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**STATE OF NEW YORK  
COMMISSION OF INVESTIGATION**

**CORRUPTION AND ABUSES IN THE CORRECTIONAL SYSTEM:  
THE GREEN HAVEN CORRECTIONAL FACILITY**

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MAY 1981

270 BROADWAY  
NEW YORK, N. Y. 10007

TEMPORARY COMMISSION OF INVESTIGATION  
OF  
THE STATE OF NEW YORK

CORRUPTION AND ABUSES IN THE CORRECTIONAL SYSTEM:  
THE GREEN HAVEN CORRECTIONAL FACILITY

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## INTRODUCTION

The State Commission of Investigation ("the Commission") issued its Interim Report on The Escape of Albert Victory on July 15, 1980. The Interim Report revealed for the first time that Albert Victory, imprisoned for the felony murder of a Police Officer, did not escape with the aid of three shotgun-carrying confederates wearing ski masks, as had been officially reported. Rather, the Commission found, Victory simply walked away from a room at the Ramada Inn in Newburgh, New York. He had been taken there, as the result of a corrupt arrangement with Correction Officers assigned to guard him, so that he could drink and have sex with his girlfriend. The Commission further found that the escape reflected a broad pattern of corruption and malfeasance by personnel of the New York State Department of Correctional Services (DOCS) assigned to Green Haven Correctional Facility ("Green Haven"). The Commission has now completed its investigation, which centered on Green Haven.

Green Haven is a maximum security prison, located in a rural area of Dutchess County. The inmates are imprisoned in Green Haven and so, in a sense, are those assigned to watch them. The officers are unarmed, outnumbered, and often insufficiently experienced to

deal with the street-wise urban inmates, the great majority of whom have been convicted of major violent crimes. Yet, in a profound sense, the officers depend upon the benevolence of the inmates. At any moment, a disruption in the delicate balance of prison life can result in conflict, combat and -- in the extreme case -- violent death.

Over the past decade, under the impulse of the Attica Prison riot and other factors, DOCS began to effect many changes in its methods of discipline and control. Prisons were renamed "Correctional Facilities." Guards were renamed "Correction Officers"; the Warden became a "Superintendent." More substantively, inmates were accorded new privileges, discipline was relaxed, and sanctions against prisoners were strictly controlled. Various types of inmate programs also were adopted.

Other changes were less constructive. At least at Green Haven, it appears that the attitude of Correction officials towards inmates' rights and inmates' disturbances contributed to a breakdown in morale, discipline and security; what has been described as a "let's make a deal" attitude prevailed. As long as another Attica was prevented, as long as anyone, inmate or officer, could "keep the lid on," various rules and regulations were ignored.

Green Haven became a free-for-all. Inmates roamed freely about the facility. Veteran Correction Officers, in disagreement with and demoralized by the new liberal attitudes, sought new assignments which offered as little inmate contact as possible. The most junior officers were placed in direct charge of the most violent felons. In addition, the high percentage of transfers of both inmates and officers, to and from Green Haven, caused an ebb and flow that fostered disorientation and a lack of security.

A system of granting "favors" to inmates developed. Small favors to inmates gave way to larger ones, and the price exacted by the guards was not only prison peace but cash and gifts. At Green Haven, corruption on a large and regular scale became institutionalized. The inmates who could buy the largest favors were primarily white, in a prison where the majority of prisoners are poor and black. The most favored were those with organized crime connections and cash.

Security and morale at Green Haven suffered a substantial breakdown. The new visiting rooms, which allowed inmate contact, became major staging areas for smuggling contraband, including drugs, alcohol and cash, into the prison. Guards became friendly with inmates, and would eat and drink with them in the visiting area outside the prison wall. Field Day events became

flea markets for smugglers of contraband. Prisoners and guards became involved in large scale pilferage of prison supplies; clothing, food and furniture were regularly reported stolen. Prisoners even cooked meals for guards, with food stolen from the kitchen, in the prison administration building.

Guards permitted prisoners to use drugs and alcohol. Bookmakers took bets totalling tens of thousands of dollars. The guards either looked away or shared in the profits. Inmates gave gifts to favored corrupt guards: cash, color televisions, drapes, shoes, microwave ovens, watches, cufflinks, liquor, baked goods, toaster ovens and theatre tickets were all traded in return for favors, or extorted from inmates.

Once imprisoned in a maximum security facility it would seem that there are only two ways out -- release (at the end of an inmate's sentence, on parole or death) or escape. However, inmates can also go outside the walls of the prison and off the prison grounds on escorted outside trips and leaves of absence. Prisoners with organized crime connections, on trips outside Green Haven for medical or family visits, were able to stop for costly meals, to visit with criminal associates, to have sex or to walk off unattended. The escorting officers were paid off in cash, sometimes hundreds of dollars a trip, in goods, or with the

services of prostitutes.

Finally, the security breakdown fostered escapes, as individual prisoners began to take advantage of the corruption and laxness in the system and the attitude of prison officials. Examples of these escapes range from Albert Victory, who escaped by paying his guards to drink in a bar while he went to a motel room with his girlfriend; to William Cody, who walked away because no one knew or followed prison regulations that prohibited a parole violator from working outside the wall; to Herminio Espinal and Antonio Capoul, who escaped simply by taking advantage of the normal chaos in the visiting room.

By no means were all Correction Officers dishonest or corrupt. But honest officers failed to report the corruption and favor taking of others. They were demoralized. The malfeasance was institutionalized and seemed to be accepted even by certain supervisors. Inmates knew this and took advantage. Guards were either a part of the corruption or could not deal with it. They felt the need to do favors for inmates in order to obtain protection. The feeling that they were alone within the prison, that nothing would change the system, this all contributed to the continuing pattern of corruption. The DOCS Inspector General's Office, which is responsible for uncovering corruption and dishonesty in

the system, was considered ineffective and unable to detect or deal with the problems.

There are no easy remedies to the problems discussed in this Report. Furthermore, it is difficult to say to what extent the problems of corruption uncovered at Green Haven exist at other prisons. This investigation began when former DOCS Commissioner Benjamin Ward brought to the Commission allegations of contract-related corruption at three correctional facilities -- Green Haven, Ossining and Fishkill. The Commission decided to concentrate its investigatory efforts on Green Haven.

Green Haven's staff and prisoners are constantly transferred to other facilities, carrying their corrupt experiences with them. Indeed, one guard, who the Commission found was at the core of corrupt activity at Green Haven and knew the true story of the Victory escape on the day it occurred, transferred to another facility, along with at least one of his corrupt associates, during the course of this investigation. Moreover, many of the guards and inmates whom the Commission found to have engaged in corrupt practices were transferred to Green Haven from other facilities. This mobility of correctional personnel and the inmates who had at one time or another engaged in corrupt practices in the prison system is a prime indication that these

practices are not confined to Green Haven alone. For example, a federal investigation of corruption at the New York Metropolitan Correctional Center found that Arnold Squitieri, an organized crime figure involved in corruption at Green Haven, engaged in virtually identical activities while in federal prison. Similarly, six inmates who helped to usher in the "let's make a deal" era at Green Haven, originally came there from Attica, and appear to have arrived well-versed in the practices of prison corruption.

These facts indicate the need for a wider inquiry to identify the extent of corruption at other DOCS facilities and we recommend such an investigation of all state prisons. In view of its other ongoing investigatory responsibilities, it would not be appropriate for this Commission to itself conduct such an inquiry. The State Commission of Correction and the DOCS Inspector General's Office have neither the staff, experience or equipment to effectively conduct such an investigation, nor are they presently prepared to combat widespread corruption within the prison system. Therefore, the Commission calls for two principal actions which it believes are essential.

First, the Commission recommends that a thorough investigation of the entire state Correctional system be conducted by a temporary commission established

by the Legislature, with members appointed by both the legislative and executive branches, in order to determine to what extent the abuses uncovered at Green Haven exist on a broader scale. Second, we recommend the establishment of an effective Inspector General's Office. Further, regulations must be promulgated to deal with the specific problems of every type of facility. More importantly they must be enforced. Records, kept on virtually every facet of prison life, must be audited and reviewed, by officials in the prison as well as by outside agencies, if they are to have any meaning.

A full scale investigation of the state Correctional system will create a base upon which a properly staffed, trained and equipped Inspector General's Office can establish a climate of honesty and security in the state's prisons and restore pride and integrity to the position of Correction Officer. Such an investigation will benefit Correction Officers, inmates and the public.

## BACKGROUND

The criminal justice system in the State of New York is a two-stage process. The first stage focuses on arrest and adjudication, administered by police and investigative agencies and the courts. Stage two involves the process of incarceration and release, administered primarily by the Department of Correctional Services and the Division of Parole.

The Seventies have been referred to as a "decade of change"\* for the Department of Correctional Services (DOCS). Executive leadership changed five times. DOCS was combined with the Division of Parole and then separated. Riots took place at the Auburn and Attica Correctional Facilities. DOCS' responsibility changed from an agency with 17 Correctional facilities, 13,000 inmates and 6,500 employees to an agency responsible for over 30 facilities -- classified as maximum, medium and minimum security -- with more than 20,000 inmates, over 60 percent of whom have been previously confined, and 12,000 employees. More than one-half of the inmates are black, approximately 27 percent are Hispanic and 20 percent white.\*\* Ninety six percent of the inmates are im-

\* DOCS Strategic Plan: 1980-1985, page 8.

\*\* Other ethnic groups total less than 1 percent.

prisoned on felony charges. The largest number of inmates, over 14,000, are held in the maximum security facilities,\* several of which are surrounded by massive concrete walls.\*\* In the state's 1980-81 fiscal year, DOCS had available budget funds of over \$300,000,000. An increase to over \$350,000,000 has been recommended for fiscal year 1981-82.

In December, 1977, at the request of former Commissioner Benjamin Ward,\*\*\* the Commission began discussions with DOCS concerning the circulation of contraband in state Correctional facilities, in particular the maximum security facilities at Green

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\* Sixty-four percent of DOCS prison space is classified as maximum security, 27 percent medium security and 9 percent minimum security.

\*\* The number of maximum security facilities varies by definition. The New York Code of Rules and Regulations (NYCRR) designates 9 maximum security facilities: Attica, Auburn, Clinton (excluding the Clinton Annex, designated as medium security), Downstate Separation Center, Downstate, Great Meadow, Green Haven, Ossining (excluding the Tappan Correctional Facility, in Buildings 9, 10 and 11, which are designated as medium security) and Bedford Hills (a facility for women), 7 NYCRR Part 100. The New York State Executive Budget for fiscal year 1981-82 designates 10 maximum security facilities: Attica, Auburn, Clinton, Coxsackie, Downstate, Eastern, Elmira, Great Meadow, Green Haven and Ossining. DOCS Directive #4017, dated July 31, 1978, designates Attica, Auburn, Clinton, Elmira, Great Meadow and Green Haven as "Maximum A" facilities. Clinton Annex, Coxsackie and Eastern are designated as "Maximum B."

\*\*\* Currently Commissioner of the New York City Department of Correction. See footnote, page 108.

Haven and Ossining and the medium security facility at Fishkill. Commissioner Ward had stated that the contraband, which he characterized as mainly marijuana, was being introduced into the facilities during visits to inmates and by sales to inmates from Correction Officers. These practices, he said, increased the availability to inmates of cash\* with which they could purchase weapons.\*\*

The Commission, pursuant to its enabling act (Unconsolidated Laws §7501, et seq.), authorized an investigation into the conduct and management of DOCS and the facilities under its jurisdiction, including corruption on the part of employees of the Department, the introduction of contraband into Correctional facilities, the procedures governing the assignment and discipline of inmates and officers, the investigative practices and procedures utilized by the Department and other related matters.

Officials of DOCS met with the Commission to review the available information regarding the three correctional facilities discussed by Commissioner Ward. It soon became apparent, from the number of employees

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\* One of the many items considered contraband in a prison.

\*\* The Commission's investigation has found no evidence that the cash which was available to inmates was used to purchase weapons.

and inmates in the system, the extent of the problems faced by DOCS, the size and training of DOCS' internal investigatory staff and the volume of records kept by DOCS, that an investigation of the entire Department, or even the three facilities noted by Commissioner Ward, was not feasible. It was decided, therefore, to concentrate on Green Haven. The diligent efforts of the Commission's staff uncovered a pattern of corruption at Green Haven.

This investigation reviewed conditions at Green Haven from 1972 to the present. While certain problems and investigative findings are limited to a specific time period, their causes, rooted in prison programs and mismanagement, continue into the eighties. The Commission has discussed these continuing problems with the current DOCS Commissioner Thomas A. Coughlin, III. The Commissioner indicated his concern with the problems set forth in this Report. He has made and has stated that he will continue to make corrective changes. Some of these changes are referred to in this Report. Additionally, changes have been instituted at Green Haven by present and former Superintendents, reflecting the Commission's investigation.

The investigation employed a wide variety of investigative techniques. The Commission's Report is based on the records of DOCS, information from under-

cover associates and cooperating officials, bank and telephone records obtained through the exercise of the Commission's subpoena power, information obtained with the cooperation of federal and local agencies (as well as the cooperation of out-of-state and foreign law enforcement agencies), field interviews and extensive sworn testimony, at times taken under grants of immunity. In particular, the Commission acknowledges the efforts and cooperation of DOCS Commissioner Coughlin and Inspector General Brian Malone and members of their respective staffs.

#### Green Haven Correctional Facility

Green Haven is located in Dutchess County at Stormville, New York. It currently houses the state's only means of carrying out the death penalty, the electric chair located in the facility's "death house." The prison was built by the state as a maximum security prison during the period 1939-1941. The state leased Green Haven to the federal government in 1944, and from then until 1946 it served as a military prison. Green Haven reopened as a state maximum security prison on October 16, 1949.

Green Haven is surrounded by a 30 foot-high wall, with twelve guard towers and front and rear gates, enclosing approximately 50 acres. Outside the wall is a

prison farm of 341 acres and 449 acres of woodlands and pastures. The absolute maximum capacity of its nine cell blocks (and segregation units) is 1,918; in fact this maximum includes cells that are actually inoperable or used for other purposes, such as shower rooms. Green Haven currently houses in excess of 1,800 inmates who are supervised and cared for by a staff of over 750, approximately 550 of whom are uniformed Correction Officers.

There are various jobs available for the inmates in Green Haven, including farm work, industry (industrial shops include knitting, furniture, upholstery and automotive), clerical and maintenance. Nevertheless, there are often over 250 inmates without jobs, referred to in prison slang as "dead inmates." Many jobs are saturated with workers (several inmates assigned to a job that can be done by one) and many jobs only require part-time work. The "dead inmates," and those who quickly complete their jobs or simply do not appear for work, are free to roam over substantial portions of the prison.

The free movement policy has at times been restricted. No restriction, however, except "keep-lock" -- a lock-in punishment -- or confinement to the Special Housing Unit, a form of "solitary confinement," results in constant cell time. Prisoners can spend most of

the day socializing in the yard, corridors or cell blocks of Green Haven, with guards and other prisoners.

Certain prisoners are housed in "honor blocks." In 1975, Albert Victory commenced a lawsuit to return him to Green Haven after his transfer in respect to a 1974 escape attempt. He referred to his housing block - "J block" - as a "minimum security 'honor' housing unit" and described the special privileges it offered,\* including:

- a. A room with a regular door and window and wooden furniture;
- b. Free movement around the block between 7 A.M. and 11 P.M. (at least once a week special events were watched on television well past 11 P.M.) and the right to lock the room;
- c. Facilities to prepare food;
- d. Use of recreation rooms (with televisions, ping-pong tables, and other equipment), a fully equipped gymnasium, shower facilities and a separate

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\* See pages 94 and 95.

exercise yard until late in evening; and

e.. Access to the law library, without a special pass or permission.

Other programs Victory participated in at Green Haven included courses in photography (Victory was frequently the official visiting room photographer) and legal research and college credit courses. Victory was also the J Block representative to the Inmate Liaison Committee and was an officer of several other inmate organizations.

The "decade of change" at DOCS is mirrored in the turmoil at Green Haven. Since opening in 1949, Green Haven has been run by nine Superintendents (formerly referred to as Wardens). The differences in their respective tenure's is indicative of the turmoil.

In the 21-year period from 1949 to 1970, there were two Superintendents (Edward M. Fay and Harold W. Follette, serving from 1949 to 1965 and 1965 to 1970, respectively). However, during the period from 1970 to date, there were six different Superintendents.\* While three of these Superintendents served two or three years each, the others only held their positions for periods

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\* On July 22, 1980, Charles Scully became the seventh Superintendent since 1970.

of three to eleven months.

Rapid turnover at Green Haven only begins with the Superintendents. It extends in significant measure to Correction Officers. Correctional facilities in upstate New York, such as Attica (Attica, New York), Great Meadow (Comstock, New York) and Clinton (Dannemora, New York) are located at a distance from other facilities and tend to draw their employees from the surrounding community with little competition from other businesses. The facilities are town industries.

Green Haven, however, is located close to several other facilities with better working conditions, in an area where there is competition for jobs from private businesses. Green Haven is not far from New York City and many officers are "commuters." For these reasons, and because of low morale and the reputation of Green Haven, personnel there tend to be a more transient group.

The former Superintendent of Green Haven, David Harris,\* has stated that in 1978 the approximate turnover rate among line Correction Officers was close to 120 percent. In one instance, there were so many officers coming and going that the inmates' visiting room had to be closed down to process them. Even higher ranking officials, such as Deputy Superintendents, Cap-

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\* See footnote, page 55.

tains, Lieutenants and Sergeants have had annual turnover rates of several hundred percent.

Mr. Harris also stated that approximately 80 percent of the officers have less than two years' experience on the job. Nonetheless, these officers tend to be in most direct contact with the experienced, "street-wise" and in some cases, violent, inmates housed in a maximum security facility. This is due to the bidding system of job assignment, under which officers with the most seniority "bid" for open jobs. After the riot at Attica, and the liberalization that took place in its wake, many Correction Officers, their morale broken and resentful of the new rights being afforded to inmates, tended to bid for jobs that accorded them the least inmate contact. That put the least experienced officers in direct contact with the most experienced inmates.

The inmate population is also in constant flux. In 1979 alone over 1,500 inmates transferred into Green Haven, and over 1,200 transferred out.

Inexperienced guards, violent inmates, and the inherent dynamics of prison life create many incentives and opportunities for corrupt activity. This Report discusses the nature and extent of some of these problems, the corruption discovered by the Commission's investigation, and recommendations for improving the prison system in New York State.

#### CONTRABAND AND CORRUPTION AT GREEN HAVEN

The Commission's investigation of Green Haven began as a request to help stem the flow of contraband. An understanding of contraband is central to an understanding of prison life. Every facet of prison life, every aspect of prison procedure, every minute in an inmate's and an officer's day is bound up in a stream of constant tradeoffs and dealing. It is a system in which various types and degrees of corrupt activity are the norm.

An inmate assigned to a maximum security prison such as Green Haven is at the mercy of both guards and fellow inmates. A similar situation exists for new Correction Officers. Officers are outnumbered, unarmed and often too inexperienced to deal with the prisoners. So they must strike bargains with them. Some do it for protection. For others, it becomes a way of life. Sometimes such deals are to make use of good informants; at other times, merely to take bribes.

Prisons, by definition, are populated by criminals. Many of them have access to money, directly and indirectly. They have every motive to offer money to the guards and officials who control their lives. And the guards -- underpaid, unappreciated and doing an unpleasant job -- have motives to strike bargains with

prisoners.

The sale and exchange of favors is what prison life is all about. One cannot fully appreciate the implications of investigating prison corruption without understanding the nature of contraband. Simply defined, everything in a prison can be contraband: not only items such as narcotics whose possession is prohibited by law to the general public, but also goods we think of as part of everyday life -- liquor, money, knives or utensils. Anything that can be used to cause death or serious physical injury is contraband. But so is anything brought into the prison for an inmate, or possessed by an inmate, without the specific permission of his keepers.

To preserve the security of the facility against the introduction of contraband, various types of searches are authorized -- including full "strip searches" of the inmate, and complete sudden searches of his cell. Contraband is in the eye of the beholder -- the Correction Officer. Thus, in practice, the smallest amenities of daily life are subject to disruption or confiscation by the guards. But some inmates can possess items of contraband or trade them, based on their relationship with Correction Officers. The inmates use the contraband they have received, or the cash or cigarettes generated from its sale, to buy favors or

trade for different types of contraband in the prison. Correction Officers can, and will, look away from the irregular and illegal activities of favored inmates. Inmates are favored because of their ability to assist the officer or because they pay him. Contraband is both the subject and the currency of corruption.

The Commission has found that corrupt acts by officers and inmates extend to almost every aspect of daily life at Green Haven. Thus, cell and job assignments can be sold to favored inmates. Drugs, alcohol, sex and gambling are available, at least to the fortunate. It must be recognized that some leniency in the system is no doubt necessary to security; for example, to cultivate informants or reward helpful inmate leaders. This Report does not deal with activities which are properly related to legitimate security concerns. Rather, this Report concerns activities that are clearly improper: with bargains that are corrupt in their essence for which no excuse is possible, and with willful blindness to, or open tolerance for, such activities on the part of supervising officials.

The extent of these activities at Green Haven is such that it would be impossible to detail them all here. This Report sets out some of the major areas of corruption at Green Haven. These include the inmate visiting program, the parole clothing room, drugs,

alcohol, gambling and sex and gifts for guards, particularly in connection with unauthorized stops on inmate trips outside the prison.

Some of these problems may seem minor or insignificant. But prisons should not be allowed to function as a continuation of the criminal society at large. Prisons riddled by corruption, whose rules are mocked by the conduct of those assigned to enforce them, can neither rehabilitate nor punish; they teach not respect, but contempt for the entire process of law enforcement.

Nor can we be satisfied that most corruption appears to be minor. Petty crimes lead to large ones; small favors lead to general laxity. The ultimate result has even been the escape of dangerous inmates. Those who foster or acquiesce in even the most minor corruption should be called to account.

#### The Inmate Visiting Program

The means by which Green Haven's inmates can legitimately remain in contact with their friends and families are varied. Inmates are permitted to send uncensored mail to those persons on their mailing list, and a telephone program exists through which inmates can call people on their telephone list, collect only. There is also a system of visiting privileges for inmates. The yearly total of visitors passing through

Green Haven's gates numbers in the tens of thousands. A former Green Haven Superintendent told the Commission that after the Attica riot inmates were permitted to receive visits from friends, as well as family members and attorneys; visitors were no longer fingerprinted, and the identification that was required could be easily forged.

At Green Haven there were three visiting rooms -- the old, the new, and the outside visiting rooms -- and a yard area, Edward M. Fay Memorial Field (Fay Field), named after Green Haven's first Warden.\* The most restrictive is the old visiting room, for inmates considered security risks, or who have prison disciplinary records. There, inmates and their visitors sit across counters from one another. Seating is provided for about 140 inmates and visitors. When the old visiting room is crowded, people often sit on the counter tops, designed to separate inmate from visitor. Originally, there were screens between inmates and visitors, but they were taken down during a period of liberalization. The new visiting room and the outside visiting room allow the inmates greater freedom

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\* On December 29, 1980, Green Haven began a new program of family reunion visits, using six fully furnished trailers set up on prison grounds inside the walls, for inmates selected on the basis of program participation and good disciplinary records.

but create greater problems.

The new visiting room is ninety feet long by forty feet wide. At the front of the room is a guard post. To the rear, doors lead to the prison blocks and the visitors' entrance corridor. Inmates meet with their visitors in a cafeteria style setting with eleven tables (each seating six), fifty stationary seats, an open indoor area, food vending machines and an outside yard within the walls. There is relatively free movement about this room, especially on crowded weekend visiting days. Often, several visitors entering together to see one inmate will be put on one visitor's pass, making it hard to account for the number of visitors present.

The confusion allows for undetected meetings, called "cross-visiting." Visitors to one inmate meet with another inmate, or with other visitors. Inmates who would otherwise have no contact with one another can also meet undetected. There is often a deliberate attempt by the inmates to camouflage these meetings. Additionally, inmates whose visitors have left can remain in the visiting room, to see others or, in one particular case, to effectuate an escape. (See The Escape of Herminio Espinal and Antonio Capoul, at page 120.)

The new visiting room is designed to comfort-

ably accommodate approximately two hundred inmates and visitors,\* and is not in heavy use on weekdays. The weekend situation, however, is markedly different, especially during the summer months. Green Haven's proximity to New York City, home for many of the inmates, and the number of visits each inmate is permitted,\*\* allow many visitors to come on weekends. Many visitors arrive by buses operated by private companies. The bus drivers, more than anyone else, control the visiting room on weekends. Until the bus drivers signal their intention to leave for the return trip to New York City, confusion reigns.

Two officers are usually assigned to keep order in this visiting room on the weekends. Crowds often reach over three hundred and fifty inmates and visitors in an atmosphere in which inmates and their wives or girlfriends grapple with each other in sexual encounters. These encounters and their effect on other

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\* This figure includes an estimate of the number of inmates and visitors in the open area in the new visiting room and the outside yard area (not in use during the winter months). A former Green Haven Superintendent testified that he considered even two hundred visitors overcrowded.

\*\* The visiting rooms at Green Haven are open seven days a week. The number of weekday visits is not restricted. Inmates were permitted to receive visits on both Saturday and Sunday. Current rules restrict weekend visits to Saturday or Sunday.

inmates and their visitors can lead to fights.\* Correction Officers, outnumbered and in fear of triggering a riot, are powerless to intervene. In one instance, the number of visitors, the practice of cross-visiting and the confusion masked an escape by two inmates. (See The Escape of Herminio Espinal and Antonio Capoul, at Page 120.)

Often the new visiting room is used to pass contraband, from visitor to inmate or from inmate to inmate, which is then moved back into the prison at the end of the day or secreted in the room for later retrieval by inmate porters. An inmate described to the Commission how contraband, in particular marijuana, could be moved into the prison, past the guards:

Sometimes, you can bring [marijuana] in. It all depends [on] who's [strip] searching [the inmates when they return from the visiting room]. If they have somebody who doesn't want to be bothered, you don't have to worry about a serious pat search or strip search. If you have somebody up there who is going to do a good job, you are not going to take a chance. What you do [then] is leave it in the visiting room [in or under the food] machines or right in front of the

\* One example of such an incident which later overflowed into the prison itself resulting in injuries and involving corrupt acts by guards is discussed below in relation to the outside visiting room. See page 30.

[guard's] desk or wherever and . . . the night [inmates] porters who go to work at 6:00 [to clean up the visiting room] would pick it up.

Q. [The night porters] are not searched?

A. They are and they aren't. Like I say, it all depends who they work for.

\* \* \*

Q. Can you tell us the name of the guards that were more lenient that you knew?

A. For me, basically everybody that worked up there. They all knew me, but they couldn't be lenient with somebody they didn't know . . . I don't even have to take my pants off, just my shirt off or my shoes and put them back . . .

The inmate explained that the lenient attitude of the guards was not related to the crowded weekend conditions at the prison.

Q. Was there ever a time that the guards would strip search you more quickly because they were being pressed for time because there were a lot of people waiting or just because they were friendly?

A. It's not a thing of whether they were pressed for time.

They did it that way because that is the way they wanted to do it. They could have done it as fast as possible.

\* \* \*

[Inmates] don't have to be in population until 5:00 o'clock anyway.

The most privileged inmates received their visitors in the outside visiting room, located in a refurbished garage structure outside the prison wall. There is also a small yard area with picnic tables. The outside visiting room was equally well known among the inmates as a location for passing contraband. In a variation on a theme, the inmate porters and grounds keepers retrieved items left in the outside visiting room or its adjacent yard, for themselves or others.\* The outside visiting room at Green Haven was closed in June, 1980, by Superintendent Harris, due to limited utilization and budgetary restrictions.

When the outside visiting room was in use, a relaxed atmosphere prevailed among the guards and the inmates and their visitors. After checking in through the main gate, visitors were permitted to go in and out of the visiting room and on and off prison grounds in an easier manner. This was confirmed by a regular prison visitor:

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\* The outside visiting room was designed for use by, among others, inmates assigned to jobs outside the walls. In this regard, it is noted that inmates assigned to work on the farm were also able to retrieve contraband left for them in areas of the farm. As The Escape of William Cody (see page 129) shows, farm workers were not always carefully selected or watched.

. . . . When I used to go to this visiting, it was outside visiting. I used to go to the store and get maybe some soda or cigarettes or a newspaper.

\* \* \*

I checked in and checked out. Check in and check out.

\* \* \*

With the officer for the outside visiting room.

In this relaxed atmosphere, certain guards and prisoners who dealt in favors would eat together with the prisoners' families. An inmate described the practice:

. . . . Like even the [guards] like out in the visiting room, they were fed lunch, breakfast, breakfast and lunch on visiting days.

\* \* \*

By Tremarco or Squitier[i]\* or whoever was in the visiting room.

\* \* \*

[They would get the food] [f]rom the visitors. They would bring it in and they would --only if the [Hues]\*\* crew was out there they would get fed. If a different guy would come in, they wouldn't get fed . . . .

---

\* Organized crime connected inmates who purchased and received favors. See pages 59, 76 and 80.

\*\* Identifying Sergeant John Hues, see pages 58 and 114.

The sexual activities in the outside visiting room were similar to those in the new visiting room. In one case, this resulted in an animosity that spilled over into the prison and almost resulted in a riot. On May 30, 1976, Edward Fanelli\* received two visitors in the outside visiting room. One of his visitors entered the visitors ladies' room and discovered a black inmate engaged in a sex act with his white wife. The inmate made an insulting remark to Fanelli's guest, and she left the ladies' room. When Fanelli discovered what had happened, an argument ensued, and the black inmate was given a beating for his insulting remark. The version of the story that the black inmate spread through the prison was that he had been beaten because Fanelli, a white inmate with organized crime connections, resented a black man-white woman liaison. Before other inmates could defuse the situation, a confrontation with several black inmates took place in front of Fanelli's cell. Fanelli was struck on the head and incurred damaging skull injuries which required hospitalization. The situation was only calmed when the true story of the incident became known.

\* Fanelli, his background and his relationship with other guards at Green Haven is discussed at pages 60 and 69.

Another part of the Inmate Visiting Program are the "special event days"\* scheduled for Fay Field, a yard area within the prison wall. These events are usually well attended and underprotected, allowing for all manner of illegal activities. Often over 300 people attend special event days. The confusion of these special events masked the introduction of contraband into the facility. Drugs and dollars were dealt by inmates and officers. One inmate described his contraband transactions at a special event:

It was on Fay Field. I can't remember [the date] . . . at this time they had just started strip searching us to go back from Fay Field in[to the prison]. I got a hundred dollars off a visitor while I was out on Fay Field. Being I didn't have any wine or anything, I bought two bags of reefer [marijuana] and I had eighty dollars left.

\* \* \*  
Everybody on the field had reefer.  
It was like growing...

\* \* \*  
Q. Was there anybody visiting you  
at that time?

\* These include Italian-American Day and San Juan De Battista day. On San Juan De Battista day, June 22, 1980, inmates Herminio Espinal and Antonio Capoul escaped from Green Haven. See page 122.

A. No, I was just on a list, inmate visiting list. . . .

\* \* \*

I went out there, I was . . . on the list to go out there for the purpose of bringing something in myself, right.

\* \* \*

Anybody can get on the list.

Q. What were you going out there to bring in?

A. Anything for a hustle. At that time I wound up with some money, like I said, a couple of bags of reefer.

In fear of a strip search the inmate turned to a friendly Correction Officer, who had previously given him "reefer," for assistance. But the deal went sour. The inmate continued:

[The Correction Officer] took [the contraband] in for me and eventually he talked me into giving him . . . eighty dollars and he would look out for me in terms of reefer. He never did -- I don't even know where my money is or where he's at.

\* \* \*

Eventually it was a beat. He beat me. There was nothing I can do about it.

The Inmate Visiting Program at Green Haven is administered chaotically, particularly on weekends.

Maximum security inmates have exploited the system and perverted a humane program allowing contact with visitors to foster the introduction of contraband into the prison, to satisfy their sexual desires and to corrupt the guards. Inmates' actions in the visiting areas have a direct and detrimental impact on the prison and contribute to the breakdown of discipline and security.

#### The Parole Clothing Room

An inmate scheduled to leave the prison -- for court appearances, on completing his sentence, on parole and for certain escorted trips or leaves of absences -- receives a suit of civilian clothing from Green Haven's Parole Clothing Room. The Parole Clothing Room is located in a lightly trafficked basement area of Green Haven's administration building and is run by Correction Officers, who are assisted by inmates. The quiet and separation of the room, as well as the easy nature of the work, make it a favored job assignment for inmates. The Commission's investigation indicates that inmates assigned to the Parole Clothing Room can easily ingratiate themselves with the guards, for favors to be returned at a later date.

The most obvious corrupt activity discovered by the Commission was the pilferage of clothing. Many

of the officers and inmates interviewed acknowledged the pilferage, but no one admitted seeing it happen. The records of Parole Clothing are inadequately kept and are easily manipulated to cover up for pilfered items. Inmates returning to the prison return their civilian clothing, and inmates leaving the prison on release or parole often do not take their full allotment of clothing. The Commission was also told that on some occasions paroled inmates would "give" their clothing allotments to officers. The loss counts of clothing are high and are often marked off to theft on the loading dock or theft by inmates. In addition, forged or unsigned charge-out requests are used to substantiate the inventory. Some of those interviewed blamed the problem on what was described as "midnight raids" by officers -- officers removing items on the night or weekend shift. A Commission test audit indicated that for one month alone, losses could total over \$10,000.

A former Green Haven inmate with first hand knowledge described the practice of pilferage of clothing and who was responsible.

Q. During the time you were in parole clothing, did any of the clothing go to anybody other than parolees?

A. Definitely, yes. It went [to] Officers.

\* \* \*

They would come down and get fitted, get the suits. Some had them made up [tailored] and took them out . . .

\* \* \*

. . . whenever they wanted something to wear.

Q. Was that common knowledge?

A. Well, the officers [in the room] would basically turn their heads, . . . and [other officers] would come down and say, I want this, that and that, and I just gave it to them.

\* \* \*

These guys were stealing clothes. . . and you don't argue with them -- whatever they want you give them: Shoes, raincoats, suits, pants, underclothes --you name it, they got it.

One inmate told the Commission that he reported the clothing shortages. The inmate was transferred shortly after talking to a correctional lieutenant about the Parole Clothing Room. More commonly, the inmates turned over the clothing to the guards who requested it, and the clothing was tailored in the inmates' tailor shop.

Clothing pilferage was not the only arrangement worked out between inmates and officers in the Parole Clothing Room. An inmate described the solitude

and easy work in Parole Clothing which allowed for casual and friendly relations between prisoners and guards.

You go downstairs [to Parole Clothing] and do your own cooking.

\* \* \*

In parole clothing, you have a stove, a refrigerator.

\* \* \*

. . . away from the institution, quiet.

\* \* \*

[Inmates in parole clothing did not have to go for meals in the prison dining room.] We used to buy our food from [any one of a number of inmates who worked in the kitchen and took meat from the butcher shop] -- I would get steaks and eggs and whatever.

\* \* \*

. . . That is all I used to eat there, steak.

\* \* \*

Q. I assume it wasn't an official prison policy for the butcher shop to sell steaks to inmates?

A. No.

\* \* \*

We cooked for [the correction officers who looked the other way]. I cooked for them.

\* \* \*

We had a mob down there. That's why we had to stop it. Eventually I had to stop it.

A small amount of the food supply belonged to the inmates, brought in legitimately by visitors through the prison's Package Room. The greater portion of the inmates' food supply was, as noted, from the prison kitchen, taken with the acquiescence and assistance of the guards. An inmate explained the arrangement:

The officers that worked down there [in parole clothing] knew where we were getting the meat from, the eggs from and everything from, they ate with us, . . . there was several of them that used to eat with us, come down every day and eat.

\* \* \*

Sometimes the officers used to go and get [the food] themselves and bring it back.

\* \* \*

You see, in other words, we had a thing going. At 7:00 o'clock in the morning [an inmate] would pick up [the food] . . .

\* \* \*

He would run through the front gate after he got the food, because the officers [on] the front gate let you in, they wouldn't search you. He would go downstairs [to parole clothing] and bring the food down.

\* \* \*

Q. The officer on the front gate was important?

A. Yes. He used to eat with us.

\* \* \*

The sergeant used to eat with us, too.

\* \* \*

Q. The eating business was almost like routine?

A. Yes.

The civilian employees in Green Haven's kitchen who worked completely surrounded by inmates, took the same attitude as the guards towards the pilferage of food.

Q. Were they [the civilian kitchen employees] in any way involved in selling food to the inmates?

A. Not to my knowledge.

Q. They must have seen the inmates take food to sell?

A. They turned their head, didn't look at it. So petty to them.

\* \* \*

They would say somebody stole it.

Inmates in Parole Clothing were not the only drain on the prison's meat supplies. Meat was also reportedly taken by officers. Indeed, more than food

was reported stolen. In some instances, typewriters and other large items, the removal of which required the thief to pass through several interior security gates in the prison, were reported stolen by the inmates. An inmate discussed these thefts:

Q. Who was in charge of maintaining the records of meat and how did they excuse the large amount of losses?

A. They would say that the inmates stole it. Everything that is missing in the institution, no matter what it is, it is an inmate who stole it.

They were missing a typewriter . . . They said the inmates stole it.

Number one, we can't get up through the [interior] gate[s] without [a Correction Officer] opening the gate, and it's three different gates that we have to go through.

\* \* \*

They said [the inmates] stole an IBM typewriter. There is no way in the world we can get through three gates with a typewriter without somebody seeing us.

\* \* \*

Three different officers would have to know about it, if we are going to steal it.

Q. Was there ever any other large item [stolen] that was blamed on the inmates?

\* \* \*

A. A big, big freezer ...

The Commission has even received testimony that on one occasion entire truckloads of furniture, typewriters and other equipment were loaded for guards by trusted inmates. The trucks were unmarked and the inmates were told by the guards "you never loaded these trucks." While it is not clear why these items were being loaded, it is difficult to imagine that this was an honest transaction. Items were also listed as damaged or otherwise requiring disposal and were reportedly later retrieved from the dump area.

In another incident in Parole Clothing, a telephone was discovered wired into prison telephone lines. An address book belonging to an inmate was found nearby with the name and personal telephone numbers of a telephone company employee. The matter was referred to the Superintendent, who in turn notified DOCS Central Office. DOCS reportedly decided to refer the matter to the telephone company. Investigation by the Commission indicates that neither the Inspector General's Office, nor the small local telephone company, ever conducted any investigation respecting possible employee involvement.

Drugs, Alcohol, Gambling and Sex

An inmate loses many freedoms, which leave many desires unfulfilled. Often, these desires drive inmates to deal with officers. In many cases, the officers use the inmates' desire for drugs, alcohol, gambling and sex as a means of control over them or of rewarding favored inmates. However, some Correction Officers will use the inmates' desires to increase their salary. Both uses are wrong. When such deals occur, the morale of the honest officer is destroyed, as supervisors look away. Those officers that deal with the inmates increase their vulnerability for more significant corrupt activity.\*

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\* The activity described in this portion of the Report is separate from arrangements made by inmates to obtain drugs, alcohol, gambling and sex in the prison visiting rooms or while on outside trips. See pages 22 and 64.

Drugs

The visiting rooms (see page 22) are not the only point where drugs enter the facility. Officers, who are rarely if ever searched upon entry into or exit from Green Haven, can bring in virtually anything and often do. One inmate who purchased drugs from a corrupt officer was Albert Victory, who later escaped as a result of privileges granted to him by the same officer (see The Escape of Albert Victory, at page 90). An inmate described one occasion when he gave Victory cash to pay a guard for delivering Taiwan sticks, a form of marijuana, that had been provided by Victory's girlfriend:

Q. Albert Victory told you himself that [Officer Roger] McGibney brought him in Taiwan sticks?

A. He not only told me this, I saw Albert Victory give money to McGibney [who delivered the Taiwan sticks] when I was present.

\* \* \*

. . . one day I went to the kitchen and Victory came in and said, . . . I need \$100 fast.

\* \* \*

[After giving Victory the \$100] we went to the kitchen, and McGibney was standing there, so he walked around the side and came back.

As we were coming back he said, I just got my Taiwan sticks.

I said, that's what you needed the \$100 for?

He said, yes. I have to give it to him. That's the only way I can get them in. I don't want to take the chance of getting them the other way [through the visiting room\*].

That's how [Victory] lived --it was pot and Taiwan sticks.

Another inmate who received drugs from a corrupt officer was Jerome "Jerry the Jew" Rosenberg:\*\*

Well, the pills -- I have seen [an officer] g[i]ve the Jew a box [with pills]. I don't know what kind of pills these were or what have you. I know the Jew had a plastic bag full of pills, all kinds of pills, all in one bag.

\* \* \*

I seen [Rosenberg] take the box and dump the [p]ills in the bag. Later on that day, Arnold\*\*\* asks me to hold this for him. The same pills that belong to the Jew. I wrap it up, stick it in my locker.

\* \* \*

\* Often, organized crime connected inmates did not smuggle or hold contraband themselves but paid others to do it for them to reduce the personal risk.

\*\* See page 61.

\*\*\* Arnold Squitieri, an inmate. See pages 59 and 76.

Q. Did anybody ever ask for [the pills]?

A. Whenever the Jew wanted them.

\* \* \*

He would tell me to give him the bag a day or two later. He would give it back and I could stick it wherever I had my wine.

#### Alcohol

Drugs and alcohol are tolerated by many officers who are in direct contact with inmates as a method of control; keeping inmates drunk or drugged and docile. The inmates arranged with certain officers and civilian employees to smuggle in liquor. In addition to this and other previously described methods of importing contraband, inmates also used subterfuge to bring liquor into the prison.

Inmates were permitted to receive packages of food and non-contraband items from friends and relatives. The prison rules require that packages must be searched in Green Haven's Package Room. Items in an opened package might be probed or sliced into small pieces (such as cakes) in an attempt to discover things hidden from view. Food in cans, however, was thought to be sealed and rarely opened. The inmates knew this and took advantage of it. Labels of cans were carefully steamed off and holes punched in the seams. After the can was emptied, it would be refilled with vodka or other liquor, the holes sealed and the label reglued. The newly filled can passed easily to the inmate.

Inmates, called "booze guys" by other inmates, also manufactured "home brew" in their cells for their own use and to sell. One inmate, who was a "booze guy" in Green Haven, described his manufacturing

operation, the economic system at the prison, and how the guards treated his activities.

Q. . . . Were you involved in any activity in the prison that could make you money?

A. I used to sell wine.

Q. How did you make the wine?

A. I would get yeast, I would buy yeast and juices from either the kitchen or when I was in the officer's mess hall, I would take it. I used to juggle officers' mess food to give me a little money, all I would have to do is turn over three boxes of cigarettes which equalizes a ten dollar bill in prison. . . .

\* \* \*

Get sugar and fruit juices and a bucket and let it [sit] for about three or four days --

\* \* \*

[I left the bucket in] front of my cell, under my bed.

The Block officers, in direct contact with the inmates, knew the wine would keep the prisoners docile and looked the other way. Some officers kept peace with the inmates by giving them advance notice of upcoming cell searches. The "booze guy" continued:

I only got busted for it once when it was under my bed. That is be-

cause they smelled it, because I opened up the top, but they didn't bother people with wine. They figured wine was cool, it kept people calmer, you know, . . .

\* \* \*

[Certain officers] told me there was a shake-down and whatever you guys have, get rid of it. They knew I drank wine, they never busted me for it. They probably figured I needed it. I never had any hassles like most other guys had hassles, drinking wine.

Gambling

An inmate at Green Haven, whether or not assigned a job, finds himself with an abundance of free time. Some attend classes, study on their own or work on their legal cases. Others scheme and deal with other inmates and officers as they roam freely around areas of the prison. One of an inmate's "leisure time" activities is gambling. Inmates place their bets with in-house bookmakers, who deal in cash and cigarettes.

A prison bookmaker often maintains as sophisticated a system of booking and collecting bets, making payments and purchasing protection as his counterpart on the street. The following testimony was taken by the Commission from one inmate, who was a known bookmaker at Green Haven. He described the start up of his operation, his protection arrangement, his philosophy of prison gambling, and the interrelation of various facets of the prison's subterranean economy:

Q. How did you begin to work as an informant for [the Deputy Warden]?

A. I was a bookmaker there,...

I told him, I said, listen, I can do you a favor, you can do me a favor.

Q. What favor could he do for you?

A. Really nothing, but just leave me alone.

\* \* \*

Not actually [let me] make book, but not to, you know, bother me, or get these officers off my back.

Because, like in prison gambling must go on, it is a necessity, without it, the prison probably -- you know, inmates, there's nothing to do, so gambling is a part of prison.

Q. Where do they get the money?

A. Cigarettes. There was money involved. If you wanted to get money in an institution there is no problem at all.

\* \* \*

Q. How did you get your supply of money?

A. I started [bookmaking] in 1971, . . . I borrowed money from [an inmate].

\* \* \*

And I bought 100 cartons of cigarettes.

\* \* \*

From [other] inmates. I think it was two inmates at that time that were selling them at \$3.00 a carton, four for ten or something like that, whatever.

Q. How did they get them?

A. Steal them or whatever, sell booze. You know, like you have booze guys that would sell booze for cigarettes.

The inmate started making book for cigarettes (later he also took cash) on sports, which could be followed on TV or radio. He had numerous bettors and established a point spread.

I would have like fifty or sixty guys betting and I put a line out.

The inmate bookmaker did not rely solely on the Deputy Warden for protection. Individual officers also dealt, bet and worked for him -- in one instance receiving a "runners' fee" for the illegal activity. One officer even involved outside law enforcement personnel and did not hide this fact, as the inmate explained:

Q. Were any of the officers, to your knowledge, aware of the book-making activities?

A. They used to gamble with me [for cash].

Them, I gave them a straight line [a better line].

Q. Were they aware of that?

A. Well, actually, you see this one officer worked for me, . . . I gave him a percentage of the money that he picked up [as a commission]. In fact, he was getting money like from the officers, he was holding money, too, plus the officers' money, plus he was even taking bets from state troopers from the street.

\* \* \*

Q. So he would solicit bets for you?

A. Yes. From the officers only.

\* \* \*

I would take care of the inmates.

Q. What was the nature of the commission you paid him? Did you have an agreed percentage with him?

A. I gave him ten percent.

\* \* \*

Whatever money he gave me, I gave him ten percent, win or lose, he got ten percent.

\* \* \*

Actually, the bets were placed, given --

\* \* \*

-- through [the officer], but I was there at times and I paid them at times, too, gave them the cash.

Q. You knew who he was placing bets for; is that correct?

A. Yes.

Q. You said that he had even paid money for bets from State Police outside the prison?

A. Right.

\* \* \*

He told me about it.

There were some cell searches made to confiscate cash. However, often the inmates were not punished or put out of business and the cash simply disappeared. The inmate bookmaker explained that the officer working for him on commission often acted as a bank, holding the contraband cash to protect it from cell shakedowns. He described one incident involving his own cell:

Q. Were you ever caught with money by a Corrections Officer?

A. One day an officer came in my cell -- I don't even remember his name -- and there was \$200 in the book [where the inmate hid his cash] . . . , so he shook down my cell.

When I went back into my cell I seen my house a wreck, I went into the book and the money was gone.

\* \* \*

Q. . . . Did you ever inquire from the inmates who shook down your cell?

A. No.

Q. You just let it go?

A. Yes, it was done.

Q. And you were never in any way written up as a violation for that?

A. No.

Q. So you just assumed that whoever took the money took it and it was gone?

A. Sure.

The amounts of money involved, from officers and inmates, and the profits of the inmate bookmaker were significant sums, all of it illegal cash that flowed through the prisons' subterranean economy and could be used for bribes, purchasing contraband or perhaps weapons.

Q. . . . You gave us an amount, it was around \$1,000 or [\$1,500] that you received from guards in bets [placed] on a weekly basis.

A. Yes.

Q. Then you said at one time the total amount of the book was like \$15,000 or \$20,000 [weekly]?

A. Right.

Q. In other words, you were receiving approximately between \$14,000 and \$19,000 in bets from inmates [weekly]?

A. Right.

\* \* \*

Q. . . . [W]hat were you making on that weekly?

A. I had several people working for me, so I would, I would like -- at that time I would say I was making maybe \$500 a week.

A. And the people working for you would be soliciting bets from inmates [or being runners]?

A. Yes.

## Sex

The popular belief is that many inmates satisfy their sexual desires through homosexuality, and that young, weak inmates are often preyed upon by older prisoners from whom they must purchase their safety with sexual favors. These practices have been the subject of many studies, as well as fictional accounts. The Commission's investigation concentrated on the official corruption aspect of the inmates' sexual activities.

This section of the Report highlights a particularly pernicious fact pattern. Other sections examine the sexual activity of inmates in relation to the visiting program, on outside trips and the escape of Albert Victory.

Allegations were also received concerning inmates' girlfriends entering the facility as "volunteers." Volunteers are permitted in areas beyond the regular visiting areas, which would make contraband passage and sexual liaisons feasible. Reportedly, this was to accommodate the black inmates who complained of white organized crime inmates making unauthorized stops on outside trips (see page 65). A review of the lists of volunteers disclosed as many as sixty individuals who were also on inmates' visiting lists. On September 18,

1980, Green Haven's Superintendent advised Deputy Commissioner Gard of the situation and requested his permission to terminate the sixty volunteers. On December 18, 1980, after receiving no response from Gard, the Superintendent stopped the practice. However, he did not remove from the inmates' lists those volunteers already approved for visits.

The Commission has received numerous complaints from officers and inmates concerning the homosexual activities of a Green Haven inmate counselor, who is alleged to have traded various favors to inmates in exchange for sex. Green Haven's records show that on one occasion a prison employee reported walking in on what he described as a scene of apparent sexual activity between the counselor and an inmate. In order to dissuade the counselor from his alleged homosexual activities, the door to the counselor's office was once removed by a high-ranking Correction Officer. The officer was reprimanded and the door replaced. In September, 1978, former Green Haven Superintendent David Harris\* wrote to J. Kevin McNiff, Deputy Commissioner for

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\* Harris is currently Superintendent of Taconic Correctional Facility, a minimum security facility with approximately 300 inmates.

Program Services,\* to recommend that the counselor be transferred. Superintendent Harris' letter referred to the counselor's alleged homosexual advances to an inmate and stated,

As you know, similar charges have been made about [the counselor] by several other inmates in the past, and there seems to be an escalation of these accusations presently happening in our population. This is a bad situation that could have serious repercussions. It should be noted that whether or not these allegations are true, if the population believes they are true, it has the same effect as if they really are.

I have recommended in the past for the safety and security of this facility, that [the counselor] be transferred. I am also recommending it now for his own safety as well as for the wellbeing of this facility.

Deputy Commissioner McNiff replied:

I feel strongly that no administrative action as to transfer is warranted at this time. There is no legal justification and good personnel policy prohibits any forced change. However, I do suggest a candid discussion of the situation with [the counselor] with regard to the atmosphere within which he is

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\* McNiff has been named by the Governor to replace Stephen Chinlund as the Chairman of the Commission of Correction.

working. I know your perception is accurate.

We will continue to look for ways to resolve the problem which will be mutually compatible to [the counselor] and this agency.

I appreciate your genuine concern in this matter. It is a difficult situation which we will continue to monitor and, hopefully, solve.

The counselor has constantly denied the allegations and, after discussions with officials in DOCS' Central Office in Albany, no disciplinary charges were ever brought against him.

### Gifts for Guards -- Favors and Extortion

The Commission's investigation has revealed that there was an institutionalized corrupt practice of providing gifts to guards. Most of these gifts were provided in return for general favors, such as favorable jobs and cell assignments, relaxed searches of an inmate's person and cell and the right to unquestioned movement throughout the prison. These gifts were given separate and apart from any money or merchandise received by a guard for performing a specific illegal act.

The gifts reported below were provided primarily to one group of guards whose leader has been identified as Sergeant, later Lieutenant, John Hues. Hues has been acknowledged by superiors, officers and inmates as the man who they all turned to to solve a problem, the one person all the officers would follow. Hues was often described as the man who really ran Green Haven. More than the higher ranking officers and the Superintendent, Hues had his finger on the pulse of the institution. Hues' power may have been perceived rather than actual, but it was this perception of power that allowed Hues to control favors for both inmates and guards.

Guards who were considered part of Hues'

"group" received meals from inmates in the visiting room (see page 29), payments for specific favors (see Unauthorized Stops on Outside Trips, at page 64), and gifts in cash and merchandise. Cash was the most common gift in the prison itself. Cash payments were made directly to officers by organized crime connected inmates, either on a regular basis or at specific times of the year, such as Christmas. Hues and his friends were also not beneath reportedly applying pressure and extorting merchandise from weaker, less connected inmates.\*

One inmate, Arnold Squitieri, was reported to be particularly generous. On one occasion an officer met Squitieri's nephew at a service station and received an envelope with three hundred dollars, to share with another officer, as a gift at Christmas time. At other times Squitieri's generosity included drapes for an officer's home, shoes picked up by an officer for Hues, and clothing offered to Sergeant Roger McGibney.

Squitieri also offered jewelry for Green Haven's Superintendent. The Superintendent was, at a later date, told of the offer by Hues, and was under the impression that Hues had spoken directly to Squitieri. In fact the offer was made to officers escorting Squitieri on an outside trip, during an unauthorized

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\* See page 61.

stop at Squitieri's New Jersey home. The officers did not take the jewelry as they believed the Superintendent would not accept it. The Superintendent was not surprised by the offer "because it is commonplace for inmates to try people as they go along. They can't lose anything by trying." The Superintendent's response to Hues' reportedly turning down or discouraging the offer was "You told him right."

Gifts were also made on behalf of inmates by friends outside of prison. Inmate Joseph Perino was friendly with a former Green Haven inmate, Dominick Montemarano (see page 86). For his friend "Joe the Bull" Perino, Montemarano provided officers with theatre tickets to the now defunct Westchester Premiere Theatre. Additionally, baked goods were given to officers from a bakery either owned or controlled by Montemarano.

Another inmate with generous friends on the outside was Edward Fanelli. Fanelli's boyhood friend and constant visitors were Frank Leto and Frank's wife Fay. Frank Leto is the owner of a liquor store in Brooklyn. The store, Party Time Liquors, was a regular stop on some of Fanelli's outside trips and officers would often be given free liquor. Fanelli once complained to another inmate about the free liquor and cash payments being given to officers:

. . . But I know they went down to the liquor store that Eddie Fanelli's partner Chick, his name is Chick,\* owned.

\* \* \*

. . . Eddie [Fanelli] told me about it. He said, these bastards are going down there to get whiskey, another bottle here, another bottle there, a few dollars here and there.

On one occasion Leto gave an officer four wristwatches, each worth \$150 or more, to be divided with the officer and Hues. All the gifts were given with the understanding that Leto's friend Fanelli would receive special treatment.

Inmate Jerome "Jerry the Jew" Rosenberg\*\* was able to provide gifts and cash to officers from his family's appliance business. Some of the gifts

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\* Frank Leto is known as "Chickie."

\*\* Rosenberg has a criminal history which includes burglary and murder charges. On May 18, 1962, while engaged in an armed robbery in Brooklyn, New York, his confederate killed two police officers. Rosenberg surrendered to the New York Daily News on May 23, 1962. On February 18, 1963, he was sentenced to death. As a result of changes in the Penal Code his sentence was commuted to 20 years to life. A parole hearing is scheduled for May 18, 1982. Rosenberg has gained notoriety as a "jailhouse lawyer" and has successfully represented other inmates in court proceedings. A movie is to be made of his life story.

were for favors, others were extorted from Rosenberg. The extortion scheme involved threats to transfer Rosenberg to a less desirable facility, far from his family and with less privileged jobs and cell assignments.\* The voluntary and extorted gifts were picked up at the Rosenberg family business in lower Manhattan. Among the items provided to officers were color televisions, toaster ovens, microwave ovens and shower massagers. In one incident a microwave oven was actually delivered to Hues' home by two other officers. Hues told his wife that he had bought the oven, because the receipt of such a free gift from his fellow workers was too incredible for anyone to believe.

The Commission also discovered that extortion schemes among the inmates themselves were not unusual at Green Haven. Some were for mere "protection," others were more sophisticated. An inmate described one method of extortion:

. . . [inmates] used to shake down other inmates, like make promises of going to minimum security institutions, promises of furloughs, help them get furloughs and things like this.

\* A complaint was lodged against John Hues, charging him with Grand Larceny in the First Degree, a Class C felony, in relation to the extortion scheme. A Dutchess County Grand Jury failed to return an indictment. See page 179.

And they used to set this up in the hospital area. One of the inmates would dress up as a civilian, and they would let him come into the office, sit down, and he would talk to the inmate and promise him all these things, but he would have to bring money up front then they would just take the money and chase them.

\* \* \*

Q. After the money had been extorted from the victims and whatever promise that had been made to them was not received, did those victims ever attempt any action to get their money?

A. How could you?

\* \* \*

I heard one inmate complained and -

\* \* \*

It was a Jewish kid, I remember, because he gave up almost like \$3,000.

\* \* \*

Q. And the money that this victim had received from his family [for payment in the extortion scheme], how did they get it to him?

A. Through the visiting room.

## UNAUTHORIZED STOPS ON OUTSIDE TRIPS

### Background

Inmates are permitted to leave prison grounds, escorted by Correction Officers for medical (including dental) reasons and private family crises, such as to visit sick relatives or attend funerals. Green Haven officers have, in a single year, escorted inmates on over 1300 outside trips, over 1100 of which were for medical or dental visits. Medical or dental visits are allowed when a prison does not have either the personnel or the facilities necessary for performing more complicated medical or dental procedures. The doctor's or dentist's bill is usually paid by the inmate or his family. DOCS regulations originally allowed inmates to travel to doctors or dentists even beyond a 50 mile radius from the facility. Inmates who could afford it often went to medical or dental practitioners in their home neighborhoods or to whom they were recommended by friends and other inmates.

The escape of Albert Victory took place during a dental visit. Victory, as part of a corrupt scheme entered into with the Correction Officers accompanying him, was taken to a motel and permitted to meet with his girlfriend, out of the officers' presence. He never returned, and was recaptured over two and one-half years later. The Victory motel visit was not an unusual or

isolated incident. Such favors and unauthorized stops were common.

Certain officers and inmates were well known at Green Haven for being involved in this widespread corrupt practice. The inmates involved were primarily white and connected to organized crime. The practice and "white bias" of these trips was so blatant that black inmates complained; these complaints were disregarded. At least one State Police Officer heard of the practice of unauthorized stops on outside trips, as his testimony before the Commission shows:

THE WITNESS: . . . Once, twice, several times black inmates would complain that Organized Crime guys, Mafia, if you will, went out to party and they didn't and they got privileges and they didn't. The blacks were prejudiced against, just a general bitching, if you will.

THE CHAIRMAN: What did you do with those allegations when they were made to you?

THE WITNESS: Nothing.

The officer told the Commission that he ignored the complaints because Correction Officers (some of whom may have been involved) dismissed them or the inmates were generally considered unreliable:

THE CHAIRMAN: Did you report them [the complaints] to anyone?

\* \* \*

THE WITNESS: I can't say that I specifically told Person A or B. But I would say to the [Correction] sergeant or lieutenant or whoever happened to be chaperoning us around that so and so was complaining about this and the other thing. They would say, they're always bitching about something or another, okay."

\* \* \*

THE WITNESS: ... But, again, I didn't put great stock in what was told to me.

THE CHAIRMAN: Could I ask you why?

\* \* \*

THE WITNESS: Well, these were inmates. We dealt with them regularly. They were less than truthful in our investigations. They would refuse to speak to us at all. Many of the things they said we found to be untrue.

The practice of unauthorized stops on outside trips is alleged to have become widespread during the administration of a Superintendent who ran Green Haven with what has been characterized as a "let's make a deal" attitude. Superintendents were formerly regular civil service positions held until retirement.\*

\* Some "old era" Superintendents remain. However, Superintendents are now appointed by the Commissioner of DOCS, treated as corporate-type managers, and subject to numerous transfers.

Prisons were virtually run as personal fiefdoms. "Old era" Superintendents lived in homes on the prison grounds--tended by inmates, with inmates as personal servants--and molded the prison to their own personality.

The "let's make a deal" attitude prevailed during the administration of the Superintendent considered to be the last of the "old era" at Green Haven. Information received concerning this Superintendent includes testimony and reports of inmates working at the Superintendent's home on prison grounds, (from where one inmate escaped) and being taken for trips on his boat; favored inmates walking in and out of the prison gates; and a favored inmate receiving numerous leaves of absence, which he abused by returning in the early morning to be picked up by prison car, or from which he returned with friends by airplane. The Superintendent also allowed a group of former Attica inmates to lounge about his home and office and adjoining conference room -- to assure their favorable testimony, if needed, regarding his own actions at Attica -- and referred to them as his "Attica Insurance." Testimony also indicates that the Superintendent kept undated, pre-signed retirement papers at the prison, with instructions for their immediate filing if he was named in a criminal action in

respect to the Attica riot.\*

The Commission has interviewed and taken testimony from numerous persons, including Correction officials, inmates and civilians and has reviewed records in relation to these unauthorized stops. The Commission's investigation, which centered on Green Haven in the years 1976 and 1977, has disclosed a pattern and practice of corruption respecting outside trips. The pattern of corruption may well extend to other years. Prison records, which were either overlooked or never reviewed by Correction authorities, disclose the improbable circumstances of many trips.\*\* Multiple records kept regarding trips, if manipulated, can allow inmates to leave Green Haven for no valid reason.

The details of the trips documented below are based on many sources of information, including the facilities' own records, sworn and credible testi-

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\* Further, information, not yet substantiated, indicates that prisoners also attended parties at the Superintendent's home and on his boat. The Superintendent acknowledges that inmates worked at his home, as was prison custom, and in one instance an inmate assisted him in removing furniture from his boat. However, he denies all the other allegations or any wrongdoing and, through his attorney, has stated that "they are not my concern."

\*\* No system of review existed for these records. For example, guards could check out for trips lasting an excessive amount of time and never be called to account. DOCS is only now forming an audit unit which may make the system more accountable. See page 156.

mony and documentary evidence or interviews with persons the Commission believes are supplying truthful information. Trips, reported by rumors, or on which incomplete information is available, even though plausible, have been deleted. So many trips with unauthorized stops were made that, in some cases, the witnesses compounded several trips, making it difficult to ascertain the truth. The Commission is cooperating with the Dutchess County District Attorney and will provide information to DOCS to effect the prosecution of the crimes revealed, where possible, and to correct the abuses and remove the abusers from the prison system.

#### The Trips

The corrupt practice of making unauthorized stops on outside trips is documented below, by inmate.

Edward Fanelli

Edward Fanelli, Jr., identified as a "soldier" in the Colombo crime family, entered the Correctional system on December 15, 1961 upon conviction of Murder in the Second Degree, Assault in the First Degree and Assault in the Second Degree. Fanelli was sentenced to twenty years to life, five to ten years and two and one-half to five years, respectively, to be served con-

currently. On December 1, 1976, he was paroled to live with Frank and Fay Leto. After a federal counterfeiting conviction he absconded before sentencing in April, 1980 and is currently a fugitive from justice.

On May 26, 1976, at approximately 7:40 a.m., escorted by Officers Roger McGibney and Frederick Miles, Fanelli left Green Haven in an unmarked state vehicle to visit his sick and dying sister in Goldwater Memorial Hospital, on Roosevelt Island. On the way the officers stopped in Queens to allow Fanelli to purchase flowers. At the hospital they were met by Fanelli's friends and constant visitors, Frank and Fay Leto, who had been advised in advance of his scheduled visit.\* The Letos' presence did not bother the officers because of their frequent visits to the prison and the friendships they had developed with the guards at Green Haven (see page 60).

After the visit, Fanelli, the two officers and the Letos stopped at Frank Leto's liquor store, Party Time Liquors, in Brooklyn. They all ate together at a Chinese restaurant and then proceeded to the Letos' home in Queens. Fanelli and Fay Leto drove off in the

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\* Prior knowledge of the time and place of a prisoner's movements outside the prison is a breach of a good security practice. After this visit, a separate incident occurred in which Correction Officers were killed by an inmate whose family knew of the time of his medical appointment and hid a gun in a doctor's waiting room.

Letos' car. The two officers and Frank Leto headed for Manhattan in the state car. The officers parked the state car at a parking meter on Second Avenue near Twelfth Street and walked around the corner. Leto, McGibney and Miles entered an apartment in a building on Twelfth Street which serves as a house of prostitution.

When the three men returned to the state car, they discovered that it had received a traffic summons for parking at an expired meter. Officer Miles later attempted to have this summons quashed. On June 2, 1976, he wrote to the New York City Parking Violations Bureau (PVB) inferring that the summons had been received while at the sick visit. Miles' letter stated:

Two Correction Officers had an inmate from Green Haven . . . on a sick visit. For security reasons, both Officers had to remain with the inmate at all times therefore making it impossible to check the meter until such time as they were ready to leave. At that time [the] summons had already been written.

PVB returned Miles' letter to DOCS' New York Office. The explanation of the circumstances surrounding the receipt of the summons, later filed with the PVB by DOCS' New York Office, states that:

While on official departmental business involving the transporting of an inmate from Green Haven Correctional Facility on a sick visit

the Officers had to leave the car unattended and meter expired in the interim.

The location of the receipt of the summons, however, is at some distance from and off the route of the trip.

The officers returned in the state car to the Letos' home to meet Fay Leto and Fanelli and noticed that the Letos' car had been in a minor accident.\* Edward Fanelli and the officers returned to Green Haven, at about 8:15 p.m. approximately twelve hours after they had left.\*\*

A short time after the visit to the hospital, Fanelli's sister died. On June 5, 1976, Officers Robert Clauss and Miles accompanied Fanelli to his sister's funeral. The funeral was at the Romanelli Funeral Home, on Rockaway Boulevard in Queens, but the officers first proceeded to the home of Frank and Fay Leto. The officers left Fanelli with the Letos, agreeing to meet them later at the funeral home. Frank Leto gave the two officers approximately two hundred dollars and made arrangements for them to have sex at a house of

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\* The officers discovered that, reportedly while Fanelli had been driving, the Leto's car had been involved in a minor - crumpled fender - accident. Fanelli had switched seats with Fay Leto and paid the other driver not to report the incident.

\*\* Travel time from Green Haven to New York City is approximately two hours each way.

prostitution on Manhattan's West Side, near Twenty First Street. Several hours later the officers met Fanelli and the Letos at the funeral home and together they went to an Italian restaurant in Queens. After eating, Fanelli returned to Dutchess County with the two officers, who brought him to St. Francis Hospital in Poughkeepsie, New York. The officers, who had left Green Haven at approximately 6:30 a.m., returned to the facility at about 9:30 p.m., 15 hours later.

On another occasion Fanelli was escorted on a medical visit for treatment relative to injuries sustained in a dispute with another inmate (see page 30). A stop was made at the home of one of the escorting officers where, on arrival, Fanelli's handcuffs were removed and he changed into street clothing. Dressed as civilians, the three men returned to the unmarked state car and proceeded to the doctor's office. Fanelli remained unhandcuffed.\*

Fanelli was warmly greeted at the doctor's office by Frank and Fay Leto who knew of the trip in advance. The officers left Fanelli with the Letos in the doctor's office and waited in the outside hallway,

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\* Employees at the doctor's office knew Fanelli's background and curiously awaited his arrival. They were surprised to see a well-dressed man wearing expensive jewelry, instead of the handcuffed, guarded, dangerous prisoner they expected.

occasionally reentering the office to see if Fanelli was ready to leave. One of the officers went out, for about a half hour, and brought back coffee for his colleague and the others.

After the doctor completed the treatment, Fanelli, the officers and the Letos went to a nearby restaurant. They enjoyed a lengthy dinner, including liquor and wine,\* seated at a large, center table in the well appointed restaurant. Then, on Fanelli's invitation, they proceeded to the Letos, ostensibly to show the officers the house. After a short stop, the Letos and Fanelli, with the officers traveling separately in the state car, drove half way to Green Haven. Stopping at a roadside rest area, Fanelli returned to the state car and rode with the officers to Green Haven. Prior to entering the facility all three changed back to their uniforms and state-issue clothing. The prison's records show conflicting times for the length of this trip, the most plausible being nine and one-half hours.

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\* The cost of such a dinner is well in excess of any state meal allowance. See footnote, page 112.

#### Rocco Evangelista

In February, 1975, Rocco Evangelista refused to answer questions put to him by a Special Grand Jury investigating the disappearance of 388 pounds of heroin and cocaine from the Property Clerk's Office of the New York City Police Department (the "French Connection" case). Found guilty of Criminal Contempt, he received a sentence of four years. On June 15, 1976, Evangelista was transferred to Green Haven. After serving his full sentence, he was released from Green Haven on January 25, 1980.

On August 11, 1976, Evangelista left Green Haven, at approximately 8:30 a.m., accompanied by Officers Clauss and McGibney, to attend the funeral of his seven year old son, at the Monterra Funeral Home, in Long Island City, Queens. Arriving in New York City around lunch time, the three men first stopped at an Italian restaurant, owned by Evangelista's friend,\* in Long Island City.

At the funeral home, arrangements were made with Green Haven for the trip to be extended. The officers, with time to spare, were given sealed envelopes by

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\* This same friend was on Evangelista's list of approved visitors at Green Haven and had offered the inmate a job at the restaurant upon his release.

another of Evangalista's friends\* and directed to a prostitute in Manhattan. The envelope, still sealed, was left with the prostitute.

Returning to the funeral home, the officers retrieved Evangalista, who announced his desire to secure the services of a prostitute. The three men went off to Manhattan. This side trip, however, was a wasted one. The officers were nervous and the hour was late so they returned to Green Haven without satisfying Evangalista's desires. The time of their arrival is confused by contradictory records, but it was at least 7:30 p.m. and perhaps as late as 10:50 p.m. -- eleven to over fourteen hours after they left Green Haven. For their trouble, the officers received in excess of two hundred dollars.

#### Arnold Squitieri

Arnold "Arnie the Animal," "Fat Arnie" Squitieri has a varied criminal history including narcotics, weapons, Grand Larceny and forgery charges, and is a member of the so called "Purple Gang." Squitieri was convicted of Manslaughter in the First Degree and sentenced to a term of eight years. He entered the prison system on June 25, 1975. On August 14, 1975, his

\* This friend has been identified as Virgil Alessi, a criminal associate of Evangalista with organized crime connections.

sentence was reduced to six years. Squitieri was paroled to the custody of authorities in his home state of New Jersey on May 9, 1979. While in prison, his approved visitors included known organized crime figures.

On August 12, 1976, at about 1:00 p.m., Squitieri, accompanied by two officers, left Green Haven to go to a doctor's appointment in the Bronx. On the way, the group detoured to Squitieri's New Jersey residence. The officers found it impressive. The officers then followed Squitieri and his wife to the doctor's office, where they were met by some of Squitieri's associates. After seeing the doctor, Squitieri and his wife went to a hotel in the Bronx, while the officers waited elsewhere. A little over an hour later Squitieri rejoined the officers and, after dinner at an Italian restaurant; they returned to Green Haven at about 10:00 p.m. The two officers were paid over three hundred dollars.

The next day, on another trip to the doctor, Squitieri left Green Haven at 8:30 a.m. accompanied by Officers McGibney and Miles. The officers left Squitieri alone at the doctor and proceeded to an arranged and paid-for meeting with a prostitute. Afterwards they retrieved Squitieri and returned to Green Haven, approximately twelve hours later, first stopping for dinner at Squitieri's favorite Italian restaurant.

On August 16, 1976, at about 8:20 a.m., Squitieri again left Green Haven, this time scheduled to go to Pelham Bay General Hospital in the Bronx, accompanied by Officers McGibney and Clauss. Squitieri, however, had arranged for the officers to go first to his home in New Jersey so he could meet his wife. Upon arriving at Squitieri's home, the officers had a drink and were given several hundred dollars by Squitieri. Squitieri also offered the two officers various gifts for themselves as well as for Green Haven's Superintendent (see page 59). While at his home, Squitieri called to check with his attorney, the late Gino Galina, regarding the arrangements for his admission. There were problems, and Mr. Galina was not there.

Squitieri and his wife set out for the hospital in one car followed by the two officers in another car. At the hospital, they were met by Galina and a notorious criminal associate of Squitieri's\*. The hospital administrator refused Squitieri admittance, and he became enraged, venting his anger, in particular, at Galina. Galina was visibly shaken and walked away from the others. Squitieri told his associate to contact a certain governmental official who might assist

\* The Commission has obtained an identification of this person as a well-known organized crime figure.

him. While they waited pizza was delivered. An hour later Squitieri entered the hospital and was admitted. The officers left Squitieri at the hospital and proceeded to a motel to meet a prostitute.

#### Joseph Dellevalle

Joseph Dellavalle, previously convicted of narcotics possession, shot two of his associates during an argument, killing one of them. He was, in turn, shot several times by an off-duty Police Officer and suffered a permanent hip injury. While on bail, following hospitalization, he was again arrested for shooting a man during an argument. On convictions of Manslaughter in the First Degree and Assault in the Second Degree, he was sentenced to terms of from six to eighteen years and four years, respectively, to be served concurrently. Dellavalle entered the prison system on May 13, 1976, and on July 10, 1976, was transferred to Green Haven. He is currently an inmate at Walkill Correctional Facility and will be eligible for parole on January 24, 1982. The maximum expiration date of his prison term is January 24, 1984.

On Saturday, March 3, 1977, Dellevalle left Green Haven, at approximately 7:30 a.m., escorted by Officers McGibney and Clauss to attend his mother's funeral at the Castle Hill Funeral Home in the Bronx.

At the funeral home, they met a fellow Correction Officer, a friend of the Dellevalle family, who reportedly "persuaded" the two officers to leave Dellevalle on his own. In return, Dellevalle sent the officers to a prostitute on the East Side of Manhattan. The officers, however, were unable to find the woman and returned to retrieve Dellevalle at his family's home. At the Dellevalle residence they were refused admittance for approximately ninety minutes and were forced to wait in a hallway. After stopping to eat with Dellevalle the three returned to Green Haven, arriving over eleven hours later at approximately 7:10 p.m. The officers were paid for their trouble but were unhappy with the day's receipts.

#### Joseph Tremarco

Joseph Tremarco's criminal career begins in 1952, when he was thirteen years old, and has continued to adult arrests for Assault, Burglary and Possession of Heroin. Tremarco admits to heavy drug use prior to 1961. On December 16, 1970, Tremarco was arrested for the possession of stolen property -- 35,000 pounds of tin ingots which had been taken in a truck hijacking. Tremarco, while awaiting trial in the hijacking case, attempted to murder one of his co-defendants with a machine gun to prevent him from testifying. Tremarco

received a federal conviction for the hijacking and a state conviction, to be served first, for the attempted murder.

Tremarco was on the dental trip on which Albert Victory escaped (see The Escape of Albert Victory at page 90). Shortly thereafter, Tremarco was paroled from Green Haven and sent to serve his federal term at the Lewisburg Federal Penitentiary. At Lewisburg, Tremarco was held in what is known as the MAB cell block -- for inmates with the Most Aggressive Behavior. Almost wholly on the basis of his supposed aid to Correction Officers during the Victory escape, Tremarco was scheduled to be released on parole on May 18, 1980. That release date was retarded until July 18, 1980, as a result of a statement he made which was interpreted as a threat against the Lewisburg Warden's family. The Commission's Interim Report on the Escape of Albert Victory, issued July 15, 1980, proved that Tremarco had lied and his "aid" to the officers was a fraud. In fact, Tremarco had participated in the coverup of the escape. This information was provided to the United States Parole Commission and Tremarco was not released.

While at Green Haven, Tremarco also took advantage of the corrupt practice of unauthorized stops on outside trips. On March 23, 1977, accompanied by Officers McGibney and Clauss, Tremarco left Green Haven,

at approximately 8:10 a.m., to visit his sick mother at a motel on Staten Island. The use of a motel stop was necessary because Tremarco's family lived in New Jersey and prison officials would not allow him out of state. This, however, did not necessarily mean Tremarco would honor their wishes and stay in New York.

At the motel they were met by Tremarco's girlfriend. Tremarco explained to the officers that it would be "worth their while" to take him to New Jersey. Convinced, the officers and Tremarco in the state car followed Tremarco's mother and girlfriend to the Tremarco's New Jersey home. Soon after arriving there, Tremarco asked to be alone. The officers complied, and two friends of Tremarco accompanied them to a nearby bar. There the four men drank and smoked cigars, courtesy of Tremarco's friends, for about two hours. The officers then returned to the Tremarco home to find Tremarco with about fifteen to twenty of his friends and relatives enjoying a spread of cold cuts, sandwiches and coffee.

The two officers and Tremarco, followed by his girlfriend, returned to the motel on Staten Island where the room rented for Tremarco's mother was still available. Tremarco asked the officers if he could be alone in the room with his girlfriend; the officers agreed and Tremarco gave them fifty dollars to spend in

the bar. About two hours later Tremarco and his girlfriend returned and accompanied the officers to the motel parking lot. In the parking lot Tremarco gave the officers over three hundred dollars for their help. At about 8:00 p.m., approximately twelve hours after he had first left Green Haven, the officers returned Tremarco to the facility. The essential difference between this trip and the Victory trip is that Tremarco returned from the motel room.

#### John Gotti

John Gotti, identified as a member of the Gambino crime family, has deep roots in the underworld. Gotti has a history of arrests dating back to 1957, when he was sixteen years old, and specializes in hijacking. On May 22, 1973, Gotti and two others, posing as Police Officers, were engaged in a dispute in a Staten Island bar. A man, believed to be a criminal competitor, was shot four times and killed by one of Gotti's confederates.\* Gotti was arrested on June 3, 1974, and originally charged with Murder. Later reduced to Attempted Manslaughter in the Second Degree, Gotti was sentenced on August 8, 1975, to a maximum term of four years. On February 24, 1977, Gotti was transferred

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\* The confederate was later found murdered, reportedly in revenge.

from the Auburn Correctional Facility to Green Haven. He was released on parole on July 28, 1977 (his parole term ended July 29, 1979).

On three separate occasions Gotti left Green Haven on medical trips to Brooklyn accompanied by Officers McGibney and Clauss. The length of time away from the facility on two of the trips is the subject of conflicting records within the facility. One set of records shows trips lasting about six hours. Another set of records shows the same two trips as having lasted in excess of eleven hours. The information received by the Commission tends to indicate that the latter time span is correct.

After leaving the doctor's office, on all three trips, Gotti was escorted up the Belt Parkway to a fast food restaurant located on Cross Bay Boulevard, near his home in Queens. Gotti was met there by one of his criminal associates. Twice Gotti left the restaurant with his associate. The third time, the officers took Gotti to meet his wife at their residence. The two officers were taken by Gotti's friend to a nearby bar to await his return. Eventually Gotti, accompanied by his friends or relatives, met the officers at the bar and they returned to Green Haven. On each occasion the officers received approximately three hundred dollars to divide.

#### Joseph Perino

In March, 1971, Joseph "Joe the Bull" Perino was convicted of Criminal Possession of a Dangerous Drug in the First Degree, a Class A drug felony and sentenced to a term of from twenty years to life. His record shows earlier arrests for policy, bookmaking and conspiracy to forge United States Savings Bonds.\* Perino was obese, with a history of cardiac problems and hypertension for which he received medication. He suffered a heart attack in the Parole Clothing Room and died in prison on August 25, 1977.

A review of his prison records reveals that Perino was permitted an unusual number of outside trips and unescorted leaves from the day after his transfer to Green Haven from Ossining Correctional Facility on December 11, 1973, until his death there six years later.\*\* The unescorted leaves were granted after numerous initial refusals. Indeed, the fact that an inmate with Perino's sentence and remaining time could receive any leave of absence was considered by many to be highly unusual. All of the trips and leaves were allegedly for medical treatment.

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\* Perino was on probation on the conspiracy charge when he was arrested for the drug offense.

\*\* Perino was granted more than forty outside trips, as well as at least ten unescorted leaves of absence, some of which lasted two days.

In fact the pattern of Perino's activities while on escorted outside trips was not primarily medical. Perino would first be taken to his house to visit his wife (sometimes neighbors were also present) where the officers would have coffee. Perino would make numerous telephone calls. The officers would also take Perino to visit his girlfriend at her home or at a motel. Sometimes Perino would meet his sister at a location where other of his friends might be waiting. Then, after a stop at his doctor, Perino and the officers would drive into downtown Manhattan to "Little Italy" and eat at Perino's favorite Italian restaurant.\* On some occasions, they would go directly to the doctor where Perino's family and friends would be waiting for him. Other times, Perino would be taken to the Brooklyn bakery of his friend and former Green Haven inmate Dominick Montemarano.\*\* For their services, some

\* Perino would also eat in a Sheepshead Bay, Brooklyn restaurant with his girlfriend.

\*\* Dominick "Donnie Shacks" Montemarano, a member of the Columbo crime family with a history of numerous arrests, was convicted of the crime of Criminal Usury and sentenced to three years in prison. His crime was the result of a criminal conspiracy with Carmine Persico, identified by the New York City Police Department as the head of the Columbo crime family. He entered prison in January, 1973 and was paroled in January, 1975 (his parole period ended in January, 1976). Montemarano is also mentioned in regard to Gifts to Guards, see page 60.

officers received between \$150 and \$200 per trip; others received only a meal or bread and cake from the bakery. The medical trips were clearly treated by Perino as a means for seeing family and friends and transacting business. Perino died the day after his return from a two day leave of absence.

## ESCAPES

Many of the problems and the corruption highlighted in this report are not new. Indeed, it has been almost "public knowledge" that corruption exists in prison systems, whether on a local, state or federal level. The extent of this corruption and the tensions it causes within the prison may create some public concern. Yet as long as the inmates are removed from society, the corruption kept within the confines of the prison, and the inmate comes back from his sexual encounters, the public is not aware of the problem. This Report on Green Haven shows that inmates can escape because of what the public believes is petty corruption.

The chaos of the visiting program, carelessness in the farm program and unauthorized outside sexual visits by inmates, are all part of Green Haven's private world. There is, however, a cause for concern. In the chaos of the visiting room, two prisoners dress in smuggled in clothing, draw security hand stamps, forge a visitor's pass and escape. These inmates are then recaptured in connection with an armed robbery in New York City. While mowing the lawn, out of sight of any prison official, an inmate, whose very presence outside the prison wall violates every rule for such a job assignment, escapes. He is later recaptured

in connection with a kidnapping and murder. Inmates at Green Haven appear to have generally come back from their sexual escapades. One inmate, however, took advantage of the corrupt system and did not return. Officers, inmates and even the DOCS Commissioner engaged in coverups and excuses to avoid the blame. This inmate, however, was not recaptured for over two and one-half years.

## The Escape of Albert Victory

### Introduction

On July 15, 1980, the Commission issued an Interim Report on the Escape of Albert Victory (Interim Report). The Interim Report, based on information which came to the Commission's attention in the course of its investigation of DOCS, was issued at that time because of the rising concern caused by numerous escapes from state and city Correctional facilities, in an effort to prevent other such escapes and to prevent the imminent parole release of one of the participants in the coverup that followed the escape. This Report sets out new information gathered by the Commission subsequent to the Interim Report which indicates that at least one ranking Correction Officer knew of the true story of the escape and acted to conceal that information, even while taking part in the investigation. This Report also updates the status of those involved in the escape.

Albert Lopez Victory was serving a sentence of 25 years to life in Green Haven, upon a conviction of felony murder, in the beating and murder of a rookie New York City Police Officer. On May 5, 1978, notwithstanding an advance warning to DOCS that he planned to escape, Victory was escorted on a visit to a dentist outside the prison. On that visit, Albert Victory escaped. He was recaptured on February 24, 1981, in California.

New evidence uncovered by this Commission established that Victory's escape was the direct product of a pattern of corruption within Green Haven; that the facts have been covered up by a hastily concocted fairy tale; and that the investigation of the escape, and subsequent efforts to recapture Victory, were buried in a frantic and unseemly scramble to avoid blame on the part of the senior officials responsible.

The Interim Report set out, for the first time, the truth of Albert Victory's escape. The official version of the escape is that Victory's guards were overpowered by three shotgun-carrying assailants. But this account, which was accepted by all the agencies involved in the initial investigation of the escape and the search for Victory, is utterly and completely false. The truth is that Albert Victory escaped when Correction Officers deliberately and corruptly took him to a motel for drinks and dinner and to allow Victory to have sex with his girlfriend. This was by no means an uncommon practice, and neither officer objected when Victory left them drinking at the bar to go to his girlfriend's room. He simply did not return.

Albert Victory was well known to the New York City Police Department, having been arrested more than a dozen times on criminal charges which included vehicular homicide, felonious assault, robbery, burglary, and

**CONTINUED**

**1 OF 2**

drug related offenses. On October 7, 1968, Victory and an associate were seen passing through a red light by a rookie New York City Police Officer, James Verecha. Officer Verecha commandeered a passing taxi, gave chase and caught up with Victory. Officer Verecha was attacked, beaten and shot. A short time later Victory was captured by an off-duty New York City Police Detective. Victory was subsequently brought to trial, convicted of felony murder and sentenced to a term of 25 years to life. Victory spent his next years in prison making unsuccessful legal efforts to obtain his release. In 1978, Victory was housed in Green Haven.

While in Green Haven, Victory continued to commit crimes. He also planned for his escape. Testimony from an anonymous informant at private hearings before this Commission has identified Victory as "probably the number one drug dealer in Green Haven." There appears, however, to have been more of a purpose for Victory's drug trafficking and other contraband activities than mere personal use or financial gain. The testimony taken by the Commission indicates that Victory's activities were in fact a prelude to his ultimate plan for escape. First he ingratiated himself, little by little, with Green Haven officials who could be helpful to him, by paying guards small sums for favors.

...You see, Victory had to buy -- it was a scheme -- started working his way up.

Victory's financial backing came from his drug trafficking.

...He had a scheme going outside the prison. He was selling pot, 1,000 - 2,000 pounds at a time... To live on and to save for when he took off.

Finally, for his escape plan to work, he had to wait:

...But like he was waiting for the right guards.

This testimony is corroborated in letters written by Victory to his criminal associate Robert Wyler,\* found by agents of the Federal Drug Enforcement Administration at a house abandoned by Wyler. Victory in a letter dated February 12, 1978, shortly after losing an appeal, shared with Wyler, with whom he wished to have a "business relationship," his thoughts on escape:

I no longer have a choice, I need to liberate myself. Liberate sounds better than escape, but neverthe-

\* On January 25, 1981, an unsuccessful attempt was made to remove an inmate or inmates from the Federal Metropolitan Correctional Center in Manhattan by helicopter. Wyler has been indicated as the target of that escape attempt.

less that is what I am about to do. Nicely, quietly and hopefully without too much of a fuss. I am not acting foolishly. Just realistically. I've had ten years to learn how to do it right and I will. But I need a lot of money.

\* \* \*

As for myself, I am in the process of putting together, for myself [sic], what I must to be safe and secure...I could go into details and you'd be satisfied that I am not going off half cocked. But after all the years and experiences we have gone threw [sic] together, I am hopeful that a full detailed explanation [sic], here in this letter, is not necessary. I will be free in a few months and I will be well (emphasis supplied).

Less than three months later Victory was free.

This was not Victory's first plan to escape. Several years earlier, Walter Fogg, Green Haven's former Superintendent and Deputy Superintendent for Security, received information that Victory would attempt to escape using a bogus Correction Officer's badge and photo identification card, while wearing clothes from the Parole Clothing Room. On a day when a large turnover of Correction Officers was scheduled, Victory would disguise himself as an officer and walk out the front gate. Victory's identification file was empty--all the pictures and negatives were missing -- lending credence to the escape information. Mr. Fogg reported his information and findings to the DOCS Inspector General's

Office and, on May 7, 1974, Victory was transferred to the Auburn Correctional Facility.

In March, 1975, Victory commenced a lawsuit in the Southern District of New York, against Deputy Superintendent Fogg, Superintendent Leon Vincent, former DOCS Commissioner Peter Prieser and Commissioner Benjamin Ward.\* Victory's complaint alleged that he was summarily transferred in violation of his constitutional rights. As relief, Victory requested that the Court declare his rights were violated, return him to Green Haven, expunge his record of all references to the transfer, enjoin any further transfers without prior notice and a full hearing and award him \$30,000. The complaint also described some of the conditions and privileges Victory enjoyed while at Green Haven (see footnote, page 15).

On September 25, 1975, while the lawsuit was still pending, Victory was transferred to Clinton Correctional Facility at Dannemora, considered by some to be DOCS' least desirable facility for inmates. A Stipulation of Settlement, signed on November 6, 1975 by the State Attorney General, with DOCS approval, returned Victory to Green Haven, promised no adverse action based on past information and expunged his records of references to the transfer.

\* Victory v. Fogg, et al., 75 Civ. 1281 (DBB).

### The Official Version

On May 5, 1978, Victory escaped from custody. The following is the story of Victory's escape as it originally appeared in the records of DOCS and of the Division of State Police.

On May 5, Correction Officers Roger McGibney and John J. Panarello, Jr. were scheduled to escort two inmates, Joseph Tremarco and Albert Victory, from Green Haven to the office of Dr. John R. Mazzola, a dentist in Newburgh, New York. Officers McGibney and Panarello went about the normal procedures for removing inmates from a prison for an escorted outside medical visit. The two prisoners were removed from their cells, searched, dressed in their regular state-issue prison clothing and placed in restraints.\* Officer Panarello was issued a .38 caliber revolver and ammunition from the arsenal. A facility station wagon, unmarked except for its state license plates, and containing no radio, was assigned for the trip.

Officers McGibney and Panarello proceeded with the inmates to Dr. Mazzola's office without incident. While in the dentist's office, Dr. Mazzola attend-

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\* These restraints were four inch wide leather security belts, padlocked at the rear, and containing a loop in the front at waist level through which handcuffs are placed to secure the prisoner.

ed to each inmate in turn, out of the sight of the two officers. At one point, Officer McGibney left the dentist's office to put money in a parking meter. The dental visit otherwise passed uneventfully.

With the inmates, the officers returned to their car and set out for the return trip to Green Haven. As they drove along Interstate Route 84, Victory suddenly complained of severe chest pains. McGibney, the senior officer and therefore in command, directed Officer Panarello to pull the car to the side of the road, so that he (McGibney) could give Victory first aid. No sooner had the car stopped at the side of the road than three men, wearing ski masks, jumped from a following car armed with revolvers and a shotgun and viciously attacked the two officers. Officer Panarello was knocked unconscious with the butt of a gun, handcuffed and pushed into the front seat of the state car. Officer McGibney, struck about the body and kicked in the groin several times by the assailants, was also handcuffed and shoved into the front seat of the car. One of the three assailants took the wheel of the state car. A second joined inmate Tremarco, who declined an offer to join the escape, in the rear seat.

Victory and the third assailant got into the assailants' car and disappeared from view. The state car was driven by the masked men off Interstate 84 at

the Lime Kiln Road exit. The men then parked the car at a nearby gravel pit, hidden from the roadway. Officers McGibney and Panarello were kept head down in the front seat of the vehicle with one of the assailants, while Tremarco and the second assailant remained in the rear seat. The windows of the car remained rolled up and the assailants never removed their ski masks. Officer McGibney remained conscious, but Officer Panarello passed in and out of consciousness due to the blow he had received.

The five men remained parked for over two hours, when a car again drove up behind the state car. The masked assailants gave the handcuff keys to Tremarco and drove off. Tremarco then released the two officers.

Officer Panarello, recalling a throwing motion by the masked man in the front seat, searched with Officer McGibney and found his revolver in a nearby muddy ditch, with its six bullets in close proximity. The ignition keys were picked up from the floor of the car, and the officers drove to the first occupied house they could find, where they called the prison and waited for assistance. When help came from Green Haven, Officer Panarello was taken to Vassar Brothers Hospital in Poughkeepsie, New York. Officer McGibney and inmate Tremarco returned to the Green Haven Facility.

As a result of the escape of Albert Victory

certain procedures relating to the transporting of prisoners were revised and updated.

After periods of medical attention and compensatory leave, the two escorting officers returned to duty. Officers McGibney and Panarello each sued the state for damages to compensate them for their injuries. They alleged that the state was negligent in failing to notify them, before the trip, that Victory planned to escape. About the time he dropped his lawsuit, Officer McGibney was promoted to Sergeant by DOCS against the explicit recommendation of Green Haven's Superintendent David Harris. Mr. Harris explained:

THE CHAIRMAN: How did his promotion to Sergeant get made?

THE WITNESS: All promotions are made from Albany. I do not have the power to promote people.

COMMISSIONER SMITH: Nobody at all? Cannot promote anybody?

THE WITNESS: All I do is recommend.

THE CHAIRMAN: But you do recommend promotions?

THE WITNESS: Yes.

THE CHAIRMAN: Did you recommend a promotion for Mr. McGibney?

THE WITNESS: No. As a matter of fact, I stopped his promotion a few months before that. He would have been made Sergeant. I said no way.

\* \* \*

COMMISSIONER CULHANE: ...Do you recall why you disapproved the promotion of now Sergeant McGibney...

\* \* \*

THE WITNESS: Yes, because I thought he was a very poor officer.

COMMISSIONER CULHANE: Can you elaborate on that?

THE WITNESS: He was a time abuser. His personnel file, about yea thick. (Indicating) He had all kinds of problems.\*

Officer Panarello, at his own request, was transferred to the Downstate Correctional Facility. He was assigned to duty as a Range Officer, considered a more desirable position because it involves virtually no contact with inmates. Officer Panarello wrote a highly complimentary letter commending inmate Tremarco for his assistance during the Victory escape, stating that Tremarco's refusal to escape and calming statements he made to the masked assailants had actually saved the officers' lives.

Tremarco was then serving a sentence of 25 years to life for attempting to murder, with a machine gun, a co-defendant who had become a witness against him. However, largely because of his conduct during the

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\* Testimony from another witness before the Commission indicates that McGibney said that when he appeared in Albany to be interviewed for the Sergeant's promotion, his file had been "wiped clean."

escape, Tremarco was almost immediately paroled from state custody. He then was taken into federal custody to serve a lesser federal sentence. Again on the basis of his conduct during the escape, Tremarco was awarded parole from his federal sentence and would have been released on July 18, 1980.

#### Advance Warning

The primary thrust of news conferences held by DOCS in the days following the escape and hearings held by the State Commission of Correction, was the issue of whether prison authorities had been given, and disregarded, advance warning that Victory planned to escape. It is undisputed that prior to Victory's escape DOCS was warned of the possibility that he might do so.\* There is dispute as to whether the information in fact predicted the actual course of the escape. There are also disputes in the testimony of the witnesses before this Commission and the Commission of Correction over what was done with the warnings received.

The chronology established by the testimony is as follows:

On April 21, 1978, The New York State Division

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\* Referring to the May 5, 1978 escape. Information concerning a previous escape attempt is discussed at page 94.

of Parole (Parole) received information from the Federal Drug Enforcement Administration (DEA) that one of DEA's informants had warned that Victory, with the aid of a corrupt counselor at Green Haven Prison, would seek a transfer to a less secure facility and from there escape. The Division of Parole sought Victory's file, which it received late on April 25.\* Review of the file showed that Victory had requested a transfer to a less secure facility.\*\* It also contained a notation that Victory had been taken on a medical visit outside the prison. Discussions at Parole raised the hypothesis that Victory's best chance of escaping would actually arise while on an outside medical visit since his record seemed to bar transfer to a less secure facility.

Parole's Executive Director Edward Elwin telephoned Lewis J. Douglass, then Executive Deputy Com-

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\* DOCS and Parole were divided into separate agencies on January 1, 1978. However, their offices and records were not physically split until March, 1978. As a result, in April, 1978, Parole was without a copy of Victory's prison file. This agency bifurcation took place in an atmosphere that was less than friendly and, indeed, the acrimony that existed between the two agencies was both evident and heightened by the events that took place subsequent to Victory's escape.

\*\* There is some slight variation in the testimony on the point of whether the request by Victory had been rejected or was still pending.

missioner of DOCS (now Judge Douglass).\* Mr. Elwin has testified that he related to Judge Douglass the information that had been received from DEA; the fact that Victory had made a request for a transfer; and that Victory had already been on at least one escorted outside medical visit. By Mr. Elwin's account Judge Douglass responded that he would stop the transfer but made no comment on the escorted medical visit. Judge Douglass acknowledges receiving the information concerning the Victory transfer request but does not recall being warned that Victory might attempt an escape while on a medical visit.

A dispute also developed between Judge Douglass and Green Haven's Superintendent, David Harris. Superintendent Harris testified that whatever information was received by Judge Douglass from Parole, nothing was passed on to him or to anyone else at the facility prior to Victory's escape. After the escape, Commissioner Ward and Judge Douglass both stated that the warning of Victory's intent to escape had been passed on to Mr. Harris; at the same time they denied

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\* Mr. Douglass was Elwin's official contact at DOCS. This contact had been established by former DOCS Commissioner Ward when the two agencies were split. Mr. Douglass was also responsible for the various units at DOCS to which information on Victory would be sent, i.e., Classification and Movement, Security and Medical. Mr. Douglass is now a Judge of the Criminal Court of the City of New York.

that Parole had warned them that Victory might attempt escape during a medical visit. The Parole Officers' Association, apparently basing its statements on information from DEA or Parole, made statements blaming Messrs. Ward and Douglass.

In the days immediately following the escape, these conflicts -- of precisely what Mr. Elwin told Judge Douglass and what Judge Douglass told Superintendent Harris -- became the subject of bitter public dispute. Contrary versions were given to the press, either through interviews or in press conferences. So acrimonious were these arguments that they totally overshadowed the investigation of the escape and may well have hampered early efforts to recapture Victory.

Indeed, it appears that the principal concern of the command structure of DOCS was to assign blame for the escape. Superintendent Harris testified before this Commission:

THE WITNESS: Approximately two weeks after the escape, one evening I was home, here again at the prison, on the prison grounds, it was on a Sunday evening, about two weeks after, and Commissioner Ward called me and he stated to me -- he said to me, Dave, do you recall Commissioner Douglass ever having called about the possibility that Mr. Victory might escape?

I said, no.

He said, well, are you sure?

And I said, yes.

He said, well you better call up Lou Douglass and get your stories straight.

I said, what do you mean get my stories straight?

He said, Lou Douglass seems to recall having called you up.

So he gave me his number and I called Mr. Douglass in New Rochelle, which was his home. I got a hold of Commissioner Douglass and I said, Commissioner Ward told me to call you.

He said, yes. Dave, do you recall me having called you up a few weeks ago about the fact that Mr. Victory might escape?

And I said, no, I don't recall anything about that.

He says, I recall in my memory that I called you.

I said I don't recall anything like that. I said, when I get to work tomorrow morning, I can ask my secretary, who keeps excellent records of everything, plus she has an excellent memory.

He said, you do that and call me up the next morning.

When I went to work the next morning, which is Monday morning, on my desk was a newspaper article with big headlines stating that Commissioner Elwin of the Parole Division had called Commissioner Douglass and told him of this pending escape and that, evidently, the Department

had done nothing about it...

\* \* \*

THE CHAIRMAN: Did you get them [Ward and Douglass] both on the phone at once?

THE WITNESS: I got them separately and I said some things which I probably shouldn't have said.

THE CHAIRMAN: You want to tell us what those were?

THE WITNESS: Well, I cursed. And I said that, obviously, you were trying to look for a fall guy. I said, here you people knew that this was going to happen, you didn't bother to tell me and yet -- and then you're calling me up the night before.

And I said, obviously the only reason you called me up the night before is because you knew it was in the paper and I didn't.

There were a few little unpleasant exchanges. That was about it.\*

Commissioner Ward testified before this Commission that Superintendent Harris' account of the conversation "sounds familiar." However, he denied any specific recollection of Mr. Harris saying he had not been called by Judge Douglass. Nor did Commissioner Ward recall having instructed Mr. Harris to "get your

\* The Commission has also confirmed that Deputy Commissioner William Gard suggested that the Correction Officers' Union "file charges" against Harris and his Deputy for Security. The Union did not do so.

story straight"; nor that he told Mr. Harris that "Lou Douglass seems to recall having called you up."

Judge Douglass testified before the Commission that he recalled calling Superintendent Harris and telling him "don't approve any transfer for Victory." He recalls no discussion with Harris (or Elwin) regarding Victory's possible escape while on a medical visit.

The differing recollections were sought to be reconciled, forcibly. Superintendent Harris testified that when he was called to Albany:

[Ward and Douglass] said they would get back to me and I did get -- they did get back to me.

That afternoon, they told me to be in Albany the next day. So I went to Albany the next day and, when I got there they [referring later to Deputy Commissioner Metz] told me that they were preferring charges against me for the Victory escape.

\* \* \*

Anyway, they told me that, if I was not responsible, that maybe I could designate my deputy warden for security who would be responsible. To make a long story short, they told me if I were to make --if I would hand them somebody. First they asked for the deputy warden; then they said the captain; then they said the lieutenant; then they said the chart sergeant, give them somebody.

\* \* \*

...So then I went to another Commissioner's office, Commissioner -- I can't think of his name.

He was the Deputy Commissioner for Administration at the time. I can't think of his name.

And I went to his office and he pretty much gave me the same sort of a routine. It was almost like the good guy-bad guy routine. And he said, Dave, we'd like to help you, nobody wants to hurt you and this, that and the other thing. But he said, because of the seriousness of this, somebody has got to be held responsible.

So again, I said that, as far as I'm concerned, my Deputy Superintendent did nothing wrong and neither did anybody else.

So then he handed me a piece of paper saying that formal charges were hereby brought against me for not following the procedure of Directive 4901, which Directive 4901 is the directive of how to transport inmates.

The charges against Mr. Harris and his Deputy Superintendent were formally filed on May 24, 1978. No further action was taken on these charges, which were subsequently dropped on August 8, 1978, days after the naming of a new DOCS Commissioner.\*

\* Benjamin Ward resigned in July, 1978 to become Chief of Police of the New York City Housing Authority. He left that position in July, 1979 to become Commissioner of The New York City Department of Corrections, his current position.

In his testimony Judge Douglass praised David Harris as "one of the shining lights in the prison business"; Commissioner Ward, when questioned about the basis of the charges, could offer only a reference to a Department directive. Judge Douglass readily admits that he was deeply concerned that the controversy might damage or hamper the confirmation of his judgeship but denies having anything to do with the filing of charges against Superintendent Harris. The evidence on this point is not conclusive.

The Commission is unable to resolve with ultimate certainty the differences in the testimony between Mr. Elwin and Judge Douglass and the sharp conflict between Superintendent Harris and Judge Douglass concerning the nature and application of the advance information. What is clear is that the principal efforts of the command structure of DOCS following the Victory escape seem to have been directed not to securing his recapture, or to finding out why he escaped. Rather, the most apparent efforts were directed to absolving Commissioner Ward and Judge Douglass of any responsibility, and finding someone to blame.

### The Truth

The escape of Albert Victory and related events were investigated by several agencies: DOCS, concerning the escape and the steps to be taken to prevent a repetition; the New York State Police and the New York City Police Department, concerning Victory's recapture; the New York State Commission of Correction concerning the Ward-Elwin-Douglass-Harris disputes; and the Dutchess County Grand Jury, where Officers McGibney and Panarello received immunity from prosecution as to the Victory escape since they were not asked to sign waivers of immunity.

The story told by Officers McGibney and Panarello was always inherently implausible. Officer Panarello had been struck by a gun butt and knocked unconscious; yet the examining doctor found his face unswollen and unbroken, with only a minor bruise on his left cheek and over his left eyebrow; the only treatment prescribed was Valium. Officer Panarello's gun and its bullets had been too easily found. Nor was there a reason for the assailants to considerately leave the car keys for the officers, or to leave the handcuff keys so that they might be released. More fundamentally, there was no rational reason for the officers to have pulled off the road in the first place: even if Victory had been having a heart attack, as Officer McGibney said he

feared, there would have been nothing McGibney could do for him other than quickly drive to the nearest hospital. Despite these and numerous other inconsistencies, the officers' account was accepted. There was a brief early effort to administer lie-detector tests to Officers McGibney and Panarello, but they refused to take them. Officer Panarello was examined by a state doctor in Albany, who pronounced that Panarello's alleged physical and mental trauma absolutely precluded further questioning, and flatly told Panarello not to consent to the administration of a polygraph.

This Commission did not accept the officers' story. Further investigation has established the truth. What follows has been established by sworn and credible testimony given to the Commission in private hearings.

On May 5, 1978, Correction Officers McGibney and Panarello left Green Haven escorting inmates Albert Victory and Joseph Tremarco to the offices of Dr. John R. Mazzola, a dentist in Newburgh, New York. The preparation for and the trip to the dentist and the period in the dentist's office apparently passed without any unusual events. However, events had already occurred which would make this trip more than a mere innocent visit to a dentist.

Prior to the scheduling of the dental visit, Officer McGibney had been approached by another inmate

on behalf of Victory to arrange for Victory to visit with his girlfriend prior to returning to Green Haven. On the morning of May 5, the trip to the dentist's office was interrupted by a stop at the Grand Union Shopping Center in Fishkill to allow Victory to make a collect telephone call, ostensibly to his girlfriend. After completing the dental visit, Officers McGibney and Panarello placed the prisoners, under restraints, in the rear seat of the car and began their return to Green Haven. At the direction of Officer McGibney, they proceeded to the Ramada Inn in Newburgh.\* The officers parked the car and removed the inmates' handcuffs and security belts.

In the motel parking lot, they met Victory's girlfriend,\*\* who gave Officer McGibney an envelope

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\* It should be noted that where, as here, the return trip might result in arrival at the prison after the evening meal, it was normal and customary for officers and inmates to eat outside before returning to Green Haven. Due to the minimal meal allowance provided per person, the standard procedure was to go to a Burger King or similar drive-in, where one of the officers would get take-out meals which would be eaten in the car. However, favored prisoners -- especially those with ties to organized crime, or those who helped prison authorities control other inmates, or simply those with enough money to bribe the guards -- were sometimes taken to better restaurants. On this occasion, the party did not go to Burger King. See Unauthorized Stops On Outside Trips, at page 64, for other examples of special meal arrangements.

\*\* This is believed to be Susan Black, who often visited Victory at Green Haven. See footnote at page 114.

with money, which he later shared with Panarello. The group, officers, inmates and friend entered the bar area of the motel's restaurant, sat down at the end of the bar and ordered drinks. Officer McGibney paid for two or more rounds. Victory ordered two drinks and, taking them in hand, stood up and left the bar. It was understood that he was going to a room in the Ramada Inn to have sex with his girlfriend. Neither officer made the slightest objection or move to stop him. Indeed, the group's only reaction to Victory's departure was to commence a discussion on the rights of inmates to "get laid." Officer McGibney appeared to have no qualms about identifying himself and Panarello as Correction Officers and Tremarco and Victory as inmates, but the open discussion appeared to make Tremarco uncomfortable.

After Victory and his girlfriend left, the remaining three were joined at the bar by another man, who appeared to know Tremarco and whose presence may have served to make the officers forget the passage of time. After an interval of "about an hour" Victory had not returned. McGibney left the bar to look for him. Victory was not to be found. As nervousness turned into apparent panic, the two officers, with Tremarco in tow, began a frantic search of the Ramada Inn. McGibney unsuccessfully attempted to secure from the reserva-

tions clerk the number of the room registered to Victory's girlfriend. He then enlisted the aid of the barmaid, who found and gave him the room number, 126.\* Officers McGibney and Panarello, together with Tremarco, ran to the first-floor room and pounded on the door, calling out "Al, are you in there?" There was no response. The three then ran outside and looked into the room through the window; they could see no signs of life. Exit Albert Victory.

Officer McGibney, realizing that he had lost his prisoner, used a lobby telephone to call for help and advice. That call, however, was not to the facility but to a former Sergeant at Green Haven, then a Lieutenant at Mid-Orange Correctional Facility, John Hues.\*\* McGibney reached Hues and explained the situation to him. Hues told McGibney to call him back after he made some inquiries; McGibney continued to search for Victory. Hues attempted to reach Edward Fanelli, a former Green Haven inmate on parole, at the home of Frank Leto in New York City (see pages 60 and 69). Fanelli was not in. Hues then called Leto's place of

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\* Room 126, registered to "Phyliss George" on the same day, was paid for in cash. There is no record of the alleged Ms. George's having ever checked out. The handwriting of the alleged Ms. George appears to be that of Susan Black.

\*\* See pages 29 and 58.

business, Party Time Liquors, in Brooklyn. Fifteen or twenty minutes later, McGibney called Hues again. Hues told him that he had no information about Victory and that McGibney should cover himself.

The two officers and Tremarco returned through the Ramada Inn to their car, where they began to discuss the explanation they would give. It was in the period between their return to the car and their later call to Green Haven that McGibney, Panarello and Tremarco concocted the tale of the armed assailants.

The three men, with Panarello at the wheel, drove to Interstate 84. Pulling to the side of the road, they established the location of the "attack." McGibney, Panarello and Tremarco then proceeded off Interstate 84 at the Lime Kiln Road exit and chose a gravel pit as the location for the rest of their story. Officers Panarello and McGibney placed handcuffs upon themselves and tightened them so as to obtain appropriate marks upon their wrists. McGibney struck Panarello above his eye and knocked him to the ground to simulate the gun butt attack. They threw Panarello's revolver, and its ammunition, into a shallow muddy ditch at the side of the road. Then they retrieved the gun and returned to the car. They discussed among themselves, and advised Tremarco of, the need for a unanimous report of the incident if they were to main-

tain their innocence and avoid prosecution. Tremarco's first parole hearing was due within the month. In return for supporting their version of the escape, McGibney and Panarello told Tremarco that they would supply support and references for his parole. Tremarco agreed to the bargain.

McGibney, Panarello and Tremarco then proceeded to the occupied house closest to the gravel pit. From there McGibney contacted the facility by telephone approximately two hours after Victory had escaped. Assisted by other officers from Green Haven, McGibney and Tremarco returned to the prison. Panarello was taken to Vassar Brothers Hospital in Poughkeepsie, New York.

Upon notification of the escape, the procedures for the recovery of the missing inmate began. The State Police were notified, road blocks were set up and DOCS Central Office in Albany was advised of the escape. DOCS Central Office notified William Gard, the Department's Deputy Commissioner for Security, who reportedly contacted former Green Haven Superintendent Walter Fogg for advice. Fogg advised Gard to contact John Hues, the officer most familiar with Green Haven. Arrangements were made to have Hues aid in the investigation at Green Haven the next day.

The evening of the escape McGibney, following

through on the fabricated story, made arrangements to be picked up at Green Haven by a friend, a State Police Officer. During the ride from the prison McGibney, in a visibly nervous state, told his friend of some of the true details of the escape.\* The evening did not end for McGibney with his return home. Later on, at perhaps one in the morning, McGibney went to John Hues' house to discuss the problem of keeping the true story secret. Hues, who was waiting for McGibney, shared drinks with him in the family room and discussed the escape. Angry at McGibney for the stupidity of his actions that day, Hues slapped McGibney, driving him across the room.

The next day, John Hues did in fact participate in the "investigation" of the escape of Albert Victory. Hues sat in and asked questions, through Lieutenant Wayne Strack, at the interview of Roger McGibney and others. Hues may have also discussed the false story with inmate Tremarco and assured McGibney and Panarello that Tremarco would not tell the truth.

Hues' participation, however, did not end with his sham assistance in the investigation of the escape. Some weeks after the escape, under pressure

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\* The testimony of the State Police Officer indicates that he "did not recall" discussing the events of the escape with McGibney. The Commission's findings on this allegation have been forwarded to the State Police and the Dutchess County District Attorney for their consideration.

from the ongoing investigation, McGibney approached Hues to ask for additional money\* for his part in maintaining the false story. Hues told McGibney to wait until the pressure of the investigation subsided. Some time later, Hues advised McGibney that he had spoken to Frank Leto\*\* and that he (McGibney) would be "taken care of." A five thousand dollar split was mentioned. Hues arranged to meet with Leto at a motel cocktail lounge outside of New York City in Westchester County. Hues attended this meeting with his wife. The news was not good for McGibney and Panarello; no more money was forthcoming.

McGibney and Panarello remained out of work for differing periods of time on compensatory leave. After newspaper reports appeared concerning the inter- and intra-agency disputes over advance warning of the Victory escape, McGibney and Panarello brought legal actions for negligence against the state. McGibney dropped his suit at the time he was promoted to Sergeant, as noted above; Panarello subsequently dropped his suit too.

Tremarco was initially placed in the Green

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\* McGibney had only received approximately \$100 at the Ramada Inn from Victory's girlfriend -- which he had to share with Panarello.

\*\* See pages 60 and 69.

Haven Special Housing Unit and temporarily transferred to a "less desirable" facility. However, the references and recommendations of Officers McGibney and Panarello, as set forth in Panarello's letter, that claimed Tremarco's conduct and coolness had saved their lives, were hand-carried to the Parole Board. Based upon these recommendations, the Parole Board released Tremarco to serve his shorter federal sentence. He was scheduled for parole release from the Federal Penitentiary at Lewisburg, Pennsylvania on July 18, 1980. Albert Victory was recaptured over two and one-half years later on February 24, 1981.\*

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\* In this connection, the Commission observes that the failure to warn Officers McGibney and Panarello of Victory's escape plan is of far greater significance now that the truth of the escape is known. The Commission believes that not even McGibney and Panarello would have dared to let Victory out of their sight if they had been warned of his intention to escape.

## The Escape of Herminio Espinal and Antonio Capoul

### Background

Herminio Espinal entered the state's prison system on November 1, 1974, on a sentence of 25 years to life for Murder, a Class A felony, committed in the course of an armed robbery. He was transferred from Attica to Green Haven on December 8, 1976.

Antonio Capoul entered the prison system on July 27, 1970, on sentences of 20 years to life for Murder, a Class A felony; 20 years for Robbery in the First Degree, a B felony; and 4 years for Grand Larceny in the Third Degree, an E felony -- all committed in the course of an armed robbery. He was transferred from Clinton Correctional Facility to Green Haven on May 31, 1972.

Espinal and Capoul escaped from Green Haven on June 22, 1980, by walking out of the new visiting room.

### The Escape

The escape of Espinal and Capoul was a marvel in simplicity. It points out how even minor laxity in the system and the application of seemingly benevolent programs to maximum security facilities can lead to dangerous consequences. The chaos of the Inmate Visiting Program on a weekend masked the scheme.

Espinal and Capoul escaped in the easiest of all ways -- they just walked out.

The planning for the escape began several weeks before June 22, 1980. Espinal had been assigned a job as night porter in the administration building of the prison. This enabled him to pick up the visitors' passes that are returned to Correction Officers upon leaving the visiting room. About two months before the escape, Capoul had been befriended by a woman\* who was helping him with the possibility of appealing his sentence. He managed to convince her that if he could not help himself legally, extra-legal methods were necessary. At Capoul's request, on the day of the escape she smuggled into the visiting room the ink\*\* used by the facility to stamp the hands of incoming visitors for later identification under an ultra-violet lamp.

Documents and identification in order, Espinal and Capoul had to arrange to change or sufficiently alter their appearance so they would not be

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\* The woman has been identified as Jane Frydel. She met Capoul after having worked with his family in a Fresh Air Fund Program. Ms. Frydel was not cooperative when interviewed by members of the DOCS Inspector General's Office shortly after the escape. She died of a long-standing illness on October 24, 1980.

\*\* It is noted that although the color of the ink used by the facility varied, the nature and the inspection of the hand stamps is such that colors are not easily discernible.

recognized or at least not scrutinized. Capoul worked in the facility's kitchen and, therefore, had a bleached pair of mess hall pants, in addition to the state-issue green clothing that all inmates wore. He was able to color these pants using a dye made, in part, from chocolate drink powder. Inmates are permitted to have some civilian clothing and Capoul chose a two-tone shirt jacket to complete his civilian appearance. Capoul, a black, also shaved the beard he had worn during his years at Green Haven and darkened the slightly lighter portion of his face with a dye and water. Dark sunglasses completed his new look. Similarly, Espinal cut his hair, shaved his moustache and was dressed in civilian type clothing beneath the state "greens." Espinal traded his black shoes in the visiting room the day of the escape for white sneakers.

The day for the escape was chosen carefully. Sunday, June 22, 1980, was a busy day at Green Haven. A "special event," a type of family celebration day or picnic, in this case San Juan De Battista Day, was scheduled for the Hispanic inmates. Fay Field\* would be filled with people and the Correction Officers would be busy. Indeed, even the new visiting room, inside the prison, was busy that day. The facility's count for

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\* See pages 23 and 31.

that day shows that there were 303 inmates and visitors in the new visiting room, and 567 inmates and visitors on Fay Field,\* a total of 870 people being watched by a handful of Correction Officers.

Espinal and Capoul dressed in their escape outfits, covered by their prison greens. The second set of clothing would go unnoticed since only a "pat down" frisk was required before entering the visiting room. With close to 400 inmates going to the two visiting rooms and Fay Field, the few guards searching outgoing inmates were hard pressed to make more than just a cursory examination. A momentary setback occurred when an officer accidentally broke Capoul's sunglasses. Capoul protested vehemently. Rather than hurting his escape efforts, the argument aided the escape as the busy officers were happy to move him along.

Once in the visiting room, Capoul received the ink from his visitor. The two inmates were able to ascertain the configuration of the "invisible" hand stamp for that day by standing at the guard station near the door to the visiting room, where an unused ultra-

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\* Persons present recall approximately 400 people on Fay Field and about 100 in the new visiting room. There may be an overlap of people counted in the new visiting room and on Fay Field, as people moved between the two areas; however, this movement only added to the confusion and lack of control that facilitated the escape.

violet lamp awaited outgoing visitors later that day. The numerous children who were visiting were, as always, seeking to allay their boredom. Espinal and Capoul were happy to fascinate the children by showing them the invisible stamp on their hands. After studying the stamp's configuration, the pair went into the visitors' men's room after 2:00 P.M. Less than an hour remained for that day's visiting session.

In the men's room, Espinal and Capoul drew that day's hand stamp with an empty pen and the ink that had been smuggled in to Capoul. They filled out the visitors' passes that Espinal had stolen from the administration building and they removed and hid their prison clothing. A Correction Sergeant came in to check the men's room but all he saw were two occupied stalls. Shortly before 3:00 P.M., they left the men's room separately and proceeded to the door of the visiting room, mingling with different groups of outgoing visitors. Out the door and up the hallway to the double sliding barred doors, they showed their hand stamps and left the forged passes behind with the appropriate desk officer. They passed, unchallenged, through the waiting area and into the street.

In the visitors' parking lot, Capoul's friend was waiting in her car. At about 3:00 P.M., Espinal and Capoul were driven off the grounds of Green Haven,

free men. Their disappearance would not even be suspected until after the visiting room cleared out and the prisoners were strip searched -- a total of as much as one and one-half hours after visiting ended at 3:00 P.M. The suspicion would not become an escape until at least 5:00 P.M. when, they calculated, the inmate count was taken. At 7:20 P.M., the wailing of the Green Haven escape whistle signified that Espinal and Capoul had made good their escape.

The two inmates and their friend drove south for about an hour and a half. They pulled off into a wooded area at about 5:00 P.M. to spend the night, thereby avoiding the road blocks that would be set for them. At about 8:30 A.M., the next morning they again proceeded south and were dropped off just north of the New York City line. They walked the rest of the way into the City.

Espinal had made \$2,500 in prison, in various schemes including selling marijuana, which he divided with Capoul in the visitors' men's room prior to escaping. Using the money, the two men went by cab to the Bronx and rented a room together on Anthony Avenue. Capoul soon left to move in with a woman he had met and lived in hiding.

On August 29, 1980, Espinal\* and an associate were stopped by two Police Officers for a traffic violation in New York City. A gun battle ensued. Taking four bullets, Espinal spent the next several months chained to a hospital bed. After his arrest it was discovered that Espinal and his accomplice had robbed a gasoline station minutes before the two officers had stopped them. On March 24, 1981, he was transferred from the Bellevue Prison Ward to the Rikers Island prison infirmary. Espinal is currently charged with Escape, Attempted Murder, Robbery, Assault and Criminal Use of a Firearm.

On September 10, 1980, Capoul was recaptured without incident by members of a Special Police Task Force in Far Rockaway, Queens, after the Police had convinced his girlfriend to give them his location. He is currently an inmate at the Great Meadows Correctional Facility in Comstock, New York and has been charged with Escape.

A DOCS report on the escape of Espinal and Capoul discusses the practices and procedures used in the visiting program at Green Haven but did not assess liability or fault to individual Correction Officers:

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\* Espinal initially identified himself as Pablo Collado and was properly identified after arrival at Bellevue Hospital.

While increased vigilance by several of the Officers might have prevented the escape, each of the involved Officers were performing their duties, as understood by them, at the time of the escape.

The report reviewed the security procedures in effect and scored several deficiencies including:

1. The ability to blur or transfer the hand stamp and the commercial availability of the ink;
2. Loss of control of visitors' passes, which were printed in the inmate shops;
3. Improper visitors' identification procedures;
4. No sign-in book for visitors;
5. The interchangeable use of inmate and civilian bathrooms;
6. Cross-visiting (see page 24);
7. Visitors returning passes before the visit ended; and
8. Visitors being permitted to leave before all inmates had been accounted for and identified.

The DOCS report attributed responsibility for these deficiencies to Superintendent David Harris and his Deputy for Security, Joseph Keenan. Keenan, recommended for disciplinary charges, is criticized

for his failure to "examine the visiting room procedures with a view towards its susceptibility and vulnerability." On December 26, 1980, DOCS charged Keenan with 13 specifications of misconduct and incompetence in carrying out his duties in that he "failed to establish appropriate and satisfactory security procedures" for Green Haven's visiting room.\* The DOCS report did not recommend disciplinary proceedings for Harris but noted that he failed to supervise Keenan's activities respecting security to a sufficient degree.

On January 30, 1981, a Dutchess County Grand Jury released a report on its investigation of the escapes of Espinal, Capoul and William Cody (see page 137) which criticized Departmental policies as well as Green Haven's managerial failings. The Grand Jury report noted that the visitors' pass security system at Green Haven was totally ineffective and the hand stamp system was not properly controlled by the officers charged with the responsibility. The Grand Jury also pointed out that the lack of training, experience and, in particular, the high turnover rate of officers at Green Haven contributed to the escape. No indictments were returned.

\* At the same time, charges were specified relating to the escape of William Cody. See footnote at page 137.

### The Escape of William Cody

#### Background

William "Machine Gun Bill" Cody has a long history of arrests, including felonious assault with a machine gun, attempted rape, burglary and murder. Cody was discharged from the United States Army with a psychological disability. In 1965, he was found legally incompetent to stand trial on charges of Manslaughter in the First Degree and Robbery in the Second Degree and was sent to Matteawan State Hospital. Five years later he had sufficiently recovered to plead guilty. On June 16, 1970, Cody was sentenced to concurrent terms of ten to twenty years and seven and one-half to fifteen years on the two charges.

While on parole from these sentences, he attempted an armed robbery at the residence of actor Hume Cronyn. Cody pleaded guilty to Robbery in the First Degree, a Class B felony, and was sentenced to six to twelve years, as a second felony offender, to run consecutive with any delinquent parole time.

Cody reentered the prison system on July 16, 1976, and on May 2, 1980, was transferred to Green Haven. He was assigned a job outside the prison walls on May 29 and walked away on July 18, 1980. Cody was arrested on September 24, 1980, in the Bronx, for conspiring with two others to commit Kidnapping, a Class

A felony. He was charged with Kidnapping, Conspiracy and Escape. The kidnap victim was later found dead.

#### The Escape

William Cody escaped from Green Haven on July 18, 1980. At the time of his escape, Cody was assigned to a job in the Outside Garage, where he ran a tractor that mowed the lawns outside the prison walls. On July 18, Cody drove his tractor to an area in front of the Superintendent's residence on Green Haven property, left the engine running, and escaped.

The simplicity of Cody's escape parallels the escape of Herminio Espinal and Antonio Capoul (see page 120), but, on its face, appears to have required even less deception and planning. Cody, assigned to a job outside the prison wall, simply walked away. Cody's escape might be interpreted by some as a case of an inmate betraying a trust and as a reason to discontinue special programs for inmates. In fact, the escape is just symptomatic of the malaise affecting the state's prison system.

A review of DOCS records respecting the escape indicates that Cody was assigned to his job outside the facility's walls in an unusual manner, and that the assignment violated the prison's own rules and regula-

tions,\* about which no one appears to have known. In addition, once Cody was outside the wall, no one even bothered to watch him.

The criteria for outside job clearance at Green Haven includes the time left on an inmate's sentence; the type of crime for which an inmate is incarcerated; the nature of other offenses with which the inmate has been charged, whether dismissed or not prosecuted; and the amount of time at the facility on the inmate's current sentence. Cody, as noted above, had been committed on July 9, 1979, to a term of from 6 to 12 years. His conditional release date was February 8, 1981; he would not be eligible to apply for parole until June, 1984. Under several of the outside job clearance criteria, including the requirement that an inmate be within 4 years of his parole release date and no more than 6 years from his final release date, Cody was not eligible for an outside job.

The rules also require that an inmate be in Green Haven at least 6 months since his last date of reception into the facility, before being considered for an outside assignment. Cody arrived at Green Haven on

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\* Further review by the Commission of inmates assigned to jobs outside the prison wall, including jobs on the prison farm, indicated that a large number of the inmates violated the rules and regulations for their assignments (see page 137).

May 2, 1980, via Ossining, Clinton and Great Meadow Correctional Facilities. He met his counselor for orientation on May 5. On May 20, he was referred to the Program Committee for an outside assignment and approved on May 23. On May 29, less than one month after arriving at Green Haven, Cody was assigned to the Outside Garage.

A DOCS report on the Cody escape explains the reason for Cody's assignment, in violation of the facility's rules and regulations, as follows:

The Program Committee decision for outside assignment was made due to his 1973 farm assignment at Green Haven; his successful furloughs, excellent disciplinary record, 5 year parole adjustment, and previous positive institutional adjustment.

An interview by former Green Haven Superintendent Harris of the civilian employee supervising the Outside Garage, after Cody's escape, tells a different story:

MR. HARRIS: How did you get [Cody] assigned to you?

MR. WINSHIP: I didn't have anybody to mow the lawns. I had this Puerto Rican and everything was all messed up. It looked bad. I asked around down the farm if there was anybody available . . . [An] outside Sergeant . . . knew a guy who was here

before who could run a tractor, named Cody. He brought him out to me and that was it.

\* \* \*

I figured if an outside Sergeant gives him to me, who am I to say . .

MR. HARRIS: So did you think there was anything unusual about the way you got Cody?

MR. WINSHIP: I don't know if it was unusual. I would not question an outside Sergeant.

MR. HARRIS: That's not my question. Did you think there was anything different about the way you received this inmate?

MR. WINSHIP: I never thought about it.

\* \* \*

I don't know. Generally I get him myself.

MR. HARRIS: This time you didn't?

MR. WINSHIP: No. I didn't talk to Cody. No. Most times when I got a man, they were already cleared for the farm.

Once outside the walls, Cody was apparently free to come and go as he pleased. The testimony of the Outside Garage supervisor sets out the method of accounting for the inmates on the outside gang, which does not appear to require that the inmate be physically present.

MR. HARRIS: How do you count [the inmates] out there? What is the count system?

MR. WINSHIP: At 11:30, I put out my ticket [with the number of inmates]. It's supposed to be 12:30 count. I would say quarter to eleven, [the outside roundsman] pick[s] up the count.

\* \* \*

MR. HARRIS: . . . [W]here would the inmate be at that time?

MR. WINSHIP: Well, he is probably mowing the lawn.

MR. HARRIS: Do you see him?

MR. WINSHIP: I most generally make it a point to see him.

MR. HARRIS: At that time, 10:30, do you actually see the inmate?

MR. WINSHIP: No.

MR. HARRIS: A roundsman comes by and you give him the count, but you don't see him, you don't see your men prior to the count slip going in?

MR. WINSHIP: The only one I don't see is the guy mowing the lawn. If he doesn't come down for lunch, then I go look for him, call the farm to see if he is there.

The position filled by Cody appears to have allowed for an extreme amount of freedom. Indeed, Cody had disappeared before.

MR. WINSHIP: If the man don't show up between 12 and 12:30, I personally go down [to the farm] to look for him. This isn't the first time I looked for Cody.

\* \* \*

One time it was 3:00 and I found him down by the Sewage Disposal Plant. One other time he was at the Training Academy. I said, "Why didn't you come in for lunch?" He said, "I don't have no watch. I don't know what time it is. I don't have no watch."

\* \* \*

MR. HARRIS: When did you go down [to the farm to look for Cody]?

MR. WINSHIP: I left the garage at approximately 12:30 p.m. I notified the horseman [the outside roundsman] immediately when I didn't see him. The tractor was running and a screw driver was there. I thought maybe he got hurt or something, . . . [An officer] told me he was at the Training Academy at 11:30 a.m.

I wouldn't question [the officer.] First I checked to cover my own ass to find out where he was. [Another officer] came down with the car and I asked him did he see Cody and [the officer] said he did that he was mowing grass at 12:15 in front of the Warden's house.

\* \* \*

MR. HARRIS: That one inmate always had this option to eat lunch wherever he was working.

MR. WINSHIP: He was always on my count, but he could eat down there

[at the farm,] if he didn't show at 12:30 I went looking for him.

\* \* \*

MR. WINSHIP: The [other two inmates assigned] don't leave the God damn shop and I tell them so. If I don't see the bastards, I go looking for them.

\* \* \*

. . . I had a gut feeling [about Cody] and I went looking for the bastard.

\* \* \*

MR. HARRIS: If he went to the farm, would the farm call you?

MR. WINSHIP: No.

\* \* \*

[I would have to go looking for him,] but I never seen Cody eat down there [at the farm]. I don't think he ever ate down there.

\* \* \*

He [ate] up here almost every day.

The Cody escape might appear to be the result of corrupt acts on the part of one or more prison officials. However, interviews with Cody and others who had personal contact with him tend, at the present time, to indicate that the escape, while no doubt planned in advance, was not the result of any specific corrupt act. Rather, Cody's escape was due to administrative failure

and the laxness in the system.\*

A review by the Commission of the outside crew after Cody's escape revealed that more than one-third of the inmates did not comply with the facility's criteria for their assignment. In one instance an inmate had been assigned to the prison farm although his record indicated that he had at one time been imprisoned for torturing and injuring animals. This information was provided to the Dutchess County District Attorney's Office.

On January 30, 1981, the Dutchess County Grand Jury investigating the escapes of Herminio Espinal, Antonio Capoul and Cody issued its report. The report noted that although regulations specified minimum eligibility requirements for outside assignments "subjective judgments were made on various inmates . . . who did not qualify." At least 25 out of 60 positions were

\* On December 26, 1980 Deputy Superintendent for Security Joseph Keenan was charged with three charges and numerous specifications of misconduct and incompetence relating to the escapes of Herminio Espinal and Antonio Capoul (see page 128) as well as Cody. A third charge specified that he had failed to report confidential information to his superiors of advance notice of an inmate disturbance and of potential threats to the security of Green Haven. It is noted that DOCS' response to the Victory escape was to bring disciplinary charges against Superintendent David Harris and his Deputy for Security, Joseph Keenan. The charges in the Victory case were later dropped. See page 108.

filled by inmates who were disqualified under the regulations. The review by the Grand Jury indicated that:

Inmates were working outside the prison walls with minimal or no supervision who had prior escapes on their records; and others had outstanding felony warrants filed against them from other states on charges of murder, attempted murder, kidnapping, rape and armed robbery. One inmate, who had been assigned to the farm, had been previously convicted of Torturing and Injuring Animals. Another had previously been involved in heavy drug trafficking while assigned to another farm. Yet another was an organized crime figure who had a prior conviction for kidnapping and escape. Still another inmate was working on the farm whose criminal history file stated that he was a hardcore brutalistic criminal type and a freelance killer who shows no remorse for his actions; a highly dangerous, strong physical individual.

Cody was cited as an individual whose background "constituted an absolute bar to his being approved for outside work."

The Grand Jury report recommended the reorganization of the farm system, to allow workers to be drawn from local minimum security prisons, and the enforcement of stricter eligibility standards. It also criticized the lack of experience and training and the

high turnover rate of officers at Green Haven. No indictments were returned. The Cody escape, although apparently not the result of overt corruption, was, at the very least, caused by gross negligence.

## MONITORING AND INVESTIGATING THE CORRECTIONAL SYSTEM

The riot at the Attica Correctional Facility in September, 1971 caused the state and the Correctional system to begin a process of self-evaluation and investigation to answer the overriding concern--can another Attica be prevented?

Several investigatory and fact-finding groups were formed. The State Special Commission on Attica, chaired by Robert B. McKay (McKay Commission), was formed to conduct "a comprehensive investigation of all circumstances and events leading up to, during and following the [Attica] uprising in order to provide a complete report to the people on what transpired, its causes and implications."\* The McKay Commission, which was critical of state officials, recommended "guidelines on which [it] believes the correctional system should be run."\*\*

The State Select Committee on Correctional Institutions and Programs, chaired by Judge Hugh R. Jones (Jones Committee), was formed to examine the problems affecting the state's Correctional system

\* Governor's Annual Message to the Legislature, January 18, 1972. Other groups were formed to investigate criminal activity at Attica and to protect prisoners' rights.

\*\* Attica: The Official Report of the New York State Special Commission on Attica (1972), page 5.

and make recommendations for improvements. In 1973, the implementation of one of the Jones Committee's recommendations transferred the State Commission of Correction from DOCS to the Executive Department, to promote its independence, reshaped its administrative structure and expanded its powers.\* Earlier recommendations of the Jones Committee, the McKay Commission and actions by DOCS led to new inmate programs, provided for the resolution of grievances and expanded inmate rights. Within DOCS an internal investigative unit was formed, headed by a chief of Correction Audit and Investigations, the "Inspector General."

The question then is whether the Inspector General and the State Commission of Correction have been effective in dealing with the problems which led to their creation.

### The Inspector General

DOCS, under Commissioner Russell G. Oswald, established an Inspector General Program on June 1,

\* See page 163. Recommendations of the Jones Committee in the state's 1972 Prison Reform Program included "proposals to finance new and diversified facilities, rehabilitate existing facilities, improve correctional programs, expand the work release program, expand job opportunities for ex-inmates and correct inequities in parole eligibility." Governor's Memorandum, Prison Reform Program, May 22, 1972.

1972. The new program, directed by an Inspector General (IG) who reported directly to the Commissioner,\* was designed to "encompass operations review ... intelligence and investigation . . .".\*\* Its objective was to:

prevent problems by program review and monitoring; insure operations in compliance with law, policy, procedures and rules; develop and maintain a system of pertinent information to enhance sound operations; and to investigate incidents and complaints.\*\*\*

DOCS portrayed the IG as the Commissioner's "eyes and ears," charged with: auditing programs and policies to ensure proper implementation\*\*\*\* and conducting in-depth reviews of facility operations, on a scheduled and unscheduled basis; investigating inmate complaints, escapes and disturbances and chronic institutional problems--such as narcotics and homosexuality;

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\* In fact, at different times, the first Inspector General reported to the Commissioners' Executive Deputy and Executive Assistant.

\*\* DOCS Administrative Bulletin #59 (Bulletin #59), from Commissioner Russell G. Oswald to Superintendents of Correctional Facilities, dated May 22, 1972.

\*\*\* Bulletin #59.

\*\*\*\* The DOCS request to the Civil Service Department for the new position of IG gives examples of eighteen broad policies and programs touching on many aspects of prison life and departmental operations

and recommending appropriate action or changes. The IG is given complete access to all files, employees, inmates and facilities.

The first IG was John J. McCarthy, a career law enforcement officer.\* The new IG's Office (IGO) was composed of a staff of three investigators, chosen from resumes that had been received by DOCS, an administrative assistant and two stenographers. While IG in Albany, McCarthy continued as Director of the Division of Parole's Bureau of Special Services (BSS) in New York City. He realized the magnitude of the responsibilities facing the IGO--for facilities and people spread all over the state:

As I recall it, I viewed my responsibility as being that for the integrity of 40,000 plus individuals. This includes inmates, parolees, individuals on educational or temporary release in addition to a staff of somewhere around 10,000.

From the beginning, DOCS did not expect the

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\* At the time of his appointment, in June, 1972, Mr. McCarthy had Masters Degrees in Sociology-Criminology and Public Administration, military experience as an intelligence officer and federal Correction Officer experience. He had been with the Division of Parole since 1949; since 1958, as Director of the Bureau of Special Services -- Parole's intelligence gathering unit. Parole and DOCS had been merged in 1971.

IGO to fulfill its mandate. Mr. McCarthy explained:

Early on at a staff conference, Commissioner Quick [Deputy Commissioner for Correctional Facilities] made a very strong point of the fact that . . . the IG mandate [was] . . . quote, a deliberate overkill, close quotes, and explained that there was no way that the IG could fulfill that mandate with the personnel given.

Staffing was IG McCarthy's greatest problem, and shortages placed "excessive" demands upon those available:

The sine qua non was staff.

We were continuously plagued with short staff problems.

There [were] continuous demands, excessive demands for overtime. And again, on assignment it was clearly indicated that as a requirement, an operational requirement people had to be prepared to work long hours of overtime and for the Correctional people, this was uncompensated overtime.

\* \* \*

So I would say that . . . at the time that I retired, I had somewhere between four and five thousand hours of overtime.

\* \* \*

Total [for five years and nine months as IG], and possibly more.

I feel it is only appropriate to point out that the overtime demands, the requirements for travel throughout the state on the IG

staff was damaging to health and disruptive of family life.

\* \* \*

Any problem . . . in the institution[s] ipso facto became Inspector General problems. Therefore, the [DOCS 24 hour] command post supervisor, whether it was 10:00 o'clock at night, 2:00, 3:00 or 4:00 o'clock in the morning, immediately got in touch with me by phone.

IG McCarthy was given permission to supplement his small unit with BSS staff members. However, he explained that this was clearly not the answer to the problem:

I was doubling over some personnel, but I think it appropriate to point out, sir, that the Bureau of Special Services personnel which at that time consisted of, I believe, maybe seven or eight parole officers and one supervisor besides myself, had a full work load on their own.

So what we were doing is we were drawing on an already overburdened situation, in a certain sense robbing Peter to pay Paul.

In addition, the BSS staff were more devoted to Parole than to DOCS:

. . . [F]ollowing the amalgamation, if [you] will, of Parole and Corrections, there existed for a number of years something less than total harmony.

Following the separation [of Parole and Corrections\*], there was a great deal of discussion and a lot of soul searching on the part of the BSS IG, if you will, Parole [Officers, as to whether they would stay with Corrections where the ceiling was not quite so close to the floor as with Parole, where a person can spend thirty years as a Parole [Officer and never get beyond that in the promotional scheme, as it used to be, at any rate.

To my knowledge, only one BSS Parole [Officer remained with the IG . . .

When IG McCarthy retired in 1978, the IGO had a staff of only seven. With the split of Parole and DOCS, BSS no longer complemented the staff of the IGO. Under the current IG, Brian Malone, the staff has increased to over twenty-five, but it is still a small unit faced with a monumental task. The IGO is now responsible for over thirty facilities, with more than 20,000 inmates and 12,000 employees.

By comparison, the Internal Affairs Division (IAD) of the New York City Police Department (NYPD), with approximately 26,000 employees (Police Officers and civilians), has a staff of over 325 (at headquarters and in the field internal affairs unit). IAD also maintains a system of field associates -- regular Police

\* Parole and DOCS split on January 1, 1978. Soon after the separation IG McCarthy, originally from Parole, retired.

Officers who act as its eyes and ears in the precinct houses. The NYPD is also monitored and investigated by the Special Prosecutor for the Investigation of the New York City Criminal Justice System, the Civilian Complaint Review Board and New York City's five District Attorneys.

Until recently, the IGO did not have a similar field associate program. Nor did it have any regular method of inducing employees who had been caught in minor violations to act in an undercover capacity. IG Brian Malone explained:

We have [a field associate program] on a very limited basis.

We tried to do that in 1978, and one of the biggest problems we had was that because of the structure of the union contract, it is very difficult to move a Correction [Officer from one post to another, not even thinking about one institution to another. It raises a lot of hackles and there are a lot of problems attendant to that, so it's tough to get somebody into position.

Number two, there is nothing we can really promise them after a particular episode or investigation would be completed, so it's very difficult to do that.

We are operating now with a limited number of people to whom promises have been made because we felt the need . . . to do that and take the problems that may arise from a union complaint afterwards.

But it would be very difficult to do, I think, given the inflexibility of assignments of officers.

Q. What about a program of . . . turning bad COs and staff members and leaving them within the system to operate as informants?

A. We are currently doing that.

Q. This again is a new program--

A. That's correct.

Former IG McCarthy testified that staff shortages were the result of budgetary constraints, not the unavailability of candidates from either Parole, Corrections or elsewhere:

There was a large number of individuals both from Parole and from Corrections who applied formally for an assignment to the IG's office. I would estimate that there was probably up to a hundred applicants on file.

There was an adequate number of applicants but what was lacking was the budgetary provisions to increase the staff.

\* \* \*

No, sir, there were no funds appropriated at any time to bring in individuals from the outside at any time.

On one occasion, the IG expanded the staff by cutting the salaries of incumbent investigators. One IG

investigator stated:

In January 1978 I was given a Grade 22 which was \$4,000 higher in salary [than he earned as a Correction Officer] by John McCarthy, and I kept that until September 28, 1978 when Brian Malone wanted to expand the office.

And he sat us down and told us the only way he could do that is by putting us back at our Grade 14 and bring in new people at Grade 22s, since they were already established items from Albany.

And from that point, September 28, 1978, to the present, I have been a Grade 14 salary Correction Officer.

Recently, the IGO was unable to hire an experienced investigator, referred by this Commission, solely as a result of "fiscal constraints."\*

The background and experience of the IGO staff investigators is also a factor affecting its ability to perform. The IGO has always drawn on the Correction Officers' ranks for investigators. Currently more than one-half of the investigators are former Correction Officers with no previous investigatory experience. These Correction Officer-Investigators were, until

\* Letter, dated October 8, 1980, from DOCS Commissioner Thomas A. Coughlin III, to Commission Chairman Adam Walinsky. Similar fiscal problems are faced by the IGO in relation to vehicles and equipment.

recently, considered on a leave status and received their paychecks from their "home" facility.\* Often, they would be called on to return to that facility to investigate friends or former supervisors.

The Correction Officer-Investigators were recognized as hardworking and loyal by the IGO supervisors. However, the level of work that they could do was limited by their lack of experience. An IGO supervisor explained:

I would love to have more investigators with investigation background. I think it's necessary to have Correction [O]fficers as investigators for the annoyance cases, lost shields and what not.

I think some Correction [O]fficers make damn good investigators. . . .

But, hey, I'm not going to give people who are not detectives or didn't come from investigatory background real heavy cases, they are not capable of doing it. But they do damn well in their function.

The leave status of the Correction Officer-Investigators was also recognized as a problem, prior to DOCS' Commissioner Coughlin placing most IGO

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\* In August, 1980, a separate budget was created for the IGO. Currently, only two IGO investigators are paid from facility budgets.

investigators on the DOCS Central Office budget. In requesting a DOCS Central Office budget slot for himself and another member of his staff, Acting IG Bodmer stated:

Needless to say, the AIG's [Assistant Inspector General's] are involved in highly sensitive and sophisticated investigations which would make their continued institutional [facility] assignment potentially hazardous.\*

IGO investigators still face this problem, although on a different level. Investigators who take a promotional examination, seeking career and salary advancement not available in the IGO, face the prospect of being returned to a facility which they have investigated:\*\*

Q. So the normal procedure would be for a person who has attained the next step in Civil Service grade, if there was no such line at central office, he would technically be forced to return to his [original] facility?

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\* Memorandum from Acting Inspector General William G. Bodmer to Commissioner Benjamin Ward, Attention Executive Deputy Commissioner Lewis Douglass, dated August 20, 1975.

\*\* At times, however, there are positions available on the DOCS Central Office budget for superior officers.

A. That's right. That happened in two cases so far.

I had Correction [O]fficer investigators who were promoted to Sergeant and returned to facilities as supervisors.

Correction Officer-Investigators are uneasy about this prospect. One of them testified:

Q. At the beginning of the hearing we were discussing the possibility of your being picked off the Sergeants list and returning to a facility.

How do you feel your position would be at the prison that you would return to now that you have engaged in investigations of people at that prison?

A. I definitely would not like to return as a Correction [O]fficer, and I have conducted enough investigations now that I am known and labeled as a hatchet man.

I would not like returning at all, but if I had to return to a prison, I would not want to return without at least being a Sergeant, having some authority over the people, some of the people anyway, that I have investigated.

Q. But do you see any problem with being assigned to the Inspector General's office at this point in time and then at some later point being returned to a facility where you might have to work with the very people you investigated?

A. I think it would be a problem.

Q. Is that a problem shared by other members of your office who are also Corrections [O]fficers?

A. Yes.

The IGO, designed to audit and maintain departmental operations, to suggest preventative measures as well as respond to crises and complaints, was soon overwhelmed by its workload. The audit function was subordinated to crises response and inmate complaints:\*

The Inspector General's workload has expanded to such an extent that the auditing function, the purpose for which the unit was created and the specific concern of the Committee when formulating the recommendations is currently performed only incident to referral investigations and not as an end in itself.

The "unscheduled" visits noted in the IG's job description were also curtailed to meet crisis situations, as former IG McCarthy explained:

Initially we had surprise, unscheduled visits to facilities, and reported whatever irregularities that we found there.

\* \* \*

\* Select Committee on Correctional Institutions and Programs, Report No. 5, issued May 24, 1973, page 32, cited in the Internal Investigation Unit [IGO] 1975-76 Budget, dated June 21, 1974.

. . . what happened was that other situations developed that had a great deal more importance . . .

The current IG, Brian Malone, has stated that response to crisis situations and inmate complaints comprise the bulk of the work. Unscheduled visits, in an attempt to find officers away from their posts or asleep, or operational audits, to assure compliance with the departmental directives, are the responsibility of the Facilities Operations Division in Central Office.

IG Malone also told the Commission that presently most of his Office's energy is channeled towards contraband coming into the facilities. Although he listed the most popular avenues for the introduction of contraband, including through employees and visitors, IG Malone did not cite a regular IGO program of prevention:

The contraband that is passed in the visiting room is really on a one-to-one basis between the visitor and the inmate.

So we sought to make the [facilities] Dep[uty Superintendent for] Security aware of different mechanisms used . . . as a training aid . . . .

[W]e are conducting investigations at this moment . . . concerning employee involvement [with] narcotic contraband.

\* \* \*

We had [been involved with surprise searches of employees coming into a facility] -- we don't do it personally --but we would be in touch, if we had some [specific] information [not on a random basis], . . . with the . . . Deputy Superintendent for Security in a particular facility and give him the information we would have and he would conduct those searches.

\* \* \*

Q. Has your office ever made a study or recommended that visiting rooms particularly in Downstate facilities [which are closer to New York City and receive more visitors] on weekends be more heavily staffed . . .

A. One of the things that my office does not do is make recommendations with respect to staffing. That is outside our area.

It is within the area of Facility Operations . . .

There is an overtime problem, there are union considerations . . .

I would be reluctant to make recommendations that affect areas outside my degree of responsibility.

Q. . . . [H]as the IG's office ever . . . had . . . or considered a program of searching incoming visitors on a random basis, target[ing] a facility for a specific search?

A. That has been done, not sponsored by the IG's office.

It was already in effect when I came into office. There was no need, let's say, to revamp it. It's ongoing.

William G. Gard, Deputy Commissioner for Correctional Facilities, responsible for facility operations, has testified that DOCS Central Office does not currently have an audit mechanism to assure compliance with departmental directives.\* Facilities essentially police themselves. However, Mr. Gard stated that DOCS Commissioner Coughlin has very recently moved to establish a new Management Audit Unit, which will report directly to the Commissioner and may correct this inadequacy:\*\*

The format of its [the new units] audit has not really been finalized yet.

Its intention is to audit the management of the facility, which will entail all areas that the facility is responsible for: fiscal, security, program, medical services, ministerial services, all

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\* The Commission has found that the records of a facility often reveal possible acts of corruption or improper procedure. For example, several extended outside trips were found to have been the result of unauthorized stops (see page 64); and after the escape of one prisoner from the prison farm, it was found that several prisoners, including the escapee, were improperly assigned to outside jobs (see page 137).

\*\* In fact, audits were conducted of the facilities. For example, the State Commission of Correction performed a management evaluation and DOCS sent a management analysis team to Green Haven in 1978. The State Commission of Correction's management evaluation is discussed at page 168.

functions that take place in a facility.

The IGO also faces labor problems in the conduct of its investigations. Union officials are permitted to be present when a Correction Officer is interviewed by the IGO. While there may be sound reasons for allowing union participation, at times it has interfered with an investigation. This problem was discussed by former IG McCarthy in relation to a specific case:

Q. Would the involvement of any of the union organizations that represent employees for the Department of Corrections in some way affect the ability to discipline or fire an employee?

A. The answer is yes, counsel.

\* \* \*

[I]n . . . interviewing of officers [under investigation], and I personally conducted the interviews, a union representative was present. As I recall, it was a high-ranking officer of the Correction [O]fficers' union, it might even have been the president.

I would have to say that his presence and intervention was a negative force. He was obstructive and did whatever he could to prevent the interview from being successful.

However, former IG McCarthy did state:

. . . that while the presence of the union official was not helpful, the ultimate result was that the individuals were found to be involved and were disciplined.\*

Union representation of employees being questioned by the IGO has other ramifications. IG Malone explained:

. . . Any time we speak to an employee he's entitled to union representation.

So you have situations where you are speaking to five employees and the union rep sits with the employee. And before Employee B comes in, he talks to the union rep and C, D and E, goes right down the line.

So there is a conduit. I don't know if they actually say, this is what they asked, I would guess, though, that might happen on occasion.

\* \* \*

[The union is] a presence during the investigation of serious matters, and the presence relates back to their ability to strike and the trauma that we all went through during the strike of Correction [O]fficers.

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\* This Commission notes that no union representing employees in the Correctional system has sought to interfere or obstruct its investigation.

Now I don't think that the union would go on strike or create a job action because of a particular investigation, but there's no denying that they are a very strong force within the Department of Corrections.

\* \* \*

I can't identify a particular instance where I could say this investigation went sour because of this union situation, but I know it has a somewhat chilling effect.

The number of completed investigations that the IGO refers for disciplinary action has been variously estimated as between 10 and 35 percent. Disciplinary cases are referred to DOCS' labor relations office and handled by what has been called an "arbitration proceeding," rather than a departmental disciplinary trial.\* Suspensions only occur when there are special circumstances. IG Malone explained:

Let's take a non-suspension case. [The IGO] refer [a case to labor relations] with a recommendation that disciplinary proceedings be inaugurated.

A judgment is then made in that office as to whether or not that will happen.

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\* The IGO also refers certain matters to the county District Attorney. IG Malone has reported that, at times, certain smaller District Attorneys Offices are not willing to devote their limited resources toward the prosecution of a prison case.

The disciplinary proceedings in the Department are by arbitration.

\* \* \*

[A] typical arbitration procedure where certain facts may be admitted or an acceptable version of facts may be admitted.

If the Department were to be seeking dismissal of an officer, he may offer to accept five days' suspension or five days' loss of pay, and somewhere in the middle possibly it gets worked out . . .

Q. Do you have any proceedings that you would characterize as disciplinary trials, departmental disciplinary trials.

A. No.

Q. They would all be by, through a typical arbitration procedure?

A. That's correct. Now, in terms of the suspension, under the contract we can suspend if a Correction [O]fficer presents a threat to the security and safety of an institution.

We have on occasion recommended that this officer be suspended forthwith, and that's been done, and that would come from me directly to the Commissioner.

Suspensions are decided at the Commissioner level.

Q. The arbitration proceedings that you mentioned, those are proceedings that are in the [employees] contract?

A. That's correct.

The "arbitration proceedings" are affected by union involvement, as IG Malone stated:

Q. . . . Would you say that the size or the ability of the union to intervene on behalf of Corrections [O]fficers has a direct effect on the action taken against a specific officer?

A. At a labor relations level?

Q. Yes.

A. Absolutely.

A supervisory officer in the IGO criticized DOCS' labor relations procedure:

. . . I personally think there is a lot of room for improvement [in DOCS' labor relations proceedings], but then again, I am not familiar with the contract between Correction [O]fficers and the department, as familiar as they are, so maybe where I feel there may be room for improvement, there may be a contractual impediment.

I personally disagree with some of their findings. I personally strongly disagree with some of their findings.

I personally abhor some of their findings to the point that I think there is something rotten in Denmark.

It has been reported that the IGO lacks credibility in the Correctional system, in part as the result of these problems. Thus, IG investigators have, at times, encountered resistance in entering areas of a facility or in obtaining a facility's records. The reaction of a facility's staff to the IG has been reported to range from indifference to animosity.

#### The State Commission of Correction

The State Commission of Correction (SCOC) is the successor to the Commission of Prisons, which was created by statute in 1907\* to visit, inspect and investigate detention institutions for sane adults to insure their efficient and humane operation. In 1929, as part of a constitutionally mandated state government reorganization, the Commission of Prisons was renamed and the Commissioner of the Department of Correction was made the chairman, ex officio, of the SCOC. The new SCOC was empowered to close any local Correctional institution (as opposed to state operated facilities) which was unsafe, unsanitary or inadequate to allow for the proper separation of prisoners. Additional legislation, in 1965, gave the SCOC the power to establish and enforce minimum standards for the care, custody, treatment, supervision and discipline of inmates in local Correctional facilities. In 1970, a Correctional training program was established for local Correctional personnel.

After the Attica riot, in 1973, and based on a recommendation from the Jones Committee\*\* the Legis-

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\* See McKinneys Consolidated Laws of New York, Volume 10B, Correction Law (1968), historical note to former Section 40. The New York Red Book (1979-1980) indicates that the Commission of Prisons held its first meeting on July 17, 1895.

\*\* See Page 140.

lature transferred the SCOC, originally part of DOCS, to the Executive Department, to assure its autonomy and independence. The Legislature also reshaped its administrative structure and expanded its powers. SCOC was thereafter comprised of seven part-time Commissioners appointed by the Governor, subject to Senate approval. The existing powers, functions and duties of the SCOC were substantially continued, "principally including their power to visit and inspect correctional facilities,"\* to promulgate and enforce minimum standards, train employees and close local facilities. New functions, powers and duties were granted to the SCOC including: advising and making recommendations to the Governor and to facility administrators, for the improvement of facilities; facility research and analysis; establishing an inmate grievance procedure; and issuing annual and special reports.

In 1975, after the SCOC was "widely criticized for failing to perform the duties entrusted to it ...,\*\* Governor Hugh L. Carey directed this Commission (the Commission of Investigation) "to investigate the affairs of the [SCOC], including the conduct of Commis-

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\* Legislative Memorandum, Corrections-State Commission, Laws of 1973, Chapter 398.

\*\* Governor's Memorandum, Correctional Institutions-Grievance Procedures, August 9, 1975.

sioners and staff in relation to the performance of their official duties." The New York State Senate's Standing Committee on Crime and Correction, chaired by Senator Ralph Marino, also conducted public hearings.

The SIC Report,\* issued on June 16, 1975, stated that the SCOC's statute was "not self-executing" and "required dynamic implementation." It concluded that the SCOC Commissioners had failed to fulfill their statutory obligations and should be asked to resign.\*\* The SIC Report recommended that full-time Commissioners be named; an effective method be established to receive and act on allegations of improper administration and that surprise, unannounced inspections of Correctional facilities at any hour be instituted; minimum standards be revised and updated; and the SCOC's statutory powers be fully used--including the use of public hearings and reports.

In response, the Legislature reorganized the SCOC to establish "a full-time and vigorous watchdog organization to oversee the performance of the state and

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\* Report of the New York State Commission of Investigation Concerning the State Commission of Correction, June 16, 1975 (SIC Report).

\*\* Of seven part-time Commissioners, only four remained when the SIC Report was issued; one retired prior to the investigation, another resigned on the day she was to appear before the SIC and a third submitted his resignation after appearing before the SIC.

local correctional system and to create a mechanism for the fair resolution of grievances in correctional institutions."\* The SCOC was now composed of three full-time Commissioners. A Citizens' Policy and Complaint Review Council (Citizens Council) was created\*\* to investigate complaints or grievances regarding local facilities and to assist in the development of programs to improve the SCOC and the conditions of confinement in Correctional facilities. Other SCOC functions--the Medical Review Board,\*\*\* visitation, the power to close facilities, training and the establishment of grievance mechanisms - were continued and strengthened.

The SCOC continued to be a controversial agency, beginning with debate centered on the appoint-

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\* Governor's Memorandum, Correctional Institutions - Grievance Procedures, August 9, 1975, approving Chapters 865, 866, and 867 of the Laws of 1975.

\*\* The Council is composed of seven members appointed by the Governor, with Senate approval, for five years, including one attorney and a former inmate of a Correctional facility. The Chairman, designated by the Governor, is one of the SCOC Commissioners, other than the Chairman of the SCOC or the Medical Review Board. Correction Law §41.

\*\*\* The Medical Review Board is composed of four members appointed by the Governor with Senate approval for five years. They include a pathologist, psychiatrist and an attorney. The Chairman of the Medical Review Board is one of the SCOC Commissioners, other than the Chairman of SCOC or of the Citizens' Council. Correction Law §43. The SCOC 1978 Annual Report indicates that the fourth member of the Board is a Registered Nurse.

ment of the full-time Commissioners, and has again been subject to criticism. The State Comptroller's Office audited selected operating practices of the SCOC in 1978 and concluded that "[a]lthough the reorganized [SCOC] achieved a number of major accomplishments, it has not effectively carried out its oversight responsibility as the 'watchdog' of the state's correction system."\*

In 1978, the State's Division of the Budget also analyzed the SCOC's performance in overseeing the Correctional system.\*\* The DOB Report found that policy decisions of the SCOC were not effectively coordinated or implemented as there was an absence of central administrative direction -- a lack of planning and focus; the SCOC staff was being ineffectively deployed; and deficiencies which had been noted in the Comptroller's Report continued to exist.

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\* Selected Operating Practices, Executive Department, State Commission of Correction, March 31, 1978. Audit Report AL-St-65-77, Office of the State Comptroller, Division of Audits and Accounts; Report filed December 29, 1978 (Comptroller's Report). The SCOC responded to this report in detail on April 9, 1979.

\*\* Division of the Budget, Briefing Document, Commission of Correction, September 12, 1979 (DOB Report).

## Green Haven Report

On October 13, 1978, the SCOC issued a report (SCOC Report), in letter form,\* assessing conditions at Green Haven "from a managerial perspective."\*\* The SCOC Report was based on an evaluation period extending from July 25 to July 28, 1978 and two previous facility visitations (in January and April, 1978). The evaluation was prompted by conditions at Green Haven that included: a high rate of assaults, and complaints by inmate groups and organizations or their friends or relatives; and previous facility visits which had supported many of the complaints, showed diminished staff morale and revealed that corrective action on operational problems was not being taken. "[T]he decision . . . to perform a management analysis whereby [the SCOC] would study the approach the management team used to run the facility" was due to what the SCOC Report characterized as a "pervasive and intense" dysfunction.\*\*\* The three

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\* The SCOC Report, close to one hundred pages long with several attachments, was sent to William Gard, DOCS Deputy Commissioner for Correctional Facilities, by Robert E. Eisenberg, SCOC State Facilities Bureau Director, in a letter dated October 13, 1978. On September 24, 1980, the SCOC formally accepted the Report. SCOC Resolution 80-2.

\*\* SCOC Report, page 97.

\*\*\* SCOC Report, page 1.

primary areas addressed in the SCOC Report were Green Haven's leadership, inmate programs and procedures and staff problems. Official corruption was not discussed,\* except in a review of procedures which were found on previous SCOC visits to the facility relating to the handling of inmates' packages and staff searches.

The SCOC Report concluded that the conditions at Green Haven were the result of poor management. The management of Green Haven under Superintendent David Harris and his deputies was described as ineffective, -- resulting in low morale and staff transfers. Harris and his executive and managerial staff, the Report stated, should not have blamed poor conditions at Green Haven on the high rate of staff turnovers, staff shortages, budgetary problems and the "over control or lack of responsiveness"\*\*\* of DOCS Central Office. The Report recommended that Harris become more involved in all areas of management -- by attending numerous executive and managerial staff meetings, touring the facility, using a more formal management process of minute taking and report writing, monthly reports and follow-ups and utilizing DOCS Central Office staff as consultants or

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\* Former SCOC Chairman Stephen Chinlund has testified that the SCOC did not specifically focus on corruption investigations.

\*\* SCOC Report, page 10.

advisors on major or minor problems that are difficult to resolve.

The major portion of the SCOC Report concerned inmate programs and procedures, in particular the procedure for disciplining inmates. Recommendations were made for improving these procedures to make them more "inmate responsive." Other inmate programs and procedures were also discussed.

The SCOC Report's managerial critique makes many valid points. However, while the Report noted that the staff viewed the Superintendent as bogged down in "paperwork,"\* its recommendations for improvement appear to require numerous meetings, tours and reports by him. Staff turnover -- described by the Report as "beyond the facilities' control"\*\*\* -- is also blamed "to a large degree" on poor management.\*\*\* Many of the recommendations in the Report for solving the turnover problem, however, appear to require DOCS Central Office action. Officer training would seem to be a Central Office function, yet the Report's training recommendations place a heavy burden on the facility.

The SCOC Report, which places a heavy emphasis

- \* SCOC Report, page 10.
- \*\* SCOC Report, page 3.
- \*\*\* SCOC Report, page 12.

on inmate programs and procedures, must also be viewed in relation to the changing focus in the Correctional system from inmate to security oriented programs as well as parallel events. On May 5, 1978, Albert Victory escaped from Green Haven as a result of the corrupt acts of Correction Officers. The SCOC Report cites the escape as an issue affecting the facility but beyond its control.

On May 23, 1978, disciplinary charges were brought against Superintendent David Harris and his Deputy by DOCS in respect to the escape. On May 23, 25 and June 14, the SCOC held hearings, primarily related to the issue of advance warning of the Victory escape.\* In July, prior to the arrival at Green Haven of the SCOC evaluation team, Commissioner Ward resigned. The charges against Harris and his deputy were dropped on August 8, soon after the appointment of a new DOCS Commissioner. The SCOC Report, actually issued after the charges were dropped, called for the swift disposition of the charges because of the effect on the job performance of subordinates and co-workers.

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\* See page 101. The SCOC issued a draft report on the escape discussing the advance warning, screening for outside dental visits and security preparations for transporting prisoners. Report of the State Commission of Correction: The Albert Victory Escape. Draft dated September 18, 1978. No final report was issued.

The seven-member SCOC evaluation team arrived at Green Haven on July 25 and remained until July 28.\* SCOC staff members went to Green Haven regularly to study problems and sent "superintendent's letters."\*\* However, the large size of the team and the magnitude of the managerial study was considered unusual by DOCS and SCOC.

The SCOC issued its Report in a letter to DOCS Deputy Commissioner William Gard on October 13, 1978. Superintendent Harris, hearing of the Report's issuance from SCOC staff members, requested a copy from SCOC and DOCS Central Office but did not receive it until February 24, 1979.\*\*\* Soon after, DOCS Central Office sent staff to Green Haven to prepare a response. Deputy Commissioner Gard transmitted a detailed 21-page response to former SCOC Chairman Stephen Chinlund on

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\* Members of the evaluation team have told the Commission that the idea of performing managerial analysis at Green Haven had been proposed prior to the Victory escape. DOCS was notified in advance of SCOC's intentions and indicated their approval.

\*\* Superintendent's Letters identify deficiencies and problems at a facility and include recommendations. The letters are sent to the Superintendent and DOCS Central Office with a response due in thirty days. SCOC 1978 Annual Report.

\*\*\* Former SCOC Chairman Chinlund testified that normally Harris would have received a copy of the Report at the same time as DOCS Central Office. However, under a practice begun at former DOCS Commissioner Ward's request, the Report was only sent to Central Office.

October 11, 1979, almost one year after the Report was issued. In testimony before this Commission, Deputy Commissioner Gard could not recall but assumed he had seen the SCOC Report, and discussed its contents with the Commissioner and Superintendent Harris since it was addressed to him.

While the SCOC Report was cause for immediate concern at DOCS Central Office, it merely restated long standing problems.\* Deputy Commissioner Gard stated:

Q. Do you recall whether this report -- it is quite lengthy . . . -- whether it had a particular impact at the central office? . . . [W]as it a cause for immediate concern and immediate action?

A. It was a cause for immediate concern, of course.

Q. . . . [W]as this basically a restatement of problems that were already known to the Department or was the information provided in this report in some way new?

A. Information I would say was probably restatement; perceptions are not information.

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\* In fact, several of the problems addressed in the SCOC Report including high staff turnover and large overtime payments had previously been discussed in a DOCS Personnel Department report in April, 1975, in relation to a previous Superintendent. This 1975 report also placed responsibility for Green Haven's problems on the Superintendent, who complained of "Albany's [DOCS Central Office] failures."

Indeed, some of the areas addressed by the SCOC had plagued Green Haven since it opened. Gard continued:

Q. Are you aware of how long Green Haven has had a staff turn-over problem?

A. Since the day it was opened in the late '40's.

Deputy Commissioner Gard believed that management problems, in particular, were endemic at Green Haven.\*

Q. Did you have any particular view as to [Superintendent Harris'] management of [Green Haven]?

A. I was aware of the management problems at that facility, and I believe that Superintendent Harris was having a great deal of difficulties, I believe, any superintendent would have, working in those circumstances.

Gard had no specific recollection of reviewing the SCOC Report or the preparing of a response, nor was the response available in the DOCS Central Office files or at Green Haven.\*\*

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\* A DOCS Management Analysis Team visited Green Haven in mid November, 1978, and reported on some of the problems previously addressed in the SCOC Report. Superintendent Harris responded to this Report on January 8, 1979.

\*\* This Commission obtained a copy of the DOCS response from the SCOC Bureau of State Facilities.

The SCOC Report surfaced again late in 1980. On June 22, 1980, Herminio Espinal and Antonio Capoul escaped from Green Haven. The DOCS Inspector General's Office investigated the escape and issued a report on July 10, which was critical of Superintendent Harris and suggested disciplinary charges against his Deputy for Security (see page 127). Then, on July 18, William Cody escaped from Green Haven (see page 129). On July 21, as a result of the escapes, Superintendent Harris was transferred to Taconic Correctional Facility.\* Disciplinary charges were filed against his Deputy for Security on December 26 in relation to the escapes. Approximately one month after his transfer, Harris was contacted by members of the press who had received a copy of the SCOC Report (but not the DOCS response) and were using it in preparing a series of articles on the prison system which ran in December, 1980.

An SCOC Resolution, on September 24, 1980, formally accepted the Report stating that it "has stimulated considerable interest, both within [DOCS] and

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\* Superintendent Harris has stated that on July 21, 1980 he was called to Deputy Commissioner Gard's office in Albany and advised of his immediate transfer to Taconic Correctional Facility. Gard forbade him to return to Green Haven, even to retrieve his personal vehicle or property. It is noted that items of correspondence concerning the SCOC's Report are missing from Green Haven's files. The DOCS response is also missing from Central Office files. See footnote, page 174.

in the press; and . . . it has been informally circulated among the general public."\* Former Chairman Chinlund testified that the SCOC finalized the two-year old Report because it had been released to the press by DOCS.

The SCOC is still an agency in transition. At the end of 1980, Governor Carey nominated J. Kevin McNiff, DOCS Deputy Commissioner for Program Services,\*\* to replace SCOC Chairman Stephen Chinlund. The SCOC currently oversees more than 350 state, county and local facilities housing more than 45,000 inmates with a staff of less than sixty and an appropriated budget, including federal grant funds, totaling just over \$1,500,000 in the state's 1980-81 fiscal year. The State's Executive Budget for fiscal year 1981-82\*\*\* proposes a reduction in the SCOC's state and federal funding and the transfer of certain programs to other agencies. The new budget recommendations "reflect a continuing commitment to focus the staff resources of the [SCOC] on broad policy concerns."\*\*\*\* Accordingly, the training program for local Correctional Officers

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\* SCOC Resolution #80-2.

\*\* See page 55.

\*\*\* New York State Executive Budget, Fiscal Year 1981-82 (Executive Budget), submitted to the Legislature by the Governor on January 19, 1981.

\*\*\*\* Executive Budget.

is to be transferred to DOCS (which maintains a training academy for State Correction Officers) and the SCOC's Bureau of Construction Review\* will be abolished, with technical assistance in the review of construction plans to come from the State's Office of General Services. The SCOC will retain the power to review health systems and process inmate grievances.

#### Conclusion

The IGO and the SCOC were both formed to address specific inadequacies in the Correctional system. The IGO has, from the beginning, been hampered by a lack of staff and training and is viewed by many as ineffective. The SCOC has for many years been an agency in controversy and is currently undergoing yet another change in direction.

The IGO can not properly investigate corruption in the Correctional system; the SCOC was not created for this purpose. This Report presents recommendations which will provide a basis for an effective corruption fighting unit within the Correctional system.

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\* The SCOC is charged by law with approving or rejecting plans and specifications for the construction or improvement of Correctional facilities. Correction Law §45(10).

#### EARLY RESULTS OF THE COMMISSION'S INVESTIGATION

The Commission's investigation has already brought significant positive results.

On July 24, 1980, soon after the Commission issued its Interim Report on the Escape of Albert Victory, the New York State Parole Board rescinded the parole granted to Joseph Tremarco on June 30, 1978, pending a hearing. Tremarco was then at Lewisburg Penitentiary and still is under the jurisdiction of the federal government. A detainer was placed on file so that he will be returned to state custody at the completion of his federal sentence. The United States Parole Commission, after retarding Tremarco's parole, originally scheduled for July 18, 1980, issued a determination of no parole and a continuation of his incarceration until the expiration of his sentence.

The two Correction Officers responsible for the custody of Albert Victory, Sergeant Roger McGibney and John Panarello, Jr., had both testified before the Dutchess County Grand Jury without waiving immunity. They were, therefore, immune from prosecution as to the matters to which they testified, i.e., the escape. In testifying, however, they both continued the fabricated story of the escape and committed perjury. Accordingly, as a result of testimony received by this Commission,

McGibney and Panarello were both charged with Perjury in the First Degree, a Class D felony. McGibney waived a hearing before the Grand Jury and pleaded guilty, upon a recommendation to the Court by the District Attorney and the Commission that he be sentenced to a term of no more than one year to be served in a county jail. The recommendation was based on McGibney's having cooperated, to a degree, with the Commission's ongoing investigation of Green Haven. In February, 1981, he was sentenced to ten months in the Dutchess County Jail. Panarello pleaded not guilty.

As a result of the revelation by the Commission of the truth of the Victory escape, the search for Albert Victory took on new dimensions. The Commission endeavored to stimulate the investigations of other law enforcement agencies by providing them with information it had gathered concerning Victory's whereabouts. Albert Victory was finally recaptured in California on February 24, 1981, two and one-half years after he escaped.

Susan Black, Victory's girlfriend and constant visitor, is suspected of aiding in his escape. A warrant was issued for her arrest on a charge of Escape in the Second Degree. Her whereabouts are currently unknown.

The information gathered by the Commission continues to be used in levying criminal charges against corrupt Correctional personnel. John Hues, formerly a Sergeant at Green Haven and a Lieutenant at Mid-Orange Correctional Facility, was charged with Hindering Prosecution in the First Degree, a Class D felony, for preventing and obstructing the investigation of the Victory escape; and Grand Larceny in the First Degree, a Class C felony, for using his position as a Correction Officer to extort money, or property from inmate Jerome Rosenberg. Hues pleaded not guilty to the felony complaints. In February, 1981, a Dutchess Grand Jury failed to return an indictment on the charge of Grand Larceny by extortion.

Edward Fanelli, Jr., who the Commission believes bribed Correction Officers for allowing him to make unauthorized stops while on outside trips, is in default of his subpoena to appear and give testimony before the Commission. Fanelli, convicted of conspiracy and counterfeiting charges in the United States District Court for the Western District of New York, failed to appear for sentencing. On April 14, 1980, a warrant was issued for his arrest. He remains a fugitive.

Information concerning certain corrupt activities by Correction Officer Frederick Miles was provided to the Dutchess County District Attorney's Office. In

April, 1981, the District Attorney presented the case to the Second Term of the Dutchess County Grand Jury. The Grand Jury indicted Miles on charges of Receiving Reward for Official Misconduct in the Second Degree, a Class E felony, and Official Misconduct, a misdemeanor. On May 1, 1981, Miles was arraigned on the criminal charges and entered a plea of not guilty. He has been suspended from his position at Green Haven.

Changes were made at Green Haven in the wake of the Commission's investigation. On February 25, 1981, DOCS issued revised Directive #0053, which describes Green Haven's function and the type of inmates to be placed there. A previous Directive #0053, dated July 12, 1976, described Green Haven as especially suited for ". . . [f]elons, with long sentences, who have been found disruptive in a more relaxed treatment setting . . .". Green Haven was designed to accept inmates whose "[p]rior . . . confinements [were] characterized by poor adjustments" and who had "[n]umerous conflicts with the law indicating aggressive and assaultive behavior."

The revised Directive #0053 describes Green Haven as a "Maximum A Security facility" and is designed to turn Green Haven into what has been referred to as a "model facility." Green Haven is now "designed to maximize program performance and as such [DOCS] will be selective in screening and placing inmates . . .".

To be assigned to Green Haven, inmates must now demonstrate a satisfactory adjustment for a minimum of one year. Assaults, contraband possession, escapes and misbehavior which resulted in confinement in the Special Housing Unit will be a bar to placement or may result in transfer from Green Haven. Special programs have been designed or emphasized in order to make Green Haven more attractive to stable inmates and encourage good behavior, such as the Family Reunion Program (see footnote, page 23). Green Haven has also upgraded its in-house training program for officers.

#### CONCLUSIONS AND RECOMMENDATIONS

As this Report has demonstrated, widespread corruption and related abuses have existed at Green Haven, in part as the result of well intentioned reforms instituted in response to the Attica uprising. The Commission does not intend to imply by this Report that the majority of Correction Officers are corrupt. However, even honest officers have failed to report the corruption and favor-taking of others. The new inmate programs and the lax or corrupt attitudes of the officers and supervisors, caused dissension and demoralization within the ranks. Veteran officers sought out job assignments which required little or no inmate contact. Green Haven experienced a constant turnover of its security staff, resulting in a continuous influx of untrained Correction Officers.

The Commission's investigation has revealed corruption ranging from petty pilferage and favors to escapes. Escapes have the most visible and direct impact on the public, but they are not necessarily the most important result of corruption. An inmate entering Green Haven is faced with corruption that has become so institutionalized that for the prisoner, to whom laws meant little on the outside, prison rules mean even less. Correction Officers perform a dangerous job and

are not highly paid or educated. Guards have a great amount of discretion over inmates, and some will always accept bribes from inmates who are always on the "con".

The Correctional system requires constant vigilance and efficient security. A change in emphasis from inmate-oriented to security-oriented programs does not require the abandonment of advances made in inmates' rights over the past decade. It does mean that corruption must be rooted out and effective steps taken to insure against its resurgence. Credibility and confidence must be restored to DOCS' corruption-fighting efforts and changes must be made to assure the secure and humane operation of the state's prison system.

Decisive steps are necessary. Resorting to excuses, such as blaming union interference or the union contracts, will not do. In blaming a multitude of problems on union interference, prison officials appear to be conjuring up excuses for failures in their own performance. It is appropriate to note that this Commission's investigation or activities were never interfered with by any union attempting to protect Correction Officers who had committed improper or illegal acts. What is needed is a higher standard of performance by those who run and monitor the prisons.

The Commission has found that it is difficult to persuade inmates and officers to provide information

about prison problems, especially corruption. If they do not believe that their cooperation will have an impact and that an investigation will be effective, they will definitely not be cooperative. Many inmates and guards have seen investigations come and go, and have no faith in the ability of the Inspector General's Office.

Accordingly, the Commission recommends that the Legislature establish a temporary commission, with members appointed by the Legislature and the Executive, to investigate and make recommendations with respect to the extent of corruption within other facilities and the overall management and affairs of DOCS. The Commission also recommends the establishment of a properly staffed, trained and equipped DOCS Inspector General's Office.

DOCS cannot properly function without a credible Inspector General's program. The Inspector General's Office, as presently constituted, consists primarily of a small staff of former Correction Officers, who are often sent back to investigate their former prisons. The Inspector General's Office, beset by staff and equipment shortages, burdened by an inexperienced staff and widely-viewed as ineffective, should be restructured and given the power that will earn it respect from both inmates and officers. One cannot expect a staff of just over 25 to investigate over 30 facilities with more than 20,000 inmates and 12,000 employees.

A new Inspector General's program should be completely independent of the budget of any facility or of DOCS Central Office and should provide for internal advancement. The Inspector General should be staffed with a full compliment of trained personnel. Disciplinary action should be handled through departmental trials, similar to the New York City Police Department.

An effective Inspector General's Office is particularly important because there is no other organization effectively monitoring corruption in the Correctional system. The State Commission of Correction, for many years an agency mired in controversy, is not designed, staffed or intended to act as a corruption-fighting unit. Furthermore, recent statements by the newly-named Chairman and in the Governor's Executive Budget have given the Commission of Correction a policy-making role.

Other changes are necessary as well. Regulations must be promulgated to account for the problems of every type of facility. Regulations, however, are meaningless if they are not enforced. All employees of DOCS should be provided with the Department's guidelines and regulations, and they should be regularly updated, like the New York City Police Department's Patrol Guide. Records, which are kept on virtually every aspect of prison operations and life, should be regularly audited

by officials within the prison as well as by outside agencies. Correctional officials must be prepared to take responsibility for their actions and policies and cease unseemly scrambles to avoid blame or place blame on others in crisis situations.

The state's long standing policy of allowing employees dismissed for cause to receive a pension should be reviewed. A pension is a contractual award to an employee for length and fidelity of state service. All honest Correction Officers are dishonored if the corrupt members in their ranks are rewarded. An employee should not receive a lifetime pension as a reward for infidelity. However, payments to the pension system made by a dismissed employee should be returned to the employee.

The Commission does not profess to have all the answers to the problems of corruption and mismanagement in the prison system. Indeed, there are no easy answers. Many of the problems in the system are endemic and are part of the history of Correctional facilities in the United States. It is certain, however, that the Correctional system in New York is growing and facing a new "decade of change." A full investigation of the Department of Correctional Services and the establishment of an effective corruption-fighting unit within DOCS will help re-

establish the public's belief in the honesty and integrity of Correction Officers; insure that prisons serve the ends of punishment and rehabilitation for which they were established; and remove abuses from humane inmate programs. Such actions will benefit Correction Officers, inmates and the public.

**END**