their assignment. They worked on the case from February 26 to April 23 and, on May 11, they turned in their final report and attachments to DeMarco, who, by this time, had been promoted to Deputy Assistant Secretary in the Labor-Management Services Administration.

There was some confusion as to which office he was working from—the Inspector General's or the Deputy Assistant Secretary's—when DeMarco gave the orders to Kotch and Crino. To DeMarco, however, there was no doubt. The inquiry was not sponsored by the IG's Office, he said, but by the Under Secretary of Labor, Robert J. Brown, who instructed him to have the management review made (p. 394).

As will be shown later in this report, which office sponsored the management review was a significant question. Major instances of inefficiencies uncovered by the Inspector General are required to be reported to Congress. Labor Department officials did not share the Kotch-Crino report with Congress.*

The report, submitted to DeMarco as "Deputy Assistant Secretary for Labor-Management Relations," was 23 pages long, typed single space on regular size stationery. Accompanying the report were attachments of reports of interviews.

In the introduction to the report, Kotch and Crino said their "review was not an investigation per se but a positive attempt to identify real and potential problem areas and to make recommendations for operational improvements."

Their reference to a "review" as opposed to an "investigation" was a characterization that other Labor Department officials made as well in their testimony before the subcommittee. The distinction—that is, that this was a review and not an investigation—enabled the Department's senior officers to handle the documentation resulting from it in an informal manner. At least that was a theory put forward by Labor Department officials. It was a theory

*A copy of the Kotch-Crino report and attachments, obtained by the subcommittee under subpena, was received as a sealed exhibit at the hearings. Identified as Exhibit No. 21, these documents are retained in the confidential files of the subcommittee.

that did not square with Federal law relating to the destruction of Federal documents.

As will be discussed in detail in the next chapter of this report, because the final report was of a "review" and not an "investigation," Labor Department officials claimed they were not required to follow established procedures in handling it. The final report, and its supplementary reports of interviews, were never formally filed. Allegations of criminal misconduct, serious professional irregularities, and employee incompetence were not investigated. And the Department's copies of the report were deliberately destroyed.

Kotch and Crino, in beginning their report of review, said they limited their inquiry to four main questions. First, they said, they examined the current status and future plans of the Department's investigation of the Central States pension fund and its more recently initiated investigation of the Central States health and welfare fund.

The second issue they studied was the relationship of SIS to the Solicitor's Office. They said they had special interest in SIS's responsiveness to the Solicitor's Office and the quality of SIS's work.

Third on Kotch and Crino's list was the question of how well SIS was coordinating its work with the Department of Justice. They would want to know how the SIS referral of criminal matters was going and the initiation of joint cooperative efforts between SIS and Justice.

The fourth subject to be studied, they said, was SIS as an entity, its leadership, competence, morale and effectiveness.

Noting that their interviews were limited to current SIS and Solicitor's Office personnel, Kotch and Crino said Norman E. Perkins, the Acting Director of SIS, had been especially helpful. They pointed out that their inquiry had been "strictly internal," that they did not do any investigation of the Central States fund; nor did they examine actual case documents or other evidence.

SUMMARY OF INFORMATION DEVELOPED IN KOTCH-CRINO REPORT

Subcommittee Chief Counsel Marty Steinberg, testifying, gave a summary of the Kotch-Crino report and attachments. Steinberg said the report, supplemented by summaries of interviews, was critical of the Labor Department's investigation of the pension fund.

Steinberg said the 23-page report came to these conclusions:

The Special Investigations Staff (SIS) was directed to conduct an investigation into union benefit plans and then to litigate on the basis of these investigations. SIS was given the authority and responsibility for the Teamsters Central States fund inquiry.

Where criminal evidence was uncovered, SIS was supposed to refer its information to the Justice Department.

According to the report, neither objective was totally achieved. The SIS mandate was narrowed early in its history. It did not litigate any cases, nor did it ever even approach the litigation stage.

As far as the SIS mandate to investigate was concerned, the Solicitor's Office of the Labor Department preempted the SIS jurisdiction. The report asserted that the Solicitor's Office took away SIS's independence and made it into its own support operation.

Regarding criminal cases, SIS was instructed in no uncertain terms that the Labor Department policy was to develop civil cases, not criminal cases. The gathering of information indicating criminal behavior was deemphasized.

The Kotch-Crino report said that information of a criminal nature that was sent to the Justice Department was referred in a haphazard way, with little or no regard for proper procedure.

The Kotch-Crino report said that from the inception of the investigation, the Department of Labor hierarchy eroded the responsibility of SIS.

The Solicitor's Office wanted SIS under its control. That objective was achieved early in the investigation. But once control was obtained, the Solicitor's Office took little or no interest in SIS duties.

No constructive guidance or management was offered. SIS was viewed as an investigative support arm for the Solicitor's Office. Beyond that, SIS had very little to do.

Morale declined. Bureaucratic infighting grew. Suspicion and hostility mounted. What SIS did do was often demeaning. Professionals complained, for example, of having to do substantial clerical work.

The Kotch-Crino report found that the Labor Department failed to devote needed resources to the SIS effort. Senior Labor Department officials were occupied with other matters and did not give sufficient attention to SIS and the Central States investigation.

The report found that the Labor Department failed to pursue culpable third parties in the investigation. Because the Department wished to move ahead quickly in filing the lawsuit, it was decided to forgo third-party investigations.

The report found that because persons associated with the fund were not properly investigated in a timely fashion, civil and criminal potential was apparently lost.

The report said that early in the investigation the scope of the inquiry was severely limited. Many areas of potential abuse detected in 1976 were not pursued. No new areas of investigation outside the Labor Department's litigation were planned, initiated, or permitted. The Solicitor's Office dictated this investigative policy.

The Kotch-Crino report said SIS was hampered by a lack of leadership, supervision, management, and administration. SIS lacked a cohesive management team in terms of cooperation, respect, and operational ability.

It was the consensus at SIS and at the Solicitor's Office that the Acting Director of SIS, Norman E. Perkins, was not doing a capable job. However, the Department never appointed a permanent Director.

The report said the Solicitor's Office viewed itself as the lawyer in a lawyer-client relationship with SIS. The Solicitor's Office did not wish to get involved in hard-fought investigation or litigation; nor was the Solicitor's Office willing to have a cooperative relationship with investigators.

The report said the Solicitor's Office did not devote enough time and resources to the Teamsters fund investigation. The policy of the Labor Department was not to pursue criminal matters in the pension fund investigation. This policy was based on SIS restrictions and to a lack of personnel.

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Chief Counsel Steinberg said the report and attachments also contained serious allegations of potential violations of law and employee misconduct.

He said these allegations included sexual misconduct, obstruction of justice, and that certain Labor Department employees were associated with organized crime figures.

Steinberg said none of this information was referred to the Justice Department or to the Inspector General of the Labor Department.

Steinberg said the Kotch-Crino report contained serious allegations and they should have been investigated.

SUBCOMMITTEE STAFF ASSEMBLED DATA ON CATEGORIES OF CHARGES

In addition to Chief Counsel Steinberg's summary of the information contained in the Kotch-Crino report, the subcommittee staff outlined under categories the more serious charges made by Labor Department personnel about the manner in which the pension fund and health and welfare fund investigations were conducted.

Those interviewed by Kotch and Crino included J. Vernon Ballard, Deputy Administrator, Pension and Welfare Benefit Programs; Monica Gallagher, Associate Solicitor; Robert Gallagher, Solicitor's Office attorney; Norman Perkins, Acting Director of SIS; Lloyd Ryan, Jr., Assistant to the SIS Director; Robert Baker, Raphael Siegel, and Edward F. Shevlin, all SIS team leaders; Thomas McCaughey, senior auditor, SIS; Kenneth Barnes, auditor-investigator, SIS; and John Helms, James E. Hucks, James W. Widdows, and Gerald Kandel, all SIS auditors.

According to the subcommittee staff analysis, presented by General Counsel LaVern J. Duffy in his testimony (p. 278, 279), nearly everyone interviewed in the Labor Department said SIS was mismanaged, that its leadership was inadequate, and morale was low.

Eight persons told Kotch and Crino that the civil suit, filed in February of 1978, was poorly timed, caused a halt to other investigations, and resulted in SIS being reduced to being an investigative arm of the Solicitor's Office.

Six persons said the Solicitor's Office was guilty of having poorly managed the fund investigation and of having allowed relations between itself and SIS to deteriorate.

Third-party investigation, which would have allowed SIS to pursue leads developed early in the inquiry, was stymied by the Solicitor's Office. Five persons expressed this view.

Five persons interviewed by Kotch and Crino said that from the start of the investigation of the pension fund there was no clearly stated strategy as to how to proceed and what the objectives were.

Seven persons said the SIS team charged with investigating the health and welfare fund of the Teamsters Central States conference was misdirected and did very little work.

Four of the SIS staff members said SIS did very little auditing and investigation and was required to do too much clerical work, such as filing.

Five persons said SIS committed to writing no reports of investigation.

Five persons said SIS was instructed by the Solicitor's Office not to pursue certain leads which had positive investigative potential.

Four persons said insufficient investigative travel was authorized and that as a result inadequate field inquiry was conducted.

Four persons complained of a lack of cooperation by SIS with the Justice Department and a delay in referrals of information from SIS to the Justice Department.

REPORT DISCUSSED IAN LANOFF'S DISQUALIFICATION

The Kotch-Crino report said SIS was created in December of 1975 to plan, develop, and conduct complex and sensitive investigations into benefit plans suspected of being in violation of the new pension reform statute, ERISA.

It was envisioned that SIS would take on the big investigations, examinations of plans that were national in scope, that had a broad base of contributors and beneficiaries, that were generating a lot of media coverage and congressional interest. To date, the report said, SIS had investigated only the Central States pension fund and later on the health and welfare fund.

Kotch and Crino said SIS, originally part of the Pension and Welfare Benefit Programs Division of the Department, was placed directly under the Office of the Secretary of Labor in January of 1977.

The following October, the report said, SIS was returned to the Pension and Welfare Benefit Programs Division where operational control over SIS was given to the Deputy Administrator, J. Vernon Ballard.

The Administrator of the Division, Ian Lanoff, an attorney, disqualified himself from overseeing SIS because he had been employed by the Teamsters Union before joining the Labor Department.

ROLE OF LAWRENCE LIPPE WAS EXAMINED

The report discussed the role of the first Director of SIS, Lawrence Lippe, who had held the position from December of 1975 to October 1977. Lippe was to have been both investigator and litigator, a reflection of the dual role SIS was to exercise in investigating cases and then taking them to court.

But the dual role was abandoned, the report said, when Lippe resigned. The Solicitor's Office took over all litigation responsibilities, the report said, adding that the SIS chief auditor, Norman E. Perkins, was selected to succeed Lippe. ". . . for reasons unknown to the writers," Kotch and Crino wrote, no one was named permanent Director.

LABOR DEPARTMENT'S OBJECTIVES ARE CITED

Kotch and Crino said that in the pension fund case the Labor Department had three objectives and priorities—(1) preservation of fund assets; (2) restructuring of the 16-member board of trustees; and (3) developing civil damage and criminal actions.

Regarding the objective of restructuring the board of trustees, the report said that after the first 12 trustees resigned in October of 1976 a press release was issued in connection with the resignation of the remaining four "holdover" trustees.

The Labor Department release, dated March 14, 1977, said the holdover trustees had resigned and that "upon the engagement of professional investment managers" to take control of fund assets

"the Department would end that portion of its investigation involving the procedures under which the fund manages its assets."

According to the Kotch-Crino report, the agreement was interpreted one way by the Department of Labor, another way by the fund's trustees. The report said the trustees understood it to mean that the Department's fiduciary investigation would end once the assets of the fund were transferred to the independent managers' control.

For its part, SIS tried to renew or expand the investigation of the fund but failed, the report said. The reason given SIS was a provision of ERISA which limited the Department's access to a fund's records to one time in a 12-month period, the report said.

The Solicitor's Office told Kotch and Crino that it was wrong to interpret the agreement as stopping further investigation. The Solicitor's Office said it knew of no agreement to that effect, the report said.

The Solicitor's Office held that the fund's lawyers misconstrued the announced agreement. The Labor-Management Services Administration of the Department tried to set the record straight but failed. This occurred when Francis X. Burkhardt, Assistant Secretary of Labor for LMSA, wrote to the fund on January 17, 1978, to clarify the Department's position.

Kotch and Crino said SIS contended that the March 1977 agreement precluded the Labor Department from investigating all administrative and trustee expenses and "that SIS may investigate loans only as they relate to the former trustees but not to the fund itself."

The report added, "The filing of the February 1, 1978, litigation has effectively terminated all SIS investigation into the pension fund." Since then, SIS members spent most of their time on work in support of the litigation. The litigation "and the referenced agreement" ended even the consideration of possible new areas of inquiry, the report said.

The Solicitor's Office rejected the recommendations of SIS to expand its investigation, the report said, adding, "SIS understands that [the Solicitor's Office] has directed that it will support the litigation and do nothing else."

The Solicitor's Office never acknowledged having given such a directive to SIS. However, the Solicitor's Office did not deny that it was unlikely that additional investigation or litigation would be begun.

In an interview with Kotch and Crino, Monica Gallagher, the Associate Solicitor, gave five reasons why no new investigations were probable. Mrs. Gallagher said that, first, the pension fund was not cooperating with the Government, making it necessary for the Labor Department to resort to subpenas to obtain records, which the Department did not want to do since it would create a "messy" enforcement action.

Second, Mrs. Gallagher said, additional investigation, coupled with the civil litigation, might be seen as harassment. Third, she said, the statute of limitations might run out. Fourth, Mrs. Gallagher said, the old trustees had resigned and some of their actions had occurred "in the fairly distant past." And, fifth, she said, additional investigation might adversely affect pending litigation.

According to the report, the Solicitor's Office policy was that, while a second suit was a technical possibility, as a practical matter it was not realistic to anticipate another court action.

A new issue would require amending the original complaint and the Solicitor's Office believed this would trigger complaints by the defendants' attorneys, delay the suit, and would be looked on with disfavor by the presiding judge, the report said.[1]

The report also remarked that SIS Acting Director Norman E. Perkins was under the impression that the Solicitor's Office wanted no new investigations.

The policy of the Solicitor's Office, the policy of the Department itself, was that SIS was to do nothing except support the litigation. As the Kotch-Crino report observed:

> The litigation thus has essentially restricted SIS to investment loan and real estate transactions; and reduced this investigation to a "voluntary investigation."

It was voluntary, the report said, because SIS, limited by the litigation, could not use administrative subpenas and had to rely on the cooperation of others to obtain records. The report said:

> All current and future investigation must be restricted only to those parties, other than the fund or the defendants, who will agree voluntarily to cooperate or be interviewed.

All other documents must be obtained through the discovery process, the report said, pointing out that SIS was restricted to reviewing only post-ERISA loans or to those loans having post-ERISA activity. ERISA, passed in 1974, was implemented, for purposes of the SIS investigation, starting on January 1, 1975.

The report said Acting Director Perkins estimated SIS to require 4,432 investigator days to complete all work it had been assigned in support of the civil suit. This would translate to 2½ years of SIS endeavor, Perkins said. "At this point there is really no accurate way of predicting the length or depth of the future SIS workload because of the sheer size of the case and uncertain legal developments," Kotch and Crino said.

Norman Perkins was said to be in favor of having SIS branch out into some new areas of inquiry, some of them having potential criminal implications, such as employer contributions to the fund, questionable stock purchases, trustee expenses. But, the report said, ". . . based on SIS understanding that its sole function is to support the litigation, no new major areas of investigation are planned or will be initiated."

HOW SIS GOT ALONG WITH SOLICITOR'S OFFICE

Pointing to tension between SIS and the Solicitor's Office, Kotch and Crino said the hostile environment led to the resignations in the fall of 1977 of the first Director, Lawrence Lippe, and his Deputy, Lester Seidel.

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[1] In May of 1981, the Labor Department amended its suit, expanding the number of transactions charged from 15 to 24. The defendants remained the same—17 trustees and one fund officer—and also remaining the same was the fact that no culpable third party has ever been named as a defendant.

When Lippe quit, the report said, the role of the Solicitor's Office in SIS affairs increased dramatically. A year later, in June 1978, the Solicitor's Office tried to place SIS directly under its control, but the effort failed.

The tension with the Solicitor's Office that drove Lippe and Seidel to quit apparently did not have the same effect on Norman E. Perkins, who, as Acting Director, replaced Lippe. Perkins, who, unlike Lippe, was not a lawyer and who had his job on a temporary basis, did not object to the encroachment of the Solicitor's Office in his organization's affairs. Perkins, in fact, told Kotch and Crino that SIS's relationship with the Solicitor was "close, informal, daily and very good."

Perkins apparently appreciated the power exercised by the Solicitor's Office within the Labor Department. He told Kotch and Crino, for example, that no one, not even the Secretary of Labor, could control the Solicitor's Office.

The Solicitor's Office was directing the Department's litigation policy and instructed SIS on what to do, Perkins said, adding, however, that the Solicitor's attorneys had overextended themselves and should only be serving as counsel for SIS, not as supervisors.

On the subject of the Solicitor's Office, Perkins was ambivalent. While he tried to convey to Kotch and Crino his positive feelings toward the lawyers who comprised the Solicitor's Office, he was also, in an indirect way, sharply critical of them and their competence.

For example, Richard Crino, in his testimony before the subcommittee, recalled his interview with Perkins during the investigation. Crino said that Perkins had tried to get across to Kotch and himself the idea that the Solicitor's Office should never have been placed in charge of SIS. ". . . I think he was trying to point out to us that the Solicitor's Office really didn't know or wasn't qualified to direct the investigation," Crino said (p. 384).

The SIS staff, excluding Perkins, told Crino and Kotch that the relationship between their organization and the Solicitor ranged from "workable to poor and ineffective." It was believed among the staff that the Solicitor's attorneys did not devote enough time to SIS.

SIS members were reported to contend that some lawyers under the Solicitor were "overworked and overburdened." Robert Gallagher, counsel for SIS, was said to fit that description. Other SIS personnel questioned the competence, case knowledge, and understanding of attorneys from the Solicitor's Office. Some SIS people were said to consider certain attorneys to be "arrogant, overbearing, and disdainful" but "others have stated that on an individual attorney-to-agent basis the work relationship has been good."

Overall, Kotch and Crino said, SIS was tied inexorably to the Solicitor's Office, a predicament seen by some SIS personnel as "an extreme handicap." Virtually everything SIS wished to do, from mapping investigative plans to conducting interviews to going on official travel, had to be cleared by the Solicitor's Office, SIS personnel said.

With this much involvement in their work, SIS members were frustrated because they felt the Solicitor's attorneys insisted on total control of the unit but then devoted insufficient time to it. As a result, they told Kotch and Crino, SIS management was getting worse and the unit itself had been rendered less effective.

Conversely, Monica Gallagher, the Associate Solicitor, told Kotch and Crino that her group's relationship with SIS was fine. Her attorneys, she said, were competent, attentive to SIS, were not overworked, and if more lawyers were shown to be needed she was prepared to get them.

Mrs. Gallagher said she knew of no reason why SIS should feel it was controlled by the Solicitor's Office. The report said Mrs. Gallagher was of the opinion that Secretary Marshall was inclined to rely more and more on the Solicitor's Office, and less and less on SIS, because of SIS's management shortcomings.

Mrs. Gallagher was said to believe that SIS's work product was not of a high enough quality, that it had been low under Lawrence Lippe and was not much better under Perkins.

Mrs. Gallagher told Kotch and Crino that the Solicitor's Office had a "lawyer-client" relationship with SIS, the Solicitor being the lawyer, SIS the client.

She said her lawyers should have sought more information from SIS but that often they did not because lawyers tended not to coordinate with the client as much as the client would like, "especially if the client is actively involved in the matter as is SIS."

Kotch and Crino reported Mrs. Gallagher's views on the need to improve the lawyer-client relationship between the Solicitor's Office and SIS this way:

> Historically, DOL [Department of Labor] does not operate in teams of investigators and attorneys such as in other agencies like SEC (Securities and Exchange Commission) and OCP (Organized Crime Program) strike forces. She would be delighted to experiment with a new model based on this concept but feels that DOL is not ready for such an agreement. For strike force work, guts and imagination are at a premium and legal theory is less important. The investigator has a principal role as a fact finder in areas where case law is adequately developed. The reverse is true in terms of ERISA enforcement, which is less fact oriented and more dependent on legal theory at this stage. As a result, the client cannot usually contribute as much. This may well be the case with SIS in terms of the [Central States] litigation.

Beyond the need to improve the lawyer-client relationship, Monica Gallagher also pointed to the need to improve the level of personnel at SIS. For instance, while she said she had few direct dealings with SIS, she did express quite specific judgment about the caliber of employees working there.

According to the Kotch-Crino report, Mrs. Gallagher said Norman Perkins was a well meaning man but he had lost control of his staff. She said she got along with Perkins in a generally good relationship. But she was highly critical of persons directly under Perkins.

One employee was not too smart, she said, and was uncooperative and unwilling to have Perkins tell him what to do. Another employee was incompetent and unreliable and it would have been a disaster to put that person in charge of anything, she said.

Kotch and Crino said that Mrs. Gallagher charged that a third SIS employee was "extremely dogmatic," "anti-female," and comparable to an old dog who had difficulty learning new tricks. This last employee, however, for all his personal shortcomings, was competent at his work, she said, even though he had treated her "as an idiot" on occasion.

Some of the new employees seemed to be more in keeping with her standards of performance, Mrs. Gallagher was represented to have said.

NORMAN PERKINS TOLD WHAT HE KNEW ABOUT SIS, OTHER MATTERS

Kotch and Crino interviewed SIS Acting Director Norman E. Perkins for 3 days in March of 1979. The interview of Perkins provided insight into the operations of SIS and its relationship with the Solicitor's Office. Perkins spoke freely in a wide ranging discourse.

A certified public accountant who was a postal inspector and an SEC investigator before going to work with the Labor Department, Perkins was assigned to SIS to serve as chief auditor in the summer of 1976.

Perkins said he was chief auditor in title only. Lawrence Lippe, the Director of SIS, and his deputy, Lester Seidel, made the legal as well as the auditing decisions and didn't advise or consult him beforehand, Perkins said.

Later Lippe brought him into the review process, Perkins told Kotch and Crino. In October of 1976, Perkins said, SIS focused its investigation on loans made by the pension fund. Other areas of inquiry such as trustee and administrative expenses were included for possible investigation, but another subject, the cost of public relations, was dropped from further consideration, Perkins said. This decision, Perkins said, was made by Lippe and Steven J. Sacher of the Solicitor's Office. Perkins said he agreed with the decision to make investigation of the loans the principal subject of inquiry.

In the fall of 1976, Perkins said, he began to note increasing involvement of the Solicitor's Office in the SIS operation. By the start of the new year, Perkins said, friction had grown up between the Solicitor's Office and Lippe. Lippe resented Steven Sacher and Monica Gallagher telling him what to do, Perkins said.

Hoping to reconcile this conflict, the Office of the Secretary of Labor appointed Robert Lagather to the investigation, having him oversee both SIS and the Solicitor's Office attorneys in connection with the pension fund inquiry, Perkins said.

By February of 1977, SIS was no longer able to conduct investigations according to its original mandate, Perkins told Kotch and Crino. Now, he said, SIS was only to work on litigation at the direction of the Solicitor.

"Project 9200" was one of the first projects SIS undertook under the Solicitor, Perkins said. Basically a clerical task that employed professionals, Project 9200 was a 60-day photocopying exercise in which SIS personnel working in Chicago reproduced Teamsters records around the clock.

With professionals running the photocopy machine, morale was sinking, Perkins said, adding that he thought the effort was worth

it because he expected the Teamsters to order SIS out of their offices shortly.

While he had not been informed formally of its existence, Perkins did hear rumors and read newspaper articles indicating that the Labor Department had made an agreement with the fund whereby it was understood that if the trustees would resign and an independent firm brought in to manage the assets, the Department would limit its investigation to loans and would not examine the fund's internal operations.

Evidence and testimony brought out in the subcommittee's hearing indicated that the agreement Perkins was referring to here was the so-called "phantom agreement." Its existence denied vehemently by Labor Secretary Marshall and other senior officers of the Department, the alleged "phantom agreement" reportedly consisted of fund lawyers making certain concessions—the resignation of the holdover trustees and the appointment of independent management firms—and, in exchange, the Government vowing to limit the investigation.

Perkins' view, according to the interview with Kotch and Crino, was that such an agreement did exist and that its result was to free the fund from all investigation except imprudent loans and, in effect, gave the fund a clean bill of health.

Perkins told Kotch and Crino about an incident in which Mrs. Gallagher presented Lippe with the names of 81 persons who were known to have knowledge of the pension fund. Perkins said Mrs. Gallagher wanted SIS to obtain depositions from these 81 persons.

However, Perkins said, Mrs. Gallagher gave no guidance to SIS as to what sort of questions she wanted asked or what areas of inquiry she wanted covered. Perkins said he and Lippe eliminated most of the names from the list.

In June of 1977, Perkins said, Lippe planned to expand the SIS effort to include an investigation of the Teamsters Central States health and welfare fund. Perkins said Steve Sacher, who was then Associate Solicitor, told Lippe that the Solicitor's Office was unhappy with SIS for opening a new Teamsters fund investigation before the agreement had been made final regarding the independent assets managers.

In September of 1977, Perkins said, Lippe's Deputy, Lester Seidel, resigned, complaining of interference from the Solicitor's Office. Seidel felt the Solicitor's Office was undercutting SIS, Perkins said, adding that Lippe explained that he would be quitting soon too. Perkins said Lippe told him he "couldn't run the show. I'm only a puppet."

In October of 1977, with Lippe and Seidel gone, Perkins was named Acting Director of SIS. On two occasions, Perkins, wishing to get started on the right foot in his new job, sought guidance from Assistant Secretary Francis X. Burkhardt and from J. Vernon Ballard, Deputy Administrator of Pension and Welfare Benefit Programs. In neither instance did he receive specific instructions as to how to proceed.

A "big stink" was caused by the Department's lawsuit filed against the fund on February 1, 1978, Perkins said, because the Justice Department's Criminal Division and the Internal Revenue Service had not been advised or consulted ahead of time.

Perkins said there was a breakdown in communication with the Criminal Division because the Solicitor's Office was unfamiliar with the memorandum of understanding of December, 1975, in which Justice and Labor had set up procedures for exchange of information.

The civil lawsuit was filed earlier than had been expected, Perkins said, because of fear that the statute of limitations would expire. The filing of the lawsuit precluded adequate third-party investigation into areas not covered in the lawsuit.

Perkins said the Labor Department felt that third-party investigations would take 6 to 9 months to complete so rather than spend that much time on it the Department believed it preferable to file the suit and gather the third-party information at a later date through the discovery process.

Perkins said that at a meeting with Secretary Marshall and others he was advised—he did not say by whom—not to tell anyone at SIS of the plan to file the civil lawsuit. It was believed, he said, that no one other than himself at SIS could be trusted to keep this information confidential.

Perkins said the fund's attorneys may have outsmarted the Solicitor's Office by getting the Department to agree not to investigate the fund's administration in exchange for the resignation of the trustees—another reference by Perkins to the so-called "phantom agreement."

Perkins said the Solicitor's Office controlled Labor Department policy regarding the lawsuit and the Solicitor's Office controlled SIS—but, he said, not even the Secretary of Labor, controlled the Solicitor's Office.

The Solicitor's Office blocked an effort by SIS to serve an all encompassing subpena for health and welfare fund records, Perkins said. Because of the Solicitor's objection, the subpena was restricted to only certain records. It was understood that additional records would be subpenaed as needed.

However, when Perkins inquired about obtaining the additional records, the Solicitor's Office told him a provision of ERISA prohibited examination of records more than once in a 12-month period, thereby requiring SIS to wait 1 year before obtaining additional documents, Perkins said.

In another instance, Perkins said, the Solicitor's Office drew up a subpena for SIS to gain records from a firm that consulted for the fund. The firm kept some records at the home of its president. Perkins said the Solicitor's Office had the subpena served on the wife of the president of the firm. Perkins said a Federal judge in Chicago ruled the subpena invalid because the wife was not an officer of the firm.

When the Labor Department sought a temporary restraining order to prevent the health and welfare fund from signing a new contract with Allen Dorfman's Amalgamated Insurance Agency, the Teamsters wanted to obtain a deposition from Secretary Marshall.

Marshall declined and, for reasons Perkins did not give, Perkins was selected to give a deposition in Marshall's place. Perkins said he pointed out that he was not prepared to be deposed and that he did not have the necessary documents. But Perkins was made to do it.

Here was how Kotch and Crino recalled Perkins' explanation of what happened next:

> When he [Perkins] advised SOL [Solicitor's Office] that he was unprepared and had no access to records he was told not to worry [,] that all that would be required would be the production of some records. At the deposition [in Chicago], the fund's attorney admonished Perkins, telling him that he was expected to be prepared and to have searched the required records. He stated that he was represented at this deposition by Monica Gallagher; and that Dave White of Justice was present as an observer. Perkins was deposed for 2 days. He alleged that at this deposition he was represented by such bad counsel that once the fund's attorney had to remind [Monica] Gallagher that she was Perkins' attorney. Even the Justice observer commented on the fact that Perkins was required to respond to questions which he should not have answered . . . After a 10-day wait in Chicago, Perkins returned to Washington and was immediately questioned as to why he was not in Chicago where SOL wanted him. . . .

Perkins said his senior subordinates were, for the most part, very difficult to work with. Morale throughout SIS was not good. His three team leaders, Perkins said, were "weak."

Perkins said an attorney assigned to SIS was "uncontrollable." One of Perkins' auditors had a poor understanding of what the case was all about, in part because he was supervised inadequately by one of the team leaders, Perkins said.

Another auditor was described by Perkins as being "washed out." Overall, Perkins said, his employees suffered from "temporary staff complex" because they worked under an Acting Director and had no confidence that their jobs were permanent.

In his testimony in public session, Perkins sought to soften some of the impact of his statements made to Kotch and Crino but, for the most part, his assertions were substantially the same.

Perkins also provided new information.

He testified that SIS did not have a detailed, comprehensive audit plan for the pension fund investigation.

He said the SIS investigation of pension fund administrative expenses was never completed. He said SIS did not inventory or number files until the summer of 1979 when a new filing system was installed. He said some of the 4,000 file folders had been in the possession of SIS since 1976 but that only since mid-1979 were they ever put in systematic order (pp. 436–437).

Perkins tried to investigate the benefits and administration or B. & A. account. He said Assistant Secretary Francis X. Burkhardt stopped him from conducting such an investigation on one occasion. On another, the request was turned down by J. Vernon Ballard, Deputy Administrator of Pension and Welfare Benefit Programs.

Perkins said it was explained to him that there was no evidence that there was anything wrong with the B. & A. and that, therefore, "it was felt there was no need to investigate."

Perkins said his request was turned down even though there were inconsistencies in the records of the B. & A. account regarding $30 million and even though there was information indicating

that certain of the trustees had profited personally from the purchase of certificates of deposit with B. & A. account funds (pp. 449–451).

The B. & A. account was not controlled by the outside investment managers but was controlled by the trustees, Perkins said, explaining that the only information the Labor Department received on the B. & A. account was data released by the fund in an annual report. Perkins said the Department had no adequate way to monitor the B. & A. account (pp. 457–458).

Perkins said he did not think it was possible for the Government to successfully sue any of the borrowers from the pension fund without first conducting third-party investigation.

Perkins said the Solicitor's Office informed him that the Labor Department was not going to pursue third parties such as borrowers (p. 453).

Perkins told Kotch and Crino that areas outside the civil lawsuit were lost and would never be investigated. Perkins said he tried to make the same points to his superiors at the Labor Department but he was informed that the investigation was closed (p. 455).

It was a mistake for the Labor Department to have devoted so many of its resources to the civil suit and not to investigate other areas, Perkins said. In short, he said, it was bad judgment for the Department to have "all its eggs in one basket." (p. 455).

Perkins said that by allowing the former trustees to resign the Labor Department enabled them to "walk away free" with no public accounting for their actions while on the board (p. 456).

The agreement precluding SIS from investigating all areas of fund operations was a handicap to the SIS inquiry, Perkins said (p. 456).

Perkins said his investigation of the health and welfare fund was handicapped by the Labor Department's filing of a civil suit (p. 457).

Perkins said he had personnel problems with SIS and that he asked his superiors for help in solving them but that he received no such help. Perkins said that nothing was done to solve these problems for about 1 year. Then in May of 1980 SIS was abolished (p. 458).

SIS COORDINATION WITH DEPARTMENT OF JUSTICE

Pointing back in time to the December of 1975 memorandum of understanding that was to insure that the Labor Department would cooperate with Federal prosecutors in developing criminal cases from the pension from investigation, the Kotch-Crino report concluded that the relationship between the two agencies was adequate.

The report said potential criminal violations had been referred to the Justice Department. Some referrals were in writing but most were "informally without record. Despite SIS's civil role and deemphasis on criminal matters, it generally has cooperated with DOJ by providing voluminous document reproduction, personal briefings, and case reviews. Minor problems are being resolved."

This was a very positive assessment, but beneath it were suggestions that some of the "minor problems" were of more than minor significance.

For example, Kotch and Crino said the original Interdepartmental Policy Committee, which had been set up to insure a smooth flow of information between the two Departments, has as an important objective the creation of a forum where policy questions could be decided. One such policy question was to be the decision as to which cases would be litigated in civil law suits and which would be prosecuted in criminal proceedings, the Kotch-Crino report said.

The coordination of the civil versus the criminal matters was one objective that fell by the wayside, the report said. Kotch and Crino wrote:

> The original five-member Policy Committee became defunct when Secretary Marshall took a personal interest in the investigation through dealing with the Attorney General and Treasury Secretary.

When the Policy Committee was abandoned, the report said, a Labor-Justice "work group" was established, meeting every other week to "coordinate investigation and litigative activities and to discuss problem areas."

Kotch and Crino said the meetings were informal, no notes were taken and that "potential criminal matters uncovered by SIS may be referred to DOJ. . . ." About half the work group's time was spent discussing the Central States pension fund investigation.

But, the report said, SIS Acting Director Norman E. Perkins was never invited to attend. Robert Gallagher, the Solicitor's Office attorney who served as counsel to SIS, or J. Vernon Ballard, Deputy Administrator of Pension and Welfare Benefit Programs, briefed Perkins on what happened at the meetings, the report said.

Perkins apparently did not feel left out, the report noting that he was of the opinion that SIS would not necessarily benefit from his presence at the meetings.

When SIS was created, the Kotch-Crino report said, Justice Department attorneys were to be a part of SIS, thereby assuring cooperation and a free flow of information. No Justice Department attorneys were assigned to SIS, however, and most of the information referred to Justice was done orally, on the phone or in meetings, the report said. The report said, for instance, that SIS Acting Director Perkins had never made a formal, written referral to Justice.

J. Vernon Ballard told Kotch and Crino that a formalized system of referrals was not needed because the Justice Department had complete access to SIS files, a view which was not shared by the Justice Department.

A possible explanation for the lack of criminal information being developed at SIS was cited by Kotch and Crino when they asserted, "It is SIS policy that its investigators will not be involved in any aspect of criminal investigations."

Their report said the no-crime policy was based on SIS's restriction to civil jurisdiction and lack of personnel to look into matters with criminal potential.

In discussing this lack of interest on SIS's part, the report asserted that SIS "has never conducted an aspect of criminal investigation and in Perkins' view 'had better not.'"

J. Vernon Ballard was reported to have said SIS was never intended to develop criminal investigations relating to the pension fund. In addition, the report said, the Solicitor's Office "sees a clear

distinction between the criminal and civil investigative roles of DOJ [Department of Justice] and SIS."

The report did observe that the Justice Department never set up an office that would be a counterpart to Perkins' and whose functions would include keeping current on Central States pension fund investigative activities nationwide.

SIS turned over thousands of copies of fund records to the Justice Department, the Kotch-Crino report said, and that reflected a cooperative spirit among Perkins and his team. By the same token, however, the Labor Department provoked charges of no cooperation because of a policy of allowing the Justice Department to read its internal memoranda but not to copy them.

The report made clear that the no-copy policy was handed down from the Solicitor's Office. Monica Gallagher told Kotch and Crino that this prohibition stemmed from her realization that "many of the SIS internal memoranda contain numerous errors and incorrect conclusions of law."

One strike force attorney was so impatient with this policy that he threatened to use a grand jury subpena to obtain copies of documents SIS refused him.

Mrs. Gallagher said another reason for the policy was to eliminate the possibility that SIS internal memoranda might show up in the civil discovery process.

Perkins was quoted as having said that when SIS came up with the name of an organized crime figure in a loan transaction he did not automatically refer it to the Justice Department. In fact, his policy was to refer to the Justice Department the names of organized crime figures only when they were involved in an apparent ERISA violation.

Testifying before the Investigations Subcommittee, Richard Crino said he was surprised to learn that it had been SIS policy under Perkins to not refer the names of organized crime figures to the Justice Department unless an ERISA violation was noted (p. 386).

Crino said he was also surprised to learn that no report of investigation was written by SIS. It was his experience that all investigative organizations wrote reports of investigation. But no such report was apparently written by SIS, Crino said (pp. 385–386).

In addition to no reports of investigation being written, Crino pointed out that there were areas of potential criminal investigation that were not followed up by SIS. One such area, he said, was information of alleged double-dipping—that is, being paid expenses twice for one activity—by fund trustees (pp. 384–386).

Another area that was not pursued was the obtaining of interviews from the principal borrowers, Morris Shenker, Allen Robert Glick, and Alvin I. Malnik. Crino said several SIS investigators told him they were not permitted to interview these men (p. 388).

The reason for the lack of interviews from Shenker, Glick and Malnik may have been that third-party investigation was stopped at such a relatively early stage in the inquiry. Crino said there was no third-party investigation after December 14, 1976, when the case was not quite a year old (p. 383).

Overall, Crino said, the investigation of the pension fund suffered from inadequate leadership and insufficient guidance once the civil

suit was filed. At that time, Crino said, the Labor Department felt pressure for a thorough investigation was reduced (p. 382).

X. Labor Department's Responses to Kotch-Crino Report

NO OFFICIAL FILE WAS KEPT OF REPORT

The Labor Department's responses to the Kotch-Crino report were difficult for the subcommittee to measure. Officials of the Department insisted that the only aspect of the report that was important was the recommendation that the Special Investigations Staff (SIS) be abolished. That was done—a year later, on May 5, 1980.

But other than the dissolution of SIS, it was not apparent what else the Department did with the report. The single action that was certain beyond a doubt was that the man with operational responsibility for the report destroyed it, or threw it into his waste basket, or gave it to his secretary to throw away.

That man was Rocco Charles (Rocky) DeMarco. DeMarco, who retired from Government the same month the subcommittee learned of his role in the Department's handling of the report, said he disposed of the report the way he did because it had served its purpose. Now the Department knew, 4 years after SIS was created, that the unit was ineffective. With that knowledge gleaned from the Kotch-Crino report, there was no more need for it. So why not destroy it? DeMarco asked (p. 254).

F. Ray Marshall, the Secretary of Labor, said he thought DeMarco's action was appropriate. There was nothing wrong with what he did, nor was it illegal, Marshall said. Marshall's judgment was affirmed by the Labor Department's top lawyer, Carin A. Clauss, the Solicitor of Labor (p. 408).

Marshall, Clauss, DeMarco, and other Labor Department officials seemed not to understand why Senators were troubled by what had happened to the Kotch-Crino report. But the subcommittee persisted in its interest anyway. Unraveling the details of how the report was, or was not, filed was a complicated task that used up large segments of time on 2 days of hearings.

Getting to the bottom of the mystery of how the report was logged or filed was, to the subcommittee's view, a valuable and necessary exercise. Serious allegations had been made in the Kotch-Crino report, allegations of blatant mismanagement, of undue executive interference in a duly authorized Government investigation, of waste and of incompetence and potential criminal matters. Senators felt these matters were too significant to let lie.

Moreover, if the Labor Department's response to such allegations was to destroy or throw out the report in which they were contained, then that too was a subject for consideration by the subcommittee.

Accordingly, the subcommittee set about to decipher from a vast amount of testimony and a limited amount of records just what had taken place and why.

DUFFY DESCRIBED DESTRUCTION PHASE

Instead of referring the Kotch-Crino report to appropriate investigative offices, the Labor Department tried to destroy the document.

LaVern J. Duffy, General Counsel of the subcommittee, gave a summary of how the destruction of the Kotch-Crino report was attempted (pp. 252–265, 271–283).

Testifying, Duffy said the subcommittee first learned in early August of 1980 that Kotch and Crino had conducted an internal Labor Department investigation. When they finished their inquiry, they wrote their findings in report form.

Duffy said that when he learned of the existence of this report, he called John Kotch on the phone and asked him about the report.

Kotch confirmed that such a report was written, Duffy said, noting that Kotch explained that the report was prepared for Rocco (Rocky) DeMarco, the Deputy Assistant Secretary for Labor-Management Services.

Duffy said he asked Kotch to provide as much detail as he could about the report and what had happened to it. Duffy said Kotch then called DeMarco.

Kotch called Duffy back. Kotch told Duffy that DeMarco admitted having destroyed the report. Kotch quoted DeMarco as saying that the report had served its purpose and could be destroyed, Duffy testified.

Subcommittee chief counsel, Marty Steinberg, and Duffy interviewed Kotch on August 18, 1980. Robert Gallagher of the Solicitor's Office attended the interview (pp. 262–263).

Kotch said that he and Richard Crino were summoned to Washington to see DeMarco on February 4, 1979, Duffy testified.

Kotch said he and Crino were to pursue a number of objectives. The objectives were to review the relationship between SIS and the Solicitor's Office, review the Labor Department's referrals of criminal matters to the Justice Department, review the workload of SIS and make findings and recommendations, Duffy quoted Kotch as saying.

DeMarco told Kotch and Crino that they were to carry out this assignment in strict confidence. They were not to discuss it with anyone.

Kotch said DeMarco told them only one copy should be made and the one copy should go to DeMarco. No file copies were to be kept.

Duffy said Kotch told subcommittee staff that he did not know why this investigation was not performed by the Inspector General. In a second meeting with DeMarco, Kotch said, he asked about the role of the IG. DeMarco's reply, Kotch said, was that this simply was not to be an IG investigation.

Kotch indicated he was not given an explanation as to what the purpose of the investigation was at that time and in the year and a half that had elapsed since then he still had not been told the purpose of the effort.

In his interview with subcommittee staff, Kotch said then when Crino and he finished the report, they gave it and its attachments to DeMarco.

Kotch said it was highly unusual to be required to make only one copy of a report and summaries of interview. It was also highly

unusual for DeMarco to have destroyed the report and attachments, Duffy quoted Kotch as saying. Kotch said he would not have destroyed the report.

Kotch told the subcommittee staff that DeMarco had him prepare a briefing paper on the report. Kotch did and gave the paper to DeMarco. It was Kotch's only copy of the briefing paper. Kotch and Crino briefed no one on the report.

On August 18, 1980, DeMarco was interviewed by Steinberg, Duffy, and Joseph Block, the minority counsel. Robert Gallagher of the Solicitor's Office attended the interview (pp. 260–261).

DeMarco said that in February of 1979 he met with Robert J. Brown, the Under Secretary of Labor. DeMarco said Brown told him that Secretary Marshall wanted someone to monitor the Department's investigation of the Central States pension fund.

Brown told DeMarco that a management survey should be conducted. DeMarco told the subcommittee staff that Kotch and Crino were selected to conduct this survey but DeMarco could not remember who selected them or why. In his testimony before the subcommittee, DeMarco remembered that he had been involved in the selection of Kotch and Crino and that both had good reputations (p. 395). Secretary Marshall also attested to their proven competence (p. 294).

According to Duffy, DeMarco said that in giving Kotch and Crino their directions the question was raised as to why this was not a matter for the Department's Inspector General. DeMarco said he went to Under Secretary Brown and asked him the IG question. Brown directed him not to have the inquiry conducted under the auspices of the IG, DeMarco said.

DeMarco referred to the report of the Kotch-Crino investigation as a "memorandum." DeMarco told the subcommittee staff that he took the Kotch-Crino "Memorandum" to Under Secretary Brown. Later he met with Brown; J. Vernon Ballard, the Deputy Director of Pension and Welfare Benefit Programs; and Carin Ann Clauss, the Solicitor of Labor.

DeMarco said that at the meeting with Brown, Ballard and Clauss he noticed that Clauss already had a copy of the Kotch-Crino report. DeMarco told the subcommittee staff that he did not know where Clauss obtained a copy of the report since he had not given her one. DeMarco said he did not know if other copies of the report had been reproduced.

DeMarco could not remember what was discussed at the meeting. But when it ended Carin Clauss handed him her copy of the report. DeMarco recalled that, as she handed him her copy of the report, Clauss said, "Dispose of this." Clauss added that she had no further need of the document, DeMarco said in his interview with subcommittee staff.

DeMarco said that following the meeting he destroyed Clauss' copy of the report.

DeMarco said he met again with Under Secretary Brown. Brown returned to DeMarco the original copy of the Kotch-Crino report. DeMarco kept the original report and its attachments until the fall of 1979. At that time, he gave the documents to William Hobgood, Assistant Secretary of Labor for Labor-Management Services.

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DeMarco told the subcommittee staff that Hobgood returned the report and attachments in March 1980. Whereupon, DeMarco destroyed them because, he said, they had served their purpose.

Duffy testified that he asked DeMarco if he had destroyed Labor Department documents before. DeMarco said he had not.

DeMarco was asked how he justified destroying these. DeMarco said they had fulfilled their purpose. He said it was permissible to destroy the Kotch-Crino report because its primary recommendation, that SIS be abolished, was carried out.

SIS was abolished on May 5, 1980. DeMarco destroyed Carin Clauss' copy of the report sometime in 1979, shortly after May 1979 when the report was completed. DeMarco destroyed the original copy of the report and attachments in March 1980.

In his interview with the subcommittee staff, DeMarco said he did not make it a practice to destroy documentation when its recommendation for corrective action has been implemented.

DeMarco was asked how the Labor Department could be expected to justify abolishing SIS to Congress if he had destroyed the report recommending such a course of action. To that question, DeMarco had no reply. He remained silent, Duffy said.

DeMarco said this was the first time in his career that he had told government investigators to prepare only one copy of their report of investigation and not to keep any file copies.

Duffy testified that on August 18 and 19, 1980, when the subcommittee staff was trying to find a copy of the Kotch-Crino report, Chief Counsel Steinberg asked Robert Gallagher of the Solicitor's Office where Richard Crino was.

It was the view of the staff that since John Kotch had already said he did not know where a copy of the report was perhaps Crino did. Robert Gallagher told Steinberg that Crino could not be reached.

Robert Gallagher said Crino would be out of reach for some time and that it would be impossible for the subcommittee staff to contact him.

Duffy testified that Robert Gallagher, insisting on the unavailability of Richard Crino, continued to say there was no copy of the Kotch-Crino report. Gallagher told the subcommittee staff that the Solicitor's Office had scoured the Labor Department in search of the report and still could not find it. Robert Gallagher told the subcommittee staff that no copy of the report existed.

The subcommittee staff persisted in its belief that there was a copy and that the Labor Department knew where it was. Duffy and Steinberg told Gallagher that the subcommittee might issue a subpena for the report.

Duffy testified that Robert Gallagher protested, saying a subpena would embarrass Secretary Marshall. The subcommittee served a subpena anyway. As a representative of the department, Robert Gallagher accepted service on August 20, 1980.

The next day, Thursday, August 21, at 1:00 p.m., Robert Gallagher called Duffy to say he had just received word that a copy of what seemed to be the Kotch-Crino report had been found in Labor Department regional offices in Cleveland.

Gallagher said he would have John Kotch fly to Cleveland the next day to ascertain whether or not it was the report Crino and

he had written. Gallagher said that if it was the report it would be delivered to the subcommittee the following Monday.

Duffy testified that he told Robert Gallagher that the document was under subpena and that Kotch should go to Cleveland immediately and have the report at subcommittee offices by the next day, Friday. Gallagher said he did not think that was possible but that he would check.

Ten minutes later Gallagher called back to say Kotch would be dispatched to Cleveland immediately and would try to have the document at subcommittee offices by the next day, Friday.

On Friday, Robert Gallagher called the subcommittee offices. This time he spoke to Marty Steinberg. Gallagher said a copy of what seemed to be the Kotch-Crino report had turned up in Labor Department regional offices in Pittsburgh.

Chief Counsel Steinberg reminded Gallagher that he had said the day before that the report was in Cleveland. Gallagher replied that Richard Crino, who worked in Cleveland, was still out of reach.

John Kotch, at the time he worked on the investigation with Richard Crino, had been assigned to Pittsburgh. Kotch, now working in Washington, had informed the subcommittee staff that he had not saved a copy of the report. On August 20, 1980, the department was compelled by subcommittee subpena to turn over a copy of the report. Kotch subsequently found his copy of the report and it was delivered to the subcommittee on Friday afternoon, August 22.

Richard Crino turned out to be very reachable by phone. Crino was home on annual leave on August 19–21, 1980 and was in contact with the department by phone. Crino was summoned to Labor Department headquarters in Washington where he spent August 25 and 26, 1980, the very days this subcommittee's hearings were being held concerning the Labor Department's handling of the Teamster investigations.

The subcommittee's desire to interview Crino was well known to the Labor Department. Yet, even though Crino was in Washington, working only a few blocks from the Capitol, Labor Department officials still persisted in their claim that Crino was unreachable.

UNAUTHORIZED DESTRUCTION OF RECORDS IS A FEDERAL CRIME

Subcommittee chief counsel Marty Steinberg wrote the Archivist of the United States on September 10, 1980 to acquaint him with the subcommittee's investigation and to ask for an explanation of Federal laws and regulations regarding the destruction of Government records (p. 283).

Specifying that it was the Labor Department's division of Labor-Management Services Administration (LMSA) where DeMarco, as Deputy Assistant Secretary, worked at the time the report was destroyed, Steinberg asked if LMSA, "had authorization to legally dispose of a report which reviewed efficiency and effectiveness of DOL's management of a special 4-year investigation?"

Steinberg noted that the subcommittee's investigation had "revealed that the report in question contained results of approximately 20 employee interviews, the bulk of which alleged mismanagement, professional misconduct, incompetence, and conflicts of interest."

The report also included a series of findings and recommendations which led to the dissolution of a Department unit, Steinberg said.

John J. Landers, the Acting Archivist of the United States, responded in a letter of September 12, 1980 (p. 284). Landers cited chapter 33 of title 44, United States Code, as setting forth exclusive procedures for the disposal of records of Federal agencies.

Under chapter 33, Landers said, Federal records may not be destroyed unless such disposal is approved by the Archivist of the United States (44 U.S.C. 3303). He said that procedures for obtaining necessary approval are contained in chapter 101 of title 41 of the Code of Federal Regulations.

Chapter 101 says that authorization for destruction of Federal records can be obtained in two steps, Landers said. The first step, he said, is to apply the general records schedules, which are issued by the General Services Administration and which govern the disposal of certain types of records common to most Federal agencies.

The second step, Landers said, is to submit disposal lists or schedules describing unique agency records on a standard form 115, request for records disposition authority, to the National Archives and Records Service. Each agency, he said, is required to develop schedules of all records in its custody.

Landers said Federal law requires heads of Federal agencies to establish safeguards against the removal or loss of Federal records (44 U.S.C. 3105) and to notify the General Services Administration of any actual or threatened unlawful removal or destruction of records in their custody (44 U.S.C. 3106).

Landers said that the Labor-Management Services Administration of the Labor Department had "no authority to destroy the type of report described in your letter, nor have they or the Department of Labor submitted a request for such authority." "In addition," Landers said, "the Department of Labor has not reported the disposal of the record in question as required by 44 U.S.C. 3106."

Landers noted that criminal penalties are provided for the unlawful removal or destruction of Federal records.

The criminal penalties cited by Landers are spelled out in title 18, United States Code, 2071. It says that:

> Whoever having custody of any record, paper, document, or other thing filed or deposited in any public office of the United States willfully and unlawfully conceals or removes or destroys the same shall be fined not more than $2,000 or imprisoned not more than 3 years, or both, and shall forfeit his office and shall be disqualified from holding any office under the United States.

KOTCH, CRINO TESTIFIED ABOUT THEIR INSTRUCTIONS

In February 1979, when they were summoned to Washington, John Kotch and Richard Crino were Deputy Area Administrators for Labor Department field offices. Kotch was stationed in Pittsburgh, Crino in Cleveland.

In Washington, Kotch and Crino met with Rocco Charles (Rocky) DeMarco. DeMarco had two jobs in 1979. He was Acting Inspector General of the Labor Department and, starting in March 1979, he

was Deputy Assistant Secretary in the Labor-Management Services Administration (LMSA).

According to Kotch and Crino, it was at this meeting—held on or about February 4, 1979—that DeMarco told them of an assignment he wished for them to carry out. They were to conduct an internal review of the Special Investigations Staff (SIS) and its investigation of the Central States pension fund.

Kotch and Crino were told that the Department officer wanting this review was the Under Secretary of Labor, Robert J. Brown. Kotch and Crino were instructed that they were to treat their assignment with great care, going about their work in the strictest of confidence and discussing their business with no one.

Kotch and Crino said DeMarco told them to make only one copy of their report and reports of interviews and to give him the one copy. These instructions were the subject of this discussion at the hearings.

> Senator NUNN. Did Mr. DeMarco tell you to write up reports of interviews but only give those reports to him?
> Mr. KOTCH. Yes.
> Senator NUNN. Did Mr. DeMarco instruct you not to keep file copies or working copies of any interviews or reports prepared?
> Mr. KOTCH. He didn't directly tell us that.
> Senator NUNN. Did he indirectly tell you that?
> Mr. KOTCH. He made it very clear that we were to turn in one copy.
> Senator NUNN. Did he say anything about the copies you would keep yourself?
> Mr. KOTCH. He never mentioned personal copies.
> Senator NUNN. Never mentioned that?
> Mr. KOTCH. No (p. 358).

Senator Nunn asked Kotch if he remembered telling the subcommittee staff in a prehearing interview that DeMarco's prohibition against extra copies also applied to file copies or working copies of interviews. This discussion ensued:

> Mr. KOTCH. He did instruct us not to—I don't know quite what you mean by a file copy. To me a file copy is a regular distribution. There was to be no distribution. Maybe we have the wrong words here.
> Senator NUNN. You tell us in your own words.
> Mr. KOTCH. He made it very clear to me and to Mr. Crino that we were to turn one copy of the report and only one copy, there would be no copies to anyone else.
> Senator NUNN. You were not to keep copies?
> Mr. KOTCH. He never mentioned my personal copy.
> Senator NUNN. Never mentioned your personal copy?
> Mr. KOTCH. No, sir.
> Senator NUNN. Never mentioned working copy?
> Mr. KOTCH. No.
> Senator NUNN. Did Mr. DeMarco tell you to write up reports of interviews but only to give those reports of interviews to him?
> Mr. KOTCH. Yes, sir (p. 359).

Senator Nunn asked Kotch if he had ever been given an assignment like this in which only one copy was to be made. Kotch said in his 12 years at the Labor Department he had never been directed to make only one copy of a report of interview. "In normal work," he said, "we made more than one copy of all files."

Kotch was uncertain what to call the product of his and Crino's work. He said DeMarco referred to it as a "management review, not an investigation." Kotch said, "It was to be in a memorandum form. And it was a memorandum, a memorandum report, or memorandum, discussing, of course, our findings." (p. 362).

Asked to characterize the work they did—asked, in fact, to give it a name,—Kotch said, "It was not an investigation in the sense of looking at specific allegations and it did have some; it would be hard to characterize it."[1]

No matter what its name, it was an important assignment, wasn't it? Senator Nunn asked. "Yes," Kotch said. In fact, both Kotch and Crino said their report was an important document (pp. 363-367).

ROLE OF INSPECTOR GENERAL'S OFFICE QUESTIONED

At that first meeting, DeMarco told Kotch and Crino that he was giving them this assignment in his capacity as Acting Inspector General. Senator Nunn asked if DeMarco specifically said he was giving these orders from his office of Acting Inspector General. "Yes," Kotch said, adding, "I was a little unclear in the interview. I had to call. I talked to Mr. Crino. I remember we reported to the Inspector General's Office rather than the LMSA office." (p. 359).

Senator Nunn asked, At that first meeting, you recall him saying it was an Inspector General's function? "That was my impression," Kotch said (p. 359).

Later—sometime in late February or early March—the jurisdiction shifted. They were no longer working for Rocco DeMarco the Acting Inspector General. They were now under Rocco DeMarco the Deputy Assistant Secretary for Labor-Managment Services.

Agreeing with Kotch's testimony, Richard Crino pointed out that other department officials assumed they were operatives for the Inspector General's Office. He said papers had begun to be processed giving them credentials identifying them as being with the Inspector General's Office. Pictures were taken for their badges, Crino said, adding, "then some policy decision took place and that was canceled." (p. 365).

Under Secretary Brown informed them of this change, Kotch said. Neither Brown nor DeMarco nor anyone else explained why there had been this change and neither Kotch nor Crino ever asked, Kotch said (pp. 359-360).

SCOPE OF INVESTIGATION WAS UNCLEAR

As their position on the organizational chart shifted from office to office, there was also some uncertainty as to specifically what it was DeMarco wanted Kotch and Crino to do.

[1] The subcommittee affords witnesses the opportunity to correct errors in grammar and syntax in their testimony before the hearing volume is printed. This quote from Kotch, however, is taken from the stenographic transcript, page 665. The edited quote in the hearing volume is, "It was not an investigation in the sense of looking at specific allegations, it would be hard to characterize it." (P. 363).

Kotch said, for example, that he wasn't sure whether DeMarco at that first meeting ever did explain what the "ultimate purpose" of their assignment was. Instead, DeMarco "tried to explain to us what our role was, what our function was," Kotch said (p. 360).

Senator Percy asked just what that meant. "As I recall," Kotch said, "it originally was somewhat unclear as to what the scope was and I recall Mr. Crino and I joined the discussion, trying to narrow the scope of it, trying to better understand it." (p. 360).

Later, Kotch said, they did limit the investigation or management review to four points—(1) the status of the pension fund inquiry, and the health and welfare fund inquiry; (2) the relationship between SIS and the Solicitor's Office, with special attention to the competence of the SIS team; coordination with the Justice Department; and (4) the effectiveness and morale of SIS.

Was this the usual procedure for an investigation like this? Senator Percy asked. Kotch replied that he had never done an inquiry like this before but that he didn't find it ununual that this one proceeded the way it did (p. 360).

UNDER SECRETARY BROWN CITED GAO INVESTIGATION

Along with the four stated areas for investigation, there was another activity contributing to the Labor Department's interest in having a review of SIS and the pension fund investigation. It was the General Accounting Office oversight examination of the department's investigation of the fund.

The GAO study, begun in 1978 at the request of this subcommittee, was on Under Secretary Brown's mind. Crino testified that at one of the meetings with DeMarco, Kotch, and himself, Brown referred to the GAO inquiry.

Crino said Brown indicated that, among the reasons for the management review, one was that "we wanted to be able to have some idea what our operation was because GAO was downstairs. He was interested in having some response to whatever GAO would comment." (p. 372).

Crino said Kotch and he were aware of GAO's investigation and, as a courtesy, they had introduced themselves to Raymond J. Kowalski, who was heading the GAO inquiry, and to two members of Kowalski's audit team.

During the visit with the GAO men, Crino said, "we told them what we thought our parameters were and they told us what theirs were."

In response to questions from Senator Percy, Crino said Kotch and he did not volunteer the fact that they would be writing a report of their inquiry but that Kowalski and his colleagues might logically have concluded as much (p. 372).

CRINO KEPT COPY OF FINAL REPORT FOR HIS OWN FILE

John Kotch and Richard Crino worked on the investigation or management review through March and April and on May 11, 1979 finished their report. Typed in memorandum form and addressed to DeMarco as "Deputy Assistant Secretary for Labor-Management Relations," the report or review memorandum was 23 pages long and had attachments which were reports of interviews of the various Department personnel they had talked to.

Crino kept a copy of the report and attachments. He said it was an important project that he and Kotch had undertaken and it was a significant document they had written, a copy of which he, as an experienced investigator, wanted to keep for his own files. Crino said he would not have destroyed the report (p. 373).

Asked if he thought senior Labor Department officials would surmise he had saved a copy of the report, Crino said, "I would think it would all depend on the individual—who is doing the surmising. Somebody with the experience of Mr. DeMarco would understand that the investigator generally keeps a copy of what he writes." (p. 373).

Paradoxically, Crino, at another point in his testimony, said no one at the Department of Labor knew that Kotch and he had saved copies of the report (p. 371).

Crino's assertions that no one knew he had a copy of the report were brought out in this exchange between himself, Senators Nunn and Percy:

> Senator NUNN. Did anyone in DOL [Department of Labor], including Mr. DeMarco, know that you retained your own work copy of the report, as well as the interviews?
>
> Mr. CRINO. The only one who would know was John Kotch.
>
> Senator NUNN. Nobody else would have known that was available?
>
> Mr. CRINO. Not to my knowledge.
>
> Senator NUNN. Mr. DeMarco wouldn't have known?
>
> Mr. CRINO. To my knowledge, he would not have; no.
>
> Senator NUNN. Hypothetically, if someone in the Department were to have destroyed all the originals and all the copies except the one you retained, they would not have had any way of knowing one was available?
>
> Mr. CRINO. Not unless they asked me.
>
> Senator NUNN. They didn't ask you until recently when the subcommittee issued a subpena?
>
> Mr. CRINO. When I got the call, yes, telling me they were looking for the report.
>
> Senator PERCY. I want to be sure I understand your reply to the question. Were you at any time before that asked if you had a copy of the report, or knew if there were copies of the report?
>
> Mr. CRINO. Not before I was called on annual leave in the middle of August 1980. The issue was forgotten as far as I was concerned (p. 369).

PART OF INVESTIGATION WAS NOT COMPLETED

SIS members and other Labor Department officials continued to assume that Kotch and Crino were working out of the Inspector General's Office. For that reason, Crino said, Kotch and he had to make a special effort to disabuse them of that mistaken view. "* * * We made that very clear to people we talked to, because they were under the impression this was an Inspector General's review," Crino said (p. 380).

Despite their new directive—that DeMarco was their immediate supervisor not as Acting IG but as Deputy Assistant Secretary of Labor—and despite their efforts to convince people of this revised status, Kotch and Crino were never really certain of their own roles. According to Crino, in fact, to the end of their review they still thought of themselves as working on an Inspector General's Office project (pp. 379–380).

When, for example, they came upon allegations indicating that a crime might have taken place, they felt that by reporting this to DeMarco, they were, in fact, doing what was required of them; that is, reporting the allegation to the Inspector General. As Crino testified, "At least in my mind, whatever I discussed with Mr. DeMarco, I was reporting to the Inspector General's Office. . . ." (p. 380).

Kotch and Crino developed information indicating that there may have been criminal misconduct in the operations of SIS to the extent that there may have been interference in the investigative process. Kotch and Crino planned to conduct further inquiry into that allegation after they filed their report on May 11, 1979.

But neither Kotch nor Crino did that additional inquiry. At the end of April, or in early May, Crino said, the question of looking into the allegation of interference was discussed in a meeting attended by DeMarco, Kotch, Crino, and Robert Gallagher of the Solicitor's Office. At this meeting, Kotch and he were told not to pursue the interference allegation, Crino said (pp. 378, 380–382).

CONFUSION OVER STATUS

Another demonstration of the fact that Kotch and Crino still considered themselves as being on an Inspector General's investigation was seen in a memorandum they wrote to Rocco DeMarco on March 23, 1979.

What was significant about their memorandum, though, was less what it said, but to whom it was addressed and its date. The memorandum was addressed to Rocco DeMarco as "Inspector General—Acting," which meant that one full month into their management review Kotch and Crino were still working under the assumption theirs was an Inspector General's Office case.

Kotch and Crino received their original instructions on February 4. They formally began their review on February 26. It ended on April 23. The March 23 date on the memorandum to Acting Inspector General DeMarco showed that they understood themselves to be working out of the Inspector General's Office for at least the first month of their 2-month inquiry, and possibly longer than that.

SUBCOMMITTEE STAFF INTERVIEWED FORMER UNDER SECRETARY BROWN

Subcommittee Investigators Raymond Maria and Lawton Stephens interviewed former Under Secretary of Labor Robert J. Brown. Maria recounted the interview in an August 22, 1980 memorandum (pp. 258–260).

According to Brown, oversight of the SIS inquiry was first given to Eamon Kelley, a consultant to Secretary Marshall; and then to Francis X. Burkhardt, Assistant Secretary for Labor-Management

Services Administration. Brown said that Burkhardt and his Deputy, Jack Warshaw, kept him current on the SIS investigation.

Brown was concerned about the progress of the investigation. He said the Solicitor's Office explained that the SIS effort was largely a civil litigation matter that it would require months or years to cross-check and analyze large amounts of fund records and data.

Burkhardt and Warshaw left the Labor Department early in 1979 and at this period, Brown said, both Secretary Marshall and he were concerned about how the SIS case was going.

Brown said Rocco DeMarco replaced Warshaw as Deputy Assistant Secretary for Labor-Management Services Administration. Brown said he directed DeMarco to "get on top of the fund program." In the interview with Maria and Stephens, Brown could not remember if he told DeMarco to submit his findings in report form.

Brown said DeMarco asked permission to bring in two to three employees from LMSA field offices to assist him. Brown could not remember their names but he did recall authorizing DeMarco to use them.

About 3 or 4 weeks later, Brown said, DeMarco came to him with a written document, summarizing the findings of the review. Brown termed this document a "paper" and not a report because he believed it to be an administrative staff review.

Brown said he read the document and informed DeMarco that he did not think it was as professional as he had expected. Brown said he thought the paper focused on personalities and recriminations, reflecting bitterness among SIS personnel and strong antagonism between SIS and the Solicitor's Office.

The squabbling aside, Brown said, the paper still documented confusion in the fund investigation. What had been intended had been a team concept, Brown said, and he felt that to achieve progress a better way of handling the investigation had to be found.

Brown said he told DeMarco that he would discuss the review with Secretary Marshall. He said he also wanted the Solicitor, Carin Ann Clauss, to read it. Brown could not remember how many copies of the review DeMarco brought to his office but he did recall specifically that a copy went to Clauss.

Brown said he believed this to be a sensitive document and told DeMarco not to circulate it. Brown remembered showing a copy to Robert Lagather, the Assistant Secretary for Mine Safety and former Deputy Solicitor.

Brown met with Marshall and Clauss to discuss the report. Brown said DeMarco may have been there too. It was decided that a complete reorganization was called for, Brown said, adding that each participant at the meeting agreed that the document was of significant sensitivity so each returned his copy to DeMarco with the understanding that DeMarco would secure them.

Brown was asked if he or anyone else told DeMarco to destroy the reports. He said he did not remember. On the other hand, Brown said, he was not prepared to contradict anyone who said that an order was given to destroy the reports. He said that if he himself had wanted to destroy the reports he would have torn them up at the meeting.

Brown said he intended to have the new Assistant Secretary for Labor-Management Services read the document so it is unlikely that he would have had it destroyed.

At his direction, Solicitor Clauss drew up a reorganization plan designed to improve policy level involvement in the SIS inquiry, Brown said. He said that because the fund effort was almost entirely a litigative matter it was proposed that most responsibility for it be given to the Solicitor's Office.

DEMARCO RECOUNTED ORIGINAL INSTRUCTIONS IN TESTIMONY

Rocco DeMarco told the subcommittee there may be some confusion over the question of which office he was operating from when he gave Kotch and Crino their assignment to conduct the review of SIS (p. 394).

Intending to clarify the issue, DeMarco explained that he became Deputy Assistant Secretary of Labor the first week in April. He said he was Acting Deputy Assistant Secretary for 1 month before receiving the position on a permanent basis. That would have put him in the post on an acting basis for most of the month of March (p. 393).

He was also director of the Office of Special Investigations in the Labor Department, starting in January of 1978, DeMarco said. He held that position until sometime in the fall of 1978—approximately October, he said—when an Office of Inspector General was created. The new Inspector General's Office absorbed the functions of the Office of Special Investigations.

DeMarco made the transition, becoming Acting Inspector General, a position he held when in January or February 1979, Under Secretary Brown asked him to conduct the review of the operations of SIS.

It was in his position as Acting IG that DeMarco was given the assignment to conduct the SIS review. It would be at least 1 month before he moved into the job of Acting Deputy Assistant Secretary.

Mindful of this—that DeMarco received the assignment in February 1979 and he did not become Acting Deputy Assistant Secretary until March—Senator Nunn asked DeMarco if Under Secretary Brown had him undertake the SIS review as Acting IG.

DeMarco's answer was:

> There seems to be some confusion even today in my mind after listening to the testimony [at the subcommittee hearings]. I think the association with it being an IG project or someone thinking it was an IG project was merely because I was selected for that assignment. Before the management inquiry was actually started, and I hadn't remembered this earlier either, the question was raised with Under Secretary Brown and I actually met with Under Secretary Brown [and] with Deputy Area Administrator Crino and Kotch and I think the former deputy administrator of the pension welfare benefit programs, Jack Ballard, at which time it was clarified that this was an LMSA [Labor-Management Services Administration] project—that I would be going in and shortly thereafter, as Acting Deputy Assistant Secretary of Labor for LMSA—

and that this was the project that was to be done by me, and these individuals under the LMSA agency (p. 394).

That answer did not reconcile the conflict in dates. DeMarco said he was given the assignment in January or February 1979, to oversee the review of SIS. The review had already begun—Kotch and Crino received their first instructions from DeMarco on February 4, 1979—before the time DeMarco was named Acting Deputy Assistant Secretary.

Unless DeMarco held another job early in 1979, a position he did not tell the subcommittee about, he was Acting Inspector General when he summoned Kotch and Crino to Washington and instructed them to conduct their investigation.

DeMarco said a number of persons were considered to conduct the "survey" of SIS but the two picked were Richard Crino, "who I knew extremely well from past employment history," and John Kotch, "who I knew by reputation." (p. 395).

DeMarco testifed that Kotch and Crino mistakenly thought they were working out of the Inspector General's Office. Apparently Kotch and Crino assumed that because DeMarco was the Acting Inspector General at the time he gave them their orders they were working under the Office of the Inspector General.

But, DeMarco said, the confusion was cleared up "before they started their inquiry." In addition, DeMarco said, he told Kotch and Crino "to make sure every person they talked to was not given the impression that they were working for the IG." (p. 395).

DeMarco was well aware that, according to the statute creating the Inspector General Offices in Cabinet-level departments, the IG must report on his activities to Congress. As far as he knew, DeMarco said, that requirement had nothing to do with the decision to place the SIS management review outside the Inspector General's Office and in Labor-Management Services. But DeMarco did not offer an explanation as to why he instructed Kotch and Crino in no uncertain terms to make clear to everyone that theirs was not an IG investigation (p. 395).

In the Labor Department organizational chart, SIS was a box under the pension and welfare benefit programs division. And the pension and welfare benefit programs division was a box under the Labor-Management Services Administration. DeMarco said that for these organizational reasons, it made sense for the SIS management inquiry to fall under the direction of Labor-Management Services (p. 396).

The Deputy Assistant Secretary for LMSA was planning to retire, DeMarco said. The Assistant Secretary for LMSA office was vacant and the Assistant Administrator for Field Operations in LMSA was also unfilled. DeMarco said Under Secretary Brown told him that duties from all three positions were to be combined and DeMarco had been chosen to take over the slot.

Senator Nunn asked DeMarco if it was because he was slated to assume the new position in LMSA that he wanted to take the SIS review with him. DeMarco replied, "That was my understanding, that there was an LMSA problem and we were going to identify the management problems there." (p. 396).

DEMARCO ASKED FOR ONE COPY OF SIS REVIEW

Rocco DeMarco's instructions to Kotch and Crino were to write up their findings. "I told them to prepare only one copy, but I did not tell them not to keep any file copies," DeMarco testified (p. 397).

Marty Steinberg, Subcommittee Chief Counsel, recalled the August 19, 1980 prehearing interview Steinberg, Subcommittee General Counsel LaVern J. Duffy and Minority Counsel Joseph Block had with DeMarco.

In light of that inverview, Steinberg asked DeMarco if he had said at that time that he had ordered Kotch and Crino to keep no file copies. DeMarco denied ever saying that.

Steinberg said the Privacy Act prohibited investigators from keeping their own personal copies of reports because, according to the statute, that practice would constitute an independent filing system.

Carin Ann Clauss, the Solicitor of Labor, appearing with DeMarco, countered Steinberg's point by saying his assertion about the Privacy Act was correct, except it did not apply in this instance because the Kotch-Crino report was not official. Clauss said Kotch and Crino conducted a "management survey" and it was not to be done by the Inspector General. Clauss said Kotch and Crino were not keeping "official records" from an "official investigation."

Senator Cohen asked Clauss, "was this an official management review or an unofficial management review?" Clauss said Under Secretary Brown told her "it was not an official investigation, that he simply wanted Mr. DeMarco to get on top of this matter because he was going to be taking over as Deputy Assistant Secretary, that he wanted him to have primary responsibility for the Central States investigation and that he wanted a personnel evaluation, he wanted an evaluation of how that team was working. He heard a lot of rumors about the coming apart at the seams and wanted someone to look at it."

Clauss added, "That is what he told me when he [Brown] gave me a copy of the report." (pp. 398–399).

FREEDOM OF INFORMATION REQUEST WAS TURNED DOWN

John Helms, an auditor at SIS, was interviewed by Kotch and Crino. Edward Shevlin of the Special Investigative staff testified that Helms filed a formal Freedom of Information Act request to obtain a copy of the report of interview Kotch and Crino had written about what he had told him.

Shevlin said Helms told him he was refused a copy. Helms advised Shevlin that he had been informed that the report was not written or that it had been destroyed.

Shevlin said he was not surprised that Helm's request was rejected. Shevlin said John Kotch, one of the authors of the report, had told him the report was embarrassing to the Labor Department. Shevlin said Kotch told him, "I can see why they would want to destroy it." (p. 108).

In his prehearing interview with subcommittee staff, Kotch was asked if he had told other Labor Department employees that he thought the Kotch-Crino report would be destroyed because it was so embarrassing to the Labor Department.

Kotch replied, according to subcommittee staff, that he didn't remember his exact words but that he could very well have said that the report was not "pleasant or complimentary" regarding the department (p. 263).

In public hearings, Kotch was asked if he recalled telling another Labor Department employee that "I understand why the report was destroyed; because it was so embarrassing to the Department of Labor."

Kotch replied, "I don't recall saying that, but I can't deny saying that." (p. 362).

The subcommittee questioned John Helms, the SIS auditor, in executive session about his Freedom of Information Act request. Helms said he filed such a request but was turned down because, he was told, the report did not exist.

DEMARCO TOLD GAO THAT KOTCH-CRINO REPORT DID NOT EXIST

Rumors about the existence of the Kotch-Crino report came to the attention of Raymond J. Kowalski, the head of the GAO team examining the Labor Department's investigation of the Central States pension fund.

Kotch and Crino submitted the report to DeMarco on May 11, 1979. Kowalski testified that sometime after May 11, he asked DeMarco for a copy of the report. Kowalski said DeMarco's reply was that there was no report (p. 345).

Carin A. Clauss, the Solicitor of Labor, dismissed GAO's effort to obtain a copy of the report as misdirected. GAO, she said, had simply asked the wrong Labor Department personnel. Clauss said GAO should have asked her for a copy of the report or, if not her, then Secretary Marshall, or Under Secretary Brown or the "Assistant Secretary." She didn't say which Assistant Secretary.

Clauss went on to say:

> When I want something, I contact the responsible officials * * *. I would start off with the people that I knew did the investigation * * * I don't think it is a good way to find material to ask secretaries or staff people or people who were never involved in the investigation or the report of the evaluation.

Clauss indicated that because GAO submitted the request to the wrong person no official request had actually been made. She said, "We were not aware that any request had been made until we read the testimony of the August (1980) hearings." (p. 336).

Raymond Kowalski replied to Clauss's assertion:

> And contrary to what Solicitor Clauss testified to this morning, we did follow the procedure of talking to the appropriate people.

Kowalski said the officially designated point of contact for the General Accounting Office when requesting records from the Labor Department in the pension fund inquiry was the Inspector General's Office of the department. Kowalski said an official of the Labor Department's Inspector General's Office—an officially designated liaison for GAO—informed him that she did not have a copy of the report and had not heard of it. The Inspector General's Office official said she had no information on their report, Kowalski said.

The Inspector General's Office official referred him to Rocco (Rocky) DeMarco, Kowalski said. "She indicated I should talk to Rocky DeMarco," Kowalski said, explaining, "So I called Rocky DeMarco and he told me the report did not exist. So I think I went to the proper person, Rocky DeMarco, since he had requested the report be prepared (p. 345).

CLAUSS DENIED TELLING DE MARCO TO DESTROY REPORT

At the subcommittee staff prehearing interview with Steinberg, Duffy and Block, DeMarco said that Carin Ann Clauss, the Solicitor of Labor, handed him the Kotch-Crino report and remarked, "Dispose of it." (p. 261).

But DeMarco testified that he did not intend for the words "Dispose of it" to be a literal recitation of what Clauss had actually said to him.

Nor, he said, did Clauss intend for him to, in fact, dispose of the report, if by "dispose" the connotation of "destroy" was imparted. "* * * the word 'dispose' was not a quote," DeMarco testified. "That was my word." (p. 400).

Senator Percy noted that the word "dispose" could impart the connotation of destroy. No, DeMarco said, what Clauss intended was that she had no further use for the report. DeMarco assured Senator Percy that Clauss did not say destroy it or get rid of it but only wished to convey the idea that she had no further use for it (p. 401).

Robert Gallagher, an attorney in the Solicitor's Office who served as counsel to SIS, also attended the subcommittee staff's prehearing interview with DeMarco. Gallagher took notes. Gallagher read aloud at the hearing from what he had transcribed.

Robert Gallagher testified that his notes indicated that "CAC"—Carin Ann Clauss—"said she had no further use for it—they had the original and for him to 'dispose of it.'" Gallagher asserted that the quotation marks around "dispose of it" were not necessarily there to suggest Clauss actually said "Dispose of it" but because he, Gallagher, put them there because, he said, "I thought that was significant." (p. 402).

The notes of the prehearing interview go on to say that DeMarco did destroy the report. Senator Percy asked him about that. DeMarco said, "I do not think I personally destroyed it. I think I took it back to my secretary and asked her to." (p. 402).

DeMarco said he gave his secretary Clauss' copy of the report and other copies which apparently had been reproduced since Kotch and Crino, acting on DeMarco's orders, had given him only one copy. His secretary's orders were to destroy the reports, DeMarco said.

DeMarco didn't know how his secretary went about destroying the reports. He said he would have asked her but, in light of the renewed interest in the report, he did not want to discuss any of this with her for fear it would be interpreted as tampering with a witness (p. 402).

DeMarco had "surplus" copies of the report disposed of, he said, but he kept one and gave it to William Hobgood, who became his boss as Assistant Secretary for Labor-Management Services.

In April 1980, Hobgood returned the Kotch-Crino report to DeMarco. DeMarco threw it away. DeMarco explained, "It was in my

'in' box. I remember briefly looking at it * * *. I didn't read it again, but I remember one interview that came to mind where there was some vague allegation that everybody was on the take or something like that. And I remember thinking, 'This matter is completed; I have no further use for it.' And I discarded it in my wastebasket" (p. 403).

Senator Percy asked if the report was then destroyed. "My working copy that came back to me, yes, was disposed of," DeMarco said. DeMarco said he tossed in into the trash in one piece. He didn't tear it up or shred it (p. 403).

DeMarco said it was the very first time in his 20-year career at the Labor Department that he ever destroyed or threw away a report (p. 405).

As for Solicitor Clauss, she said she read the Kotch-Crino report because Under Secretary Brown asked her to. When she finished reading it, she handed it back to DeMarco.

Senator Percy asked her what she said to DeMarco when she gave it back.

> Clauss testified: Well, I don't think, Senator, that I said anything—I think that the clear understanding from the time I received the report was that I was not to keep a copy, that it was simply being shown to me, that this matter was not in my immediate jurisdiction. Mr. Brown was seeking my advice * * * (p. 410).

Clauss also offered a comment on the matter of DeMarco throwing the Kotch-Crino report into the wastebasket, that the document that the Labor Department had considered so sensitive and so in need of confidential treatment could be tossed whole into the trash.

> Clauss said: It may come as a surprise to you—I don't have a single shredding machine in my entire organization. I don't believe Mr. DeMarco has one in his office. When someone tells me they threw out a report, I don't immediately think of them sitting there and cutting it up into little pieces. I don't know how he threw away the report (p. 409).

KOWALSKI'S COMMENTS ABOUT KOTCH-CRINO REPORT

Raymond J. Kowalski of the General Accounting Office said that when he heard about the Kotch-Crino investigation and report that he went to Rocco Charles DeMarco and asked for a copy. DeMarco was serving as Deputy Assistant Secretary of Labor, had formerly been Acting Inspector General and was designated as the official point of contact within the department for GAO.

Kowalski said DeMarco told him there were no copies of the report. Kowalski said he had no recourse but to accept DeMarco's word that there was no report (pp. 345–346).

Kowalski said that having a copy of the report would have been a great benefit to GAO as it evaluated the Labor Department's investigation of the pension fund.

Now that his agency did have a copy of the report, Kowalski said, it had been of considerable assistance, particularly in connection with testimony GAO had given the Oversight Subcommittee of the House Ways and Means Committee. The House Subcommittee

has had a longtime interest in the department's pension fund inquiry.

Kowalski said that, as a GAO auditor, he had been assigned to the Labor Department for 10 years. He said that in that time he had never before been denied access to a department report. He said he had never heard of a report being destroyed, either.

Kowalski said the report was too important to destroy and he found it hard to believe that senior Labor Department officers had actually tried to dispose of it (pp. 346–348).

Kowalski contradicted one of the most frequently made assertions of senior Labor Department officials, which was that the attempt to destroy the report was made only after it was decided to carry out the report's principal recommendation—to abolish SIS.

The attempt to destroy the report began in 1979 and ended in March 1980, when DeMarco threw away the last official copy. SIS was abolished in May 1980.

Additionally, the dissolution of SIS was but one of several recommendations for corrective action which were contained in the Kotch-Crino report.

According to GAO's Kowalski, there were a total of 19 recommendations and the Labor Department did not implement all of them.

Kowalski said he agreed with the summary of the Kotch-Crino report given by subcommittee chief counsel Marty Steinberg (pp. 346–347).

ISSUE OF CONFIDENTIALITY CONCERNED MARSHALL

The fact that Rocco DeMarco had taken the Kotch-Crino report and thrown it into a wastebasket was a point of contention for the subcommittee. Only the day before DeMarco's testimony, his boss, Labor Secretary Ray Marshall, had harshly criticized the subcommittee, accusing it of reckless and cavalier handling of the investigation, particularly for the way the Kotch-Crino report was handled.

Parts of the report were made public, Marshall said, and the subcommittee had threatened to release the entire document. Such irresponsible use of so sensitive a document had already done damage to the Labor Department, its personnel and its mission, Marshall said (pp. 295, 297).

The members of the subcommittee challenged Marshall to cite instances in which the subcommittee's use of the report had compromised the Department, but Marshall would not be specific (pp. 297–298).

Now, however, the focus of the hearings shifted to a contrast between Marshall's charges of irresponsible handling of the report by the subcommittee and the admissions DeMarco was making as to his own handling of the report. First, DeMarco had his secretary destroy several copies and, second, the one remaining copy in official Labor Department files he tossed whole into the trash.

Senator Nunn recalled the many demands from Labor Department officials that this document or that document were too sensitive to be addressed in public session by the subcommittee. The Kotch-Crino was one such sensitive document (p. 409).

Yet, Senator Nunn said, here was an illustration of how the department itself was handling the Kotch-Crino report, leaving it

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in a wastebasket with no controls over what would happen to it. Even Secretary Marshall, while insisting that DeMarco broke no law, did admit there might have been a better way to dispose of the report (p. 419).

Secretary Marshall responded:

> I don't know what happens to our waste baskets * * * I don't know if they are burned immediately or shredded or whatever. Somebody might know that. I think it is a thing we ought to look into, though, and will * * * I have always assumed that copies of documents could be disposed of and that whoever took care of those documents would understand the legal procedures, the legal requirements for doing that. We need to review that to be sure about it. I again would rely on the Solicitor's Office to look into that and give us a recommendation on it. I intend to ask the Solicitor to do that (p. 419).

The hearing record, as follows, reflected the sharply differing views held by the subcommittee members and the Labor Department as to the proper way to handle sensitive Government documents:

> Senator NUNN. Looking back on it, Mr. DeMarco, do you think it was appropriate to take a sensitive report like that and put it in the trash can?
>
> Mr. DEMARCO. Senator, if you are asking me to use 100-percent hindsight, I would agree with you. I would have kept a million copies.
>
> Senator NUNN. There is some room in between you throwing a copy in the trash can and making 1 million copies. What we are trying to find is some balance here about sensitive documents (p. 408).

Senator Nunn asked Solicitor Carin Ann Clauss what she thought of DeMarco's action. This discussion ensued:

> Ms. CLAUSS. If you are asking me whether I would have thrown it in the trash can, I probably wouldn't have. If you are asking me whether I think Mr. DeMarco did something wrong, no. I don't think he did something wrong.
>
> Senator NUNN. Let's not talk about the criminal aspect. Do you think it was a mistake?
>
> Ms. CLAUSS. I think I would agree with Mr. DeMarco, it would have been a great idea to save a copy. However, I would point out he did save a copy for his supervisor, and his supervisor kept it for many months.
>
> Senator NUNN. Ms. Clauss, do you realize the document you spent yesterday telling us about how important it was to keep it confidential, we kept it from the public domain even today in these hearings and now we have testimony it was thrown away as a whole copy in the trash can. You don't see anything wrong in that?
>
> Ms. CLAUSS. What I am saying to you, Senator, is I would not have disposed of a sensitive document in that manner. However, I certainly think that Mr. DeMarco can only tell us what he was doing (pp. 408–409).

MARSHALL NEVER READ KOTCH-CRINO REPORT

Labor Secretary Marshall acknowledged that he never read the Kotch-Crino report.

Marshall said he never heard of the report until the subcommittee requested a copy of it.

Marshall said he directed his trusted aides to read the report for him and summarize it for him (p. 328).

Senator Cohen said it was difficult to believe that Secretary Marshall would testify under oath on the Kotch-Crino report without having read it.

Senator Cohen said that if he had been advising the Secretary he would have pointed out that the subcommittee might want to go through the report in great detail and for that reason it would be wise to have at least read it.

Marshall said he was familiar with the document in general but that he had not thought the subcommittee was so interested in the report. Had he known that, he said, he might have read it.

Senator Nunn reminded Secretary Marshall that in the past three weeks in three previous conversations he had informed Marshall that the Kotch-Crino report contained very serious charges. Senator Nunn said he recommended to Marshall that he read the report (p. 333).

WHY DEMARCO TOLD SUBCOMMITTEE STAFF NO COPIES EXISTED

When the subcommittee staff interviewed Rocco DeMarco, he told them no copies of the Kotch-Crino report existed. Senator Cohen asked DeMarco if he assumed that Kotch or Crino had kept copies of their report. DeMarco said, "I had no doubt in my mind" that Kotch or Crino kept a copy (p. 411).

If that were so, Senator Cohen asked, why didn't he tell the subcommittee staff that Kotch or Crino had a copy? DeMarco replied, "I had already heard seconds before that apparently Mr. Kotch had told them he didn't have a copy. At that time, there was a doubt raised in my mind about him. But Mr. Crino, I hadn't faced that." (p. 412).

Had the thought suddenly occurred to him that Crino might also have failed to keep a copy? Senator Cohen asked. DeMarco replied, "At this point, I thought after all these years—in my mind—the system has failed. But, obviously, it didn't."

"What do you mean, the system has failed?" Senator Cohen asked. DeMarco replied, "It is a custom and practice for the originators of these reports and memos to keep copies and I had never known it to fail before as far as I was concerned." (p. 412).

Was DeMarco intending for the subcommittee to understand that, even though he had thrown his copy into the wastebasket, he knew there would still be copies? Senator Cohen asked. DeMarco replied that was correct and that he knew, for example, that John Kotch had saved a copy. He knew this, he said, because in 1979, after receiving his first copy, he had called Kotch about it and, by Kotch's replies to his questions, DeMarco said, it was apparent that Kotch had held on to a copy.

Senators did not press DeMarco on the question of why, then, in 1980, did Kotch deny to the subcommittee staff that he had a copy of the report when he, Kotch, had a copy in 1979. Or why had

DeMarco not acknowledged the existence of the report to GAO's Raymond Kowalski or at least helped Kowalski find a copy of the report? Nor did DeMarco explain why the Labor Department had refused John Helm's Freedom of Information Act request for portions of the report by telling him the report did not exist.

Senator Percy reminded DeMarco of Federal regulations against unauthorized destruction of reports. Then he asked, "What caused you to just throw in the wastebasket this highly sensitive report and in a sense destroy it that way?"

DeMarco answered, "Senator, as I have stated already, I was done with my part of it. As far as I was concerned, it was merely a duplicate of something that would still be in existence from the writers, and it had served its purpose as far I was personally concerned, my assignment my part of it." (pp. 412–413).

REPORT WAS NEVER REFERRED TO INSPECTOR GENERAL'S OFFICE

The General Accounting Office was denied access to the Kotch-Crino report. The subcommittee was denied access to the report until it served a subpena, the first time in its history that it had to compel cooperation from a Government agency.

Also denied access to the report was the Inspector General's Office of the Department.

One of the questions the subcommittee sought to answer was: Did the Department of Labor not refer the report to the Inspector General because the law required the IG to report on such matters to Congress?

Sheldon Repp, special assistant to the Inspector General of Labor, testified that the IG was authorized by law to have access to reports such as the one written by Kotch and Crino. In carrying out section 6 of the Inspector General Act of 1978, Repp said, the IG has access "to all [the Department's] records, reports, audits, reviews, documents, papers, recommendations * * *." (p. 354).

Repp said the statute creating the IG offices in executive branch agencies required that the Inspector General report twice a year to Congress on "significant problems, abuses and deficiencies relating to the administration of programs and operations." (p. 354).

But the Labor Department's Inspector General's Office was stymied in its attempts to obtain a copy.

How much of this background Sheldon Repp knew about as he tried to obtain the report is not known. What got him involved in the search for the Kotch-Crino report were the Senate confirmation hearings of Marjorie Knowles, who, in May 1979, was appointed Inspector General of the Department of Labor.

During the hearings, Knowles was asked about the progress of the Department's investigation of the Central States pension fund. Knowles replied that she didn't know very much about it but would learn. She told Repp to give her a report on how the inquiry was proceeding.

Repp testified that he went back to the Labor Department and talked to Richard Ross. Ross had been Acting Inspector General and still worked in the IG's Office. Repp said Ross told him that John Kotch and Richard Crino had been directed to make a review of the investigation and SIS.

Repp said Ross told him that Rocco DeMarco had ordered the Kotch-Crino review and that DeMarco's orders had come from

Secretary Marshall. Repp said Ross promised to try to obtain a copy of the Kotch-Crino report and give it to him "for background purposes." (p. 350).

According to Sheldon Repp, here was what happened next:

> Later, Mr. Ross called me back and told me that he had talked with someone—I don't recall his identifying the source—and was told that there was a verbal report which had been given and that the notes concerning this report were destroyed. I didn't pursue the matter further at that time as I was involved in setting up the Inspector General's Office and other related matters (p. 350).

That was May 1979. In December, Repp said, he started his own survey of the Central States pension fund investigation and of SIS. He began the survey, he said, because he had heard talk that SIS was about to be reorganized and personnel transfers were being considered.

Repp said he spoke to Lawrence Lippe, Monica Gallagher, Robert Gallagher, and Edward F. Shevlin. Shevlin told him that Kotch and Crino had made some kind of a study. Shevlin suggested Repp talk to Kotch and Crino.

Repp said he asked Monica Gallagher and Robert Gallagher if they knew anything about it. They both said they knew nothing of such a report, Repp testified.

"The conclusion I reached after talking to them was that there was no formal report," Repp said. "No one I talked to voluntarily told me that a formal report existed, or had existed." (p. 351).

Repp said the Kotch-Crino report was never referred to the Inspector General's Office. He said referrals were never made to the IG of any of the allegations contained in the report and the reports of interviews (pp. 351–352).

Repp said he knew of no other report at the Department of Labor which had been destroyed (p. 356).

Marty Steinberg, subcommittee chief counsel, said he asked Mrs. Knowles if she remembered any report or allegations along the lines of the Kotch-Crino review ever being referred to her when she was Inspector General.

Knowles, who left the Department in May of 1980, said she had never seen documentation like that but had heard of the report and had asked Sheldon Repp to try to find it, Steinberg said. She said no copy of the report was ever referred to her, nor were any of the allegations contained in the report ever presented to her (pp. 356–357).

Persons experienced in many years of observing Government operations were surprised to learn of the maneuvering the Labor Department had done to prevent the Congress from seeing the Kotch-Crino report.

GAO's Raymond J. Kowalski, given a copy of the report by the subcommittee, was amazed that a Government agency would try to destroy so significant a document.

"I couldn't believe it," Kowalski said. "Really, it is amazing that they would destroy a document like that, especially since they are saying, 'Well, we have taken action on this document.' So they must have considered it an important document. Yet supposedly they said they implemented all of the objectives when they really haven't, in my opinion." (p. 348).

Even harsher in his judgment of the Labor Department's conduct regarding the Kotch-Crino report was subcommittee general counsel, LaVern J. Duffy.

Looking back across 28 years of service on the subcommittee, Duffy said he had never witnessed any executive branch agency behave so poorly in response to a congressional committee.

"In all of my experience with this subcommittee," Duffy said, "I have never seen such obstructionist tactics utilized by an executive agency. . . ."

Duffy said the subcommittee investigation was moving along in a procedurally sound manner until the first week in August when he discovered that Kotch and Crino had conducted their own inquiry and had written a report about it.

"Then it turned around completely," Duffy said, "We had to subpena the document. We had to subpena individuals to testify in executive sessions, which . . . is unprecedented. We had to threaten subpenas to have witnesses from the Labor Department testify in public session on this matter. This issue was resolved in the 11th hour. . . . I think it is shocking and I think it is sad." (p. 264).

Rocco DeMarco said he knew in January of 1979 that a person from outside the Labor Department, Marjorie Knowles, would soon be appointed Inspector General. But the fact that Knowles, who had not been part of the management team overseeing the SIS inquiry, would take over the Inspector General's Office had no bearing on his decision to make certain that the Kotch-Crino investigation and subsequent report were removed from the IG's jurisdiction and placed under his control in the Labor-Management Services Administration.

Putting the Kotch-Crino report in the Labor-Management Services Administration made sense, DeMarco said, because SIS was in that Division of the Department (pp. 395–396).

FRANCIS BURKHARDT RECOMMENDATION WAS NOT HEEDED

One of Secretary Marshall's most frequently stated assertions about his Department's response to the Kotch-Crino report was that its principal finding, that SIS be abolished, was implemented (pp. 295, 332, 337).

Marshall was precise on the point, justifying the destruction of the report on the basis of its recommendations having been implemented. Marshall testified, "Once the [Kotch-Crino] review had served its purpose and its recommendations had been carried out, the official coordinating the review discarded his copies." (p. 295).

It required 1 year—from May of 1979 to June of 1980—for the Department to actually abolish SIS. But the action was taken and, to Secretary Marshall's point of view, the action reflected extremely well on his Department's ability to identify a problem, decide what to do to correct it, and then do it. As the Secretary said, with the Kotch-Crino report in hand, he could move with dispatch because "We had enough information to know that we needed to reorganize SIS." (p. 337).

Secretary Marshall was then reminded by Senator Nunn of a recommendation that originated in the office of one of his Assistant Secretaries, Francis X. Burkhardt, written 1 year before the Kotch-Crino report, that proposed essentially the same thing, that

SIS was not functioning effectively and that a total reorganization was called for.

In April and May of 1978, memorandums went from Assistant Secretary Burkhardt to Secretary Marshall proposing a total reorganization of SIS (p. 337).

To the question of why hadn't he implemented the recommendation of the Burkhardt proposal, Marshall said:

> Partly because we were trying to work out the changes. I testified earlier about making changes at the top, rather than completely reconstituting the organization and after getting the Kotch-Crino report and getting another recommendation from Under Secretary Brown, we did it. But we were trying all the way through this to make effective use of the SIS, and therefore did not act on this original recommendation. I thought that initially you could make some changes at the top and that that might do it (p. 338).

No changes were made "at the top" of SIS in 1978. Norman E. Perkins, who had been named acting Director of the unit in 1977 when Lawrence Lippe quit, remained in charge of SIS through 1978 and through 1979 and was Acting Director right up to the day in May of 1980 when SIS was abolished.

Secretary Marshall went on to say,

> I could put the Under Secretary more completely in charge and let him—made this a special responsibility for the Under Secretary and asked him to move in and watch it very carefully because of dissention that existed between the SIS and other agencies in the Department and, therefore, since the Under Secretary was over all those agencies internally, then he could more effectively do that. It was not until I got a recommendation from him later on the basis of the Kotch-Crino report that we decided to go ahead and make the change (p. 338).

Secretary Marshall was then asked a related question. Why had he waited until the spring of 1979—6 months after the GAO began its assessment of the Central States inquiry—to initiate the Kotch-Crino investigation?

Secretary Marshall said:

> Partly because that is when it was brought to my attention that we still had serious problems and that is when I told [Under Secretary] Bob Brown to find out what they were. He came to me and said that we still have problems there, after he started monitoring it very closely and said, "I think we need to take additional action to straighten it out," and therefore I gave him the instruction to analyze it and give me a recommendation (p. 338).

Later in his testimony, Marshall was again asked about the 1978 Burkhardt recommendation. Marshall said,

> We had ongoing discussions about that. I decided not to accept the memorandum at that time, and the real question was whether the SIS could function as it had been. There was some debate about that, or whether we need to change. What we finally did after our inability to solve the problems through other means was, to have the internal

report that we had done. This indicated two problems, one, a need for a strong management, and, two, to clarify the role between SIS and the Solicitor's Office. Then we decided to separate out the functions and put one under LMSA (Labor-Management Services Administration), one under the Solicitor's Office (p. 424).

Unlike the Kotch-Crino report, these memorandums which made recommendations but did not characterize the Labor Department's efforts, were not destroyed.

THE TESTIMONY OF ROBERT GALLAGHER

Labor Secretary Marshall testified that the subcommittee's use of the Kotch-Crino report was irresponsible. Of special concern, he said, was the subcommittee's treating in a credible manner criticism lodged by "disgruntled former staff level employees."

Senator Nunn challenged Marshall on this assertion. Senator Nunn pointed out that it was incorrect to say that the criticism in the Kotch-Crino report stemmed only from "disgruntled former staff level employees." Considerable amounts of the criticism of the Labor Department contained in the report came from executive level employees who were still in the Department's employ and who did not seem to be disgruntled at all (p. 296).

In fact, Kotch and Crino were under instructions not to interview former employees. All the reports of interview, therefore, were of employees who were, at the time Kotch and Crino spoke to them, employed at SIS or elsewhere in the Department.

One such person was Robert Gallagher, whose evaluation of the pension fund inquiry appeared in the Kotch-Crino report. Robert Gallagher testified before the subcommittee with Labor Secretary Marshall.

Robert Gallagher, an attorney in the Solicitor's Office, joined the Labor Department in March of 1976. He had some contact with the Department's investigation of the Central States pension fund in 1976 and early 1977 and was assigned to work primarily on that inquiry in September of 1977 (p. 420).

Senator Nunn praised Robert Gallagher for his having taken the time to try to understand the problems faced by SIS personnel. The Senator recalled that SIS investigators, who frequently complained that the Solicitor's Office did not give them enough guidance, did say that Gallagher took the time and made the effort to try to improve SIS's effectiveness. When he heard Senator Nunn's praise for Robert Gallagher, Marshall said, "That is one of the reasons we kept him." (p. 505).

In his testimony before the subcommittee, Robert Gallagher said he was interviewed by Kotch and Crino and had read their report. He said they did "a very good job" in reporting on their interview of him but observed that regarding certain of their conclusions he would have concluded "a little bit differently." (p. 421).

Robert Gallagher said the civil lawsuit against the former trustees had the effect of having SIS devote virtually all its resources to preparing for that litigation, to the exclusion of third-party investigation of borrowers such as Morris Shenker and Allen Robert Glick.

Gallagher said that at the time the lawsuit was filed there was a considerable amount of evidence in the possession of third parties. He said the Department tried to obtain this evidence through civil discovery (p. 421).

It was established in the hearings that third party investigations, through the use of administrative subpenas, is more effective than civil discovery procedures, which are limited. Civil discovery procedures require that sworn depositions, for example, be conducted strictly within the terms of the specific lawsuit. Conversely, administrative subpenas enable investigators to receive sworn testimony from persons on a broader subject area within the wider context of the entire investigation.

In his testimony before the subcommittee in executive session, Robert Gallagher said that he had told Kotch and Crino that the Solicitor's Office could have done a better and more aggressive job in the pension fund investigation if more resources and more experienced attorneys had been made available.

Gallagher said he told Kotch and Crino that he would have preferred that there be more experienced attorneys to assist them in the pension fund case.

In his testimony in public session, Gallagher sought to clarify his earlier remarks, saying that what he really meant to point out to Kotch and Crino was that more experienced lawyers were needed for the litigation of the pension fund civil suit.

Gallagher said his recommendation was followed and that more attorneys were assigned to the case when a reorganization of the Solicitor's Office was implemented and when SIS was abolished in May of 1980 (p. 422).

Gallagher said it was his understanding that once Lawrence Lippe resigned as Director of SIS the original concept of an integrated team of lawyers and investigators was abandoned.

Gallagher said he was not satisfied with the new concept which replaced the lawyer-investigator team approach. In its place, the Solicitor's Office imposed a system, described by Associate Solicitor Monica Gallagher as "lawyer-client," in which the attorneys in the Solicitor's Office dealt with the investigators in SIS as if they were clients in need of legal advice. The previous idea of lawyers working cases with investigators, which had been installed by Lawrence Lippe, was thrown out (p. 423).

Gallagher acknowledged telling Kotch and Crino that "turf problems," jealousies, and personality clashes between the Solicitor's Office and SIS has caused the failure of the lawyer-investigator team concept upon which SIS had been founded.

Gallagher also acknowledged telling Kotch and Crino that he was worried that insufficient resources had been committed to the pension fund investigation.

He said he was worried about the management and responsiveness of SIS. He said that abolishing SIS had solved the problem because now SIS's resources were under the direct control of the attorneys in the Solicitor's Office (p. 423).

Gallagher said that, as of the spring of 1979, no one in the Solicitor's Office had reviewed those areas of the SIS investigation which were beyond the facts covered by the 15 transactions that constituted the core of the Department's civil suit against the former trustees.

Gallagher said that, practically speaking, the filing of the civil lawsuit had the effect of diverting investigative and litigative resources to such an extent that other areas—such as alleged misuse of expense accounts by the former trustees—could probably never be examined.

Gallagher agreed with subcommittee chief counsel Marty Steinberg's characterization that the civil lawsuit, in effect, precluded the likelihood that the trustees would be investigated any further (pp. 420–421).

Gallagher said the new pension reform act, ERISA, permitted bringing legal actions against borrowers such as Morris Shenker, Allen Robert Glick, and Alvin I. Malnik, that the Solicitor's Office considered bringing such actions against the borrowers but decided against it. He said the subject was too sensitive to be discussed in public session (p. 421).

Gallagher said he had heard the allegation that SIS was not permitted to carry out third-party investigation from December of 1976—1 year after its creation—but he said this actually occurred after the February 1978 lawsuit, not before, and that SIS was then given the exclusive assignment of supporting the civil suit and nothing else (p. 421).

Asked why SIS was not permitted to continue its search for third party information through the administrative subpena process, Robert Gallagher said the answer was too sensitive to be given in public session (p. 421).

Gallagher described the working group attended by officials from the Labor and Justice Departments and the Internal Revenue Service. He said it met regularly to discuss the Teamsters Central States investigation. He said Norman Perkins, the head of SIS, did not usually attend (p. 428).

Rober Gallagher acknowledged that there was information in the Kotch-Crino report which indicated that there had been interference in the SIS investigation that amounted to criminal conduct (p. 428).

Robert Gallagher said he was aware that both John Kotch and Richard Crino were sufficiently concerned about these allegations to decide that, upon completion of the management aspects of their inquiry, they should return to their investigation and further look into the criminal interference charges.

Gallagher said he had the assignment of making inquiry into the interference charges and that he met this assignment by interviewing the persons who leveled the charges. Gallagher said it was his finding that it was all a "misunderstanding," that the allegations of criminal interference in the SIS investigation were groundless (p. 429).

He was, he said, under the impression that the Department of Justice, which was also aware of the criminal interference charges, was satisfied with the explanation he had arrived at that the allegations were simply the result of a "misunderstanding (p. 429)."

But, Gallagher said, he now knew that the Justice Department was not satisfied with the "misunderstanding" explanation. Had he known about the Justice Department's attitude at the time, he said, he would have conducted his own investigation differently. "I would have done whatever I could to try to see that they were satisfied," Robert Gallagher said (pp. 428–429).

Gallagher recalled discussing the Kotch-Crino investigation with Sheldon Repp of the Inspector General's Office. Repp testified before the subcommittee that Robert Gallagher was one of those Labor Department officers he discussed the inquiry with, one of the several Department aides who told Repp that they knew about the Kotch-Crino management review but they didn't know anything about the so-called report that was allegedly issued afterward (p. 351).

Gallagher recalled that he had a "very long conversation" with Sheldon Repp about the Central States investigation and "I probably did say what he said I said." (p. 429).

Gallagher testified that when he was interviewed by Kotch and Crino he had assumed there would eventually be a report. But he wasn't absolutely sure there was actually a report so when Repp asked him about it he didn't volunteer his total thinking on the matter. Anyway, Sheldon Repp didn't seem to be all that interested in locating a copy of the report, Gallagher said.

Explaining why he did not tell Repp about the likelihood that a report was written by Kotch and Crino, Robert Gallagher said:

> One reason would be that I didn't know that it existed. I didn't know who would have it if it did exist. And there didn't seem to be any interest from Mr. Repp or enough interest to warrant further inquiries (p. 430).

Gallagher said the two senior Labor Department aides who were directly over SIS were Administrator Ian David Lanoff and Deputy Administrator J. Vernon Ballard, both in Pension and Welfare Benefit Programs. Lanoff, who was formerly an employee of the Teamsters International Brotherhood, disqualified himself from the pension fund investigation. That left Ballard in charge of the inquiry.

Gallagher said with Lanoff off the case, he didn't know whether Ballard had sufficient time to devote to it. Gallagher went on to say that it troubled him that the Labor Department might not have made a sufficiently forceful commitment to the pension fund inquiry. But Gallagher said he thought it was not a deliberate misallocation of resources and that if he ever concluded it was he would quit his job (pp. 430–431).

Subcommittee chief counsel, Marty Steinberg, asked Gallagher why, once Lawrence Lippe resigned, for the next 2½ years Norman E. Perkins served as Acting Director, instead of being designated Director on a permanent basis.

Robert Gallagher said he didn't know why. Labor Secretary Marshall, sitting beside Gallagher, said Perkins had the job on a temporary basis for such a long time because the Department was monitoring SIS to determine if and how it could be better managed (p. 424).

Secretary Marshall stressed the point that during those 2½ years Norman Perkins, even though he had the job in an "acting" capacity, was the officer in charge (p. 425).

Senator Nunn asked if anyone from the Department could say what Perkins' credentials were to qualify him for his being in charge.

Marshall did not know. He referred the question to Carin Clauss, the Solicitor. Clauss said, "He has excellent credentials but I cannot at this point give you his vitae." (p. 425).

Senator Nunn wanted to know if Perkins had ever run an inquiry of this size before. Marshall looked to his aides—Carin Clauss, Associate Solicitor Monica Gallagher, Rocco (Rocky) DeMarco, Robert Gallagher, Assistant Secretary William Hobgood—and asked, "Does anybody know Mr. Perkins' credentials." (p. 426)?

Robert Gallagher said Perkins came to the Department of Labor from the Securities and Exchange Commission where he was "an investigator with a responsible position."

But Robert Gallagher did admit that he didn't know whether Perkins had ever supervised an inquiry of the magnitude of the Central States case.

Subcommittee chief counsel, Steinberg, asked the question again. Did any of the Labor Department witnesses know what Perkins' credentials were for heading SIS? Secretary Marshall replied, "I assume Mr. Perkins does."

Marshall said that Under Secretary Robert Brown was supposed to keep a close watch on everything SIS did. "It is hard to give a matter higher priority than to assign it to your Under Secretary," Marshall said (p. 426).

Senator Nunn pointed out that the Kotch-Crino report indicated that Under Secretary Brown had not closely supervised SIS (p. 426).

Marshall replied that neither Kotch nor Crino had asked him who ran SIS and therein, he said, was seen the problem of obtaining complete and accurate information for projects like the Kotch-Crino investigation.

All too often, Marshall said, the persons who are asked to comment did not know the whole story. They spoke up with limited knowledge. And, he said, "we cannot assume that that, therefore, is fact." (p. 427).

Robert Gallagher said that shortly after Norman Perkins was installed as Acting Director of SIS, it became apparent that Perkins was not capable of handling the job in a competent manner (p. 427).

Gallagher said he brought this conclusion to the attention of his superiors. Within the Solicitor's Office, his superiors included Associate Solicitor Monica Gallagher and Solicitor Carin A. Clauss (p. 428).

In his testimony Gallagher disputed the General Accounting Office's assertion that SIS had made only 11 formal referrals of information of a criminal nature to the Justice Department.

Gallagher said he had personal knowledge that about 80 referrals had been made but he did not specify that they were formal, written referrals, which was what GAO was looking for and could not find, except for the 11 (pp. 71, 501).

Solicitor Clauss said it was apparent that an improved procedure for the referral of information to the Justice Department was called for (p. 500).

Gallagher said that several of the former trustees—Roy Lee Williams, for one—enjoyed positions of such consequence in the Teamsters that they were able to exercise some voice in the selection of the successor trustees (p. 508).

Gallagher said the February 1, 1978, civil lawsuit against the former trustees had run into difficulty. The Solicitor's Office in filing the suit cited 15 special pension fund transactions as demonstrative of the ERISA violations that allegedly were widespread in the fund's operations. It was the intention of the Solicitor's Office to expand this base to include more than the original 15 transactions.

However, lawyers for the pension fund objected. They claimed the Labor Department suit should be limited to those 15 transactions. It wasn't fair, they said, for the Solicitor's Office to be able to enlarge the dimensions of the case at its convenience.

Coming down on the side of the Teamsters lawyers, a Federal magistrate limited discovery in the suit to the 15 transactions. Robert Gallagher testified that the Solicitor's Office appealed the magistrate's decision to a Federal district court judge and that the judge had not ruled on the appeal (p. 432).

Carin Clauss, the Solicitor of Labor and the architect of the Department's legal strategy, explained the appeal this way:

> Our lawsuit, Senator, was a pattern and practice lawsuit directed at all loan transactions. Now we are having a temporary problem with the magistrate who has now made a serious error of law, who in connection with a recent deposition has ruled that we are limited to those 15 loan transactions. But that wouldn't be the first day where a magistrate has made an error, and I daresay won't be the last (p. 455).

Following the subcommittee's hearings, the appeal to which Clauss referred was litigated in Federal court in Chicago but the ruling was not a clear cut victory for either side.

Lawyers for the pension fund, arguing that the 15 loan transactions were of such complexity that each one constituted a major lawsuit unto itself, told Judge James B. Moran that it was a "fishing expedition" the Labor Department was embarked upon. The Department should be required to stipulate in the complaint which loans it intended to try, lawyers for the defendants asserted.

Representing the Labor Department, Robert Gallagher argued that the Solicitor's Office had, from the outset, made clear that it intended to go beyond the 15 transactions noted in the original lawsuit.

Judge Moran said the Labor Department could move beyond the original 15 transactions—but only in a limited way. He said the Department could seek information through the discovery process from persons who were connected to other loans as long as they were somehow related to 1 or more of the original 15 transactions.

However, Judge Moran ruled that the original 15 transactions were all that the Labor Department could seek judgments on. The judge said that if the Department of Labor wanted to seek judgments on additional pension fund transactions, it would have to amend its original complaint to include the new transactions.

In effect, then, what Judge Moran said was that the Labor Department had flexibility in obtaining depositions and documents in the discovery process. But the Department was still bound by the 15 transactions cited in the February 1978 lawsuit. The only alternative the Department had was to amend the suit.

The Labor Department amended its complaint to include nine additional pension fund transactions in May of 1981, but no additional defendants.

MARSHALL WANTED NO EXECUTIVE HEARINGS, NO PUBLIC HEARINGS

Once the Labor Department discovered that the subcommittee knew about the Kotch-Crino investigation and report, the Department imposed a new set of ground rules as to how its personnel were to cooperate with the subcommittee.

The Labor Department did not offer the subcommittee information indicating there was a Kotch-Crino report. This information was developed by the subcommittee staff in August of 1980.

From then on, Labor Department officials were advised that before agreeing to testify before the subcommittee in executive session they should understand that the Secretary of Labor, F. Ray Marshall, had strong views against his people testifying in private. Labor Department employees were informed that the Secretary preferred that they testify in public session or not voluntarily testify at all.

At the same time, the Labor Department was claiming that certain information the subcommittee had, including the Kotch-Crino report, was much too sensitive to be discussed in public session. The Department warned the subcommittee that public discussion about the Kotch-Crino report and other sensitive matters would jeopardize the Government's side in the civil suit against the former trustees.

Senator Cohen said that Secretary Marshall had put the subcommittee in "an impossible situation." Executive sessions were not allowed but, the alternative, public sessions would be irresponsible (p. 265).

Sentor Cohen asked subcommittee general counsel, LaVern J. Duffy, who had been working daily with Labor Department officials in trying to reconcile this dilemma, if he thought the Department was creating roadblocks in a deliberate attempt to obstruct the investigation.

Duffy said, yes, the Labor Department was deliberately trying to impede the subcommittee's work. Subcommittee chief counsel, Marty Steinberg agreed (p. 265).

Commending the subcommittee staff for not being diverted by Labor Department tactics, Senator Percy said:

> I share the frustration of the staff . . . in this regard. Time after time we were stonewalled. Every effort was made to obstruct our duty and our obligation. It is therefore time that we put it right on the record, not allowing whitewash to go on in this kind of a case. . . . (p. 265).

Senator Percy added that he had never seen more incompetence in any other Federal agency as he had seen in the Labor Department's handling of these matters (p. 266).

Senator Nunn said he understood the Labor Department's concern about sensitive documents that, if made public, could affect the civil suit. Because of that concern, he said, the subcommittee had received many exhibits as sealed, barring public access. In addition, Senator Nunn said, other documentation contained unevaluated allegations against Labor Department personnel. This material, too, was received as sealed exhibits.

But, Senator Nunn said, it was precisely a concern over possibly affecting the civil suit that led the subcommittee to seek to have

executive sessions and why it was so troubled by the Department's attempt to prevent its officials from testifying at them.

Senator Nunn called attention to a letter he received from Carin Ann Clauss, the Solicitor. Clauss informed Senator Nunn that the Department would insist on public hearings. Yet in the same letter, Senator Nunn said, Clauss further warned that a public airing of the issues would do unfair damage to persons' reputations.

Senator Nunn said he found it "an astounding inconsistency" for Clauss to say, on the one hand, Labor Department officers would testify only in open session and, on the other hand, that their testimony was too sensitive to be made in public (p. 265).

It was the judgment of Senators that the subcommittee had no choice but to use subpenas to compel the testimony of Labor Department witnesses in executive session.

The Labor Department's policy on not cooperating with the subcommittee forced two precedent setting decisions. In compelling the Department to turn over the Kotch-Crino report, it was the first time the subcommittee had been forced to use a subpena to obtain a document from a Government agency.

And, in compelling the testimony in executive session of Labor Department employees, it was the first time the subcommittee had been forced to subpena Government officials to testify (pp. 243, 246, 264).

Labor Department Officials claimed that, since there was no prohibition by Marshall, each employee was free to make up his own mind as to whether or not he would cooperate with the subcommittee.

Conversely, it was apparent that Marshall's announcing to the Department that he didn't approve of executive sessions had the certain effect of precluding all voluntary testimony from Labor Department witnesses.

Labor Department employees, not surprisingly, refused to cooperate and testify voluntarily in executive session.

Labor Department officials indicated that employees were not forbidden to testify voluntarily in executive session. It was, they said, not a hard and fast rule. It was only that the secretary himself simply did not approve of executive sessions.

Typical of this attitude on the employees' part was a comment made by Richard Crino when, in executive session, Chief Counsel Steinberg asked him about the voluntary cooperation issue.

Crino said:

> I was advised that the Secretary had strong feelings and I believe the term was "strong views." But the Secretary did not have any objection to appearing in a public session. He would probably bring whatever witnesses the committee wanted with him to that public session. That influenced my decision to await the subpena.

In his public testimony, Crino tried to give the impression that the Secretary's views were just one of several factors that contributed to his decision not to cooperate.

Senator Percy asked:

What led you to the conclusion that you should await a subpena rather than appear voluntarily before this subcommittee?

Crino replied:

I was honoring the Secretary's views (p. 371).

XI. Subcommittee Examined Question of Department's Fitness for Oversight

IRS, Labor Would Not Judge Fund's Soundness

Neither IRS nor the Labor Department would assume responsibility for attesting to the actuarial soundness of the pension fund.

According to Raymond J. Kowalski of GAO, Labor Department officers not only denied they had the responsibility to judge the financial soundness of the fund, Labor also said that it was the duty of IRS to make such a judgment.

But IRS, as early as the fall of 1978, emphasized that it was under no obligation to assess the financial soundness of the fund. The IRS position was expressed in testimony the Service gave the House Ways and Means Committee in October of that year.

The IRS view was that it had no authority to determine whether the fund was financially sound. IRS felt that the Central States pension fund was not subject to the minimum funding standards of ERISA (p. 27).

More on the IRS opinion came at this subcommittee's 1980 hearings from Assistant Commissioner S. A. Winborne. He said IRS would not have the authority to assess the fund's actuarial soundness until December 31, 1981. That is the date ERISA's minimum funding standards will go into effect, he said.

Winborne said that until then IRS could not say whether the fund met minimum funding standards (p. 221).

Ira Cohen, the Director of the IRS Actuarial Division, testified that the question of actuarial soundness was difficult to answer.

He said the term "actuarial soundness" had not been defined to the satisfaction of actuarial experts. ERISA set minimum standards for financial solvency, Cohen said, but that these standards did not guarantee that a fund would actually be solvent.

Cohen said that ERISA's minimum standards say that a multiemployer benefit plan such as the pension fund must have reserves equal to the normal cost of running the fund, plus a 40-year amortization of past service liability.

Cohen said the minimum standards called for in ERISA were insufficient and should be strengthened.

He said legislation had been introduced that would require funds to improve their financial position when certain warning signs appeared. The measure, H.R. 3094, was introduced in the 96th Congress (pp. 222–223).

According to the General Accounting Office, since 1975 the trustees of the fund had four actuarial evaluations of the fund's financial soundness. Three evaluations used data as of January 31, 1975, and one used data as of December 31, 1978.

GAO said the first actuary, who had been the fund's actuary since 1955, concluded that the fund was financially sound. In 1975, the fund hired a second actuary, who said the fund was not financially sound. He also said the fund would require contributions much higher than those estimated by the first actuary.

A third actuary was brought in "to break the tie," GAO said. He agreed with the second actuary and said the fund was not financially sound. GAO quoted a former fund official as saying that the third actuary believed the fund's unfunded liability was "reaching staggering proportions."

A fourth actuarial report, dated March 3, 1980, but based on 1978 data, indicated the current funding should satisfy ERISA's requirements, GAO said. However, the actuary also said the funding policy allowed very little margin for error. If actual experience differed from projections, funding problems would occur after the ERISA standards become effective for the fund in 1980, the fourth actuarial report said.

Concluding its comments on the fund's financial soundness, the General Accounting Office said, "In our opinion, IRS should closely monitor the financial status of the fund to assure that it, in fact, meets the standards in 1981 and in future years." (p. 79).

Elsewhere in its preliminary report, GAO noted that since the outside investment managers, the Equitable Life Assurance Society and the Victor Palmieri Co., had taken over most of the fund's assets, the financial picture had brightened somewhat.

For example, Equitable reported that from an investment standpoint the increase in investment assets through December 31, 1979, has been at an annualized rate of return equal to 8.23 percent, as compared to 4.5 percent in 1976.

For calendar year 1979, the fund's total investment income was about $151.3 million, or more than double the $73 million earned as reported by the fund for 11 months in 1976, when the former trustees controlled the investments and assets (p. 75).

In light of the improved financial status of the fund, it is important to note that Equitable and Palmieri will control assets and investments only until October 2, 1982. On that day, the Central States pension fund's 5-year agreement with Equitable and Palmieri will end (p. 50).

It is not known whether or not the pension fund will agree to a new contract. But, according to Secretary Marshall, the pension fund is under no legal obligation to give up control of its assets again (p. 510).

Failure to Achieve Lasting Reforms

According to the GAO study, presented to the subcommittee by Comptroller General Elmer B. Staats, the Labor Department failed to achieve lasting reforms of the fund.

Evidence of this failure was seen in the fact that both the Labor Department and IRS reopened their investigations of the fund, GAO said.

Staats said:

> We believe that the need to renew the investigation was the consequence of the shortcomings and deficiencies in Labor's and IRS's investigative efforts, dealings and agreements with the trustees in reforming the fund's management and operations, and monitoring of the current trustees' activities (p. 11).

LABOR DEPARTMENT, IRS RENEWED INVESTIGATION OF PENSION FUND

In 1980, almost 4 years after the Department's onsite investigation began in Chicago at pension fund headquarters, the Labor Department reopened its inquiry. A Department of Labor report issued in November of 1979 and the Department's Solicitor's Office agreed that a new investigation should be conducted.

The report said the new investigation should cover those areas of the pension fund's operations that were not completed in the first inquiry, including the benefits and administration, or B. & A., account, administrative expenses and trustee allowances, employee salaries, employer contributions, asset management, and the purchase of a new $3 million airplane.

The Solicitor's Office, pointing to the need to look into some of the same areas listed in the report, said the performance of the new trustees showed disregard for the interests of the participants and beneficiaries (p. 80).

On April 28, 1980, Labor Department investigators returned to the pension fund headquarters in Chicago. The second Labor Department investigation began.

The Internal Revenue Service also resumed its investigation of the pension fund (p. 81).

LABOR'S REOPENED CASE WENT BACK TO JANUARY OF 1977

In 1979, when the Labor Department decided to reopen its investigation of the pension fund, a significant time limitation was imposed. According to Ray Kowalski of GAO, the reopened case was limited to January of 1977 as to how far back in time it could go.

This limitation, Kowalski said, was unwise. He said the Labor Department should look into instances of alleged abuses that occurred before 1977 (p. 29).

Kowalski said that James Benages, who was in charge of the Labor Department's investigation in Chicago, had informed GAO that the subpena served on the pension fund stipulated that records prior to January of 1977 were not affected.

Kowalski also noted that because of the January 1977 cut off date the actions of the 12 trustees who resigned in 1976 would not come under examination.

In addition, the activities of the four holdover trustees—Fitzsimmons, Williams, Massa, Spickerman—would not be reviewed for the months of January, February, and March of 1977 since they resigned in April. Roy Lee Williams, who was a trustee for 22 years and was alleged to have been an organized crime mole representing mob interests on the board, would be enabled to escape Labor Department scrutiny for his actions on the board in calendar years 1975 and 1976, both covered under the 1974-passed ERISA statute which went into effect in January of 1975 (p. 57).

The limitation of January 1977 also prevented investigation of principal third-party borrowers such as Morris Shenker, Allen Robert Glick and Alvin I. Malnik because most of their transactions were with the former trustees.

Kowalski said that beyond information as to the January 1977 cut off date he did not know very much about the new Labor Department inquiry because, for the most part, the Department refused to talk to GAO about it (p. 30).

LABOR, IRS CONTINUED TO DUPLICATE EACH OTHER'S WORK

When IRS and the Labor Department reopened their investigations of the pension fund in 1980, both agencies had the avowed goal of cooperating and coordinating their efforts.

But, in contrast to their stated objectives, they seemed to be following the same paths they went down in 1976; that is, they operated separately.

Ray Kowalski of the General Accounting Office testifed that IRS and Labor were both issuing subpenas for the same sets of records, and the two agencies seemed to be conducting separate investigations of similar pension fund activities.

Kowalski said there once again was duplication of effort and that it "appears they are doing the same things they were doing 3 years ago." (pp. 42–43, 81).

MARSH MEMORANDUM ADMITTED LABOR KNEW LITTLE ABOUT FUND

Not only did the Labor Department not monitor the B. & A. account properly, it didn't know very much about the pension fund itself. The Labor Department came to this realization after it had investigated the fund for 5 years.

Howard Marsh, who worked in the Department's Pension and Welfare Benefit Programs Division, wrote a memorandum in which he described the pension fund's financial condition.

The memorandum, dated November 19, 1979, and for the attention of Assistant Labor Secretary Rocco (Rocky) DeMarco, said there "is virtually no information available on the current financial operation of the fund." DeMarco formally submitted the memorandum to Associate Solicitor Monica Gallagher (pp. 23–24, exhibit No. 2, sealed).

The Marsh memorandum said the Labor Department had insufficient information about how much money should be transferred to the asset managers; how expenses were approved; and how authority was delegated to the fund's executive director.

The memorandum indicated the fund's banking procedures were disorganized. For instance, it was noted that the fund had as many as 45 different checking accounts at one bank at the same time.

The Marsh memorandum said the Labor Department had reached the point where it was vital that the Department develop an understanding through investigation of how all aspects of the fund were being administered.

The memorandum said the Department was especially ill-informed on the operations of the B. & A. account (p. 54).

Raymond J. Kowalski of GAO testified that the fund had very little information on how the fund operated financially. Kowalski said the Marsh memorandum was a serious admission for the Department to make since it had been investigating the fund for 5 years.

Kowalski said it was "astounding" that the Department knew so little about how the fund operated. He said it was impossible to conduct effective civil and criminal investigations of the fund if the Department did not know how the fund operated.

Senator Percy asked how the Labor Department could have spent 5 years investigating the fund and still not know how it operated.

Kowalski replied that the Department had devoted so much of its resources to preparing for the civil litigation that it had few resources left to figure out how the fund worked.

Kowalski said the Department claimed to be monitoring operations of the fund through the annual reports. But Kowalski said that, as far as GAO was concerned, information contained in annual reports was too skimpy to form the basis of an understanding of how the fund functioned.

Had he had the access to the fund which the Labor Department enjoyed, Kowalski said, he would have learned all that he needed to know about how the fund worked (p. 23–25).

GOVERNMENT DID NOT MAKE BEST USE OF ITS POSITION

GAO felt that the Government was in a strong position as it entered negotiations with the fund in 1976 and early 1977.

There was considerable evidence of mismanagement by the trustees. The fund had already lost its tax-exempt status. The trustees were at a disadvantage. But, GAO said, the Government did not make the most of its strong position.

Even had the trustees lived up to their commitments to reform the fund, they got off relatively easily. GAO said the Government could have insisted upon, and achieved, much more sweeping reforms that would have had a more lasting and beneficial effect upon the fund and its beneficiaries (p. 82).

INSTITUTIONAL ABILITY OF LABOR DEPARTMENT TO INVESTIGATE UNIONS

A measure of the Labor Department's effectiveness in investigating the Central States pension fund was seen when in 1980, some 5 years after its first inquiry began, the Department opened a second one. The subcommittee is not criticizing the Department of Labor for opening a new investigation whenever necessary. The subcommittee is pointing out that had the first investigation been effective there may have been no need for a second one.

So many questionable acts by Labor Department officials, the most blatant of which being the attempt to destroy the Kotch-Crino report, had been revealed in the subcommittee's hearings that an inevitable question was raised: Is the Labor Department institutionally capable of investigating organized labor?

In a spirited defense of the conduct of his department, Labor Secretary F. Ray Marshall insisted that the Labor Department was an effective, well run organization perfectly capable of overseeing union activities (pp. 287, 301–303).

But members of the Investigations Subcommittee had their doubts. For example, Senator Percy asked Elmer Staats, the Comptroller General of the United States and the head of the GAO, if he thought it was possible for the Labor Department to conduct an objective, worthwhile investigation of labor unions.

Considering the "political facts of life," Senator Percy said, was it wise for Congress to have placed ERISA enforcement in the Labor Department?

Staats said Senator Percy had raised a point which had concerned him when ERISA was being passed by Congress.

Not only did the placing of ERISA enforcement at Labor trouble him, Staats said, it was also a matter of debate whether it was realistic to have IRS and the Labor Department share functions under the pension reform statute.

Staats said he hoped the subcommittee would examine the IRS-Labor working arrangement and evaluate its effectiveness (pp. 18–19).

Senator Nunn said it had been hoped that the Labor Department would have viewed its basic constituency as being union members who paid into trust funds—not the trust funds themselves or the people who ran them. But, Senator Nunn said, he was now of the opinion that the Labor Department may not see things that way (p. 19).

XII. Findings and Conclusions

INVESTIGATION WAS CALLED FOR

The Teamsters Central States pension fund, a $2.2 billion trust, has been criticized for poor management since its creation in 1955. Substantial portions of its resources have been used to finance high risk real estate ventures. Many of its loans were made to reputed organized criminals. The fund has earned the reputation for being a lending institution for unsavory borrowers and questionable projects.

The fund's notoriety has grown over the years. Press coverage has focused not on the benefits the fund promised its pensioners but instead on the unseemly way its investments have been made and the backgrounds of the persons who benefited from them.

In 1971, former Teamsters president, Jimmy Hoffa, serving a prison sentence for crimes that included pension fund fraud, was released on parole. He began an effort to regain high office in the union. Someone did not approve of Hoffa's plans. He disappeared in 1975.

The publicity that surrounded Hoffa's disappearance, coupled with other media accounts of alleged and proven corrupt practices in the Teamsters organization, led to pressure on the Federal Government to do something to clean up the union.

In 1975 the Senate considered a measure, introduced by Senator Robert Griffin of Michigan, to create a select committee to investigate labor racketeering, including the Teamsters Union and the operation of the Central States pension fund. The Senate Permanent Subcommittee on Investigations, which has jurisdiction to investigate racketeering in the labor-management field, considered opening an inquiry into the Central States pension fund and related subjects.

Neither of these two Senate investigations was initiated because the Department of Labor assured the Congress that it was starting its own inquiry. The Department said it would use the new pension reform act as the vehicle to examine abuses of employee benefit plans such as the Central States pension fund.

ERISA WAS USED FOR FIRST TIME

Known as the Employee Retirement Income Security Act, or ERISA, the pension reform act set certain standards for the conduct of those persons charged with the management of an employee benefit plan. Those who exercised this authority were known as fiduciaries.

Generally, the fiduciaries of employee benefit plans were the trustees and certain senior employees of the fund.

Existing Federal law called for the reporting and disclosure of certain information about a fund's operations. ERISA went beyond that. It required that the employee benefit plan be managed in all ways as a prudent person would manage his own affairs.

When a fund was found to have been run in an imprudent manner, those responsible—the fiduciaries and culpable third parties such as borrowers—could be taken to court by the Government. If found guilty, they could be declared liable for the losses the fund suffered because of their misuse of the fund.

In addition, in developing evidence indicating the violation of fiduciary standards under ERISA, the Federal Government had the greatly expanded opportunity to pursue information of a criminal nature.

The criminal investigation factor was one of importance to the Department of Justice. This was because in certain employee benefit plans, the Central States pension fund being a prime example, the problem of fiduciary trust was much larger than the question of civil liability.

In 1975, there seemed to be agreement in the Departments of Labor and Justice, that any effort to reform the Teamsters Central States pension fund should include both civil and criminal approaches.

There was consensus in both departments that the mismanagement of the fund was not due to poor judgment alone. There was the very strong possibility that, mismanagement and innocent mistakes aside, some persons had conspired to systematically loot the fund of millions of dollars. Crimes were alleged to have been committed. At that time the Government seemed prepared to try to identify and prosecute them.

SIS WAS ESTABLISHED

The Labor Department created the Special Investigations Staff (SIS) to conduct the inquiry in coordination with the Criminal Division of the Justice Department and the Internal Revenue Service.

SIS was a unique organization within the Labor Department. Patterned to some extent after the organized crime strike forces, SIS was to investigate alleged wrongdoing in employee benefit trust funds. SIS was to work closely with the Justice Department. SIS and the Criminal Division of the Justice Department were to consult on how to proceed on each major case. Civil cases would be litigated by SIS. Criminal cases would be prosecuted by Justice.

The Labor Department assured Congress, including this subcommittee, that it would coordinate the SIS investigation of the fund with the Criminal Division of Justice.

The Justice Department, which had the responsibility for prosecuting persons charged with labor racketeering and other criminal practices involving unions, looked forward to the SIS investigation. Federal prosecutors felt they could benefit significantly from working in close harmony with SIS.

Two aspects of the planned cooperation with the Labor Department seemed especially promising. The first was the statutory jurisdiction only the Labor Department enjoyed in the labor-management field. This jurisdiction gave the Labor Department ready access to information not always available to the Justice Department.

The second cause for optimism at the Justice Department was the Labor Department's plan to invoke the new pension reform act, ERISA, for the first time, which would mean access to more information in the labor-management field. It would also mean the opportunity for the Government to use additional weapons against labor racketeers.

In the assault on alleged corrupt practices in the pension fund, the Labor Department was to be in the forefront. The Labor Department would have first access to information. It would share this information with the Justice Department. If this objective was to be achieved, however, it was necessary that cooperation between Labor and Justice be at a premium.

BALANCED INVESTIGATION WAS ENVISIONED

The Congress, including this subcommittee, was led to believe that a balanced investigation was being assembled and that the subjects were the fund, its trustees and senior officers and third parties such as the borrowers of fund loans and other persons taking part in one way or another in the fund's transactions.

It was never contemplated—not by the Justice Department, not by this subcommittee, not by senior members of SIS—that the only persons the Labor Department would limit its investigation and subsequent litigation to were the trustees and fund officials.

A cursory review of the operations of the fund would show that profits from the alleged systematic looting of the fund were won by certain borrowers and their associates. Investigation of the activities of third parties as well as those of the trustees was necessary to any thorough, professional inquiry. Third party investigation was also necessary to answer key questions concerning the tracing of funds which could have been used as bribes or kickbacks to influence fund fiduciaries.

Law enforcement officers specializing in the operations of organized crime were aware that some of the best known organized crime figures were third parties in fund transactions. That is to say, organized criminals had either borrowed from the fund or in some other way were tied to certain of the fund's transactions.

STUDY CITED ALLEGED CRIME LINKS TO FUND

One summary of the alleged links of the pension fund to organized crime was prepared early in 1975 in the Labor Department. The study, based on information already in Labor Department files, provided a primer on the extent to which organized criminals were believed to have infiltrated the pension fund.

Disclosed in the study were multimillion-dollar loans the fund had made to hotels, resorts and other entities which had gone bankrupt; loans to high risk gambling and resort developments; and several major prosecutions which had been mounted by the Federal Government against organized criminals associated with the pension fund.

Describing Morris Shenker, Jimmy Hoffa's lawyer, as a "well known St. Louis attorney who is a millionaire as a result of his dealings with the pension fund," the study went on to note the ties to the fund of men like Shenker, Allen Dorfman, Allen Robert Glick, Alvin Baron, Irv Weiner, the late Irvin J. Kahn and other persons reputed to be affiliated with mobsters.

The study said the fund would not reform itself. It summed up the problem this way:

> Events . . . indicate that there will be no change in the operation of the fund, since the lending policies have not changed. In spite of the scandals, criminal prosecutions, bankruptcies and widespread involvement of criminal syndicates in the operation of this fund, it continues to operate as before. It would appear that the continuation of the lending policies, the makeup of the trustees, and the continuing presence of people such as Allen Dorfman, Al Baron, Morris Shenker, etc., will guarantee that the funds intended for the pensions of the Teamsters will be in jeopardy.

SIS INQUIRY WAS HISTORIC OPPORTUNITY

The pension fund's link to some of the most notorious organized crime figures constituted an historic opportunity for the Government to move against not only labor racketeering but also to use the new pension reform statute, ERISA, as a vehicle to move against organized crime's involvement in pension funds.

It was an opportunity that would not come along very often. That was why it was so essential that SIS coordinate every major aspect of its investigation with the Criminal Division of the Justice Department. That was why it was so important that the investigation pursue both criminal and civil violations.

By its actions in forming SIS and in its assurances that it would coordinate its inquiry with the Criminal Division, the Labor Department gave every indication that it fully understood the fund's situation for what it was; that is, a billion dollar corpus in the hands of fiduciaries who seemed to be influenced by organized criminals.

The Labor Department hired personnel for SIS who had experience in criminal investigation and, equally important, in financial investigation. SIS attorneys, accountants, auditors and investigators were to go about their examination of pension fund records with the understanding that all evidence would be weighed in light of its possible use in criminal as well as civil cases.

Above all, the decisions as to how the evidence would be used would be made in a coordinated fashion with both Justice and Labor Department officials having a say.

On paper, then, the investigation looked good. But it did not turn out as planned or promised.

SIS GOT OFF TO A BAD START

SIS got off on the wrong foot. Its initial staff complement of 45 professionals and support personnel was not met. The unit was short handed from the start, and in its 4½ year life, SIS never did become fully staffed.

The working environment was not good in fund offices in Chicago where auditors and accountants were examining documents. Because the investigation was being pursued, in part, at the headquarters of the fund, problems arose. Security was lax and no adequate procedures were employed to protect the integrity of the investigation.

UNWISE POLICY RULED OUT SUBPENAS

An unwise policy decision was made in 1976. The Labor Department, which had the authority to issue subpenas, declined to use the authority with the fund. The Labor Department decided that it would be more efficient if needed records were requested, not subpenaed. Fund lawyers promised that the fund, for its part, would turn over requested records immediately upon demand.

There were two shortcomings to this approach. First, without authentication, only the subpena power could demand, there was no way of assuring that the documentation the fund turned over was complete or accurate. Second, the voluntary method was predicated on the assumption that the subject—the pension fund—would continue to cooperate. If it decided not to cooperate, the investigator could only request records. He could not compel.

Predictably, there came a time when it did not suit the pension fund's interest to cooperate voluntarily with the Labor Department. The fund simply stopped turning over records. With no compelling reason to cooperate, such as an enforceable subpena, what did the fund have to lose? Labor Department records and testimony before this subcommittee show that this voluntary system resulted in inadequate record production procedures.

IRS REFUSED TO JOIN WITH LABOR

Another problem the inquiry encountered arose early in 1976 when the Internal Revenue Service refused to join its ongoing audit of the pension fund with the joint Labor-Justice effort.

Initially, while there was disappointment that the IRS had adopted the go-it-alone attitude, Labor and Justice Department officials did not feel the Service's decision was necessarily a major hindrance to their own investigation. Unfortunately, however, IRS did cause a serious setback to the investigation.

In June 1976, with advance notice to no one, IRS revoked the tax exempt status of the Central States pension fund. It is not absolutely clear who made the decision to revoke. IRS officials said the decision was made at the regional level, by a field officer in the IRS Chicago office, and that IRS national headquarters in Washington did not give the directive setting in motion the revocation.

USERY SPEECH REPORTEDLY TROUBLED ALEXANDER

Conversely, there was other testimony, officially denied by IRS, that the decision to revoke was made after the then Labor Secre-

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tary William Usery gave a speech before the Teamsters 5-year election convention in Las Vegas. In the speech, Usery said he was a member of the "Teamsters Club" and believed in what the "Club" stood for.

He said other things that could readily be interpreted to mean that he was a friend and supporter of Teamsters president Frank Fitzsimmons.

His speech was considered by many persons to have been questionable and poorly timed because Fitzsimmons, as a member of the board of trustees of the Central States pension fund, was a principal target in the Labor Department's investigation of the fund.

Usery made his speech on June 14, 1976. The revocation occurred 2 weeks later on June 25.

The decision had nationwide implications, the most serious of which was the possibility that the Teamsters might respond by going out on a national strike.

IRS justified its revocation order on the basis of its conclusion that the pension fund was not being operated for the exclusive benefit of the beneficiaries. This was a technical justification. IRS did have the authority to revoke the tax exemption on these grounds. But that was not a satisfactory justification.

It was apparent, and had been for some time, that the pension fund was not being managed for the exclusive benefit of the beneficiaries. That was an established fact. The purpose of the Labor Department's inquiry—and the reasons why it would have been preferable to have IRS a part of the investigation—was to have a balanced, comprehensive examination of the fund. That was the way to achieve permanent reforms that would insure that retired Teamsters Union members were fully protected by the Fund's fiduciaries.

With IRS having moved ahead with its tax status revocation, any hopes for such a comprehensive, balanced investigation were hampered or lost. One of the most powerful tools the Government had was the tax status revocation. Unfortunately, it was invoked at the start of the case, not later when it could have been used with much greater effect and when it might have been used as leverage to achieve permanent reform.

REVOCATION CREATED NEW PROBLEMS

The revocation, invoked too soon, created new problems. A primary concern became, ironically, one of devising a method of restoring the very tax exemption that had been taken away.

IRS had to act to prevent the adverse consequences of its own actions. IRS had to protect the innocent victims of the revocation, the beneficiaries of the fund and contributing employers, from being damaged by the revocation and the subsequent loss of tax benefits.

Because of the retroactive feature of the revocation, it meant that without temporary relief beneficiaries, as well as contributing employers, would not only lose future tax benefits, but also be taxed on past benefits already realized.

Contributing employers questioned the value and obligation of sending their money to a non-tax exempt trust. Banks managing

some of the fund's assets had doubts about their own propriety in handling non-tax exempt moneys.

The IRS revocation had the potential effect of punishing the very people it was intended to protect. Meanwhile, the trustees, senior fund officers and third parties such as borrowers were not immediately affected in an adverse way by the IRS action.

The realization soon became obvious to IRS and it granted the first of several waivers, giving temporary relief from the consequences of the revocation order. The postponement of the revocation continued to be granted for the next 8 months until April 1977 when the tax exemption was restored.

In the final analysis, then, no one suffered because of the revocation—no one, that is, except Department of Labor employees conducting the Government's investigation of the fund. Their work was made that much more difficult.

Because of the IRS' action, the Special Investigations Staff was diverted from its mandate, the investigation of the fund. SIS had to devote valuable time to responding to matters relating to the revocation. This was especially true for senior officers of SIS. They were required to prepare for Congressional appearances discussing the impact of the revocation and work with IRS in cushioning the adverse effects of the revocation.

IRS began negotiating with fund lawyers as to what steps the fund could take to achieve restoration of its tax exemption. The IRS-pension fund negotiations troubled SIS. Agreements stemming from the negotiations could be construed to commit the entire Government to a course of action that the Labor Department might not wish to take.

The Labor Department protested. IRS abandoned the separate negotiations. IRS agreed that from then on it would coordinate its investigations with the Labor Department.

SIS was then able to devote itself again to the investigation of the fund, its first priority. For the first several months of its investigation, SIS planned to have its accountants and auditors examining records at fund headquarters in Chicago.

SIS PLANNED TO BEGIN THIRD PARTY INVESTIGATION

When the first phase of the investigation was completed, it was SIS's intention to have the investigation shift to third parties. During the course of a financial inquiry, third party investigation generally occurs after the original records of an entity have been examined and principals in that entity have been interviewed. The investigation then was to turn to borrowers and other third parties who had information on what had been done with the loans and other pertinent information.

Third party investigation was necessary: (1) to demonstrate the culpability of third parties, trustees and fund officers in questionable transactions; (2) for the success of any comprehensive, balanced inquiry, whether it is preparatory to civil litigation or criminal prosecution; and (3) to demonstrate that patterns of mismanagement and criminal conduct had occurred in the Fund's financial transactions. This point—that third party investigation was needed to show alleged civil liability as well as criminal activity—was obvious to anyone who knew anything about investigations.

The alleged large scale theft or systematic looting of pension fund assets happened when the money left the fund in the form of loans and other disbursements. The Labor Department had to literally follow the flow of that money to establish what had been done with it. Only third party investigation could accomplish that goal.

Alleged diversion of loaned moneys, alleged kickbacks, and finders fees, the alleged posting of costs that were fictitious or inflated—all these alleged corrupt practices could only have occurred once the loans were executed. No record of them would show up in pension fund files. It was precisely these kinds of alleged corrupt practices around which the Government should have constructed cases.

THIRD PARTY INVESTIGATION WAS STOPPED

Third party investigation was planned in detail but was never allowed to go forward. Administrative subpenas, an integral part of third party investigations, were also denied SIS by the Labor Department.

Subpenas were needed to compel third parties to testify and provide documentation as to how they managed fund assets made available to them in loans and other transactions. Without subpena authority, SIS had to request third parties to cooperate. The targets of the investigation were being asked to participate voluntarily in an examination of their own records and performances.

Beginning in the early fall of 1976 and continuing into the summer of 1977, SIS's responsibility and authority were eroded. SIS began to lose its ability to conduct third party investigations. Also eroded was SIS's power to compel cooperation through the use of administrative subpenas.

A major change in policy had taken place at the Labor Department. There was no longer interest in pursuing criminal leads. The primary focus—indeed, the only focus—was in building a limited civil action to file against the trustees of the fund and its senior officers.

SOLICITOR'S OFFICE BECAME INVOLVED IN SIS

The Special Investigation Staff (SIS) was locked in combat not only with pension fund lawyers, which was to be expected, but also with lawyers from the department's Solicitor's Office, which was not expected.

Bureaucratic jealousy, ignited by the Solicitor's fear that SIS would intrude on its jurisdiction, grew. Solicitor's Office attorneys, inexperienced in investigative work, began to interfere in the day-to-day operations of SIS.

It was an unfortunate time to interfere, because, from all the evidence this subcommittee has seen, it was apparent that SIS was entering into a crucial stage of its loan inquiry.

SIS was examining fund records. It was about to begin to take sworn depositions from and serve subpenas on borrowers and their associates—men like Morris Shenker, Alvin I. Malnik, Allen Robert Glick—when the SIS investigative strategy was countermanded.

The Solicitor's Office instructed SIS that there would be no more subpenas served on borrowers and their associates and no more depositions taken. From then on, SIS would be a support arm for

the Labor Department's Solicitor's Office. Eventually, the Solicitor's Office would supervise SIS.

LIMITED CIVIL SUIT BECAME EXCLUSIVE OBJECTIVES

Because of these restrictions, the only goal of the Labor Department investigation became the preparation of a limited civil suit in connection with a limited number of transactions. The civil suit, originally based on 15 transactions, eclipsed everything else. In 1981, the number of transactions was enlarged to 24.

There would be no more investigation of information of a criminal nature. There would be no more investigation of what happened to the loans and other investments after they were made and who received them. In fact, the investigation that had been started was, for all practical purposes, abandoned in mid-stream. Left uncompleted were investigations into areas of fund activity that required further inquiry such as the benefits and administrative account, trustees expenses, fees paid by the fund for services, payments of benefits, and possible kickbacks given as rewards for alleged manipulation of the fund.

Another result of the dramatic change in the Labor Department policy was a rapidly deteriorating relationship between SIS and the Criminal Division of the Justice Department. The original goal of close, harmonious ties with Justice was scuttled. Things got so bad between the two departments that eventually Justice Department officials came to believe that SIS personnel were under orders not to communicate with them.

Correctly anticipating that the SIS mandate, as originally explained to him, would never be realized, SIS Director Lawrence Lippe quit in the fall of 1977. Lippe's Deputy, Lester Seidel, quit at about the same time.

HISTORIC INABILITY TO INVESTIGATE LABOR RACKETEERING

The mixed signals, confusion and changes in the direction of the investigation which began in the early fall of 1976 and continued throughout the existence of SIS as an entity reflected the historic institutional incapability of the Department of Labor in dealing with labor racketeering.

As Senator Nunn, then chairman of the Permanent Subcommittee on Investigations, pointed out during the hearings, the Department of Labor seemed institutionally incapable of proceeding in any major labor racketeering investigation. This characteristic crossed party lines and transcended administrations. The failure to deal with labor racketeering was noted during the extensive hearings conducted by Senator McClellan and his Labor Rackets Committee in the late 1950's. The Department of Labor under Secretary Marshall found itself just as incapable of dealing with the Teamsters as his predecessors had.

SUCCESSES AND FAILURES OF LABOR'S STRATEGY

The subcommittee does not doubt Secretary Marshall's sincerity and good intentions in desiring to bring about reform in the pension fund by concentrating on a limited civil inquiry to protect the fund's assets. This effort did, indeed, lead to positive accomplishments such as:

(1) The Labor Department was successful in clearing the board of trustees of men who were alleged to have abused their fiduciary conduct through the years.

(2) The Labor Department was successful in removing most of the fund's assets from the hands of the trustees and placing them in the hands of independent asset managers.

(3) During the 4 years of Secretary Marshall's tenure, it is beyond question that the fund's financial picture improved.

(4) The Department of Labor instituted a civil law suit to obtain recovery of funds lost due to alleged mismanagement.

The subcommittee, however, does not agree with the narrow and limited approach the Department of Labor took in the Teamsters investigation.

The Department of Labor's focus was too narrow and ultimately doomed its Teamsters investigation. This narrow strategy, despite accomplishing some short-term results, failed. The subcommittee finds the Department of Labor failed to provide for long-term reform and protection of the pension fund. The Labor Department's approach brought temporary relief without treating the underlying illness. It was a bandaid on a major wound.

The Department's approach had significant negative results such as:

(1) The investigation was incomplete.

(2) Third party investigation was limited and eventually called off.

(3) There was a lack of coordination with the Justice Department.

(4) There was a deemphasis on criminal matters.

(5) Inexperienced personnel were permitted to take control of the investigation.

(6) The Department of Labor failed to obtain any enforceable agreement with the fund.

(7) Despite the fact that the Department of Labor succeeded in removing the trustees, it left the fund vulnerable by failing to take part in or require the approval of the selection of the new trustees.

(8) Despite the fact that the Department of Labor succeeded in forcing the fund to hire independent asset managers, it left the fund vulnerable by limiting that contractual arrangement to a 5-year period which ends in 1982 and leaving considerable fund assets under the control of the present trustees.

(9) Despite the fact that the Department of Labor succeeded in bringing suit against fund trustees and officials, it failed to lay the foundation for a successful result in this litigation because it limited the investigation to certain transactions thereby ignoring many areas of abuse; it limited the suit to fund officials and failed to pursue culpable third parties; it failed to name financially secure defendants who could reimburse the fund.

The Department of Labor's approach in attempting to protect fund assets was incomplete and inconsistent with well recognized investigative techniques. The narrow approach employed by the Department of Labor failed to achieve the lasting results necessary to reform the fund and protect the beneficiaries. It also ignored the pervasive evidence of organized crime's influence over the fund.

In implementing this limited approach to the Teamsters investigation, Labor Department officials said, they did not want valuable

time spent on any other activities. They wanted all available resources, SIS included, pointed in one direction—the limited civil action.

That was why, Labor officials said, third party investigations were put off. SIS was no longer to be an investigator-litigator working in close harmony with the Justice Department. SIS was, from then on, to be a support arm on behalf of the planned civil suit. The responsibility for litigating the civil suit resided in the Solicitor's Office.

The Solicitor's Office had handled all litigation for the Department until the creation of SIS. Had SIS been allowed to carry out its original mandate, it would have not only investigated, it would also have gone to court on civil matters. In that arrangement were sown the seeds of bureaucratic jealousy.

For that reason the subcommittee finds merit in the observation made by former Deputy Director of SIS Lester Seidel, who said that Secretary Marshall did his best but was not well served by his senior advisers.

SIS did not achieve its original objectives. SIS was given the assignment of investigating the Teamsters Central States pension fund. By its interference, the Solictor's Office assured that SIS would fail.

This is not to say that the subcommittee finds no fault with SIS itself. However, whatever faults SIS did have, they were not cured by the Solicitor's intervention but were only made worse by it. If, after the summer of 1977, SIS did become ineffective, it was because the Solicitor's Office had rendered it so.

LABOR DEPARTMENT DID NOT WANT CRIMINAL INVESTIGATIONS

The Solicitor's Office ran SIS. That was why SIS's first and only permanent Director, Lawrence Lippe, resigned in the fall of 1977. That was why Deputy Director Lester Seidel resigned at about the same time. And that was why the successor to Lippe, Norman E. Perkins, a man with few qualifications for the job, was put in charge of SIS as Acting Director.

Norman E. Perkins thought his orders were to avoid criminal investigations at all costs. Perkins told Labor Department investigators the SIS was not supposed to investigate criminal matters and "had better not". Perkins followed his orders as he perceived them. In the 2½ years that Perkins was in charge of SIS, few formal referrals of information were made from SIS to the Justice Department.

Cooperation with the Justice Department came to a standstill. Secretary Marshall disputed that, telling the subcommittee that he met often with the Attorney General. But meetings between Cabinet-level officers do not necessarily constitute interagency cooperation. Evidence is sufficient to demonstrate that cooperation was unsatisfactory.

Labor Department policy, evidenced by Labor Department actions, not pronouncements, was not to cooperate with Justice, not to uncover and develop information of a criminal nature, not to do anything beyond the pursuit of a limited civil investigation. At the same time, however, the Department gave Congress and the public the impression that a more comprehensive, balanced inquiry was going on.

The attempt to give the impression that criminal information was being developed, for example, was seen in one instance in which a Solicitor's Office attorney, Monica Gallagher, instructed SIS to seek depositions from 80 persons whose names she had culled from the minutes of the meetings of the board of trustees of the pension fund.

It was pointed out to Mrs. Gallagher that before obtaining depositions from these persons proper investigative procedure required that SIS first obtain sufficient information about them and their involvement with the fund so that investigators could ask appropriate questions.

According to SIS personnel testifying before the subcommittee, Mrs. Gallagher was not concerned about proper procedure, but what she wanted was "a high visibility road show" that would demonstrate to Congress that the investigation was pursuing criminal leads. Mrs. Gallagher denied that was her intention.

Mrs. Gallagher did not deny she did give SIS these instructions and, no matter what her objectives may have been, they were unprofessional instructions.

Because of the Solicitor's Office, the SIS investigation was unnecessarily burdened and narrowed. Unprecedented opportunities were lost. The uncommon chance to investigate and prosecute some of the Nation's most notorious organized criminals was wasted. The opportunity to deter future organized crime abuse of the pension fund was lost. The inquiry was the victim of bureaucratic infighting and naivete or incompetence at high levels of the Labor Department.

SOLICITOR'S ACTIONS HAD APPROVAL OF TOP DEPARTMENT OFFICIALS

The decision to allow the Solicitor's Office to take over SIS was but one of a series of questionable judgments that came down from senior offices of the Department.

To understand how these department-level decisions damaged the SIS effort, it is useful to examine the status of the investigation during the crucial months of late 1976 and early 1977. Despite the problems caused by the untimely revocation of the fund's tax exemption, SIS was making some progress.

SIS auditors and accountants were finishing their preliminary examination of records at fund offices in Chicago. Suspect loans had been identified and categorized into primary clusters. Third party investigative strategy was being shaped.

SIS had begun taking sworn depositions from fund trustees. Trustee William Presser of Cleveland, a longtime power in the Teamsters International who has been convicted of Taft-Hartley and obstruction of justice violations and who is a reputed associate of organized criminals, would not answer questions SIS asked him. He invoked his fifth amendment privilege not to respond on the grounds that he might incriminate himself and SIS determined to move against him on this basis.

SIS's theory was that, although every person has a fifth amendment privilege, a fiduciary should not be allowed to assert his privilege in response to questions about his fiduciary duties and remain in that fiduciary role. SIS said he had no choice but to resign. Rather than test SIS's legal theory in court, William Presser resigned.

Getting William Presser off the board of trustees was a genuine achievement. Presser's resignation demonstrated SIS was on the right track.

CONSENT DECREE SHOULD NOT HAVE BEEN ABANDONED

SIS had nearly persuaded fund attorneys that their best chance of winning back the tax exemption was to enter into a consent decree. A consent decree, enforced by a Federal court, would have had the pension fund, without admitting guilt, agree to a series of operational and administrative reforms.

The advantage the consent decree would have given the Government stemmed from the court backing of the agreement. If the fund should fail to implement its promised reforms, it would be in contempt of court.

The consent decree was one excellent solution to the problem of providing the kind of immediate relief needed to preserve and protect fund assets. It had another benefit. It would have enabled the Labor Department to safeguard fund assets but would in no way have curtailed the ability of SIS to continue its investigation.

However, at about the time the consent decree seemed most likely to occur, fund lawyers came up with a counter proposal. Restoration of the tax exemption was still their goal. They proposed that instead of the consent decree that they would have the trustees resign.

MASS RESIGNATIONS APPEALED TO LABOR DEPARTMENT

The mass resignation offer in the early fall of 1976 appealed to Labor Department officials. They were looking for a dramatic, quick demonstration that the Department was bringing about reform of the fund. Despite advice to the contrary from those closest to the investigation, senior Labor Department officers abandoned the consent decree strategy and accepted the mass resignation proposal. It was a shortsighted decision because it focused only on the short-term resignation of the holdover trustees and not the long-term problem of the selection of new trustees and lasting enforceable reforms.

To begin with, not all the trustees resigned. Four remained, Frank Fitzsimmons, Roy Lee Williams, Andrew G. Massa, and John Spickerman. Now, with the new administration coming into office in January 1977, a major effort was launched to remove the four "holdover" trustees.

In April, the fund agreed to have the four holdover trustees resign. It agreed to turn over management of most of its assets to outside, independent investment firms. And it agreed to eight conditions or reforms it would implement to assure that the fund would operate in a less questionable manner in the future.

In response to the pension fund's assurances, the IRS restored the tax exemption on April 25, 1977.

APRIL ACCORDS WERE NOT ENFORCEABLE

All features of the April accords between the fund and the Government were based on oral agreements. No contract was signed. Nothing in writing was formally agreed to by both parties. The only written documents were a unilateral letter from IRS to

the fund listing eight conditions of requalification and the joint DOL–IRS press release. Nothing was submitted to a court. The consent decree concept of having reforms enforced by a court was no longer considered. There was no enforcement mechanism in the oral agreements.

The Government's strategy was flawed. The Government was as anxious to have IRS restore the tax exemption as the fund was. The Government was prepared to accept the assurances the fund made to justify restoring the tax exempt status. It is probable that fund lawyers noted the weakness in the Government's strategy and acted accordingly.

It was also likely that the fund lawyers perceived that IRS would not want to revoke the tax exemption again. The risks were too great, particularly that of a nationwide Teamsters strike. It was apparent that the persons damaged by a revocation were not those suspected of looting the fund, but were innocent parties—beneficiaries, participating union members and contributing employers.

The April 1977 accords were not victories for the Government. They were public relations sleights of hand for IRS and the Labor Department. IRS saved face by appearing to have gained something in response to the revocation. The Labor Department got to boast about reforming the fund.

But the real victors in the April agreements were the persons who controlled and manipulated the fund. Crucial to their success was the absence of an enforceable agreement. The eight conditions the fund agreed to were not enforceable. A short time later, in fact, the fund reneged on many of the conditions.

Even the agreement to bring in outside investment managers was contestable, in the view of the fund. The fund soon started to question the outside managers' authority and sought to lay the groundwork for terminating its contract with them.

PENSION FUND WAS CONTEMPTUOUS OF NONENFORCEABLE AGREEMENTS

The fund's attempts to compromise the independence of the outside managers showed the contempt which the fund felt toward a nonenforceable set of accords. The fund failed in its effort to fire the outside investment managers. But it did not fail in refusing to live up to other features of the agreement.

In refusing to live up to its part of the bargain, the fund made clear the weakness of the Government's position. The Labor Department and IRS were burdened with a set of agreements they could not enforce.

As testified to by GAO and IRS, the pension fund abrogated its promises frequently. Sometimes it got away with it, as in failing to adhere to the conditions of tax status restoration. Sometimes it didn't get away with it, as in the effort to fire the investment managers.

Even the resignations of the four holdover trustees, which Secretary Marshall heralded as a triumph, were a mixed blessing. It was true that Frank Fitzsimmons, Roy Lee Williams, and the others were off the board.

But the Labor Department did not take steps to assure that the new trustees would be better. The Department did not insist on taking part in the selection process or in some form of a veto over

who the new trustees would be. That was a major Department error.

Why make the effort to remove the old trustees if the Teamsters Union officials would be allowed complete discretion in replacing them? The same selection system that gave the pension fund trustees like William Presser, Roy Lee Williams, and the others was still in place.

FORMER TRUSTEES TRIED TO INFLUENCE SUCCESSORS

Information obtained by the subcommittee revealed that the former trustees did try to influence the new trustees. In addition, the new trustees were found to have conducted themselves in a manner that suggested they intended to manage the fund's affairs in a fashion similar to that of their predecessors.

An effort by former trustees to influence new trustees was seen in the attempt to circumvent procedures and make good on a loan commitment the fund had made to Morris Shenker. Shenker won a commitment from the fund to loan him $40 million to renovate and enlarge the Dunes Hotel in Las Vegas.

The Labor Department ruled the loan would violate ERISA and told the pension fund to rescind the commitment. The fund rescinded. Shenker sued the fund.

WIRETAPS SHOW SHENKER, CIVELLA MANEUVERS

In the meantime, the old trustees, including Roy Lee Williams, had resigned. According to court authorized wiretaps during 1978 and 1979, Shenker and Nicholas Civella plotted to maneuver the fund into a position where it could still loan the money to Shenker.

Nick Civella, identified by law enforcement sources as the head of the Kansas City crime syndicate, told Shenker to go to La Costa, the resort and country club near San Diego, where he was to meet with a person identified by law enforcement authorities as Roy Lee Williams.

Williams, who had been a pension fund trustee from 1955 to 1977 when he was forced to resign, was the most powerful Teamsters leader in Kansas City and was frequently mentioned as the man most likely to succeed Teamsters International President Frank Fitzsimmons.[1]

Williams and Shenker were both seen at La Costa. The pension fund trustees then did try to funnel money to Shenker. They attempted to reach a settlement with Shenker in response to his lawsuit. The trustees wanted to loan him $91 million.

Since Equitable Life Assurance Society of the United States and the Victor Palmieri Co. were the principal managers of the fund's assets, the trustees wanted to circumvent them.

The trustees came up with the idea of getting the money to Shenker by transferring the money from the control of the outside managers to the benefits and administration, or B. & A. account, a corpus of more than $100 million which was not controlled by Equitable or Palmieri. The B. & A. account was controlled by the trustees. Their objective, then, was to settle the suit with Shenker

[1] Roy Lee Williams, appointed interim president of the Teamsters following the death of Frank Fitzsimmons, was elected to a full 5-year term in June of 1981 at the union's convention in Las Vegas.

out of the B. & A. Account. This was an effort to manipulate fund assets.

The B. & A. account was not set up to make loans and investments. It was from this corpus that the fund paid benefits to retired Teamsters and administrative costs. At the instigation of a Federal court, the Labor Department and the outside asset managers objected and the transaction was not allowed.

But the new trustees' attempt to make the loan from the B. & A. account was a demonstration that they were as willing to accommodate Morris Shenker's wishes as the men they replaced on the board.

ROY WILLIAMS INVOKED FIFTH AMENDMENT

Roy Lee Williams, the former trustee, was subpenaed to testify before the subcommittee. FBI wiretap affidavits, Justice Department documents, statements of F. Harvey Bonadonna, search materials, surveillance and other evidence received by the subcommittee formed the basis of allegations that Williams, a high Teamsters official, was tied to the Kansas City mob.

Williams, who had been indicted three times but never convicted, was asked by the subcommittee if he had met with Morris Shenker and Nick Civella to discuss ways of circumventing investment managers and ERISA in making the loan to Shenker. Williams was asked about his ties to Nick Civella and other organized crime figures.[2]

The subcommittee also questioned Williams about his connections with organized crime figures, manipulation of fund assets, his influence on the new trustees, the use of a Civella-approved medical program and his plans for future control of the union and the trust fund.

To each question, Williams invoked the fifth amendment privilege of not answering on the grounds that his response might incriminate him. He responded in this manner 23 times.

To invoke the fifth amendment privilege is no admission of guilt. But for a trustee of other people's money to invoke the privilege in response to questions about how he exercised his fiduciary responsibilities does raise doubts about the witness' integrity.

Consider a comparable situation. Imagine a working family that every month deposited its savings into a bank. One day they became troubled because there seemed to be less money in their account than they thought.

They asked their banker to explain—and he invoked the fifth amendment. It may have been his constitutional right. But it did not sit well with the working family, particularly when that savings account was to help them live during retirement. They would at least have had the ability to withdraw their remaining funds rather than leave those funds in the hands of a trustee who refused them any explanation of his fiduciary duties.

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[2] During the hearing Williams was asked about documents seized in the homes of organized crime figures which indicated he received money from them. Subsequent to these hearings Federal law enforcement officials filed some of the search results in Federal court which indicated that the documents seized in a raid, authorized by search warrants on the homes of Kansas City mob figures, revealed how the syndicate was sharing in skims believed to have been obtained on a monthly basis from a Las Vegas casino.

These seized documents showed that in one particular monthly skim $1,500 and other proceeds went to a person known as "Rancher," a code name for Roy Lee Williams, according to law enforcement sources (see p. 176).

That is the situation Teamsters Union members must tolerate. They may know or suspect that their retirement and other benefit plans are controlled by persons who are themselves controlled or influenced by organized criminals. However, Teamsters members do not have the same option as a bank customer does of withdrawing their funds.

Teamsters Union members, either through fear or indifference or a sense that any effort to change things will be futile, have been unable or unwilling to unseat the present leadership of their union. But that does not mean the Government is not obliged to bring about reform of this union and its welfare benefit plans on behalf of the membership.

Roy Lee Williams should have been thoroughly investigated for actions he took while on the board of trustees and for efforts he took to influence the board once he left it.

The 17 former trustees named in the civil suit should have been thoroughly investigated in a similar manner. All of the culpable third parties should have been thoroughly investigated also. Only when all the facts were in should the decision have been made as to how to proceed. That decision should have been made jointly by Labor Department officials working in harmony with the Criminal Division of the Justice Department. IRS should have been involved and cooperating, too.

GOVERNMENT SHOULD HAVE JOINED IN TRUSTEE SELECTION

The Labor Department should have demanded a role in the selection of new trustees. The Department should have insisted on an enforceable agreement that would assure that the pension fund lived up to the promises it had made.

Above all, the April 1977 accords should not have signaled the end of the SIS investigation as originally planned. The planned approach of SIS was procedurally sound. But the events of April meant the investigation would be severely limited.

The curtailing of the investigation in this manner led to the belief by Labor Department employees that there had been a secret agreement, an understanding between the Labor Department and the pension fund that was never made public.

SIS CHIEF BELIEVED IN PHANTOM AGREEMENT

Many Department of Labor employees believed that the Labor Department had entered into a so-called phantom agreement whereby the Labor Department had agreed not to investigate any subject other than selected loans which would be investigated with a view toward a civil suit only.

Secretary Marshall and his associates said there was no phantom agreement. But the official installed in late 1977 as the head of SIS, Norman Perkins, did believe in the phantom agreement.

Perkins' stewardship of SIS lasted 2½ years. For the entire period, Perkins believed in the phantom agreement. Perkins testified before the subcommittee that during his [illegible] Acting Director, his interpretation of the Department of [illegible]actions was that "there would be no further investigation of [illegible] of the areas of loans" (in the lawsuit).

Perkins' belief in the phantom agreement explains why SIS under his leadership made few formal referrals of information to the Justice Department and why those that were made were done in a haphazard fashion.

Perkins' comment that SIS did not investigate criminal leads and "had better not" can be seen in clear perspective when viewed in light of his belief in the so-called phantom agreement.

POLICIES ENCOURAGED BELIEF IN PHANTOM AGREEMENT

Perkins was not the only Labor Department employee who believed in the phantom agreement. In fact, the actions of the Department may have nurtured such a belief by failing to demand a written, enforceable agreement with the fund, by failing to force the fund to live up to its oral agreements, by failing to serve subpenas or otherwise enforcing its requests for documents from the fund and, finally, by failing to proceed against certain borrowers and culpable third parties in several areas of legitimate inquiry.

SIS REFERRAL POLICY TO JUSTICE WAS INEXCUSABLE

Norman Perkins said that he did not think it appropriate for him to refer the names of reputed organized criminals to the Criminal Division of the Justice Department when his investigators came across them in their examination of pension fund transactions. It was only when these individuals were found to have violated ERISA that such referrals were to be made. But at the same time, the Labor Department policy precluded third party investigation of borrowers who had organized crime connections. It was preordained, then, that no organized crime referrals to the Justice Department would be made by SIS under Perkins.

To an experienced investigator, it must have been frustrating to have to work under a restriction like that.

For example, an organized crime figure might have benefited from a trustee—that is, a fiduciary—and that trustee might be suspected of being in violation of ERISA. It was incumbent on the Government to find out the facts. The ERISA violation, thoroughly investigated, might lead to information indicating that the organized crime figure was himself culpable, not only to the charge of violating ERISA, but also to breaking other laws. That point, so obvious to experienced investigators, escaped responsible Labor Department officials.

MARSHALL USED ASSET GOAL TO JUSTIFY ALL DECISIONS

Fundamental to the obstacles blocking effective work by SIS was the decision by Secretary Marshall to limit the inquiry under the guise of "protection of fund assets." Marshall allowed this "objective" to assume such overwhelming dimensions that it eclipsed all other considerations and objectives.

Time and time again, Marshall invoked the phrase, "protection of fund assets," as if the words themselves could take the place of sound Government management of a problem and effective investigative procedure.

Why, for example, did the goal of "preservation of fund assets" preclude the possibility of thorough and competent third party

inquiry? A professional third party investigation could only have enhanced the Labor Department's effort to protect fund assets.

Both goals—competent third party investigation and protection of fund assets—were worth pursuing. Why emphasize one to the exclusion of the other? What was to prevent the Labor Department from continuing to develop information through third party investigation, information that could have been used in the civil case as well as any criminal prosecutions?

CONSENT DECREE WAS PREFERABLE COURSE OF ACTION

Along with the decision to make the No. 1 priority the "protection of fund assets" was another important judgment the Labor Department made—to have the fund turn over management of its assets to an outside, independent investment firm.

There were other courses of action the Department could have chosen to protect fund assets. The subcommittee's position is that the consent decree strategy was preferred. It would have required that the pension fund follow stipulated administrative reforms. If the fund didn't, it would have been in contempt of court.

The use of outside managers could have been one option included in such a consent decree. The subcommittee has found other instances of trust fund abuses where Federal courts did, in fact, appoint independent trustees or asset managers.

It was not an "either-or" situation. Marshall could have accomplished his objective of having outside asset managers within the confines of a court decree, while at the same time protecting the beneficiaries with the enforcement mechanism only a court can provide.

In addition, any objection that a consent decree would have been too time consuming to achieve is not supported by the facts. The subcommittee's investigation concerning other trust fund abuse cases indicated that the Federal courts handled them quickly, sometimes deciding them within a matter of days or weeks.

Bringing in outside investment managers to handle the fund's assets was a questionable alternative to the consent decree. That is not to say the outside asset managers did not do an adequate job. The General Accounting Office cited data indicating that by several measurements the investment managers did improve the fund's financial picture.

What the subcommittee finds objectionable about the outside management approach is apparently exactly what the fund and its lawyers found appealing about it. By bringing in private management firms, fund lawyers were able to avoid any enforceable agreement between themselves and the Government which could be overseen by a court.

EQUITABLE, PALMIERI CONTRACT EXPIRES IN 1982

The contract between Equitable, Palmieri and the fund was to last 5 years and no longer. Control of fund assets will return to the trustees next year. There is no provision to continue the arrangement past 1982. With Equitable and Palmieri out of the picture, the trustees will be free to resume control of the assets.

The future would look more promising if the Labor Department had insisted on some say over who the trustees would be. But no

such insistence was made and now protection of fund assets, with each passing day, becomes a more pressing issue. Had the Labor Department adopted the consent decree philosophy, no problem would exist. Reforms in fund procedures would have likely been of longer duration.

These were issues Marshall never fully addressed in his appearances before the subcommittee. Invariably, his response was that he did what he did to preserve and protect fund assets. It was as if his decisions resulting in a limited inquiry and short-term reform were all justified in the name of "protection of fund assets."

DEPARTMENT COULD HAVE DONE MORE TO PROTECT FUND ASSETS

But protection of fund assets was not a goal that conflicted with developing criminal and civil information from third party investigation. Protecting fund assets did not mean SIS could not go into the field and subpena and take sworn depositions from borrowers and their associates. Information from these depositions could easily have been used in any civil suit. They would have made the civil suit that much stronger.

Protecting fund assets was not a goal that precluded the possibility of using SIS in the role it was created for.

The Department of Labor's continued assertions that its primary goal was to protect fund assets did not justify its other actions that allowed SIS's original mandate to be altered, that allowed the Solicitor's Office to intrude in the affairs of SIS to such an extent that it could not carry out its mission.

The Department of Labor could have done more to protect the fund's assets. It could have allowed the investigation to go forward as originally planned and develop information of a criminal nature. There is no better way to protect fund assets than to prosecute those persons suspected of having defrauded the fund.

Did the Labor Department really think that all the funds that had been lost could be restored in a civil suit in which the only defendants were trustees and fund officials? The answer is no.

Secretary Marshall himself admitted in his testimony that the Labor Department expected financial judgments from the civil suit to exceed the personal resources and insurance coverage of the fund trustees. The persons who benefited the most from the questionable and corrupt practices were the borrowers and their associates. But no borrower or any other third party was named in the civil suit.

LABOR DEPARTMENT'S INVESTIGATION WAS A FAILURE

On balance, the Department's investigation was a failure because the real villains in the affair—the reputed organized criminals who systematically looted the fund of millions and millions of dollars for the past two decades—were not brought to justice. Their names were rarely even referred to Justice. Nor were they subjected to civil liability.

To Secretary Marshall this was strictly a limited civil matter. The only problem with the fund was one of possible civil violations of ERISA. To this subcommittee's thinking, it was an inept, narrow, naive approach.

It is regrettable that the Labor Department, from January 1977 to January 1981, was guided by a policy that interpreted the ERISA statute with tunnel vision. The Department's narrow interpretation of ERISA ignored the spirit and intent of the statute and made a mockery of the Congress' primary purpose—to protect the interests of union members and fund beneficiaries.

KOTCH-CRINO REPORT CITED SHORTCOMINGS

The inadequacies of the investigation of the pension fund came to light in the Labor Department's report of its management review by two experienced Department investigators, John Kotch and Richard Crino.

The Kotch-Crino report spelled out many of the shortcomings in the Labor Department's investigation. The Department's response to the Kotch-Crino report was a heavy handed attempt to destroy it. Not a single official Department copy was saved.

Fortunately, Kotch and Crino did save a copy. Under subcommittee subpena, the Department was forced to give up the remaining copies. It was the first time in its history that this subcommittee had to use its subpena authority to obtain a document from the executive branch.

The Department's witnesses—Secretary Marshall, Solicitor Clauss, and the officer who destroyed the documents, Rocco "Rocky" DeMarco—made many excuses trying to justify the way the Department responded to the Kotch-Crino report.

But none of the excuses could conceal the fact that the report is a damning judgment of the manner in which the Department managed its investigation of the pension fund.

Nor could any of the excuses smooth over the confrontation that led to the need for the subpena. The Labor Department apparently had no intention of seriously seeking a copy of the Kotch-Crino report when the subcommittee learned that such a report had been written and asked for a copy.

SUBCOMITTEE HAS REFERRED RECORD TO JUSTICE

It was only when the subcommittee served a subpena for the report that the Department found a copy and turned over the document. The Department's handling of the Kotch-Crino report is an unfortunate chapter in the history of the Department of Labor.

The manner in which Rocco "Rocky" DeMarco destroyed the Kotch-Crino report is a matter that should be reviewed by the appropriate authorities. As shown in the body of this report, there are lawful procedures that are to be followed when documents of this nature are destroyed. It is apparent that DeMarco followed none of these procedures. The Labor Department's Inspector General and the Justice Department should assess DeMarco's conduct. The conduct of other Labor Department officials in responding to the subcommittee's request for the report and its subpena should also be assessed by the Inspector General and the Department of Justice.

Serious allegations have come to light in the subcommittee's investigation which should be evaluated. It has been alleged, for example, that SIS personnel were under directions not to communicate with the Criminal Division of the Justice Department. This is

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an allegation of some significance and should be investigated further. One of the major reasons for SIS to have existed at all was that it was to communicate regularly with the Justice Department. Yet it reportedly was told not to communicate.

It is important that these issues be assessed and evaluated by experienced observers who can then make a judgment as to whether or not there was inappropriate interference with the investigation of the fund.

The Kotch-Crino report accurately reflected the sorry state the Department's investigation reached. The Labor Department tried to destroy the evidence of its own shortcomings. At worst criminal violations were committed in the destruction of the report by Labor Department officials. At best it was a very poor performance by the Department of Labor. These actions should be judged by a competent authority.

Secretary Marshall claimed the Labor Department is institutionally capable of overseeing the Teamsters Central States pension fund. The subcommittee disagrees. The Department is to be judged not by its assurances but by its actions. And its actions going back many years and many administrations proclaim in clear language that it remains incapable of investigating major labor racketeering cases.

INTERESTS OF UNION MEMBERS WERE NOT LABOR'S FIRST CONCERN

If the union members were the first concern of the Labor Department, several aspects of the inquiry into the pension fund would have been handled differently.

First, the Department would have worked to achieve an enforceable agreement with the pension fund to assure that a comprehensive, specific and permanent set of reforms was implemented. Oral agreements, press releases and understandings have a place in the negotiation process. But when negotiations have ended, there is no substitutes for written, formal, enforceable contracts. The fund either reneged or tried to renege on most of its agreements of April 1977. When the agreement ends in 1982 the Labor Department "solution" will allow business as usual.

Second, the Labor Department would have declared that no trustee would be appointed to the restructured board who was not cleared by the Department. It made no sense to remove the old trustees and yet permit the naming of new trustees according to the same selection system.

As Solicitor Carin Clauss informed Secretary Marshall, the new trustees were not conducting themselves in a manner that would suggest they were any different from the old trustees. For that predicament, Marshall, Clauss and other senior officers of the Labor Department had no one to blame but themselves. The Department had ample opportunity to insert itself into the trustee selection process. It chose not to, thereby forfeiting on a rare chance to assure more permanent reform of the fund.

Third, the Labor Department would have brought civil actions against the borrowers and other persons on the receiving end of the pension fund loans and investments. The culpable third parties were allegedly as responsible as the former trustees for the questionable transactions. ERISA allowed for suing third parties. Why not sue them along with the trustees?

The folly of the Labor Department's suing the trustees and no one else was seen in Secretary Marshall's admission that the defendants in the lawsuit did not have the personal resources or sufficient insurance to pay all the claims that the Government expected would be successfully brought against them. If they don't have the resources to make the fund whole, why not also sue those who have the resources? The culpable third parties might have been in a more positive financial condition to pay should judgments be won against them. Some of the culpable third parties, for example, had substantial assets and real estate holdings.

Fourth, the Labor Department, if it truly had the best interests of union members at heart, would have made a special effort to work closely with the Justice Department in developing criminal cases.

The Labor Department organized crime study, written early in 1975, made clear what most other knowledgeable persons already knew about the pension fund; that is, that it loaned money to and invested in organized criminal endeavors.

Instead of ignoring the criminal implications of the fund's activities, the Labor Department should have made criminality a major focus on its inquiry. The Department should have declared all-out war on criminals who had inserted themselves into the Teamsters Central States pension fund. The Department should have made an example of the pension fund and rooted out corruption wherever it was found. In so doing, the Labor Department could have signaled the rest of organized labor that the Federal Government would use every weapon at its command, including ERISA, to rid the labor movement of criminal elements.

That is a large undertaking, of course. But if the Labor Department refuses to lead the way, who will?

By habit and tradition, the Labor Department has not made a top priority the protection of the rights and benefits of present and future pension fund beneficiaries.

The subcommittee makes the following separate findings and conclusions:

LABOR'S ROLE IN DETECTING CRIMES

1. Apparently the Department of Labor believes that ERISA is not clear enough on the subject of what responsibility the Department of Labor has to investigate information of a criminal nature. The subcommittee disagrees but recommends that the law should be amended to reflect the Labor Department's responsibility. Top Labor Department officials who seem to believe otherwise must be made to understand that they have an affirmative responsibility in this area.

ERISA's intent is that the Labor Department is to be the first line defense against wrongdoing or corrupt practices in employee welfare benefit plans. Commonsense dictates that if the Labor Department comes upon any information indicating that a crime has been committed, it is obligated to investigate it. The Department is under an obligation to pursue that information and then, in an orderly, formal, written manner, refer it to the Justice Department. It is the opinion of this subcommittee that the Labor Department under existing law has the initial responsibility to detect,

investigate and refer all criminal and civil allegations of wrongdoing to the appropriate authority.

The Labor Department erred in not doing just that in its inquiry of the Central States pension fund. It was wrong for the Department to make referrals orally and on the phone or in an otherwise haphazard way or to fail to refer them entirely. Procedures for the formal referral of criminal information should be developed and strictly adhered to.

INDEMNITY PROPOSAL IS WRONG

2. In the early stages of the investigation, pension fund lawyers reportedly proposed the idea that the trustees, should they be liable for losses, should be indemnified by the fund.

The proposal was initially rejected by the Labor Department but, according to one witness, the fund lawyers were persistent and kept raising it. The indemnity proposal has never been finally disposed of by the Labor Department.

The subcommittee finds the concept of indemnifying the trustees from the fund to be unsatisfactory. In effect, it says that the trustees, while responsible for the fund's financial losses, should be protected by the fund for any judgment against them. It is circular logic and the Government should reject it.

THIRD PARTY INQUIRY WOULD HAVE HELPED CIVIL CASE

3. The Solicitor's Office in the Labor Department was wrong when it intruded on the operations and investigative strategies of the Special Investigations Staff (SIS).

SIS's strategy to examine fund records had gone forward according to plan. Third party investigation was about to get started. But it was stopped by the Solicitor's Office, with the blessing of Secretary Marshall.

The decision to stop third party investigation all but ruined any possibility of developing information of a criminal nature. But the decision also damaged the civil suit. Third party investigation, supported by SIS's authority to issue administrative subpenas, could only have strengthened the civil suit.

Administrative subpenas and depositions are more flexible and efficient than depositions taken under the aegis of a U.S. district court during the discovery process. Like court depositions, administrative depositions are taken under oath before a court reporter and persons testifying falsely are subject to prosecution for perjury.

In cases where a witness fails without justification to appear and testify or produce subpenaed records in an administrative deposition, the administrative subpena may be enforced in district court.

The administrative subpena is an effective investigative tool. When the Solicitor's Office stopped third-party investigation, it cut off the use of this device. Without reference to criminal inquiry, the loss of this technique, and the tools that go with it, the Government's civil case suffered a major setback.

GOVERNMENT ACTED AS IF THERE WERE PHANTOM AGREEMENT

4. The subcommittee makes no finding as to whether or not there was a phantom agreement limiting the scope of the Labor Department investigation. Norman Perkins, who headed the Department's inquiry for 2½ years, thought there was a phantom agreement.

Whether or not there was such an agreement is of less significance than what actually happened, which was what the Labor Department did, in fact, limit the scope of the investigation. The Department limited the inquiry to a few loans and investments, primarily in real estate, and did not concern itself with subjects like trustee expense accounts and other administrative matters.

On several occasions, even when SIS was under the leadership of Norman Perkins, attempts were made to expand the investigation. The goal was to enlarge the inquiry, to possibly move into areas where questionable conduct might be so apparent that criminal cases might be developed. But all such attempts to broaden the investigation failed. As Perkins said from his own experience, SIS did not look into criminal matters and "had better not."

LABOR DID NOT MONITOR FUND, B & A ACCOUNT

5. Labor Department officials testifying before the subcommittee would have had the subcommittee believe the Department kept a close eye on the benefits and administration, or B & A, account. The General Accounting Office concluded just the opposite.

In its study of the Labor Department's oversight of the fund's operations, GAO felt the Department knew very little about the B & A account.

Similarly, there was strong indication that, after its 5-year, $5.4 million investigation of the entire pension fund, the Labor Department still didn't understand the most fundamental operations of the fund.

Howard Marsh, who was Deputy Area Administrator in the Department's Atlanta region, was called upon to make an evaluation of how the Department should proceed in relation to the fund. One of Marsh's findings was that the Labor Department did not have sufficient knowledge of how the fund worked.

Marsh's finding, coupled with that of GAO, constituted an indictment of the Labor Department and its ability to carry out its mandate to monitor and investigate the pension fund.

Additional proof that the Labor Department failed in monitoring and investigating the pension fund occurred in 1980 when the Department reopened its inquiry into the fund. The fact that a new investigation was necessary proved what a failure the first inquiry was. This is not to indicate any displeasure with a renewed investigation of the fund but merely to point out that a subsequent investigation may have been rendered unnecessary by a complete and competent initial inquiry.

NEW PLAN NEEDED WHEN CONTRACT EXPIRES

6. Secretary Marshall placed great stock in the fact that the fund's assets were in the hands of outside investment managers. That arrangement will expire in 1982. The fund will again be vulnerable to abuse and criminal exploitation.

The Labor Department should begin preparing for the expiration of the contract between Equitable, Palmieri and the fund. It is the responsibility of the Department to see to it that means are found

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to insure that after the 1982 expiration date investments are made in a prudent, procedurally sound manner.

The trustees' willingness and ability to carry out their fiduciary responsibilities has been questioned and is now under investigation. There is doubt as to whether or not the trustees will handle the fund's assets according to the prudent person rule embodied in ERISA.

Under that provision of the statute, trustees are expected to manage a trust fund's affairs as a prudent person would handle his own.

The prudent person rule is not an especially demanding one. But until provided with evidence to the contrary, the subcommittee believes adhering to that rule may be beyond the capabilities of the fund's board of trustees. That is why the Department of Labor must be ready to step in when the contract expires in 1982.

There are several options. A new contract with outside managers is one. A consent decree is another. A board controlled by neutral, independent, professional trustees may be considered. Whatever the vehicle selected, it must be able to guarantee that the welfare of union members and beneficiaries will be the first and only objective of pension fund operations.

DESTROYING KOTCH-CRINO REPORT WAS AGAINST LAW

7. In the course of the subcommittee's investigation, it was established that a Labor Department official, Assistant Secretary Rocco Charles "Rocky" DeMarco, had on two occasions destroyed what turned out to be the only official copies at Labor Department headquarters of a highly sensitive report.

The report, known as the Kotch-Crino management review, provided a wide range of very damaging information about the manner in which the Labor Department had handled the investigation of the Central States pension fund.

Moments before DeMarco began his destruction of the Kotch-Crino report, he said, he was given instructions by Solicitor Clauss. DeMarco said that Clauss, handing him her copy of the report, remarked, "Dispose of this."

DeMarco did just that. He disposed of it by destroying it. Then he proceeded to tell anyone who asked—the GAO, this subcommittee, an SIS investigator—that no such report existed.

An additional development in the destruction of the Kotch-Crino report was the legal opinion of the Solicitor of Labor, Carin Ann Clauss.

Clauss said she did not remember telling DeMarco to dispose of the Kotch-Crino report. but, she added, his destruction of it was acceptable conduct on his part. She might not have gone about it as he did, she said, but, nonetheless, it was her view that he did nothing wrong. Secretary Marshall also saw nothing wrong with DeMarco's conduct, either, after he checked with his Solicitor, Carin Clauss.

There can be debate over what is meant by the words, "Dispose of this." It can mean dispose of this by destroying it. Or it can mean dispose of this by placing it in an easily retrievable file. DeMarco chose to dispose of the report by destroying it, and then denying there ever was such a report in the first place. There was

no doubt in DeMarco's mind as to the precise meaning of what Clauss had in mind when she reportedly said, "Dispose of this."

John J. Landers, the Acting Archivist of the United States, was asked what he thought about the destruction of a document like the Kotch-Crino report in the manner in which DeMarco did it. Landers cited chapter 33 of title 44 of the United States Code as setting forth exclusive procedures for the disposal—that is, destruction, of records of Federal agencies.

Federal law and Federal regulations were very specific—and, Landers said, the destruction of the Kotch-Crino report appeared to be in violation of all of them.

Landers noted that criminal penalties are provided for the unlawful removal and destruction of Federal records.

The criminal penalties cited by Landers are spelled out in title 18, United States Code, section 2071. It says, "Whoever having custody of any record, paper, document or other thing filed or deposited in any public office of the United States willfully and unlawfully conceals or removes or destroys the same shall be fined not more than $2,000 or imprisoned not more than 3 years, or both, and shall forfeit his office and shall be disqualified from holding any office under the United States."

The Kotch-Crino report contained information indicating serious inefficiencies in a major Government operation. The report contained information indicating allegations of conflict of interest, obstruction of justice and sexual misconduct.

Because of the seriousness of the information and allegations contained in it, the report should not have been disposed of. Those matters raised in the report required further investigation.

More importantly, the Kotch-Crino report should not have been disposed of because *it was against the law to do so.*

FAILURE OF INQUIRY WAS LOSS OF HISTORIC OPPORTUNITY

8. Opportunity lost is the most apt way to characterize the failed Labor Department investigation. Lost was the opportunity to put the new pension reform statute, ERISA, to good use, to utilize ERISA to bring about lasting reform of the fund.

Lost was the opportunity to assure that the fund would be run by trustees and officials whose primary interest was the welfare of union members and fund beneficiaries. Lost was the opportunity to take to court, in civil proceedings or criminal, borrowers and other third parties who had profited from questionable loans and investments.

Lost was the opportunity to bring to justice some of the Nation's most notorious organized criminals. An opportunity of such historic significance does not come along often.

XIII. Recommendations

DEPARTMENT SHOULD ASSUME PREEMINENT ROLE

1. In the subcommittee's investigation and hearings, one point came through as being more important than anything else. The point is that the Labor Department should assume a position of preeminence in the detection, investigation and proper disposition

of all violations of Federal law in the operations of employee welfare benefit trust funds.

No other Federal component has the statutory and jurisdictional access to welfare benefit trust funds that the Labor Department has. The Department has the access for a reason. It is important enough to say it again: It is the clear and unequivocal intent of the Congress that the Labor Department has the front line responsibility to detect, investigate, and properly dispose of trust fund violations. The Labor Department's responsibility to detect, investigate and properly dispose of these violations applies to both civil and criminal cases.

The issue is no longer arguable. The subcommittee hopes the Labor Department will stop resisting the will of the Congress and start carrying out its mandate. The Department, from October of 1976 to January of 1981, did not carry out the full intent of the Congress regarding ERISA enforcement and corrupt practices in welfare benefit trusts. The Department obfuscated. It seized on small points in debate, deliberately missing the forest for the trees.

The time for discussion has long since passed. More than 6 years have gone by since ERISA became law, time sufficient for any Federal agency to organize itself for the proper implementation of a new law.

By habit, tradition, and inclination, the Labor Department has tended to avoid adversarial encounters with big labor unions and their big employee benefit trusts. Nowhere was the tendency more vivid than in the Labor Department's investigation of the Teamsters Central States pension fund. The Department did not do a satisfactory job investigating the pension fund because it was unwilling to do a satisfactory job.

The jurisdiction was there. The investigative tools were there. What was missing was the proper attitude. When Labor Secretary F. Ray Marshall testified that his Department would be on "dubious" legal grounds should it try to use ERISA as a vehicle to investigate all violations of law, it was Marshall himself who was on dubious footing.

The General Accounting Office, the Congressional Research Service of the Library of Congress, the Department of Justice, the Subcommittee on Investigations, and any number of other Government and congressional entities believe Marshall was wrong, that the statute was intended to be a vehicle enabling the Labor Department to be the first line of defense against illegal and improper practices in the operations of employee welfare trust funds.

Beneficiaries of those funds cannot afford another 6 years of drift and delay. For that reason, the subcommittee recommends that Congress pass legislation directing the Labor Department to initiate and investigate all violations of Federal law relating to employee welfare benefit trust funds.

The subcommittee recommends that Congress include in the legislation language making it unarguably clear that the Labor Department is to work in close harmony with the Department of Justice in investigating violations of Federal law relating to employee welfare benefit trust funds.

Equally important, the subcommittee recommends that the new leadership of the Labor Department take steps to reverse those habits, traditions, and inclinations within the Department which

have tended to lead the Department in the direction of avoiding adversarial encounters with big labor unions and their big employee benefit trusts.

The subcommittee recommends that the Secretary of Labor reorganize the Solicitor's Office in the Labor Department. Personnel should be hired who are experienced in long term, complex investigations. A background in criminal and financial investigation should be encouraged. Moreover, attorneys in the Solicitor's Office must have the intellectual balance to be able to be supportive of the important rights of organized labor in the collective bargaining process and still seek to root out corruption in the labor movement wherever it occurs.

The Secretary of Labor is asked to carefully review the staffing of the Solicitor's Office and to consider the attitudes and abilities of those attorneys who were instrumental in shaping and carrying out policies and practices in connection with the investigation of the Central States pension fund.

So many irreparable mistakes and foolish miscalculations were caused by the Solicitor's Office over the past 5 years, it would appear that the new leaders of the Labor Department would be better served by carefully reviewing the personnel slate with special emphasis on individuals involved in the Central States case. The Department of Labor should carefully review and analyze the abilities and interests of these individuals in the Solicitor's Office to determine if their qualifications and attitudes are in accordance with the goals of the Government in protecting the rights of each and every union member whose trust fund assets have been dissipated.

LABOR DEPARTMENT INSPECTOR GENERAL SHOULD INVESTIGATE ORGANIZED CRIME VIOLATIONS OF ERISA

2. The subcommittee recommends that the Labor Department grant the investigative responsibility for ERISA violations to the Office of the Inspector General in addition to that division or section of the Department of Labor which currently handles ERISA violations.

12-MONTH ACCESS LIMITATION SHOULD BE AMENDED

3. The subcommittee recommends that Congress pass legislation removing from the Employee Retirement Income Security Act, ERISA, the stipulation limiting the Labor Department's access to employee welfare benefit trust fund records to one time in a 12-month period. In its place there should be new language giving the Department access whenever it believes a violation has occurred in significant trust fund cases involving multiemployer Taft-Hartley trust funds.

The 12-month limitation is arbitrary and serves no legitimate purpose. If the Labor Department suspects a fund of questionable or corrupt practices, and duly authorized officers feel an examination of fund records would serve to prove or disprove the existence of such practices, then there should be no bar to access.

It is difficult to imagine a less desirable limitation on Government than a rule which says that, in effect, if the Labor Department looked at a trust's records in January, it was precluded from

doing it again in June. A more appropriate rule would be that if the Government believes trust fund operations are working to the detriment of present and future beneficiaries, the Government should be able to go in and find out. In cases of the magnitude of the Teamsters investigation it makes little sense to proceed in any other manner.

ERISA STATUTE OF LIMITATIONS SHOULD BE LENGTHENED

4. The subcommittee recommends that the statute of limitations for ERISA violations be lengthened from the current period of 3 years to 6 years.

The big trust funds—the Teamsters Central States pension fund, for example—are too complex for a 3-year limitation. Proving a financial investigation case, under the best of circumstances, may require more time. Six years would be preferable.

In addition, ERISA should be clarified regarding the statute of limitations so that it is clear that the statute begins to run only after the Government actually starts to investigate an alleged violation.

IRS-LABOR JURISDICTION ISSUE SHOULD BE STUDIED

5. The subcommittee recommends that the Congress, through the appropriate legislative committees, reconsider ERISA as it relates to the jurisdictional problems that arose between the Internal Revenue Service and the Labor Department in the Central States pension case.

After a review of the jurisdictional problems that have been documented in this report, Congress may wish to amend ERISA in such a way as to allow for IRS to cooperate more fully with the Labor Department.

In that regard, the subcommittee again recommends that Congress amend the disclosure provisions of the Tax Reform Act of 1976 so that IRS can more readily cooperate with other Federal components in investigative matters.

The major portion of the subcommittee's report, "Illegal Narcotics Profits," issued on August 4, 1980, addressed the need to amend the disclosure provisions. Information developed and presented in the Labor Department oversight investigation is additional support for the subcommittee's belief that the disclosure provisions should be amended.

FORMAL AGREEMENT

6. In any investigation which has issues of civil and criminal consequence as great as the Teamsters fund inquiry, it is preferable for the Government to formalize any agreement with an adverse party in a written, enforceable document.

In this manner, not only will the Government be assured that the results will be lasting and guaranteed by way of an enforcement mechanism, but the Government will be insuring that its position is clear and unequivocable.

FIDUCIARY ENFORCEMENT [1]

At the time of his appearance before the subcommittee in September of 1980, Roy Lee Williams was one of the most powerful leaders in the Teamsters Union. A vice president of the Teamsters International, Williams was the leader of Teamsters activities in Kansas City. For 22 years, he was an influential member of the board of trustees of the Central States pension fund.

Since his appearance before the subcommittee, Williams has become even more significant a labor leader. With the death of Teamsters president, Frank Fitzsimmons, Williams has been appointed interim president. He was elected to a full 5-year term in June of 1981 at the Teamsters convention in Las Vegas.

The Labor Department was able to persuade one of Roy Williams' colleagues, William Presser, to resign from the board of trustees of the Central States pension fund. William Presser would not answer questions the Labor Department asked him about his fiduciary conduct. The Labor Department argued that trustees are obliged to account for their conduct as fiduciaries. If they refuse, they can be accused of being unsuitable to continue to serve as fiduciaries. When confronted with a Department demand that he resign, William Presser chose not to test the issue in court and stepped down from the board.

The Labor Department's position was that a fiduciary, a person entrusted with the money of union members, must be held accountable as to how he handled that money. In an interim report, issued on May 20, 1981, the subcommittee said the Labor Department should apply the same legal reasoning to Roy Lee Williams and his fiduciary conduct. Today, in its final report, the subcommittee is of the same opinion.

The Labor Department's position was that a fiduciary, a person entrusted with the money of union members, must be held accountable as to how he handled that money. The subcommittee believes the Labor Department should apply the same legal reasoning to Roy Lee Williams and his fiduciary conduct.

In his appearance before the subcommittee, Roy Williams gave four reasons for not answering allegations that he had abused his fiduciary trust.

First, Williams said that he was the subject of Federal grand jury investigations and had been subjected to electronic surveillance and had not been given the opportunity to read the transcripts.

Second, Williams said that in his 22 years of service as a trustee of the pension fund he had made hundreds of decisions as to how the fund should function. He said he would not respond to questions about those decisions until he had the opportunity to prepare a response ahead of time. To do that he would have to know the specific questions ahead of time.

Third, Williams said because of the electronic surveillance on him and other persons he did not name, he felt that to testify under oath before the subcommittee would subject him to the risk of being charged with perjury.

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[1] An interim recommendation similar to the one recited herein was released on May 20, 1981, in the subcommittee's interim report on "Oversight Inquiry of the Department of Labor's Investigation of the Teamsters Central States Pension Fund.

Fourth, Williams then took the previous three reasons—the surveillance, the need to know in advance what he would be questioned on and the risk of perjury—and said they combined to constitute sufficient justification for him to refuse to testify on the grounds that his testimony might incriminate him.

Williams then took the fifth amendment privilege 23 times, refusing to answer on the grounds that his testimony might incriminate him.

Because of the allegations concerning his fiduciary conduct, because he refuses to account for his affairs as a fiduciary and because of unanswered charges that he represents organized crime syndicates like the Kansas City mob, issue which reflect on his fiduciary duties, a serious question has arisen as to whether or not Roy Lee Williams has any place in any position of trust in the labor movement.

By Federal statute any official position in a labor organization as well as a position of trustee of an employee benefit plan is described as a fiduciary position. A union officer, as a statutory fiduciary, has the same duties as a trustee; that is, to hold the assets of the union for the sole benefit of the union members, to handle the assets prudently and to account for his actions.

The Labor Department and the Federal courts should give Roy Lee Williams another opportunity to answer questions about his conduct as a fiduciary.

The subcommittee recommends that the Department of Labor evaluate the conduct of and the allegations against Williams and then determine whether or not he is suitable for high office in the Teamsters Union.

An administrative proceeding should be convened and Williams should be asked appropriate questions about his current fiduciary duties. If his responses are not adequate, the Labor Department should petition the Federal court seeking the removal of Roy Lee Williams from his fiduciary position. This would provide Williams with a full and fair due process hearing. Such court should consider each and every factual allegation concerning Mr. Williams as well as his refusal to respond to allegations which reflect adversely on his fiduciary status.

In its May 1981 interim report, the subcommittee recommended that the Labor Department pursue this course of action and inform the subcommittee of its actions within 60 days.

In subsequent meetings between the subcommittee staff and officials of the Labor Department, the Department rejected the subcommittee's recommendation. Department officials said Federal law did not give them uncontestable authority to initiate legal action to remove union leaders for alleged fiduciary breach.

In formally responding to the subcommittee's interim report, the Labor Department, in a letter of July 9, 1981, again rejected the recommendation. The letter, signed by Secretary Raymond J. Donovan, said the Department did not have lawful authority to carry out the subcommittee's recommendation.

While it still believes that the Labor Department does have the authority to remove union officers for alleged fiduciary breach, the subcommittee feels that congressional intent should be apparent beyond the shadow of a doubt. Therefore, the subcommittee recommends that Congress pass legislation which declares that the Department of Labor has statutory authority to apply to Federal court to remedy any breach of fiduciary duty by a labor union official, including the ability to seek removal of such an official.

The Federal Government, by statute, has granted labor unions and their officials many benefits no other entity enjoys. As a result, those officials have important responsibilities and duties as fiduciaries. If these officials do not live up to these responsibilities, there is no legal reason that the labor union official should enjoy these federally mandated benefits by virtue of their retaining their fiduciary role.

The subcommittee is not suggesting that an individual be penalized merely for asserting his fifth amendment privilege. It is suggested, however, that a fiduciary has certain obligations, among them the obligation to fully disclose matters affecting his fiduciary responsibilities. If a fiduciary breaches this duty, he may be removed. It is not our purpose to comment on the reason a fiduciary refuses to disclose, such as the invocation of the fifth amendment privilege. The reason for refusing to account for his conduct as a fiduciary does not eliminate his responsibility to abide by his fiduciary duties. Any breach of his fiduciary duties may be grounds for removal regardless of the reason for the breach. Any such refusal to respond, coupled with factual allegations of misconduct, should be aired in a full and fair due process to determine if such a fiduciary should be removed.

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