FINAL REPORT AND RECOMMENDATIONS
on
THE INVESTIGATION OF THE WORKMEN'S COMPENSATION SYSTEM

A Report by
The New Jersey State
Commission of Investigation
January, 1974

The Commission of Investigation

of the State of New Jersey

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January, 1974

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

The New Jersey State Commission of Investigation is pleased to submit its final report and recommendations on the investigation of the Workmen's Compensation System pursuant to Section 10 of P. L. 1968, Chapter 266 (N. J. S. A. 52:9M–10), the Act establishing the Commission.

Respectfully submitted,

Joseph H. Rodriguez
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BACKGROUND OF THE INVESTIGATION

A humane method for compensating individuals for work-connected injuries was first established in New Jersey by a 1911 act of the Legislature. The Workmen's Compensation system flowing from that act is designed to provide social protection through a strictly statutory formula for awarding compensation without regard to the fault of the employer or the contributory negligence of the employee. The cost of this social protection for working people in New Jersey is passed along to the consuming public in the prices they pay for goods and services.

It was the hope of the framers and supporters of the Workmen's Compensation Act that the system would function largely in an administrative fashion with emphasis on adequate compensation being paid promptly to those suffering permanent disabilities from employment injuries. The act, however, recognized that compensation claims often would be subject to dispute, and it accordingly established the Workmen's Compensation Courts to provide a formal process for litigating claims.

The Growth of the System

During its 63 years of existence, the Workmen's Compensation system has grown into a massive and complex monolith. The system now involves the payment of vast amounts of money annually. Employers pay in excess of $274 million per year in insurance premiums for Workmen's Compensation coverage in New Jersey. In addition to that figure is the cost of Workmen's Compensation benefits paid by companies of sufficient size and fiscal resources to insure themselves.

According to State Labor and Industry Department records, approximately $100 million is dispensed annually by the system as compensation awards to injured individuals. That figure represents substantially more than is processed annually by the civil courts in New Jersey.

The Workmen's Compensation system has become quite complex because over the course of six decades it has established by statutory interpretation, case law, and regulatory and administrative

procedures, as well as custom and practice, its own individual and multi-faceted procedures, processes, and standards for handling claims, making awards and establishing premium rates charged by insurance carriers.

Surges for Reform

During recent times, there has been almost once every decade a surge toward comprehensive overhaul and reform of the Workmen's Compensation system. Each time in the past the surges have been unable to generate sufficient consensus to achieve that goal. The result has been piecemeal changes in the system from time to time. Some of the most frequent criticisms over the years have been that the system pays too much money overall for lesser injuries and not enough for the more serious injuries and that too much money is siphoned off by the system in relation to the amount of money paid to injured workers.

The latest 10-year surge toward reform has developed during the past several years. It has been spurred not only by the same criticisms of the past but also by some new trends and some allegations as to abusive practices.

In the past decade, the resort to the formal process* involving resolution of compensation cases in the Workmen's Compensation Courts has increased vastly, while resort to the two administrative type processes for resolving cases has shown virtually no increase. Those two processes are direct settlement between the employer and the injured worker and the informal process** presided over by Referees of Compensation. Additionally, the injured worker as of 1973 was receiving less than half of each dollar paid for Workmen's Compensation insurance premiums.

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* In the formal process for arriving at Workmen's Compensation awards in the Compensation Courts, the injured worker (petitioner) undergoes competing medical examinations and evaluations of the degree of his permanent disability by a petitioners' doctor and doctors for the employer or his insurance company (respondent). The competing evaluations are in the overwhelming majority of cases subject to settlement on a compromise figure at the pre-trial level, although some cases involving more complex disputes are given full trial-like hearings. The fees for attorneys and doctors involved in the cases are assessed by the Court against petitioners and respondents. The maximum petitioners' attorney fee allowable in a formal case is 20 per cent of the amount awarded as compensation.

** In the informal process, the injured worker is examined by a state-paid doctor who makes his evaluation of the degree of disability. The doctor's report is available to the Referee of Compensation who makes a determination of the award based on the degree of disability. The maximum allowable petitioners' attorney fee at the informal level is 10 per cent of the award. If the petitioner is dissatisfied with his award at the informal level, he may proceed to the formal level.

The Request for Investigation

Besides statistical indications that the system may have gone awry, there were persistent reports and allegations that the atmosphere in the Workmen's Compensation Courts had evolved to a point where irregularities, abuses and even illegalities were being ignored or tolerated. A series of newspaper articles in 1971 dwelled at length on some of the alleged abuses said to be flourishing in the system to the possible detriment of the system's primary goal, namely that it operate principally in the best interests of the injured worker.

As a result of the mounting hue and cry about the ills of the system, the then State Commissioner of Labor and Industry, Ronald Heymann, appointed his then Executive Assistant, Mr. Charles Rosen, to investigate the reports and allegations. Mr. Rosen's subsequent inquiry and report convinced Commissioner Heymann that some of the allegations should be referred to an investigative authority. After discussion between members of the State Labor and Industry Department and the Office of the State Attorney General, a decision was made to refer the matter to the State Commission of Investigation (S.C.I.).

Preliminary inquiry by the S.C.I. into the Workmen's Compensation system commenced in July, 1972. For the ensuing five months, some 100 interviews were conducted throughout the state by Commission personnel. Additionally, several subpœnas were served. Among those interviewed were Judges of Compensation, petitioners' and respondents' attorneys and doctors, court reporters, various insurance company representatives, and several individuals who had been represented by a variety of attorneys from locations throughout the state.

Full Investigation is Authorized

By December, 1972 the Commission's preliminary inquiries had determined the existence of improper, abusive and even illicit practices. Accordingly, the Commission deemed it advisable to undertake a thorough investigation into the Workmen's Compensation system, an investigation which was authorized pursuant to a resolution of the Commission.

As the investigation progressed, facts were developed uncovering certain fraudulent bill padding practices among certain doctors and

attorneys in the liability or negligence area, as well as the compensation field. Consequently, pursuant to another resolution of the Commission, the investigation was extended to include billing practices between doctors and attorneys in the negligence action area.

By the Spring of 1973, the Commission was prepared to proceed with public hearings on the investigation after hearing in private session the testimony of 54 witnesses representing every level of the Workmen's Compensation system, as well as negligence plaintiffs. The public hearings were held May 1, 2, 8, 9, 15 and 16 and June 13, 20 and 22 in the State Senate Chamber in Trenton.

The subsequent pages of this report review and summarize in detail the testimony taken and exhibits marked at the public hearings. Suffice it to state here that the hearings covered four principal areas:

1. The pervasive atmosphere of the system
2. Abuses and improprieties
3. Fraud
4. The insurance rate making process

Recommendations Noted

At the opening of the public hearings, the then Chairman of the Commission, John F. McCarthy, Jr., observed in a statement he read into the record that the more the Commission examined the Workmen's Compensation system, the more it became obvious that nothing less than a lengthy, comprehensive look at all aspects and components of the system would be sufficient to attain the Commission's goal, namely to establish a basis for meaningful recommendations for legislative and administrative action to improve the system for the benefit of all involved in it.

The Commission's final recommendations, which include more than a score of proposed legislative and administrative actions, logically appear in this report after the review of the public hearings. The recommendations emphasize steps to halt further abusive practices and additionally suggest actions for improvements in the operation of the system.

The recommendations are summarized and presented in detail on pages 232 to 317 of this report.

Then Chairman McCarthy in his opening statement at the public hearings noted further that while the Commission originally had not anticipated undertaking an analysis of practices in the liability or negligence area, the Commission nonetheless intended to highlight publicly abuses uncovered in that area in hope of alerting the bench, the bar, the medical profession and the general public to those situations and obtaining legislative and executive correction where possible.

In concluding his opening remarks, Chairman McCarthy said:

> Let me state that this investigation should in no way be interpreted as impugning the statutory intent of Workmen's Compensation in New Jersey. The Commission recognizes the complete validity of and need for a humane system of compensation for work-connected injuries. The system, however, has developed an atmosphere and mode of operation which appear to stray from the central concepts of the Workmen's Compensation Act of 1911. The system needs an airing. Let us proceed with the investigation.

The Commissioners wish to express publicly in this report their appreciation of the extensive effort and expertise brought to bear on this comprehensive investigation by the S.C.I. staff as a whole and in particular by Mr. Joseph Zeller, who as Research Analyst was instrumental in developing the final recommendations presented in this report.

In keeping with the policies of the Commission and the provisions of the State Code of Fair Procedure, the Commission issues a reminder that any person who feels the material contained in this report tends to defame or otherwise adversely affect his reputation has a right to appear before the Commission and testify as to matters relevant to the testimony or other evidence complained of, or in the alternative to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of.

CHARTS AND STATISTICS

The New Jersey State Department of Labor and Industry compiles and stores on computer memory banks a wealth of statistical data as to the type and amount of Workmen's Compensation claims filed, how and where those claims are processed, and the compensation awards made in each case.

The Commission's public hearings commenced with the introduction of a series of charts based on statistics supplied by the Department. Mr. Charles A. Rosen, the then Special Assistant to the State Commissioner of Labor and Industry, testified as to the data, and their import, on the charts which were designed to establish graphically a factual setting for later testimony as to problems and abuses in the Workmen's Compensation system and as to suggestions for curing the system's ills.

Chart Number One (see page 323) shows that for the period 1962-72 total dollars awarded in Workmen's Compensation cases rose from $52 million in 1969 to a peak of $111 million in 1971. The chart shows additionally that this growth in total dollars awarded was paralleled by a similar increase in the dollar value of awards dispensed in formal cases which are litigated through the Workmen's Compensation Courts, and that the amount of dollars dispensed via the two less costly processes for awarding Workmen's Compensation dollars showed virtually no increase in the same 10-year period. Those two processes are the informal process supervised by state referees and the process of direct settlement between the employer or his respondent insurance company and the injured worker.

Chart Number Two (see page 324) shows a similar picture of the sharp growth in formal cases, compared to a decline in informal cases and direct settlements, during 1962-72, but on this chart, the growth and decline are expressed in terms of the number of Workmen's Compensation cases processed annually during the 10-year period. The chart specifically shows the number of formal cases processed as rising from 22,500 in 1962 to a peak near 37,000 in 1971.

From Charts One and Two, Mr. Rosen was able to conclude that the informals and direct settlements reflect only a small percentage

of the compensation award dollar, while there has been a huge increase in resort to the formal or litigated process which entails the added expenses of separate medical examinations by doctors for petitioning workers and by doctors for the employers of their respondent insurance companies, plus higher permissible awards of attorneys fees.

Chart Number Three (see page 325) shows data reflecting that for the years 1964-72, use of the Second Injury Fund has almost quintupled, with 69 new applicants having been placed on the fund in 1964, compared to 340 new applicants being so placed in 1971. Chart Number Four (see page 326) shows that the dollar value of allotted benefits from that fund has soared from $640,000 in 1964 to $4 million by 1972.

The Second Injury Fund is a system whereby a worker who has been disabled in a previous employment and then is totally disabled in a subsequent employment is compensated by the last employer for the last disability but balance of the cost of the worker's total disability is paid from the fund. A principal purpose of the fund, which is supported by assessments against employers', is to encourage employers to hire partially disabled workers by assuring those employers they will not have to bear the total cost of total disability if the worker is reinjured on the job.

Chart Number Five (see page 327) shows on a county area basis how the number of Workmen's Compensation cases alleging impairment from occupational diseases has increased dramatically in the period of 1970-72, with the greatest proportion—more than 1,200 cases in 1971 alone—being filed in Essex County.

Chart Number Six (see page 328) presents a three-year statewide history of occupational disease cases in terms of the number of cases and compensation award dollars. The chart shows specifically that the number of occupational disease cases increased from 2,985 to 5,062 and that the award dollars rose from $8.6 million to $12.4 million.

Chart Number Seven (see page 329) showed a similar three-year statewide history for Workmen's Compensation cases involving muscle sprains.

EXPERT WITNESSES

The early phase of the public hearings was devoted to eliciting of testimony from four witnesses who could, because of their experience and expertise, establish what are proper practices, procedures and standards for the Workmen's Compensation system and recommend steps for curing the system's ills.

Two of those witnesses are partners in two law firms handling substantial volumes of Workmen's Compensation cases. One is Matthew W. Parks, partner in the law firm of Tomar, Parks, Seliger, Simonoff and Adourian in Camden in Southern New Jersey. The other is Jacob L. Balk, senior partner in the firm of Balk, Jacobs, Goldberg, Mandell and Selighson in Newark in Northern New Jersey.

The other two expert witnesses are Judge Stanley Levine, Supervising Judge of the Workmen's Compensation Courts in Elizabeth, and Judge Roger W. Kelly, who at the time of the hearings was Supervising Judge of the Workmen's Compensation Courts in Newark but who has since been assigned to Perth Amboy.

Testimony of Matthew W. Parks

Mr. Parks' law firm handles about 400 Workmen's Compensation cases per year, most of them involving injuries of an orthopedic nature. He was asked to testify as to his practices and methods so that his testimony, when combined with that of Mr. Balk, would provide a yardstick as to the proper methods and practices followed by scrupulous attorneys for petitioners in compensation cases.

One abusive practice which was a subject of the Commission's investigation involves the frequent reference by some attorneys of their clients to favored doctors for unauthorized heat treatments. In the Workmen's Compensation processes, an unauthorized treatment is one that has not been authorized by the respondent insurance company or self-insured employer. Mr. Parks was asked about his practices in this area:

> *Q. Can you describe for me the circumstances under which your client would receive heat treatment?*

A. Only if the attending physician recommended it or if on his own he went to a doctor.

Q. In other words, you don't make it a practice of sending the client to a treating doctor?

A. No, sir, we don't practice medicine at all. If a client comes in and says they need treatment, we usually tell them to go to their family doctor, either one, to go back to the company physician. If he says he won't treat them any more, go to the family doctor and have him recommend somebody.

Q. Would you consider it improper for an attorney to send a client to a doctor for treatment?

A. Yes, I don't think it's within the attorney's prerogative to recommend treatment or even to make a determination that a client needs treatment. That's for a doctor to determine.

Mr. Parks was asked to comment on certain medical reports (marked as Exhibits C-8 through C-10) making reference to the sending of clients by a New Jersey law firm to Dr. Harold E. Lippman, a heat treating doctor who at the time of the correspondence had offices in Newark but whose offices are now in Irvington. Mr. Parks testified as follows:

Q. *Mr. Parks, I have, first of all, submitted to you certain medical reports beginning with C-8 through C-10. Now, I have removed the name, any references to an attorney, although I have left in the name of the treating doctor.*

A. Yes, sir.

Q. But, in any event, I would like you to look at C-8, and you might see the language there about halfway down the page which says, "Subsequent to the hospitalization he states he was sent to Dr. Lippman by his lawyer and this doctor treated him for eight months and the patient remained out of work for eight months"?

A. Yes, sir.

Q. I take it I would not find such a reference to a client of yours?

A. No, sir. If a client comes into our office and says he needs treatment and we find out from a medical

doctor that he does in fact need treatment, we then make a motion for medical treatment with the carrier through the courts and make a telephone demand on the carrier initially to go back to their own doctor.

Q. Thank you, Mr. Parks. I would assume, then, that your answer would be the same with respect to C-9 where the language is, "He," meaning the petitioner, "contacted the law offices of blank, who, according to the patient, arranged for him to see Dr. Harold Lippman of Elizabeth Avenue in Newark, New Jersey"?

A. Yes, sir.

Q. I would not expect to find that language in medical reports with reference to your clients, would I, sir?

A. No, sir.

Q. And similarly with respect to C-10, you will note the language in the middle of the page, "She," referring to the patient, "also saw Dr. Harold E. Lippman of Newark in February, 1971 heat treatments to her back and entire right side. She was treated by him for three months. She was sent to him by blank"?

A. Again, if the blank is an attorney,——

Q. The attorney.

A. No, we do not send our people for heat treatments or any kind of treatment.

Mr. Parks was also queried about a letter from the same New Jersey law firm requesting Dr. Lippman to give unauthorized heat treatments to a client:

Q. Will you read what the letter says, please?

A. It's addressed to the doctor, gives an in re with the patient's number, the file number of the law firm and it says, "Dear Dr. Lippman: Will you kindly commence treating client for his back injury as the insurance company refuses to render any further treatment. I am enclosing herewith for your information a copy of the hospital record in this matter. Very truly yours."

Q. The date of the letter again was?
A. July—January the 27th, 1969.

Q. Now, will you look at the patient card?
A. Yes, sir.

Q. And you will notice that this patient received a series of diathermy treatments ending August 5th, 1968 and then resuming some four months later, January 27, 1969. In other words, it looks like the doctor promptly followed the attorney's recommendation?
A. He did receive treatment. The patient received treatment the same day as the letter, yes.

Q. Is that letter proper as it's written?
A. In my opinion, I would say, no. I would send my client there in order to ascertain whether or not he does, in fact, need treatment, not——

Q. But you wouldn't——
A. I don't tell the doctor to treat. We send a client to a doctor to see if he's still temporarily disabled. If the doctor says he is, then we make a motion for temporary medical treatment. We don't tell the doctor to treat.

Q. Isn't this letter an open invitation to the doctor to treat the patient whether he needs it or not?
A. It's an instruction, start treating.

Q. It's an instruction without any reference to necessity?
A. That is correct.

An explanation was given by Mr. Parks as to how unauthorized heat treatments can be a factor in increasing the amount of money dispensed in a Workmen's Compensation case:

Q. Isn't it true that the issue of whether it was authorized or unauthorized is, first of all, an issue of fact which must be resolved at the settlement conference or at the trial?
A. That's correct.

Q. And isn't it also true that the parties may compromise on the issue of whether it's authorized or unauthorized, and what the respondent will say is, well,

I'll contribute so much toward Dr. Lippman's or Dr. so-and-so's bills, without getting into the question of whether it's authorized or unauthorized?

A. That has happened. The respondent will say, we'll pay $100, $200 toward unauthorized medical treatment, whether it be just physiotherapy or actual treatment, casting or what-have-you.

Q. So that it does become a factor, then, in the settlement fact?

A. The amount.

Q. The amount of the bill.

A. It can be a factor, yes.

Q. And the respondent many times will concede the issue of whether it's authorized or unauthorized and make a contribution towards the doctor's bill in order to dispose of the case?

A. Yes.

Another abuse which was a subject of the Commission's investigation entails the practice by some attorneys of automatically alleging neuropsychiatric injury in addition to the basic allegation of injury which is frequently a muscle sprain of the back complaint. Mr. Parks testified as follows as to his practice in this area:

Q. Mr. Parks, would you explain the circumstances under which you would send your clients for a neuropsychiatric examination?

A. I would send a client for a neuropsychiatric examination if the initial injury was to the head itself. If it were an injury to other parts of the body, I would send the client to the specialist in that field for evaluation, and if when I received that examining report back the doctor in there says that this man is emotionally involved in his complaints or he should be examined by a neuropsychiatrist, then we schedule an examination by the neuropsychiatrist.

Q. Can, you, looking back over, let's say, your filed formal claims for the year 1972, can you give me some estimate as to how often you might have sent your clients for a neuropsychiatric examination? Maybe is it one out of ten; one out of fifteen cases?

A. I would say less than one out of ten.

One questionable practice which came to the Commission's attention was that of a law firm providing a Workmen's Compensation client with a medical-legal memorandum setting forth details he could recite to examining doctors about his injury and his complaints of pain or other ailments. This practice was not indulged in by Mr. Parks:

Q. Now, do you have any occasion to provide your client with what I referred to as a medical-legal memoranda which would accompany him to the examining physician?

A. No, sir. When a client comes in, we do give them an envelope that tells them to stick receipts for drugs and things like that so that they have it when they come into the office. But we give them no instructions or no statement as to how the accident happened or what their complaints are when we see them, although we do take that information ourselves.

Q. In other words, you do not memorialize his list of subjective complaints, give him the memorialization and tell him to cart it around with him from doctor to doctor?

A. No, sir.

Among the allegations received by the Commission as to abuses in the Workmen's Compensation system was one concerning the practice of some attorneys and doctors purchasing lunches for judges before whom they were appearing regularly. Mr. Parks gave the following comment on that practice:

Q. I would like to ask you whether or not in your experience as a practitioner you have ever had occasion to purchase lunch for a judge of compensation.

A. No, I have not.

Q. And do you have an opinion concerning that practice?

A. Yes, sir.

Q. And what is that opinion?

A. I don't think that it should be done, and there is an administrative directive.

Q. I understand that there is, and that Canon 32 of the Canon of Judicial Ethics would prohibit it.

A. Yes, sir.

As graphically detailed by some of the charts marked as exhibits at the outset of the hearings, the number of formal Workmen's Compensation cases has increased sharply in recent years. The formal process involves the filing of a claim petition in the Compensation Courts, with additional expenses for competing medical examinations and evaluations by doctors in private practice. Additionally, Judges of Compensation may award attorneys' fees of up to 20 per cent of the compensation award while Referees of Compensation are limited to a maximum 10 per cent award of attorneys' fees in the informal process. Mr. Parks explained his views on what he considers to be some of the causes for the greater resort to the formal process:

Q. Now, I believe that I asked you, Mr. Parks, if you could enlighten me as to why in your judgment there has been an increasing tendency in the last decade toward the more expensive formal process, the formal cases.

A. Yes, sir. One, inadequate awards at the informal level. One figure that was not in your charts, called direct settlement reviews. You dealt with direct settlements, but the State of New Jersey has a program called the direct settlement review, and I believe that the last year that there was a direct settlement review the carriers or employers voluntarily paid almost $1 million in additional awards to injured workmen merely because the state listed it at an informal hearing and the man came in, was examined by a state doctor and received an award.

Another reason, as I say, the examination is not a complete examination. Therefore, the evaluation is not enough.

Another reason is the fact that the carriers are not paying temporary disability benefits and medical bills when they should. The people are being dunned. They have no money. They come in to an attorney and the quickest way of getting something done is by filing a formal petition and filing a motion for medical treatment, temporary disability benefits.

Q. Well, now, I know that when insurance companies drag their feet on the payment of temporary or medical, that some cases the footdragging is not justified because, as you explained to me, there may be situations where the injured worker has been taken right from the plant to the hospital and there should be very little question that the injury is work connected?

A. That's correct.

Q. But may it also not reflect a natural suspicion on the part of the insurance companies as to whether or not it's justified?

A. Yes, sir. If it's an unwitnessed back injury or something like that, they do have. They want to make a complete investigation. They are contesting most heart cases as being totally related on the job.

* * * * *

Q. All right, Now, Mr. Parks, in the area of informal, the informal settlement, you say that generally a doctor is brought in and there might be a list of fifty or sixty?

A. At an informal level the State hires a doctor. He's on the State payroll. I honestly don't know what that figure is now. Last year it was only 50-55. He got the same thing whether he lived in Pennsauken, whether he traveled to Camden, it took him ten minutes, or whether he traveled to Atlantic City and it took him an hour and a half to get there and an hour and a half to get back.

Q. But would it be common that he would have a list of fifty or so?

A. Yes, sir.

Q. So you have to concede his examination, of necessity, would have to be superficial?

A. Absolutely.

Q. And you stated it's not binding on either the petitioner or respondent, correct?

A. That's correct.

Q. So, in effect, these two impediments seriously jeopardize the effect of an informal hearing?

A. Yes.

Each expert witness was asked for opinions and suggestions for curing the ills which beset the Workmen's Compensation system. Mr. Parks placed primary emphasis on the screening of potential judges before their being placed on the Compensation Bench:

Q. Mr. Parks, what is your understanding of the manner in which judges of compensation are appointed?

A. At the present time?

Q. Yes, sir.

A. They're appointed by the Governor with the advice and consent of the senate.

Q. Well, from whence, generally, if you know, would the Governor receive his recommendations?

A. Well, I'm not sure. In some instances I'm sure it's political recommendations. The State Bar Association did attempt to have all proposed judges submitted to them for recommendations, and we did get one or two names, but that is all.

* * * * *

Q. I understand. I take it you would certainly approve of a better screening of candidates?

A. Absolutely.

Q. And would you think that such a screening should be the function of the State Bar Assocation?

A. I think it should be along the lines that the other judges, the judges of the civil courts are appointed. These people are—some of the people who appear in compensation, this is their only time in court. You're dealing with a lot of money to these people, and I think they're entitled to have qualified men sitting on the bench listening to the medical problems and other problems that they have.

Q. Well, that was one of the thrusts of my opening comments, that so many millions of dollars are disposed of on such expeditious procedures that it does

take a well-qualified man to handle such a circumstance, if the system is to work expeditiously, that is,

A. That is correct.

Q. —and without perpetuating some of the abuses that we have referred to. Would you agree with that, sir?

A. Yes, sir.

Mr. Parks was asked for and gave his opinion as to the qualifications of the Judges of Compensation who are well known to him:

Q. All right. Now, about the judges?

A. Of the judges, again speaking from Freehold, Toms River south, presently——

Q. Presently.

A. —there was one judge I would say is not qualified to sit on the bench. The others you would have to rate from fair to excellent.

Q. How many judges are we talking about?

A. About eight.

Q. So one out of those eight that you are thinking of you would rate as not qualified?

A. Yes.

Q. The other seven, fair to——

A. Excellent.

Q. —excellent?

A. Yes, sir.

Q. How many would you put in the excellent category?

A. Two.

Q. Two. So that leaves us with four who are qualified, one not qualified?

A. The others are qualified.

The importance of a strong Director of the State Division of Workmen's Compensation was stressed by Mr. Parks as a major step for improving the system:

Q. Well, let me ask you more specifically. What about a strong director?

A. Strong director?

Q. Yes.

A. The Division has been without a director for about a year, give or take. I believe it's of the utmost necessity that we get a strong director immediately, and I understand that that is in the process of occurring and may occur within a week.

Q. So that you feel many of the problems that beset the system are administrative?

A. Absolutely. I think that there are many tools within the framework of the present statute, if enforced, could move the so-called backlog, and I'm not convinced that there is a backlog, but move the cases. Penalize attorneys who are not moving their cases, whether they're petitioners' attorneys or respondents' attorneys, and a strong director could also move his judges around at will to different places.

Q. Well, then, I take it you would advocate a system where no judge was permanently in one location for any fixed period of time?

A. No, I don't say that's a bad situation, no sir. I just say that if a judge is not conforming, isn't putting in his time, isn't doing the job that he was appointed to do, he can be moved to a vicinage that will take him a little while to get to, a little while to get back from, and maybe convince him that he should do the job for which he was appointed.

Q. Well, this remedy that you suggest, I take it, is not being used presently?

A. It has not been used, to my knowledge, no.

Q. In other words, the assignment of judges to locations where they might be encouraged to work a little harder?

A. Not to my knowledge, it has not been used. Of course, we only have so many Belvideres you can send somebody.

Q. So many what?

A. Belvideres.

Q. Is that sort of like duty in the Holland Tunnel?

A. Well, it's all the way up where you have a lot of traveling, especially if you live in South Jersey.

Some suggestions were made by Mr. Parks which he believes would lead to greater use of the informal process for obtaining Workmen's Compensation awards:

> *Q. As a professional in the field, what would be your recommendations in order to buttress or build up the credence to be given an informal award or to dispose of cases at that level?*
>
> A. The State Bar committee, on which I sat as a member, has recommended several things. First of all, that the amount of $450 be raised to $550, which is, in effect, 2½ of total. Now, the rule is that all fingers and toes must go. The recommendation was that hands and feet also must go to informal. Proper enforcement of the penalty if the attorney does not utilize that informal level, and I would say a raise in pay to the state doctor to get some competent people in there. You have to remember that a state doctor, out of the fifty or seventy people he is going to examine, is probably a G.P. and he may be examining a hearing loss, a lung condition, an eye situation.
>
> Now, sometimes they will recommend, for my people in South Jersey, that they come all the way up to Newark for an eye examination or a hearing examination and then come back and they've lost another day's pay for the trip up, another day back here. I think that if the amount was raised, including hands and feet, and the judges and referees enforced the 5% fee rule, that you would see the informal utilized more as it should be.

Testimony of Jacob L. Balk

In 1972 a total of 209 Workmen's Compensation awards were made to clients of Jacob L. Balk's aforementioned law firm. The firm's compensation practice is conducted by Mr. Balk and three other attorneys, with the firm's specialty being occupational disease cases. Mr. Balk, like Mr. Parks, was asked about his firm's practices in Workmen's Compensation areas known to be subjected to abuses. He was first queried about his firm's practice relative to alleging neuropsychiatric injury in compensation cases:

Q. Now, Mr. Balk, would you explain for me the circumstances under which your clients are sent for neuropsychiatric evaluation?

A. Our clients are sent for neuropsychiatric evaluations in several different ways. In the first place, if a man comes in with a head injury, we send him initially to a neuropsychiatrist. That's the man we think of immediately.

If a man comes in with a serious injury, like an amputation or something of that nature, and he gives us complaints of nervousness and the fact that he's ashamed to go out, generally his wife comes along with him and she fills in some of the information that he refuses to go dancing, that he shuts himself up, he doesn't have anything to do with the children, we recognize that as a neuropsychiatric problem.

The additional way is when we send a man to a regular orthopedist or to an internist, a heart-attack case, and we get back a report from the doctor that this man should be seen by a neuropsychiatrist, in which case we send him to a neuropsychiatrist.

One other way, as long as I am, if we get the hospital record, which we generally do, and we see in the hospital record there is a diagnosis of a possible disc injury or radiculitis, then we feel it's a neurological problem and the man is entitled to be examined by a neurological.

Q. I take it if a client came in with a low-back strain or fingertip amputation, you wouldn't send him directly to to neuropsychiatric physician?

A. No, sir, never.

Mr. Balk then told of his firm's practice relative to heat treatments for clients and explained how the extent of treatment can be an influence in increasing the amount of a Workmen's Compensation award:

Q. Now, can you tell me the circumstances, Mr. Balk, under which your clients might receive heat treatment?

A. Well, to the best of my knowledge, again speaking from my experience in the orthopedic field, but I have spoken to my associates, we have never had a

client who had heat treatments. They may have had it while they're in the hospital, but once out of the hospital we have never had a client who had heat treatments.

Q. And certainly you have never directed a client to a doctor for heat treatment?

A. Never.

Q. Have you nevertheless, though, in your experience found that a judge of compensation would be influenced in awarding disability, or, rather, let's put it this way, one of the factors that he would consider in an award of disability is the number of heat treatments the patient has received?

A. Well, not only the number of heat treatments, treatment. The judges do consider treatment as an element in their criteria and the absence of treatment as an element in their criteria for evaluating disability. That is true.

When shown examples of letters, marked as exhibits, from a New Jersey law firm to its clients listing the injury complaints of the clients, Mr. Balk agreed there was a danger that this practice might lead to the clients' relying more on what their attorney has put on paper rather than on what the client actually feels in the way of pain or other ailments. Balk acknowledged that he was aware of the abusive practice of some attorneys in alleging in Workmen's Compensation cases involving occupational diseases a long string of injuries arising out of the same employment. He testified that his firm does not engage in this practice as a rule. One exception, he said, was when the statute of limitations was about to expire. In those instances, he will make multiple allegations but any allegation not supported by subsequent medical examination is dropped from the claim petition.

He was emphatic, however, in stating that his firm never would automatically allege, on its own and without a supportive medical examination and/or medical data, injury to areas of the body. He testified as follows:

A. So, when a man comes in and tells me he's worked in the chromate industry as a filter press operator or in the roasting department for ten, fifteen years and he shows me that he's got the perforated

septum, and he tells me that his throat is sore all the time, and he tells me that his chest is sore and he coughs, I believe him because I know this is par for the course, and we'll include a claim for nasal perforation, for nose and throat and for the chest. That's about it.

Q. You wouldn't presume any other disabilities, would you?

A. No, sir; no, sir.

Q. You wouldn't add eyes and hearing and nervous system?

A. No, sir.

Q. And would it be fair to state that if you were to allege a hearing loss or impairment of the eyes, impairment to the eyes or to the nervous system, that you would have had an examination by an internist or an EENT man?

A. Absolutely, unless it was such a clearcut thing where the man comes in we order a hospital record and we see that he was treated in the hospital for chemical burns of the eye and that he was discharged with a severe conjunctivitis. I mean, the proof is right there. But otherwise we have him examined first.

It's very important sometimes in order to process a case properly that we have additional information before we send a man to the doctor, and that's the reason why we sometimes file a petition before we have him examined by Dr. Lieb, for example, by some of the doctors, Dr. Berney, because without certain information the doctor's examination would really be valueless. We have to provide him.

We will get back a letter by Dr. Lieb, "I don't have enough information. What was the name of the chemical?" The people sometimes have bizarre ideas of what they were exposed to.

Q. Yes.

A. I had a man came in and claimed that he was exposed to asbestosis, to asbestos, and by the time we really found out what it was really all about, he never had been exposed to asbestos. He was exposed

to a cellulous product that was used as a substitute for asbestos.

So, you cannot rely on the petitioner all the time and you have to get information, and you cannot get that information until you file your petition.

Q. If I understand you correctly, even in those cases which you think may be obvious, you still might have an internist's examination?

A. That's correct.

Q. To pin it down?

A. That's correct.

Further testimony was given by Mr. Balk to the effect that he would never indulge in the practice, detailed in correspondence and claim petitions, marked as exhibits, wherein a New Jersey law firm continued to allege an additional multiple allegation of a hearing loss even after the examining physician found no appreciable hearing loss. The questioning of Mr. Balk on this matter by Special Counsel Ronald S. Diana concluded as follows:

Q. Do you think that this correspondence, these claim petitions that we have shown you, is an example of the abuse that I have been describing concerning the multiple allegation of unfounded claims in occupational diseases?

A. Mr. Diana, I beg to be excused from characterizing it, I will say that I would never do such a thing. I don't think—I don't think that these petitions should be filed in this way; that they should be handled in this way.

Q. All right. Thank you, Mr. Balk. I'll move on to another subject.

One of the Commission's concerns was that the cost of extra medical examinations prompted by unwarranted allegations of multiple injuries in occupational disease cases was a factor in increasing the cost of Workmen's Compensation insurance coverage. Mr. Balk testified as to the costs involved in extra medical examinations and as to one way the abuse of unwarranted allegations of injury might be impeded. The testimony makes reference to Exhibit C-22, a claim petition in which a New Jersey law firm alleges partial permanent disability to chest, lungs, respiratory

system, internal organs, heart, nervous system, nose, throat, hearing and complications arising therefrom. Mr. Balk testified as follows:

Q. Mr. Balk I would like to refer you again to Exhibit C-22.

A. Yes, sir.

Q. And considering the nature of the impairments described in Paragraph 12, how many different examinations would the respondent have to incur the cost of?

A. Knowing how the respondents prepare for these things, they would have to have at least three and possibly four doctors. They would have to have a chest man. They might have an internist who would do just the chest and the heart, but I myself, if I had a case like this, might probably come in with two internists, one who specialized in lung disease and one who specialized in cardiovascular disease. They'd need a neuropsychiatrist; they'd need an ear, nose and throat man or—well, that would be about it. They would need at least three, possibly four doctors.

Q. Do you know what the charge would be in the Newark area for such an examination by respondents' doctors?

A. Only by reputation, so to speak. I understand some of the doctors, respondents' doctors, the internists, charge $100 and some charge $125, exclusive of any special tests that they might do. I think the orthopedists charge somewhat less, and the ear, nose and throat man would probably charge around $75; to $75.

Q. So we are somewhere in the neighborhood of $300 worth of medical examinations——

A. That's correct.

Q. —that the respondent would have to incur the cost of as a result of those allegations?

A. That is correct.

Q. Now, Mr. Balk, I presume that in your experience in the compensation courts you have had occasion to observe the manner in which these cases involving

multiple allegations of disability are handled by respondents at the settlement level. Now, is it your opinion that they're too quick to settle some of these cases, the respondents?

A. That is my impression. As a matter of fact, I have gone on record with some of the respondents that I thought that if they would sit back on their haunches and fight some of these, that it wouldn't be necessary for them to make some of the complaints that they do make.

Q. Yes.

A. In other words, they're bearing—some of this trouble they're responsible for themselves.

Q. So that those petitioners' attorneys who might be prone to abuse the system through these multiple disability allegations might, you feel, be discouraged from so doing if the respondents were going to make a fight of it.

A. There's no question about it. That goes for some of these cases in which you have multiple petitions filed, also.

Like Mr. Parks, Mr. Balk was asked to give suggestions for possible ways to cure some of the ills of the Workmen's Compensation system. He was first asked for his opinion of the caliber of present Judges of Compensation:

Q. Mr. Balk, I would like to now move to another subject, the subject being judges of compensation. I would like to ask your opinion as to what percentage of the judges you feel are well qualified; what percentage you feel are qualified; what percentage you feel are not qualified.

A. Well, Mr. Diana, it's a rough kind of opinion I'll have to give you. I believe I've appeared before every judge in the state except the two new ones who were just—one of the new ones who was just appointed. I did appear before the other one. But some of them, of course, I have appeared before to a much greater extent than others.

I would say that there are five judges whom I consider erudite. I mean, you can really sit down and

discuss the law and the philosophy and they can try a case. Another five, I think, are quite well qualified. I would say roughly ten of them are average, and the balance, I don't know how many there are, I think I heard you mention thirty or somewhere.

Q. Thirty or thirty-five. I'm not sure.

A. Well, I would say that twenty of them range from excellent to qualified and the balance are below average. There are some of them that I shudder when I think that I might have to try a complicated cancer case before. And, as a matter of fact, very often I get into a situation like that and I work very hard to settle a case rather than run the gauntlet of getting a poor trial.

Mr. Balk also was emphatic in calling for better screening of Workmen's Compensation judicial appointees as a way of improving the caliber of the Compensation Bench:

Q. Do you think that the caliber of judges of Compensation could be improved if they were screened by some responsible Bar Association committee?

A. Very definitely. I mean, Matty Parks mentioned his experience when he was chairman. When I was chairman I tried to——

Q. Chairman of the Workmen's Compensation Section?

A. Chairman of the Workmen's Compensation of the State Bar Association.

I tried to get something like that going, and quite recently we actually at our meeting of the State Bar, the annual meeting of the State Bar, passed a resolution to the effect that we felt that the Workmen's Compensation Section should be considered in the appointment of workman's compensation judges,—I'm paraphrasing it—not to have the power to select them or to reject them, but to give our opinion as to their qualifications.

Now, you know the way the State Bar works. We cannot take any unilateral action—a section cannot take unilateral action. We had to clear that through the trustees of the State Bar. I'm sure Mr. Bertini

knows how it works. And we submitted this resolution to them and we got back a request from the trustees, would we consider withdrawing the resolution. We were going to present this to the floor, because we have the right to present it to the floor. We got back a request from them, would we withdraw it on the representation of the trustees that they were in contact with the executive branch and that the understanding was that these appointments would be submitted to the State Bar and that we would have a chance to give our opinion. But right after that two judges were appointed, and I have nothing against either one of them, but the point is that we never got a chance to give our opinion as to whether we felt they were qualified or not. They just ignored us.

Q. I may naively assume, perhaps, that after these hearings are completed the recommendation for screening may be given more weight.

A. I should hope so. I think it's important for everybody. It's important for everybody.

One of this witness's suggestions for enhancing the Workmen's Compensation Judiciary and its operations was to have those Judges of Compensation who preside over actual adversary trials placed in the judicial branch of government and be treated like judges of the regular state courts:

Q. What do you think about the suggestion that the judges of compensation should report to some authority other than the director of the division?

A. Well, you know, I've been involved in what you might call the politics of workman's compensation for many, many years, and this is another one of my pet ideas. In fact, I think two years ago you will find I wrote a letter to the Law Journal in which I summarized, really, what the duties of a judge of compensation were and what a good judge of compensation was called upon to do, and I recommended that they be made part of the judicial system, taken out of the Workman's Compensation Division altogether, and I've recommended that to the Governor's Study Commission, that the judicial—that part of workman's compensation which involves adversary trials

and the function of a judge as a judicial officer be taken out altogether and placed in the judiciary. That's my recommendation. I think it would be a wonderful thing. But if you're going to do that, then you really have to treat them as judges. You've got to give them a salary which is commensurate and give them the emoluments that go with it—secretaries, and sergeants-at-arms so they can feel that they're judges —and in that way we can help to attract able and qualified men who will really be capable of performing the job.

Workman's compensation is a very, very vital— I personally think it's the most important court. I may be a little bit jealous of it because I make my living at it, but I personally think it's the most important court in the state. More people get their knowledge about the function of state government through workman's compensation than in any other branch of our government. And as you have pointed out, we pay out an awful lot of money, and I think we should have very, very able men, and I don't think anybody has ever addressed himself to the problem of getting able, qualified men.

The Commission was deeply concerned by reports that respondent insurance companies often were slow in starting payment of temporary disability benefits to injured workers. Mr. Balk indicated in response to questions by Commissioner Thomas R. Farley that this abuse was quite common:

Q. Mr. Parks testified a little bit earlier on the point of temporary disability payments sometimes being neglected or caught in a bureaucratic mixup. Could you augment that at all, or have you run into that?

A. All I can tell you is, it's true. Mr. Farley, I can send you documentation, letters of a man who had his foot amputated. Now, I'm not talking about a man who claimed he had a back injury and then decides he's not going to work or take it easy. Here's a man in July had his foot amputated and in January he gets a letter from the insurance company that they're denying liability, and this is another problem you

face; the illiteracy and the naivety of some of your petitioners. This man from July until January sat at home waiting to hear from the insurance company because an adjuster had called him up and told him that they were working on it. In fact, they had come to the hospital and taken a statement from him. In January they first wrote him a letter that they're denying liability. This man did not receive one single penny, not even from the state, and the first thing I did when he came to me, he was told finally by—he went to his counsellor at rehabilitation, who had fitted him with the prosthesis. He said, "Well, why don't you go see a lawyer?" So, he went to a local lawyer in Paterson and he referred him to me.

The first thing I did, I called the TDB Division in Trenton. I said, why hasn't this man been getting temporary disability benefits from the state, because they're supposed to pick up. If the insurance carrier or the employer denies liability, the state is supposed to step in under their right of subrogation. They said, "Well, we can't do it unless the claim petition is filed."

I said, "Well, why wasn't the man told, at least, to go ahead and file?" Well, of course they didn't have an answer.

So, I went ahead and filed a claim petition for him and then I filed an affidavit guaranteeing reimbursement, and in March, for the first time, he got a check from the state picking up all his temporary disability back to July. But in the meantime he had had to give up his apartment, he had moved in with his son, and that was it.

Now, there are things like this happening all the time. We have cases. I had a man come into my office on a crutch with his leg in a walking cast. He had been out of the hospital for five weeks and he still hadn't gotten a penny of temporary disability from the carrier, although he had been taken right from the job to the hospital to have the cast put on, and this was right before Christmas and I called up the carrier. I said, "Why hasn't this man gotten his money?" Well, they didn't know. The investigator hadn't reported in.

I said—well, I told the man, "Here's what you do." I gave him a twenty dollar bill. I said, "Tomorrow morning you take your wife and the kids and you go up to that insurance company and you sit there, and when they ask you what you're doing there, you tell them that you're waiting for your temporary disability benefits and tell them to call me."

Well, he went up there. He did just as I told him. The call came through and I said, "The man is going to sit there until he gets some money. It's before Christmas." I said, "You've been waiting long enough." And as it happened, they did give him his money.

Not only that, I said, "In order to make up your neglect, I think you ought to pay him at least four or eight weeks in advance," and they gave him four weeks in advance so he had a decent Christmas. This happens.

Q. You're not talking about a similar instance, now. Is it much more prevalent than that?

A. It's prevalent; it's prevalent. If we go through our files, we can show you any number of cases.

Now, please, Mr. Farley and gentlemen, I'm not saying this is the policy of the insurance carrier or that it's policy of a self-insured, but it is neglect on somebody's part; a file gets misplaced and nobody gets around to it; an investigator dawdles about turning in his report, and it happens, it happens.

Q. In concept, shouldn't the temporary disability payment have the same priority as a paycheck?

A. It should, absolutely. I think I would recommend that it be made mandatory with penalties attached that if a man is taken off the job to a hospital, or even if he's sent home sick, that there be a rebutable presumption, rebutable, I'm not saying mandatory, although Mr. Parks mentioned this gentleman from Oregon. In Oregon it's mandatory and even that they pay temporary, and if it turns out later on that they're not responsible, they don't get their money back. But I would say that there be a rebutable presumption that if a man is taken off the job to a hospital or a doctor, that there's a rebutable presumption that it's

work related, and the minute that week is up he gets his temporary disability check just the way he would have gotten his paycheck, and that they keep paying him until-unless they deny liability or something else turns up. But that man should get his temporary disability, because as Dean Larsen pointed out when he appeared before the Ozzard Committee, many of these compensation claims, the filing of compensation claims have their genesis in the fact that the man did not get temporary disability benefits and he went behind the 8 ball and then he's looking around for a way to become whole again. Most of the people live up to their salaries; they have mortgages; they have payments on their cars; payments for their appliances. If they're without a paycheck for two or three or four weeks, they're in trouble and they never catch up, and then they look around for ways to get even, and this is what happens; they file a claim.

Christmas Gifts

Before having the two aforementioned Judges of Compensation testify as expert witnesses, the Commission heard testimony relative to the practice, despite state regulations to the contrary, of the offer of cash gifts by certain petitioners attorneys and doctors and the receipt of those gifts by personnel in the Workmen's Compensation Offices in Newark at Christmas time. Charles E. Waldron, Special Investigator for the State Commission of Investigation, testified that the size and frequency of the cash gifts were determined by himself and other members of the Commission's staff in interviews of Division personnel who included court attendants, judges' secretaries, investigators and assignment clerks. The interviews were recorded in statements signed and sworn to by the various personnel. Waldron testified as to the following facts relative to gift giving:

> • During the Christmas seasons of 1970 and 1971, there were between 18 and 20 petitioners attorneys who gave cash gifts to Workmen's Compensation Division personnel in Newark. In 1972, a time when the Commission's investigation was known to be in full swing, the number of gift-giving petitioners attorneys during the Yule season was 12.

- For Christmas 1970 and 1971, some six petitioners doctors gave cash gratuities to Workmen's Compensation personnel in Newark. Only one did so in 1972.

- For 1970 and 1971, the total amount of cash gifts given to each employee ranged from $100 to $500. For 1972, that range was $25 to $200.

- One law firm was in the habit of giving $50 to $60 to each employee at Christmas time. The next highest amount by any firm on a per-gift basis was $25 to $30. The $50 to $60 gifts were being given to judges' secretaries and assignment clerks.

- One court attendant tried to rationalize his acceptance of case gifts by the contention that he performed services above and beyond his regular duties.

Testimony of Judge Stanley Levine

The first of the two Judges of Compensation to be called as expert witnesses was Judge Stanley Levine, the Supervising Judge of the Workmen's Compensation Courts in Elizabeth. Judge Levine was a Workmen's Compensation referee for one and a half years prior to becoming a judge 12 years ago. He served additionally as Supervising Judge of the Compensation Courts in Newark, Morristown and Paterson.

The practice of gift giving at Christmas time was considered by the S.C.I. to be a symptom of the pervasive, clubhouse atmosphere which has existed in the Workmen's Compensation system. Indeed, so pervasive has been that atmosphere that some attorneys and doctors felt no inhibition against at least attempting to effect delivery of gifts to some judges before whom they regularly were appearing. Judge Levine told of an instance where he was offered a gift but discouraged the practice by promptly returning the gift to the donor:

Q. And while you were supervising judge in Newark was there an occasion when you were offered a Christmas gift by a practitioner of compensation?
A. No, sir, never, not a practitioner.

Q. How about a doctor?
A. Once by a doctor. It was several days before Christmas, a gift package containing what, to the

best of my recollection, were three bottles of liquor was delivered to my house, and I opened it, saw what it was and who it was from. It was delivered physically, manually, within twenty minutes back to the sender's or donor's home.

Q. You returned the gift?

A. Oh, yes. I had my next-door neighbor go with me, who was then a guidance counsellor in the school system. While I waited in the driveway, he brought the package into the house.

Q. This is a doctor who appeared in compensation court as a petitioner's evaluating physician; is that correct?

A. Yes sir.

Q. And he would have appeared before you and there would have been occasion for you to assess the amount of his medical fees?

A. Oh, yes, quite regularly.

Another symptom of the pervasive atmosphere in the Workmen's Compensation Courts was the reported practice of the buying of lunches of some judges by those professionals who were appearing regularly before those judges. Judge Levine told of his lunch time practice and of his opinion of the practice of purchasing the lunches of judges:

Q. Judge Levine, have you ever had your lunch bought and paid for by any practitioner of compensation?

A. Never.

Q. And what is your practice concerning lunch?

A. Well, I don't necessarily recommend it to my colleagues or anyone else, but I generally bring lunch inside, a couple of thermos bottles, and I generally take out my newspaper at lunchtime and relax and eat in chambers.

Q. And how would you view the practice of the regular purchase of lunch for a judge by practitioners of compensation?

A. Well, I think it's unsupportable and unconscionable.

Judge Levine was also critical, like the attorneys who preceded him, of the lack of a sufficient screening process in the selection of Judges of Compensation, voiced reservations as to the qualifications of some of the present judges, and urged the salaries of judges, now at $29,500 per year, be raised to the equal of those of County District Court Judge ($34,000 per year):

Q. Judge Levine, in your observation, how are judges of compensation appointed?

A. Well, I can only speak for myself except from the general impression one gets that politics does enter into it. If you want to know how I received my appointment, I could tell you.

Q. Well, how did you receive your appointment?

A. At the time I was serving my law clerkship in Trenton I was commuting from Newark to Trenton, and at the time Judge Franklin, now the county court judge in Bergen County, was then, I think, deputy attorney general assigned to the Division of Workmen's Compensation, he later became director of the division, and we got to know each other somewhat in the commuting end of it, and one time I received a phone call from his office asking me if I cared to join the division, and that was it.

Q. But I take it that there is no screening process by the Bar Association or other agency concerning the employment of judges of compensation?

A. There was none then and, to my knowledge, there is none now. At least, I'm not aware of it.

Q. So that the recommendations are more or less by word of mouth to the appointing power?

A. I would say so, yes.

Q. What I would like to ask you now, Judge Levine, is if you could give me your evaluation on a percentage basis, without mentioning names, as to the qualifications of the present sitting judges of compensation. Specifically, would you give me your estimate of what percentage you believe to be well qualified, what percentage you believe to be qualified and what percentage you believe to be unqualified?

A. Well, it's difficult for us to pass a comment in general, but using that American Bar Association standard, I think——

Q. Yes.

A. —of exceptionally well qualified, qualified, et cetera, I suppose I would say that approximately 10 to 20% are exceptionally well qualified; I'd say another 20% are well qualified and say most of the rest are qualified, and I suppose there are a few who I would, if I had to pass judgment, say that were not fully qualified.

Q. Well, when you appeared before the Commission in private session, you gave me your opinion that 20% of the sitting judges were unqualified. Is that still your view?

A. Well, perhaps it's a bit high, but I would say at least 10%.

Q. At least 10%?

A. In my opinion.

A. And if I may make one last comment, and this may be in the area of enlightened self-interest. You commented upon judges earlier. I would urge that in order to attract and retain the best possible talent for the Division, that salaries should be upgraded very considerable and at least on a level with the county district court. I might note that the Federal Government has taken account of this. Its category of administrative judges get $36,000 a year, which happens to be 90% of the Federal District Court salary. But, so much for suggestions from me.

The overwhelming majority (Judge Levine placed it at 90 to 95 percent) of Workmen's Compensation cases are settled at the pre-trial level in the Compensation Courts. These cases are referred to as "streamliners" in Northern and Central New Jersey and "put throughs" in Southern New Jersey. In these cases, the only problem to be ironed out is to compromise on an award figure in light of the competing medical evaluations of disabilities, always on the high side for the petitioner's doctor and always on the low side for the respondent's doctor. Judge Levine testified about the "streamliner" process:

Q. Now, Judge Levine, I would like you to explain for the record what is commonly referred to as a streamliner. Would you give me your definition of that?

A. Well, it's a term used for a practice whereby before actual trial, or it's essentially a pretrial conference in which the attorneys on both sides, petitioner's and respondent's, are brought into the judge's chambers. They are asked to submit their medical reports. Speaking for myself, I invariably, with very few exceptions, have the petitioner brought into chambers where I ask certain questions, essentially background, complaints, number of treatments, to determine to some extent, at least, credibility and the like, and then a suggestion is made as to the value of the case, and if the attorneys agree, then this procedure is then reflected in a formal judgment on a stenographic record in the court.

Q. Now, these streamliners, then, we are talking about are formal petitions wherein the amount of disability is agreed to, any contest over medical bills is agreed to beforehand, so that your basic function as a judge in those circumstances is to make a determination if the agreed percentage of disability is a fair one with respect to the petitioner and to evaluate, if possible, his credibility as to his complaints?

A. Correct.

Q. And apropos of that, the parties convene in your chambers where you have evaluated the medical reports of both the petitioner's and respondent's doctors; you ask the petitioner some questions in an effort to determine his credibility concerning his present complaints. By the way, if he had no present complaints, there would be no basis to award him any permanent disability, would there?

A. Except for cosmetic defects, scarring and things of that nature.

Q. Yes. And then following this, this process or agreement, if you will, is solemnified in open court?

A. True.

Q. How long do these processes generally take, in your experience?

A. Well, it could vary from five minutes for a very simple matter to conferences as long as one or two hours in very difficult or serious ones.

Q. Yes. When you say it could be as little as five minutes, do you mean just the conference in your chambers?

A. In chambers, yes.

Q. And then maybe another five minutes in open court?

A. Five or ten minutes.

Q. Five or ten minutes. In these—by the way, I don't think I——

A. Excuse me. I might add,—I don't wish to interrupt.

Q. Yes.

A. The purpose of the stenographic recording is because by law the petitioner has the right to reopen his case within two years of the last payment of compensation, and so there is a recorded testimony of his complaints and a record made on a comparative basis should the case be reopened. I think that's the principal reason for it.

Q. Yes. In other words, after the matter has been discussed informally in your chambers and there is agreement reached as to the percentage of disability, when it is recorded by the court reporter?

A. Yes.

Q. What would be the basis upon which the petitioner could reopen in two years?

A. On the basis of an allegation that his disability has increased or worsened and the possibility that he might have medical treatment, surgery, the like.

Q. Now, would you say that the great percentage of formal cases are disposed of in the manner you just described?

A. Oh, yes, the overwhelming percentage. I would say 90 to 95%.

One point of inquiry in the Commission's investigation was the habit of one doctor, who had the largest practice in the State of orthopedic injury evaluations for petitioners in compensation cases, of omitting a diagnosis from his reports of his examina-

tions. Judge Levine gave the following testimony relative to the value of diagnosis in medical reports:

Q. So the record is clear, I take it that what would happen is that the petitioner's doctor would hand in his report, which would include history and a list of the complaints and his evaluation of disability?

A. His findings——

Q. His findings?

A. ——and diagnosis, usually, and conclusions as to estimate of disability.

Q. Yes. You say "diagnosis, usually." Is the diagnosis of an aid to a judge in arriving at a determination of disability?

A. I think it's most difficult to resolve a case without knowing what the diagnosis in the situation happens to be, what the medical condition is.

Q. Well, isn't it not so that there is one doctor who invariably omits a diagnosis from his reports?

A. It's been my experience that one doctor almost uniformly omits having a diagnosis of his own. He may quote a diagnosis from the hospital record of treating doctor, but it's been my experience that his own diagnosis is generally absent.

Q. Do you think that the absence of diagnosis in his reports was to create a rationale for him being called to testify?

A. That's my impression.

The Commission additionally was concerned with statistics, previously noted, which were supportive of allegations that the Second Injury Fund, previously described, was being abusively used by some petitioners attorneys. Judge Levine testified as follows about the fund:

Q. In other words, it (the Second Injury Fund) was to encourage employers to take workers who had a pre-existing disability?

A. Yes, the philosophy and rationale is that it encourage employers to hire disabled individuals, so that in case of a subsequent injury they would not have to bear the total burden of a total disability injury.

Q. Yes. That was the original, that was the historical purpose of the Fund?

A. Yes, sir.

Q. And did they have a particular kind of disabled worker in mind?

A. Well, I suppose classically they had in mind, of course, the variations and permutations and combinations are endless, but somebody who lost a leg or arm in a non-work-related accident, or even work-related accident, and subsequently lost another major limb. Then that would make him eligible for total disability payments, that type of situation.

Q. In recent years the application for Second Injury Fund, has it moved away from that purpose as you stated it?

A. I think more and more we are seeing applications for Second Injury Fund benefits from older workers who don't fit into this classic category. Many situations where they have been working for a foundry, let's say, for twenty or thirty years, and rather extensive or serious pulmonary disability, were able to work until a certain period, maybe the plant moved out of the state or closed down or whatever the case might be, and at that point he might have acquired over the years a number of other disabilities and now alleges that as a result of his pulmonary disability and possibly hypertension, high blood pressure, ulcer or diabetes, things of that nature, he's now incapable of being employed.

Q. Well, let me see if I can characterize what you have said in the form of a question. Is the Second Injury Fund being used to compensate disabilities which, in your opinion, are age related rather than employment related?

A. I think there are attempts at so using it, yes.

Q. So that when this happens the Second Injury Fund is really being used as a supplement to Social Security or pension, is it not?

A. Quite often the application is for, I would say, that type of purpose. Many of these people are already on Social Security who have filed for Second Injury Fund benefits.

Q. Now, in order to meet this problem, Judge Levine, do you have any recommendations as to what can be done?

A. I think it's easier to pinpoint the problem than to offer a solution. I think this is something that should come out of the legislative study, recommendations of the director, things of that nature.

Q. And I take it in this case it would be because it could very well be that you might have a sixty-five-year-old individual who is perfectly capable of continued employment but for the disabling injury he has received at that age?

A. True. You can't make a categorical, sweeping statement applying to all sixty-five-year-olds, or seventy-year-olds or fifty. Some are hail and hardy at age seventy and others are substantially disabled at age forty-five or fifty. So, each case has to be judged on its own merits.

One of the most common injuries forming the basis of a Workmen's Compensation claim is low back sprain involving soft tissue injury where the subjective complaints of pain by the worker are the principal factors in evaluating the disability and where little or no lost time from work is involved. Judge Levine was of the opinion that awards in this area were really more for pain and suffering than for permanent disability and suggested a different mode of handling them:

Q. And are these low-back cases, in your judgment, in many situations an example of a tort concept creeping back into the application of the Workmen's Compensation Act?

A. I think for the relatively minor back strain case, and of course one could argue on a judgment value of what is relatively minor, but given a little or no-lost-time case with few treatments and complaints of pains and aches and that sort of thing, I think the tort concept has crept back. He's being paid to that extent for pain and suffering during the period that he has these pains.

Q. Now, what do you find to be a basic distinction between the examination report filed by a petitioner's

doctor in a low-back soft-tissue injury and the respondent's doctor?

A. Well, there are two. Aside from a natural disparity between partisan experts on opposite sides of the fence, I think the chief difference would be that the petitioner's doctor would give virtually total credence to the complaints of the petitioner, the subjective complaints.

Q. Subjective complaints, yes.

A. Whereas it is my impression that the respondent's doctor would generally rely largely, if not exclusively, on objective evidence of injury.

Q. In your opinion, don't awards in these minor low-back cases where there is no lost time and relatively few treatments really constitute awards for pain and suffering?

A. I would broadly agree with you, and I think it would really not be violative of the spirit or the intent of the Act if such cases were, generally speaking, not viewed within the category of permanent disability. I would enter only one caviat, and that is that where there is some lost time—two days, three days, a week—and presently the individual is not being compensated for lost time under eight days, there is a waiting period up to seven days, as you know, I don't think the injured person, the injured workman ought to bear the burden of his lost wages for that work-connected injury. So, in my opinion, he should receive at least his after-taxes salary or wage for the lost time that he had.

Q. Well, let me see if I can paraphrase what you have told me, then. In your opinion, the injured worker isn't going to lose very much or society hasn't been damaged to any great extent if we eliminate from the scheme of workmen's compensation recovery in minor low-back soft-tissue injury cases?

A. I don't think it could be catastrophic to either society or to the individual himself providing this other suggestion.

Q. Providing that any medical costs that he's incurred he's compensated for and lost time?

A. He should be provided with necessary and complete medical treatment and reimbursed for his lost time, yes.

Among the most serious allegations sifted by the Commission in this investigation pertained to giving injured persons more heat treatments than needed or going further and padding heat treatment bills with phony treatment dates and charges. The incentive for overtreatment and/or fictitious treatment is, of course, to provide an ostensible basis for a higher compensation award than would be normally granted. As will be seen later in this report, a similarly strong incentive exists in the negligence action field, since the medical bills or "specials" in those actions are used as a yardstick for settlement amounts.

Judge Levine testified that the number of treatments can be a factor in increasing the amount awarded in Workmen's Compensation cases:

Q. Now, as this system presently exists today, is one of the factors which influence your award or a judge's award in a low-back case the amount of heat treatment that the petitioner has received?

A. Well, broadly speaking, you know, the totality, all of the evidence that one takes into account in weighing the severity of an injury and the extent of disability, treatment becomes an important factor. It's not a conclusive item because even that has to be——

Q. Evaluated?

A. ——evaluated within a context of whether the treatment was available in the plant and, you know, the difference between the heroes and the complainers and the like. But all things being equal, the number of treatments received will be an indication, at least, of the severity of the injury and the likelihood of permanent disability.

Q. So therefore, the number of heat treatments is a factor which can influence the amount of award in a muscle-sprain case?

A. Oh, yes, I would say so.

Another abuse which was brought to the Commission's attention involved the proliferating practice of some law firms of making almost automatically allegations of neuropsychiatric injury, above and beyond the basic injury alleged. The practice appeared to be most abusive when resorted to in relatively minor injury claims, especially low back sprain cases. Judge Levine testified as to this practice and possible remedial steps to halt it:

Q. Now, I would like to have you explain for me, if you will, Judge Levine, the typical manner in which neurological overlays are alleged in these minor orthopedic cases.

A. Well, I assume you mean you are not referring to the fact that in a claim petition they alleged back sprain and neurological sequela, or are you?

Q. Yes, I am. What is the petitioner saying when he says that there is a neurological overlay?

A. Well, he is saying, in effect, that he has some emotional or anxiety symptomatology as a sequela of the basically orthopedic accident, let us assume.

Q. In other words, as a result of having strained his back, and I'm confining myself again to the low-back soft-tissue cases, he's saying as a result of having strained his back he's got some nervousness?

A. Neurosis.

Q. Some anxiety?

A. Yes. In many cases that's what he is alleging. I might add, again, if we're talking about the relatively minor back-strain case, again with quotation marks around "relatively minor," it would seem to me that there is no necessity basically for the neurological claim and that an award for permanent disability for the basic orthopedic injury could be viewed as encompassing any associated anxiety or concern that the individual might have. But I don't want to leave the impression that there cannot be legitimate and oftentimes serious neurological injury or sequela as a result of a nonbasically neurological injury.

Q. Oh, yes, I can well appreciate that in a serious case such as the one I saw in your courtroom the other day when the man's arm was caught in a roller, I

could see myself in the courtroom several years after the event the neurological problem that that fellow had.

A. He's got a permanent injury both ways, orthopedic and neurologically, for the rest of his life.

Q. No question about it, and I'm not a doctor.

A. Neither am I.

Q. Therefore it's fair to state, then, that there are some practitioners who are abusing the resort to neurological examination?

A. I think so.

Q. Now, Judge Levine, has it ever come to your knowledge that there is again a pattern involving what I would consider to be minor low-back cases where the petitioner's attorney, especially one that is, you know, well versed in the field, would automatically assert a neurological examination as well as an orthopedic?

A. Yes, some law firms do it almost automatically. Some do not at all.

Q. I see. Then this impels the respondent's attorney to get two examinations, correct?

A. Orthopedic and neurological.

Q. And then there might be testimony in open court with respect to the neurologicals as well?

A. Yes, sir.

Q. And again, all of this expense is being inputted into the rate structure, ultimately; is that not so?

A. Oh, yes, it would have to be. Somebody has to bear the expense.

Q. And where this is almost done on an automatic basis, again without mentioning names, would you have any recommendation as to how this might be limited or certainly put into a perspective that is fair and reasonable to both petitioners and respondents?

A. I would require, I think, or suggest that it might be required that the firm spell out with much more particular—with particularity and specificity the

reasons for its allegations of the other than basic injury which was incurred.

Q. What about this, Judge Levine: In the event that neurological was not a warranted allegation in a particular low-back case, would a cutting of a petitioner's counsel fee act as a deterent?

A. It might if it were uniformly applied by all judges. Where you don't have it uniformly applied, it loses its effectiveness.

Q. Would there be any possibility of letting the word go out that a neurological that was culpably frivolous should involve some sanction?

A. I think this would probably be a proper area for the director at his meetings with the judges of compensation to make clear where he felt it to be an abuse of the basic practice and then appropriate response.

The Commission's investigation was also concerned with another abusive practice whereby some attorneys make insincere and unwarranted allegations of multiple injuries in occupational disease cases. Judge Levine testified about the practice, the upward effect of that practice on Workmen's Compensation case costs, and possible steps to stymie the practice:

Q. Now, I would like to move to another subject, Judge Levine, and that is the subject of occupational disease. Are you familiar with the practice of the multiple allegation of disability arising out of an employment?

A. Yes, sir, I am.

Q. In other words, that would involve the allegation of a disability involving the chest, lungs, nose, throat, hearing, heart, internal organs, and nervous system and complications arising therefrom?

A. Everything but the kitchen sink.

Q. "Everything but the kitchen sink." Do you associate that practice with one particular law firm?

A. Yes, I do.

Q. And do you believe that in that case as a result of your experience those allegations are unwarranted and insincere?

A. Well, given the number of situations in which many of the allegations are resolved without any award for those alleged conditions, one must inevitably come to the conclusion that they are done pro forma rather than after careful investigation of each claim.

Q. In other words, they're used as a settlement lever?

A. I believe so.

Q. And despite any lack of merit in those allegations, the respondent would be required to incur the cost of the medical examination——

A. True.

Q. ——corresponding to the disability?

A. Yes.

Q. And those medical examinations that the respondent must incur are costly, are they not?

A. Well, we all know what medical costs are these days.

Q. They can be as much as $100 apiece?

A. They can be, yes.

Q. Do you think that perhaps one way to diminish that abuse—and I would take it you would consider it an abuse of the system to make these multiple allegations without any foundation?

A. Well, "abuse," of course, is a pejorative term, but I'll go along with it.

Q. Do you think that one way to eliminate this abuse might be to require examinations, medical examinations, to accompany the claim petition?

A. I would say that my own approach to it would be this: If the basic disability were one in which there was a presumptive disability, let's say, an allegation of pulmonary disability, chronic bronchitis after exposure of many years in a foundry, I would say it would not or should not be necessary to submit a medical report along with the claim petition at that time. But for other alleged injuries—eyes, ears, you name it—where it's not the basic allegation, then I

think quite possibly examinations should accompany, should be required by the petitioner before the respondent is forced to respond.

A leading criticism of New Jersey's Workmen's Compensation system has been that the very serious injuries are insufficiently compensated. Judge Levine expressed his concern about this problem and offered a possible remedy for it.

A. I would add one other comment, if I may.

Q. Indeed.

A. I think another area that could certainly stand some upgrading are the serious injury cases. One you mentioned of when you were in court the other day, the individual whose arm was useless. It wasn't amputated, but it was functionally useless. It seemed to me that situations such as that, amputation or seriously functionally-disabling injuries, should be paid at a rate equivalent to the total disability rate for the number of weeks for that injury. So if an accident, let's say, occurred in 1972 for an amputation of an arm, that individual would be able to receive 300 weeks at $101 a week, approximately $30,000, rather than 300 weeks at $40 per week totaling $12,000.

Q. Which is the partial total rate, $40 a week?

A. 40 is the maximum rate for permanent partial disability, and that's what they are presently being compensated for at the present time.

Testimony of Judge Roger Kelly

Judge Kelly at the time of his appearance at the public hearings was Supervising Judge of the Workmen's Compensation Courts in Newark and had been so for three years. He has been a Judge of Compensation for 17 years and has a total of 25 years of experience in the Workmen's Compensation system, including the private practice of law and employment by an insurance company.

As previously presented, the Commission's investigation concerned itself with the practice of some petitioners attorneys and doctors giving sizeable cash gifts at Christmas time to employees

of the Workmen's Compensation Division. Judge Kelly testified as to the history of gift-giving in the Compensation Courts and expressed dismay that the cash gifts had reached such large proportions:

Q. Now, Judge, you were here this morning, were you not, when Special Investigator Waldron testified concerning cash gifts to personnel of the bureau in Newark?

A. That's correct.

Q. Were you surprised at the amount of cash gifts that had been received?

A. Yes, I was.

Q. Do you think that it was proper for those gifts to have been offered and for the personnel to have received them, accepted them?

A. Well, under the understanding that I had, the people were allowed to accept gifts. I don't think anybody ever discussed the amount of gifts, assuming that they would be reasonable amounts, which had been customary over the years, anywheres from 5 to 10, $25 maximum. But I had no idea they were that large, but I didn't know anything about it. It's hard to look back and say if it was improper if the situation had never been discussed.

Q. Well, it certainly would create the appearance of impropriety, wouldn't it, when assignment clerks and secretaries were receiving gifts as high as $60 from one attorney?

A. Well, I think it would.

Q. Is it only the amount that bothers you?

A. Well, to be perfectly frank, it didn't bother me that the secretaries received Christmas gifts because I have no feeling that this is a bad thing in itself, it's only people who use it to make a bad thing. But my whole background favors the idea of joy at Christmastime, and in that sense I personally always try to give gifts to my secretary and see that the girls in the office do receive small gifts from the staff.

Q. Well, you don't condone or approve of a practice whereby one employee can receive as much as

$400 or $500 in cash gifts at Christmastime, do you Judge?

A. No, I don't.

Q. Was there a tradition in the Division of Workmen's Compensation in Newark of gift-giving which goes back many years?

A. It goes back all the years that I have been in the Division and in the years before when I didn't work in the Division.

Q. I believe you told me that there was, in fact, a time when judges of compensation and others of the Division personnel, the bureau personnel, carried their Christmas gifts home by the carload?

A. That's true. When I first came into the Division in 1955, that was the standard practice. And then when I say—I don't know about carload, but a truckload. Some people did take truckloads of gifts home, and this was changed subsequently. At the time the change went into effect the commissioner at that time expressed a view that he had no objection to somebody receiving some liquor or cigars, but he couldn't see how any bottle of liquor or box of cigars could amount to a bribe of anybody in the department. But during the discussion that we had when we did take action to straighten out the problem, it was commonly arrived at, tacitly perhaps, but well understood, that the action did not prohibit the girls from taking, accepting Christmas gifts.

Q. When was that action taken?

A. Well, I can't pinpoint it. It's somewhere in the late fifties or early sixties. Just exactly where, I can't say right at the moment.

Q. You mean it was tacitly understood that the division personnel in Newark would be entitled to accept Christmas gifts despite the regulation of the Division to the contrary?

A. Well, I didn't say Newark, and I don't think it's limited to Newark. It's general, all the offices, and it is my understanding that that is a fact, as you put it.

Q. Whose responsibility do you think it would have been, Judge Kelly, to enforce the administra-

tive rule which prohibits employees and officials of state agencies from accepting gifts and gratuities?

A. Well, all the authority comes from the commissioner and then into the director's office. Based on being so advised, any lesser official in charge should comply with the requirements that are given to them.

Q. Well, in other words, you would have looked to the director of the Division for the enforcement of the rule against the giving of gifts?

A. That's very definite. If you don't mind, I would like to comment on a point that was brought up this morning with Mr. Waldron. You said something about when this change takes place or was there a change in 1972, and there was, and you gave a reason which he thought perhaps was the reason. But I learned later that the commissioner took an entirely different viewpoint and expressed a view that he wanted nobody to accept anything, and I advised the lawyers in the halls and the doctors and everybody else to not give anybody any presents, and I told the girls in the office not to accept any presents this year from outside people.

Additional testimony was elicited from the Judge about attempts by petitioner's attorneys to give him gifts:

Q. Well, am I correct in my understanding that there have been petitioners' attorneys who from time to time persist in offering you gifts?

A. That has happened, but I don't accept them.

Q. In fact, you have in fact returned some, haven't you?

A. That's right.

Q. And this practice of giving gifts to the bureau personnel, and, in fact, offering gifts to judges of compensation persists to this very day, doesn't it?

A. I can't say that. I doubt it very much. I'm not aware of it.

Q. Well, when was the last time a petitioner's attorney offered you a gift that you had to return?

A. The last incident I had was in 1969.

Q. That was the last time?
A. Right.

The Judge was asked for an opinion on the qualifications of present Judges of Compensation and on how the process of selection of future judges could be improved. He testified as follows:

Q. Now, I take it you are familiar with the qualifications of all the judges of compensation in the Workmen's Compensation Division, are you not?
A. I can't say that I am because there have been new appointments in the last couple of years and some of them have not really come across my path too much to form any conclusion.

Q. How many new appointments were there in the last two years?
A. Well—well, I would speculate, at least, four or so. I'm not sure.

Q. Well, then, excluding those four, which would leave us a balance of approximately thirty-one, how would you rate those of which you have an opinion as to whether they are well qualified, qualified or not qualified? Will you give me a percentage figure?
A. Well, let's see. I'd say 20% are well qualified; perhaps 40 to 50% are qualified, and then there's questionable degree of incompetency as to the balance.

Q. In other words, the balance of 20 to 30% in relative degrees of incompetence?
A. I would say that.

Q. Is it fair to state that the appointments of judges of compensation has been based primarily on political considerations?
A. I think so.

Q. Would you personally favor the screening of applicants for the position of judge of compensation by the Bar Association?
A. Most emphatically, yes.

It was Judge Kelly's opinion, as it was the opinion of the previous witnesses, that the transfer of the Workmen's Compensation Courts to the Judicial Branch of government would be beneficial:

Q. Judge, do you have an opinion as to whether or not the supervision of the judges of compensation should come under the judiciary or should stay within the Division?

A. Well, my own feeling, preferably, would be to be under the judiciary. But I don't know what the practical situation is in that regard. I think that would certainly raise the standard of operation considerably and would take it away from being torn politically each time a different group comes into power.

Q. A different group to curry favor for their favored sons as an appointment?

A. It isn't—we're dealing in workmen's compensation and we're dealing with the issue between labor and industry, and on one side you find that you're being charged with not doing enough for the injured workman and then, when there is a changeover, you're told that you're destroying the business climate by giving away too much, and you're in this constant conflict. We do not live a cloistered life as compensation judges. We're constantly under fire for one thing or another.

Q. Well, especially in Newark you're really in a fish bowl, aren't you?

A. Well, it's a fish bowl. It's a tremendous operation there. I don't know whether you realize it or not but we have 25 to 30% of the entire work in the state right in Newark and we have plenty of cases. And, as a matter of fact, this past week the commissioner gave me authority to make some policy changes to counteract some of the difficulties we've been having.

Like Judge Levine, Judge Kelly has observed a growing practice of some petitioners attorneys to encourage elderly individuals to use the Second Injury Fund (sometimes referred to as the 2 per cent fund) as a supplement to a pension or Social Security. He testified as follows as to that practice and his suggestions for arresting it:

Q. Now, Judge, I'm going to move on to another subject. When I spoke to you previously, you told

me that the Second Injury Fund was "overplayed." Could you explain to me what you mean by that?

A. Well, I think there is a tendency for lawyers to encourage elderly people, with due respect to myself and all others here who may be as old or older. But when they get about sixty-five and they perhaps are tired of working, and maybe rightfully so, they look around for programs that will help them to survive. I know it's tough. I'm not minimizing the difficulties. But when they become eligible for Social Security, and if they can work it, they make a compensation claim and then they try to qualify for benefits under the 2% Fund, and to do this you need an accident or an occupational illness of some kind.

Q. I don't suppose you would know whether they, meaning these people you describe, look around for the lawyer or the lawyer looks around for them, would you?

A. I don't know the answer to that. All I know is I get—we get plenty of these cases.

Q. Do you associate this practice, that is the application for the Fund by elderly people, do you associate this practice with a particular law firm?

A. Well, I——

Q. I'm not going to ask you to name the firm, but I wondered if you——

A. There is one law firm that does go in big on that, but I don't say it's the only firm.

Q. Not the only one?

A. Yes.

Q. Then would it be fair to state in these cases we're talking about, the Second Injury Fund cases, they're being used to compensate disabilities, which, in your opinion, are age related rather than employment related?

A. I think in many cases the compensation case is a valid claim. The part of it that I think I distrust is the claim for benefits under the 2% Fund, because there's very few people at the age of sixty-five who cannot show preexisting conditions, particularly arteri-

osclerotic heart disease, hypertension, and maybe a broken leg playing high school football and a few other things that happened through the years.

Q. Well, do you think, then, that the resort to the Fund should be eliminated after age sixty-five?

A. Well, I told you before that I thought there should be an ineligibility at age sixty-five, but after hearing Stanley Levine today and thinking about that occasional guy who is youthful and vigorous, I felt that maybe the idea should be to have a presumption that he's ineligible at sixty-five, but give him the opportunity to overcome that presumption.

Q. Put the burden on him in that circumstance?

A. Right.

Judge Kelly was aware of the increasing resort to unwarranted multiple allegations of injury in some occupational disease claims and favored discouragement of the practice:

Q. Now, Judge, are you also familiar with the practice of alleging multiple disabilities arising out of the same employment?

A. Yes, I am.

Q. And do you associate that practice with a particular law firm?

A. Well, in the same sense that I answered the other question, not exclusively, but in the great majority of cases it is one firm.

Q. And have you found that in these cases that we are describing these multiple allegations are unjustified?

A. Well, the outcome is as was brought out here this morning; usually limited to a recovery of one phase.

Q. And if the outcome is usually limited to recovery for only one disability, it would suggest there was no sincere belief in the validity of the others, wouldn't it?

A. It certainly would suggest something about it that should be discouraged.

Q. That the practice should be discouraged?
A. Right.

Q. How do you think you could discourage that?
A. Well, I've already instituted some changes in Newark on that. We have the policy there that when a multiplicity of claims is made like that, the respondents do not have to order any examinations until after the pretrial conference when they see what the other side has.

The abusive practice of some attorneys' almost invariably alleging neuropsychiatric injury in addition to the basic injury alleged has increased, according to Judge Kelly, who told of a step he has taken to try to curb this abuse:

Q. Judge, now on to another subject area, and that is, specifically, the allegation of neuropsychiatric impairment in low-back cases. Do you think that the alleging of neuropsychiatric impairment in low-back cases is being abused?
A. Well, alleging is probably being abused in a sense that too many times, I think, petitioners' attorneys generally will try to force settlements by bringing in a claim for a neurological if they don't get a break at the pretrial conference, if they don't get a favorable settlement.

Q. Do you find that there is a practice among petitioners' attorneys in these low-back cases to send their client automatically out for a neuropsychiatric evaluation, in other words, if it's low back, send him to Dr. So-and-so for neuropsychiatric evaluation?
A. Well, perhaps there is, although I don't know whether you understand or whether something shouldn't be talked about at this point in relation to these so-called neuropsychiatric examinations. There is an area of low-back sprain which involves radiculitis. Radicular references it's called.

Q. What is that? You will have to explain that.
A. Well, that means that there is some irritation of the nerve root in the spine. This causes pain to go down one of the extremities or both extremities. It still may not be an extremely serious condition, but it

still may exist. And there is a distinction here I want to make clear, if I possibly can. Neuropsychiatric is two spheres, representing two spheres of medicine, one is neurological, one is psychiatric. Now, if you're talking about the anxiety state, you're talking about the psychiatric reaction. But if you're talking about nerveroot irritation, you're talking about the neurological involvement in the low back. Many of these cases have a bona fide area of neurological involvement in the low back. The only point that I would try to make is that the lawyer shouldn't decide to have the examination. The examination neurologically should be made on only if the orthopedist recommends it, in other words, if the orthopedic examination indicates complaints suggestive of neurological involvement of the low back, then he would make that type of recommendation to have a neuropsychiatric examination.

Q. Well, have you found evidence that petitioners' attorneys are not going through the orthopedist but are making the determination and automatically sending the client?

A. I think they do, to a great extent make the determination themselves as to what examinations.

Q. And you don't think that's proper?

A. I don't think that's really the right thing to do. I think that the nature of the injury should suggest one type of medicine and a doctor of that type should do the examining, and if he recommends any further examinations, then they should be followed up.

As previously noted, the Commission's investigation had as one facet the looking for ways which might possibly increase the use of the informal process for making compensation awards. Judge Kelly agreed on the importance of progress toward more use of the informal process and offered suggestions for accomplishing that end:

Q. So that there's been an increase in the resort to formal hearings?

A. Right, right.

Q. All right. Now, has this increase in the resort to formal hearings resulted in delay in the disposition of these cases?

A. Well, insofar as we have the capacity to hear the cases and there are whatever factors are involved in getting cases ready, there would be some delay. The more cases we have, there's that much longer a period.

Q. What I'm driving at is this, Judge: Obviously, if there was a greater resort to formal hearings, one could say just to create more judges you will reduce the delay. But wouldn't another solution be to take some of these cases and have them heard at the informal level?

A. I'm wholeheartedly in favor of that. I think a lot—almost all cases could go through an informal hearing as a preliminary step.

Q. Would you recommend any changes in the present structure of the informal hearing as it now exists in order to accommodate these cases?

A. Well, we don't have any structure. There is no law.

Q. It's not covered by statute?

A. There's nothing in the law about this informal hearing.

Q. I understand.

A. And I think it might be a good idea to draw up a statute relating specifically to informal hearings.

Q. Where there would be an examination only by a state doctor?

A. I don't say it would have to be by a state doctor. It could be, they could bring in their reports from treating doctors or examining doctors or anybody they want who was capable of doing it.

Q. Well, what would be your line, if you thought it through, and you may not have, what would be your line of demarcation between a case heard on the informal level and a case heard at the formal level? Would you send certain kinds to the informal?

A. Well, I've thought of, say, a number of $1,000 as a number. One of the reasons there has to be some limitation, I think, in fairness to all of the parties, is there should be a firm record covering anything of a

serious nature so that all parties involved are protected in any future activities, such as even a judge being criticized, or a company being asked to reopen a case and pay more money and things of that type.

Q. Well, I think you told me, Judge Kelly, the last time we met that you would favor a decrease in the number of compensation judges and a greater incentive provided for capable young people to become referees. I understood you to mean from that, therefore, that you would reduce the jurisdiction in the formal hearing and increase the jurisdiction in the informal hearing?

A. Well, I don't mean solely that. What I meant was a combination. You see, we really didn't discuss what I had in mind there. My feeling is that there could be a combination of informal and pretrial conference, not to make another step but to consolidate two steps; have an informal hearing, and if the situation isn't resolved, then right then and there to enter a pretrial order and send the case to trial, and this could be handled by a corps of referees.

Q. Well, wouldn't you want to do something to encourage people to arrive at a settlement in the informal level, otherwise the attorneys will simply take it up knowing that they're going to get 20% of the award?

A. That's where perhaps the thousand-dollar figure would come in; that if they refused to accept a reasonable disposition, that they would be limited to a 5% counsel fee. Now, let me point out that even at the present time there are some lawyers who bring formal hearings even on finger cases because they just don't want to be bothered with informal hearings, and they know they're only going to get a 5% counsel fee, but they do that anyway. They absorb that and they prefer to do it that way.

CASH HOARDS AND ENTERTAINMENT EXPENSES

As part of the Commission's investigation, the accounting staff examined the books and records of a number of doctors engaged in practice involving Workmen's Compensation cases. The purpose of this phase of the investigation was to attempt to determine if there were patterns of expenditures which might contribute to the "clubhouse type atmosphere" pervading the Workmen's Compensation system.

Julius M. Cayson, Jr., C.P.A., the Commission's Chief Accountant, was called as a witness to testify as to the facts determined by this phase of the investigation. Mr. Cayson had previously been qualified as an expert witness in the federal and state courts and before legislative committees. He described how the accounting staff conducted complete audits of the books and records of nine doctors, five of whom were doctors who examined petitioners in Workmen's Compensation cases and four of whom were engaged primarily in work for respondent insurance companies.

Verification Difficulties

Mr. Cayson explained how the staff encountered difficulty in verifying the income of some of the doctors because of the failure of some insurance companies to issue a certain federal Internal Revenue Service (I.R.S.) form:

> *Q. Now, were there any major difficulties or impediments which confronted the staff in preparing these examinations?*
>
> A. Yes. Among others, and there were others, the staff discovered that we could not obtain a hundred per cent verification of the workmen's compensation income of the petitioners' doctors because some of the insurance companies did not provide what is commonly known as a Form 1099 relating to this category of disbursements.
>
> *Q. Would you explain what a 1099 is, please?*

A. I'd be glad to. A Form 1099 is similar to the commonly used Form W-2, only this is the form which is generally required when fees in excess of $600 are paid by a paying agent to physicians for services rendered.

Q. Now, did the carriers explain why they did not provide the Form 1099?

A. Yes, they did. They contended that the petitioners' examining physicians were not held employers within the meaning of the applicable Revenue Ruling TIR-1054, dated 11/17/70. I might add in passing that one major carrier even advised that they didn't even have a record of the checks issued to petitioners' doctors.

Q. Now, what was the basis, then, upon which the Commission and the accounting staff had for determining that insurance companies should have reported all payments to doctors in excess of $600 on Form 1099?

A. Well, Mr. Diana and Commissioners, we have on our staff four accountants with a combined one hundred ten years of experience with the Internal Revenue Service. Our reading, our collective reading of the statutes, leads us to believe that the insurance companies are responsible, and we have so inquired to Washington, D.C., for a ruling on the matter and we have not received that reply as yet. But our collective interpretations lead us to believe that they were responsible for issuing 1099's.

The Internal Revenue Service Upholds the Commission

The Commission subsequently received a letter (marked as an exhibit at the hearings and reprinted in full in the Appendix of this report) from William H. Rogers, Chief of the Administrative Provisions Branch of the I.R.S., upholding the S.C.I.'s staff opinion that insurance companies writing Workmen's Compensation coverage are required to furnish Form 1099 when payments of $600 or more per year are made to any physician, without regard to his being a petitioner's or a respondent's physician.

Lack of Compliance Encourages Diversions

Mr. Cayson testified further how non-compliance with the Form 1099 requirement evidently encouraged substantial diversion of Workmen's Compensation fees into cash hoards by some doctors, hoards which could not be traced as to ultimate expenditure and which could have been used for the purposes of entertainment and gift giving:

Q. Therefore, if I may summarize, carriers writing a substantial portion of the compensation insurance in New Jersey did not provide 1099 data relating to petitioners' doctors, but they did provide data relating to respondents' doctors?

A. That is correct.

Q. Of what significance to the Commission's examination of compensation practices is the failure by insurance companies to file 1099's for petitioners' doctors?

A. Our examination of the records of petitioners' doctors disclosed material diversion of workmen's compensation fees by three petitioners' doctors examined. Whereas, only one respondent doctor diverted workmen's compensation fees. We found no discrepancies in the records of only one petitioner's doctor out of all those examined.

Q. What do you mean by "diversion of compensation fees"?

A. Fees were not deposited in normal business bank accounts by these doctors but rather the checks received by them for their examinations were: A, cashed; B, deposited to savings accounts; or, C, endorsed over to third parties and not disclosed to their accountants. Therefore, the funds so diverted by the methods described in A, B and C above would not be reflected in the doctor's gross receipts for the New Jersey Unincorporated business tax purposes and in all probability not recorded for Federal income tax purposes. I must say probably because the New Jersey State Commission has no access to Federal income tax returns, which are confidential.

Q. Mr. Cayson, as a result of the staff's examination of the four doctors, petitioners' doctors, and I

think there was one respondent's doctor in that group, what is the dollar value of diverted receipts in the years 1970 and 1971?

A. There was a total of $351,133. It is broken down as follows: Dr. A: $128,958.

Q. Is that a petitioner's doctor?

A. Yes, it is. I'll identify them. Dr. B, a petitioner's doctor, $102,983. Dr. C, $64,837. By the way, this is a treating doctor working primarily for petitioners. Dr. D is a respondent doctor. $54,355. And I repeat, the total involved is $351,133.

Q. Now, was there a particular modus operandi that these doctors used in the diversion of income?

A. Yes.

Q. What was it?

A. All right. I'll go back to Dr. A. His modus operandi used was: A, he cashed checks and he endorsed checks over to third parties. Dr. B. He cashed checks and he also deposited other checks to savings accounts. By the way, none of these accounts were disclosed to the accountant. Dr. C used all three methods; that is, he cashed checks, he deposited some checks in the savings accounts and he also endorsed them over to third parties. The last, the respondent's doctor, cashed checks and he also endorsed the checks over to third parties. Again I would like to repeat that all these particular individuals involved, as far as our investigation was able to disclose, did not disclose this information to their accountants.

Q. Now, what do you see as the significance of the diversion of these workmen's compensation fees by these doctors?

A. Their check-cashing practices provided a substantial cash hoard which cannot be traced. Secondly, none of these physicians expended significant amounts of any checks for entertainment purposes or gifts. Our staff can only conclude that on the basis of trade practice by five other workmen's compensation doctors who were examined that Dr. A to D, who I alluded to above, used cash for their business entertainment and business gifts.

Q. In other words, if these doctors were receiving income that they were not disclosing, there would perhaps be no way to determine how they were expending those sums, and if they were expending them for illegal or unethical purposes there would be no way to detect it?

A. There is absolutely no way to detect that, Mr. Diana.

Good Records Tell Tales

To illustrate the type of information which could be developed from well kept books and records having no discrepancies, Mr. Cayson testified about one petitioner's doctor who expended $36,844 in entertainment of personnel involved in various areas of the Workmen's Compensation system in 1970-1971, including expenditures on behalf of a Judge of Compensation:

Q. Was there an instance, to illustrate the point that we have just made through questioning, was there an instance where you were able to trace the expenditure of money by a petitioner's doctor?

A. Yes, we were.

Q. And what was his income from all sources for 1970?

A. $246,467.

Q. And how much of that did he earn from his compensation practice?

A. $189,796.

Q. About 80%?

A. Roughly, yes.

Q. What was his income from all sources in 1971?

A. $307,624.

Q. And how much of that was from his compensation practice?

A. $265,451.

Q. How much money did this petitioner's doctor expend in the entertainment of workmen's compensation personnel in 1970 and 1971?

A. $36,844.

Q. Did that include the entertainment of insurance company personnel including insurance adjusters?
A. Yes, it did.

Q. Did that include the entertainment of respondents' attorneys?
A. Yes, it did.

Q. Did that include the entertainment of petitioners' attorneys?
A. Yes, it did.

Q. Did that include the payment of gratuities to personnel of the Division of Labor and Industry?
A. Yes.

Q. Were there included in that total any monies paid to a judge of workmen's compensation?
A. Yes, it was.

Q. Who was that judge?
A. Alfred D'Auria.

Q. What year was this?
A. This was in 1971.

Q. Was there a payment by this doctor of $150 in April 1971 to Alfred D'Auria representing the purchase of theater tickets?
A. Yes, it was.

Q. What was the doctor's explanation for that?
A. He said that the tickets represented an anniversary gift to Judge D'Auria.

Q. Did we determine from Judge D'Auria when his wedding anniversary was?
A. Yes.

Q. What month?
A. June.

Q. Additionally, during 1971 did the records of that doctor reflect the payment of $250 to the wife of Alfred D'Auria?
A. Yes.

Q. And what was the doctor's explanation for that payment?

A. He explained this represented payment to Mrs. D'Auria on behalf of her son Peter for research Peter was alleged to have done for the doctor.

Q. Did this doctor make any appearance before Judge D'Auria in 1971?

A. Yes, he did.

Q. How many?

A. Sixty.

Q. What was the dollar value of medical fees awarded to him by Judge D'Auria in 1971?

A. $2,300.

Q. And what percentage of that figure was in excess of the maximum allowed by division regulations?

A. The medical fees Judge D'Auria awarded to this doctor exceeded the maximum by 36%.

Mr. Cayson told additionally of large expenditures for entertainment by respondents doctors:

Q. Now, did your examination of the records of respondents' doctors disclose payments to Compensation Division personnel?

A. Yes. One of these respondent doctors gave Christmas gratuities to Workmen's Compensation Court personnel. This doctor also acknowledged that he was one of three doctors who split bills at various restaurants in Newark to which certain invited parties present at compensation court regularly adjourned for lunch. He explained how usually at least one of the doctors would be present and pick up the tab and later collect from the other two. This professional corporation, and they operate as a professional corporation now, expended $20,770 in compensation expenses during the two years examined. A second respondent doctor cashed a total of $27,500 in business checks which were deducted for tax purposes as entertainment as follows: In 1965, $7,500.

Q. 1965?

A. I mean '69. I beg your pardon. In 1970, $10,000. In 1971, $10,000. His accountant, a C.P.A., could provide us with no backup data to substantiate

these expenses, merely summarizing that he probably spent the money on adjusters and other insurance company personnel. It is significant to note that this doctor derived 90% of his income from workmen's compensation.

A National Problem of Compliance

Through Mr. Cayson's testimony, it was established that payments to petitioners' doctors in Workmen's Compensation cases in New Jersey from insurance companies totaled $1.6 million in 1970-72. Since the Commission's research showed insurance companies accounting for half that total did not issue Form 1099 to petitioners' doctors, $800,000 of that total went unreported to the Federal Government on those forms.

More significantly, the lack of compliance with the issuance of Form 1099 could be considered a national problem involving at least $16 million. Mr. Cayson testified to that point as follows:

Q. Now, based on your twenty-two years' experience, you would agree that this non-compliance with 1099 regulations is not only a New Jersey problem but is a national problem as well?

A. I would definitely agree, because I must assume that the national carriers not providing 1099's in New Jersey are not providing them to doctors in forty-four other states. Let me explain that. There are approximately forty-five states that permit private insurance companies to write business. There are five states, therefore, that have what we call state funds and these—therefore, that's how we got the forty-five states.

Q. On a national basis, then, what do you estimate is the annual amount of doctor income not reported to the Federal Government on Form 1099?

A. The minimum figure that I could come up with is $16 million.

THE HIGH COST OF UNWARRANTED ALLEGATIONS

The abuse of making insincere and unwarranted allegations of multiple injuries in some occupational disease claims in compensation cases was previously documented in the testimony of four expert witnesses. Mr. Cayson was asked to testify as to how this abuse has the effect of driving up the cost of Workmen's Compensation insurance rates.

CLAIM EVALUATIONS

Mr. Cayson first discussed the way in which these multiple allegations claims are evaluated for loss reserve purposes by insurance companies:

Q. Turning to another subject, Mr. Cayson, during the course of this investigation did you have occasion to interview the claims managers for insurance companies?

A. Yes.

Q. How many?

A. Seven.

Q. Now, is one of the functions of a claims manager the evaluation of filed claim petitions for loss reserve purposes?

A. Yes. Under his supervision there would be a workmen's compensation claim expert who would evaluate each and every claim petition for loss reserve purposes.

Q. How did you find that they were categorizing the claims?

A. Generally speaking, serious and non-serious. Certain claims are recognized as having a value of, let's say, $500 or less and these are in the so-called non-serious category.

Q. Now, how are the claims rated?

A. Non-serious claims are what they call average rated; that is, they are put into the hopper and an average is derived therefrom. The serious cases are rated on a case-by-case basis.

Q. Now, are occupational disease claims considered in the serious category and, therefore, rated on a case-by-case basis?

A. Yes, they are.

Q. Now, would you give me some idea of how these companies initially value an occupational disease claim?

A. Yes. One company valued the claims at 5 to 10% of maximum recovery, or $1100 to $2200. A second company rated them at twice the value of the petitioner's doctor's findings. Thus, if the petitioner's doctor finds a 15% disability, the company would value at 30% or $6600. A third company valued them at 15 to 17% even if the petitioner's doctor finds no disability. The fourth company values them at 25% or $5500. A fifth company values them at 50% or $11,000. Just for comparison purposes, I went to a source in New York and they advised me that in New York the occupational disease cases are valued at 50% of total.

Q. That would be 50% of the maximum New York rate?

A. Yes, sir.

Q. Therefore, from what you told me there apparently is no uniformity in the rating practice?

A. That is correct.

Q. Now, in addition, do the insurance companies add a loss adjustment factor to the evaluated occupational disease claims?

A. Yes, they do.

Q. And what does that represent?

A. The loss adjustment factor represents an allowance for medical examination, legal fees of the insurance company and operating expenses applicable to workmen's compensation.

Q. What per cent of their evaluation, that is of the loss evaluation, is added as a loss adjustment factor?

A. Mr. Diana, that may range anywhere from 8 to 12%, but the average is about 12%.

Q. Now, can you give me therefore an average figure for the evaluation of occupational disease cases by those carriers' claims managers which you interviewed as they were evaluating New Jersey risks?

A. The average that we came up with was 30%, $6600 if you add the loss adjustment factor.

A Costly Comparison

With an average evaluation having been established, this average was compared to the actual awards in the occupational disease cases handled by a New Jersey law firm. The comparison showed actual awards were much lower than the average evaluation. Mr. Cayson testified as to the comparison and to the conclusion that the growing abuse of unwarranted multiple allegations causes Workmen's Compensation insurance rates to rise:

Q. Now, did we also examine the occupational disease cases of one law firm which went to judgment in 1972?

A. Yes we did.

Q. And how many cases did that include?

A. 362.

Q. And what were the typical allegations of disability?

A. Partial permanent disability to chest, lungs, respiratory system, nose, throat, hearing, internal organs, nervous system, and complications arising therefrom.

Q. Now, despite the allegations of these multiple disabilities, what did the awards themselves reflect?

A. The awards reflected that in only 7% of the cases there was any finding of any work-related disability other than chronic bronchitis.

Q. Now, what was the dollar value of these awards?

A. 466,256 cases—dollars, rather, or $1,288 per case. Let me repeat that. $466,256 or $1,288 per case.

Or stated another way, the average award averaged 6% of partial total.

Q. Now, how would these cases have been rated by insurance companies that you interviewed?

A. Well, if we wanted to strike an average, the average reserved for each case would have been $6,600 or 30% of partial total, for a total loss reserve value of $2,389,200.

Q. Now, I take it, then, that the net result of these multiple disability allegations is to force insurance companies to set aside higher loss reserves?

A. There is no question about that, sir.

Q. Am I correct in assuming that higher reserves will produce higher rates?

A. There is no question about that.

THE CONDUCT OF JUDGES

As previously noted, some of the allegations which led to mounting pressures for reforms in the Workmen's Compensation system concerned toleration of abuses and even illegalities to a point where those adverse practices were flourishing. The Commission's public hearings, having established how improprieties and abuses can flourish under a pervasive atmosphere, now were focused on how that atmosphere might affect the conduct of certain Judges of the Workmen's Compensation Court.

FREE LUNCHES

Dr. Alex E. Maron, a physician with offices in Ocean Township, has since 1960 conducted a practice consisting principally of examining and evaluating disabilities of petitioners in compensation cases, most of which are in the orthopedic injury field. He testified about the custom of attorneys, doctors and judges involved in compensation proceedings in the courts in Freehold frequently lunching together, with one judge never contributing to the cost of those luncheons:

> *Q. All right. Directing your attention, Doctor to the period of time from approximately 1966 to 1971, did your practice place you frequently in the comp court in Freehold?*
>
> A. Yes, sir.
>
> *Q. Doctor, is there any type of a practice or a tradition in the Freehold comp court with regard to luncheons?*
>
> A. There was.
>
> *Q. Would you describe that practice, please?*
>
> A. Well, speaking specifically that period from '66 to '71, or even before that, it was the custom for the petitioners' attorneys and the respondents' attorneys, as well as the doctors involved in the various cases, to have lunch together. It wasn't done on a one hundred percent basis. Very often we would go to the American Hotel, which was across the street, and

there might be one table where it would be myself and the respondent's doctor, Dr. Villapiano, and maybe four or five of the attorneys, and then there might be other tables where there would be some of the insurance company representatives, adjusters with their attorneys. There might be some petitioner's attorneys who chose to sit with their petitioners, for example. So that it wasn't an all-encompassing thing, but we knew that regularly we would meet there for lunch and those who wanted to would sit with us.

Q. Were the judges frequently in attendance at these luncheons, Doctor?

A. I would say frequently, yes.

Q. Who would normally pick up the tab?

A. Well, the tab was paid by the doctors, who would share it, and some of the attorneys, primarily petitioners' attorneys. There frequently was contribution from some of the respondents' attorneys. There frequently were visiting petitioners' attorneys who did not contribute. If they came once in awhile, we would offer them a meal as a guest. You know, we were glad to have them. And many of the judges would frequently contribute their share or a share.

Q. Well, during the period under consideration right now was Judge Alfred P. D'Auria presiding frequently in the Freehold area?

A. My recollection is that he was there frequently for a period of about a year. I don't remember whether it was '68 or '69. About a year after he first started he was assigned to our area regularly. He was there about two-three days a week.

Q. And would he frequently attend these luncheons?

A. Yes.

Q. Did you ever see him contribute any money towards his own lunch?

A. I don't recall seeing him contribute.

Free Chauffeuring

Philip Bigotto, a shorthand reporter employed by the firm of William C. O'Brien and Associates, had been assigned exclusively to Judge Alfred D'Auria of the Workmen's Compensation Court. Mr. Bigotto was called as a witness to tell of the services, other than shorthand reporting, he was required to perform for that judge and how his employer gave him extra monetary compensation for performing those extra services. In return, Judge D'Auria awarded the O'Brien firm the maximum $25 stenographic fee for each compensation case, lowering that fee award to $20 only in 1972 at a time when it became known the S.C.I. was investigating the Workmen's Compensation system. Mr. Bigotto testified as follows:

Q. Mr. Bigotto, are you assigned to a particular judge on a permanent basis?

A. Yes.

Q. And who is that judge, sir?

A. Judge D'Auria.

Q. Mr. Bigotto, are any of the other reporters in the O'Brien service regularly assigned to a particular judge on a full-time basis?

A. No.

Q. When were you first assigned to Judge D'Auria, Mr. Bigotto?

A. I believe it was 1968, if I'm not mistaken.

* * * * *

Q. Among your duties, Mr. Bigotto, don't you also pick Mr. D'Auria up and drive him to and from work every day?

A. Correct.

Q. And do you ever take him out on rides other than to and from court?

A. Only on one or two occasions when I went up to see Judge Tumulty right after he had his stroke, or I was down to Judge Tumulty's wake in Jersey City, only about that. Once I took him to a judges' meeting, his son wasn't around, and that was on a Saturday. I thought that was asking a little too much, but I did him a favor.

Q. Didn't he, in fact, on one occasion send you to his summer home in Avon to pick up his shoes?

A. On occasion, yes.

Q. Well, these side assignments, Mr. Bigotto, do you put in a voucher to the O'Brien service for that?

A. Sure, sure.

Q. Are you, in addition to your normal salary, compensated by the O'Brien Company for your services to Judge D'Auria?

A. Yes.

Q. And how much do you receive for that, sir?

A. $45 a week.

* * * * *

Q. And what various court houses did you drive the judge to?

A. Different counties you mean we worked in?

Q. Yes.

A. First started out, I think we worked in Newark. Then from Newark we worked in —let me see, now— Morristown. From Morristown went down to Elizabeth where we are now, Elizabeth, and two days in Freehold a week.

Q. And you would pick the judge up at his home and drive him to the various court houses?

A. Yeah.

Q. And do you feel as though you are being reimbursed fully for this chauffeuring job?

A. Enough money? No.

Q. Why do you say that?

A. Well, I think it's—there are guys in the office that are making twice as much money as I am, and, well, I think it's worth more than that, really.

Q. Is this because of the charges for gas and oil or the aggravation that you have to put up with?

A. Well, the aggravation and the whole bit, the traveling.

* * * * *

Q. Mr. Bigotto, you said you commenced chauffeuring Judge D'Auria about 1968; is that correct?

A. Yes.

Q. And is it also correct, is it not, that Judge D'Auria had made a request of your employer that he be given a chauffeur?

A. I have no knowledge of that.

Q. How do you think the others got the job?

A. I don't know.

Q. Well, would you assume he made the request or would you assume Mr. O'Brien——

A. I would have to assume that.

Q. You would have to assume that, wouldn't you?

A. Uh-huh.

Q. All right. Now, let's examine a little bit about your job as a reporter for Judge D'Auria. You would not transcribe, would you, the conferences, the settlement conferences?

A. No.

Q. What you would transcribe is the five-minute proceeding in open court where the settlement was formalized; isn't that correct?

A. Correct.

Q. How many of those do you think you could do in a day?

A. Quite a—well, it depends. I do my own typing.

Q. I understand.

A. If you were to send it out to a typist, you could probably do a lot.

Q. No, no. I mean, in the course of one court day how many of those formalized proceedings would you transcribe in open court? Twenty maybe?

A. It would be a very, very, very busy day.

Q. Well, more than twenty?

A. I say, the average is—a good day in the division is considered ten settlement cases.

Q. Ten?

A. Yeah.

Q. Maybe sometimes as many as fifteen?
A. Sure.

Q. So you would be transcribing betwen ten and fifteen cases a day. And I take it, by the way, the money that was awarded for the stenographic fees doesn't go into your pocket, does it?
A. No.

Q. It goes to your employer, doesn't it?
A. Correct.

Q. And you were being awarded the maximum fee throughout the entire year 1970, were you not, $25?
A. Correct.

Q. For a five-minute proceeding in court, were you not?
A. Yes.

Q. In 1971 you were being awarded $25, were you not?
A. Correct.

Q. All right. So we only have, you say, perhaps some period of time in 1972 where he cut you down to $20.
A. Correct.

More Free Lunches and a Free Pair of Shoes

Judge D'Auria sat regularly in the Workmen's Compensation Courts in Toms River from 1967 to 1971. Among the attorneys who appeared before him regularly there, and occasionally in Freehold, is Sheldon Stern who was then employed by another attorney, Harold Lipsky. Mr. Stern testified that Judge D'Auria would go to lunch in Toms River with a group of attorneys and doctors who appeared regularly before the judge, with the judge's lunch and those of respondent attorneys being paid for by the petitioners attorneys present. Mr. Stern testified additionally about an incident where he personally paid for Judge D'Auria's lunch:

Q. Well, did you ever personally pay for the judge's lunch?
A. On one occasion I know I particularly had paid for his lunch. On other occasions bills were split

among petitioners—and when I say "petitioners," petitioners' attorneys—and the physicians who were there at the time. Not only would the judge's lunch be included, but generally respondent's.

Q. Well, when you appeared before the Commission in executive session, Mr. Stern, didn't you relate an incident wherein the judge chastised you for sneaking away on him one day?

A. Yes, yes, I did.

Q. Would you tell us what happened?

A. This was in Freehold and he asked myself and another attorney to stay for lunch and go out for lunch. I had matters back in the office, I had other things to do, and I didn't feel like going to lunch with him and I went to lunch with the other attorney.

Approximately a week or two weeks thereafter I appeared again in Freehold and there was some discussion that I ran out on him, so to speak, at lunch time.

Q. He accused you of running out on him?

A. Well, accused. Judge D'Auria's bark was worse than his bite. I had never gotten one thing one way or the other. It was his mannerism, and I didn't feel threatened by it. I didn't feel compelled.

Q. Well, did you buy lunch?

A. Yes, I did.

Q. Did you have enough money on you to pay for it?

A. At that particular time, no. No. I did not.

Q. Well, how did you get it?

A. I borrowed some money from another attorney who was along with us.

Mr. Stern told of another incident where an unfulfilled promise of the purchase of a pair of shoes for Judge D'Auria led to Stern's being ordered out of court by that judge who later received the promised pair of shoes:

Q. Mr. Stern, didn't you also relate in executive session to the Commission an incident wherein the judge threw you out of his courtroom over a pair of shoes?

A. Yes, I did.

Q. What happened there?

A. Well, I have been thrown out of the courtroom many times by Judge D'Auria particularly. I don't think I'm the only one.

He brought up a question of a pair of shoes for him. I—at that time I knew nothing about any shoes and I didn't know what he was talking about.

I went out in the hallway and a Dr. Zinkin told me that there was some discussion between him (the Judge) and Mr. Lipsky over a pair of shoes. I went back in, I told him I don't know what he's talking about, no one mentioned anything to me about it, but that I will discuss it with Mr. Lipsky.

Q. Well, was court in session when he threw you out?

A. Court was in session. I don't believe that there was anyone else in the court except for some attorneys. There may have been. It was not something that——

Q. But he was sitting up on the bench, wasn't he?

A. Yes, he was.

He didn't mention the shoes from the bench. He just told me to—when I showed up, he told me to get out, and I said, "Why?" from the back of the courtroom and he said, "You know why." and I says, "I'm confused." and I think Dr. Zinkin, who is the petitioners' doctor who generally appeared in Toms River, said, "I'll go out in the hall and talk to you," and he did and says that Harold was supposed to find him—Harold meaning Mr. Lipsky was supposed to find him a pair of shoes. And I says, "Well, I know nothing about it, no one ever told me about it," and I went and told Judge D'Auria that I know nothing about it but I'll talk to Harold about it.

Q. Did you talk to Harold?

A. Yeah, I told him that something about shoes, that Judge D'Auria's talking to me about shoes and I didn't know anything about it.

Q. Well, what did Mr. Lipsky tell you?

A. I think he just told me, "Don't worry about it," not that I was worried about it. I just told him and that was the end of it as far as I was concerned with the shoes. I didn't deliver any shoes to him.

Q. Do you know whether Mr. Lipsky ultimately did give him the shoes?

A. I believe he got the shoes. I'm quite sure of that. Who gave it to him, I—I don't know. I know I did not give it to him and I know that Mr. Lipsky generally would not appear in comp during that period of time since I was going to comp on a regular basis and that Dr. Zinkin—may have given him the shoes, some other attorney may have given him, you know through the office.

Q. Were you aware at the time, Mr. Stern, that the subject of this controversy was a ten-dollar pair of crepe-soled shoes?

A. If it was $10, I think it was a lot. I think it was like $5, because I understand that with the shoes—I think they got them from a pushcart on the East Side in New York, really.

Free State Bar Association Dues

There also came a time in 1968 when D'Auria requested that Mr. Stern pay the judge's Bar Association dues. Mr. Stern testified as follows as to that incident:

Q. All right. Mr. Stern, I direct your attention, sir, to the month of May, 1968. Did you attend the State Bar Convention in Atlantic City at that time?

A. I don't know the year. If you are referring to previous testimony with regards to——

Q. Yes.

A. —the dues, if that be the year that I was down there, I don't know. I remember that there was an important election, that was the year that I'm talking about, and it could have been '68.

Q. Well, did you see Judge D'Auria at that convention?

A. Yes, I did.

Q. And did you have any conversation with him?
A. Yes.

Q. And would you tell the Commission what the subject of that conversation was?
A. I was either walking by or waiting in line to pay my dues and Judge D'Auria approached me and asked me for money so he could pay his dues and get in and vote. I told him that I didn't have it, and I told him I didn't have it. He said, "Where's Mr. Lipsky?" or "Where's Harold?" and I said, "He's over there." And he said, "Would you go and get him for me?" and I went and got Harold and——

Q. Did you tell Harold what the judge wanted?
A. I told him that he wanted to borrow some money from me for the dues and I didn't have the money and you could afford to lend it to him easier than I could.

Q. Well, what did Mr. Lipsky say?
A. I think he was kind of disappointed that Judge D'Auria so to speak, found him rather than the thousand of other lawyers that were in the convention and went over and spoke to him, and I believe either paid his dues or gave him the money for his dues or either—well, one or the other; either paid for his dues or gave him the money for it.

The Chairman: How much was involved?

The Witness: To be very honest, sir, I really don't know because of the fact it wasn't my money and I could really care less of how much someone else was either loaning or giving or doing.

The Chairman: Didn't the judge mention any sum to you?

The Witness: He mentioned his dues, and as soon as he mentioned his dues, and I really didn't have it—I think if I had it, I might have loaned it to him.

The Chairman: Okay.

Q. Wasn't there a problem with regard to arrears? He hadn't paid in a long time?
A. Yes, as I recall, when they went to pay his dues, that there was some discussion with the girl who was

taking the money at the table that he hadn't paid for a long period of time and that his dues were substantial, and, I believe, I believe that Mr. Lipsky told the girl, "Then give him a new membership."

Q. Which would have been cheaper than updating the dues?

A. I believe he asked them how much does he owe and how much is a new membership and take the lesser of two evils.

At this point in the hearings, the State Bar Association dues ledger card for Judge D'Auria was entered as an exhibit. It showed Judge D'Auria had been dropped from membership in the Association in 1945 for non-payment of dues and re-instated May 18, 1968 on payment of $20, which indicates Lipsky paid for a new membership rather than for the more costly step of clearing up Judge D'Auria's arrearage.

More Free Lunches and a Free Christmas Party

Attorneys for the New Jersey Manufacturers Insurance Company appeared regularly before Judge D'Auria in the Workmen's Compensation Courts in Elizabeth during 1971-72. After an exhibit was marked summarizing some of the expense vouchers incurred by three of the company's attorneys, John R. Gleeson, Jr., Assistant Vice President and Attorney of Record for the New Jersey Manufacturers Insurance Co., testified as follows:

Q. I show you Exhibit 31, Mr. Gleeson, and ask you if you can identify that, sir.

A. Yes. This is a compilation of isolated expense accounts, which included a lunch expenditure for Judge D'Auria. I might say, there are other people present. In short, the expenses reflected here are not entirely spent for Judge D'Auria's. I might say, there are other people present. In short, the expenses reflected here are not entirely spent for Judge D'Auria's lunch. There may have been three or four people present at any one time. But, at any rate, included in the items as set forth here is Judge D'Auria's lunch.

Q. And this summary of expenses runs from what time period to what time period, sir? You may retain it. I have a copy here.

A. It's a period apparently from August 6, 1971 to December 4—December, 1972, approximately a year and a half.

Q. All right. Directing your attention, then, to the last page, is there a total of all expenditures?

A. For this, for this period, a year and a half, representing the three employees whose lunches were itemized here, or summarized, there is a total of $726.15.

Q. Mr. Gleeson, did you ever discuss this particular situation with your employees?

A. Yes.

Q. Incurring expenses for Judge D'Auria?

A. Yes, as a matter of fact, I did, because it was occurring with repetitive habituals and I did inquire as to what brought about the situation.

Q. Well, did they explain to you what their position was with regard to these expenses?

A. Yes. At the noon recess, when they were assigned to a particular court, more particularly in the Elizabeth vicinage, it would be either suggested by Judge D'Auria that they go to lunch or he would inquire, "Where are you going to lunch?", the general indication being that they should lunch together, which they did. At the expiration of the lunch, when the check would come in, they felt obliged to pay it.

Q. And would it be a fair statement to say that your company tolerated this situation?

A. Yes. We did not condone the situation. We felt it an imposition. But under the circumstances of the situation insofar as rather than embarrass our attorneys or put them in a position in which they would incur some animosity, possibly, from Judge D'Auria, we tolerated the situation.

Q. Mr. Gleeson, I direct your attention to the front of that exhibit, more particularly to an expenditure

noted for Dec. 13th, 1971, in the amount of $144.08. It's on the first page, sir.

A. On the first page? Yes, I see it.

Mr. O'Connor: Can we have this marked as an exhibit.

(Expense voucher of New Jersey Manufacturers Insurance Company received and marked Exhibit C-32)

Q. Mr. Gleeson, I show you Commission Exhibit C-32 and ask you if you can identify that exhibit, sir?

A. Yes, I can.

Q. What is that exhibit?

A. This is an expense account item submitted by one of our attorneys for the date—I guess it's December the 13th, '71, and it, in effect, indicated "Entertainment of Elizabeth Workmen's Compensation Court bureau personnel at the request of Judge Alfred D'Auria and under his direction and supervision."

Q. So, in other words, Judge D'Auria had one of your attorneys pay for his Christmas party; isn't that correct, sir?

A. That is correct.

Q. Now, does this practice still exist within your company?

A. No, it does not.

Q. Do you have any particular feelings as to whether or not it should continue?

A. I am very happy that the practice is discontinued.

At this point in the hearings, it was noted that Judge D'Auria had appeared at a private session of the Commission on April 4, 1973, and a copy of the transcript of that appearance was entered on the public hearing record as an exhibit. Commission Counsel B. Dennis O'Connor stated for the public record that the exhibit showed that Judge D'Auria declined to execute a waiver of his public employee immunity and testify without that immunity. He was excused as a witness.

Judge D'Auria on May 10, 1973 was suspended from the Workmen's Compensation Bench by State Labor and Industry Commissioner Ronald Heymann as a result of testimony relative to the Judge at the Commission's hearings. The suspension remained in effect until Judge D'Auria retired on June 29, 1973.

A Sale of Incomplete Law Books

S. Lawrence Torricelli, an attorney, was at the time of the public hearings associated with the law firm of Rabb and Zeitler* in Woodbridge by virtue of ownership of one share of stock in that firm. He handled all compensation practice for the firm.

Torricelli testified about an incident wherein a Judge of Compensation effected the sale of a set of incomplete law books to Rabb and Zeitler at a time when that firm had Workmen's Compensation cases before that judge:

> *Q. Now, Mr. Torricelli, did there come a time in mid-1971 when a Judge Joseph Grzankowski—Reporter, that's spelled G-r-z-a-n-k-o-w-s-k-i—told you to have Mr. Rabb call him concerning the sale of some law books?*
>
> A. That's true.
>
> *Q. And what did Judge Grzankowski say to you?*
>
> A. He says—he told me that he had a lot of law books that he wanted to sell our firm because he knew that we didn't have any law books and——
>
> *Q. What did you say to him?*
>
> A. And I called him. I said, "I don't do any of the buying and selling, you would have to talk to Mr. Rabb about it and"——
>
> *Q. Well, did you also——*
>
> A. ——and, so, he asked me to have Mr. Rabb call him, and I don't know whether Mr. Rabb called him the first time. I don't believe he did, because I saw Judge Grzankowski a second time and he said, "Well, he hasn't called me yet."
>
> I said, "I'll tell him again to call you."
>
> Finally, I guess they got together and spoke.

* The firm of Rabb and Zeitler, a professional corporation, was in the process of being dissolved at the time this report went to press. The principals, William Rabb and Richard Zeitler were practicing law at separate locations, Rabb having established his own law office and Zeitler remaining at the firm's office.

Q. Did you also tell Grzankowski that "We don't have any place to put the books?"

A. I did on the second occasion. I——

Q. Yes.

A. I told him that we have no library space at all.

Q. But he persisted and said, "Have him call me?"

A. Well, yes.

Q. All right. Did you determine that ultimately the books were sold by Judge Grzankowski to Rabb & Zeitler?

A. Yeah, because one day they suddenly arrived and there they were all piled up all over the floor.

Q. Did Mr. Rabb say to you that he was not happy about having to buy the books?

A. Mr. Rabb was extremely unhappy about the whole situation.

Q. Did he say why he was unhappy about buying them?

A. No, it's not the question. The books were usable. The question of the money had to be spent and that we had no place to put them. And, as a matter of fact, we put them in Mr. Wolmack's office, my associate. We had a little tiny cubicle of a room there, and half of it had to be taken up with the law books all piled up on the floor.

Q. Well, if Mr. Rabb was unhappy about having to buy the books, why did he buy them?

A. You would have to ask him that.

Q. Well, were you appearing regularly in compensation court before Judge Grzankowski at this time?

A. Every day.

Charles E. Waldron, previously identified as Special Investigator for the S.C.I., investigated the circumstances of the sale of the books to Rabb and Zeitler. A summary of the principal points of his testimony follows:

- The amount of the sale was $2,339 as determined by the payment check (marked as an exhibit) dated March 9, 1971 and drawn on the regular account of Rabb and Zeitler, payable to Judge Grzankowski.

- The Judge was cooperative with the investigation and voluntarily turned over all his pertinent records and also confirmed a description of the volumes sold after Waldron had physically inspected the books at the office of Rabb and Zeitler.

- The books sold included volumes of the Atlantic Reporter, the New Jersey Digest, the New Jersey Practice Series, the Encyclopedia of Trial Techniques, and Negligence in the Atlantic States. The sets were all out of date and/or incomplete, and inspection showed Rabb and Zeitler had never taken steps to update them and complete them as of 1973.

- Judge Grzankowski appeared before an executive session of the Commission waived his public-employe immunity and testified that Rabb and Zeitler appeared eager to buy the books, a principal of that firm having said to the Judge in 1969 to hold onto the books until the firm had more room for them. (The private session testimony of the Judge was entered on the public hearing record as an exhibit.)

- Waldron by phone (his notes of the conversation were marked as an exhibit) obtained an estimate from an appraiser at Gann Law Books in Newark that the law books at the time of sale in 1971 were worth a total of $1,025.

- Waldron obtained another written appraisal (marked as an exhibit) from an appraiser of the Williams Press, New York City, that the value of the books at the time of sale would be at top $1,750 but that was a high figure at which negotiations would start.

Judge Grzankowski was suspended from the Workmen's Compensation Bench for five days in a disciplinary action ordered by State Labor and Industry Commissioner Ronald Heymann as a result of the testimony before the Commission relative to the sale of the law books.

A Law Practice on the Side

As part of the investigation of the conduct of some Judges of Compensation, the Commission asked several judges to submit statements of their net worth during 1968-71. A net worth statement is essentially a comparison of what a person owns to what he owes. The financial resources which result in increases in a person's net worth should be ascertainable and explainable.

One judge submitting such a statement was Judge James J. Bonafield who at the time was sitting in the Workmen's Compensation Courts in Newark. Bonafield's net worth statement was questioned by the Commission's Special Agent/Accountants because his stated net worth exceeded by some $33,000 the fiscal resources which could be ascertained as being available to him. Special Agent/Accountant John P. Gildea testified at the public hearings that the $33,000 was an indicator that the judge might have sources of income that might not have been disclosed. Additionally, the Commission was cognizant that under New Jersey Statutes Annotated 34:15-49, Judges of Compensation were required, effective January 7, 1970, not to engage in the practice of law and to devote full time to their judicial duties.

Accordingly, the Commission's staff continued to investigate relative to Judge Bonafield. Mr. Gildea subsequently discovered Judge Bonafield had maintained, at least up to the spring of 1971, insurance covering employees at his law offices at 1458 Main Avenue, Clifton. Gildea testified how this discovery led to others and a suspicion that Judge Bonafield may have used another attorney's name to mask his (Bonafield's) law practice after the January 7, 1970 cutoff date:

> *Q. Now, in the course of this investigation did we discover that Judge Bonafield had maintained compensation insurance covering certain categories of employees?*
>
> A. Yes, there had been such a policy which was in force at least up until April of 1971.
>
> *Q. And did we locate the insurance agency who wrote the policy?*
>
> A. Yes, we did.
>
> *Q. And did you examine the file?*
>
> A. Yes.

Q. And during your examination of that file what was revealed to you?

A. In the examination of that file we came across a letter with the return address of Marino Tedeschi, 1458 Main Avenue in Clifton, but the postmark on it was from Brick Township in Ocean County.

Q. Well, I will give you C-99. Is that the envelope to which you are referring?

A. Yes, that is the envelope.

Q. And that's an envelope which was utilized by Judge Bonafield in transmitting something to his insurance agent; is that correct?

A. I presume it was by Judge Bonafield because all other correspondence in that file was from Judge Bonafield.

Q. And the letter was postmarked what date?

A. May 18th of 1971.

Q. And in the upper left-hand corner whose name appeared?

A. Well, the fact that it had a stamp of Brick Township and the name of Marino Tedeschi at 1458 Main Avenue, I knew that Judge Bonafield had a house in Brick Township and I knew that he owned the address, the building at 1458 Main Avenue. I checked several years of the *Lawyers Diary,* the directory for lawyers, and I found that Marino Tedeschi had never listed his address at 1458 Main.

Q. So what did that lead you to suspect?

A. Well, I believed that possibly indicated that he was using Mr. Tedeschi—that Mr. Tedeschi may have been being used by Judge Bonafield as a front for operations out of 1458 Main Avenue.

Q. As a front for the practice of law you mean?

A. That was my——

Q. That was your suspicion at that time?

A. Suspicion. I had no proof.

Q. I understand.

A. Just to look into it.

A Judge Is Called

The questions raised by the investigation of Judge Bonafield prompted the Commission to call him as a witness at a private hearing. The following exchange from the transcript of that appearance was read into the public hearing by Ronald S. Diana, Special Counsel to the Commission in the Workmen's Compensation investigation:

> Mr. Diana: I would next like to read a question and answer posed at executive session on Thursday, May 3rd, 1973, by me to Judge James J. Bonafield.
> "Question: And is it your testimony here this afternoon that in the last two years you have not received any monies representing legal fees or the proceeds from legal fees?
> "Answer: That's my testimony."

Mr. Gildea subsequently read some other portions of Judge Bonafield's private hearing transcript into the public hearing record to set forth the judge's contention that he had an agreement with Marino Tedeschi, the aforementioned Paterson attorney, to take over Judge Bonafield's law practice in return for $250 per month in rent payments by Mr. Tedeschi for the use of the law offices at 1458 Main Avenue, Clifton:

> *Q. Now, did we then pursue these questions raised by the envelope?*
> A. Yes, we did.
>
> *Q. Did we pursue them with Juge Bonafield?*
> A. Yes. Judge Bonafield appeared before the Commission at executive session May 3rd, 1973, and during the course of this hearing he was questioned concerning his relationship to Marino Tedeschi. He described the relationship as the transcript will show. Mr. Bonafield speaking——
>
> *Q. Just a minute, Mr. Gildea. You're now going to read from Judge Bonafield's sworn testimony under oath at executive session; is that correct?*
> A. That's correct.
>
> *Q. All right, sir.*
> A. "He, of course, Mr. Tedeschi, and I are very good friends. I have known him for a number of years

and he would take a case that I would refer cases to him. He would do work for me, and he occupied the offices at 1458 Main Avenue for a while."

Q. Now, what did Judge Bonafield testify to concerning any monies that he received from Tedeschi for cases referred to him by the Judge?

A. The testimony as recorded is: "Question:"——

Q. Again you are reading, now questions posed to Judge Bonafield at executive session, sworn to under oath; is that correct?

A. That is correct.

Q. All right.

A. "Question: Now, out of those cases have you received any fees?

"Answer: No fees as referrals.

"Question: Well, what kind of fees then? How would you characterize them?

"Answer: Well, we had an arrangement where he would agree to pay rent for the use of the office, and he paid me rent.

"Question: How much rent?

"Answer: $250 a month."

Q. All right. So, then, the substance of Judge Bonafield's testimony was that after the cutoff date in January of 1970 Tedeschi paid him rent for the use of office space at 1458 Main Avenue?

A. Yes.

A Signed Statement Disputes the Judge

The day after Judge Bonafield's appearance at the private session of the Commission, Mr. Gildea interviewed Mr. Tedeschi and obtained that attorney's signature on a statement summarizing that interview. The statement was marked as an exhibit at the public hearings, and Mr. Gildea testified as to its salient points as follows:

- Tedeschi told Gildea that he made what he termed a loose arrangement in late 1969 with Bonafield to take over Bonafield's legal work. Tedeschi said he

did take over a few cases from Bonafield but that was all. He cannot recall ever paying any rent to Bonafield and was not even given a key to Bonafield's offices in Clifton. Tedeschi recalled a bank account was opened in his name for deposit of receipts relative to any cases referred by Bonafield. Tedeschi, however, did not have control of the bank accounts and he never saw the cancelled checks or bank statements from that account.

Tedeschi did sign some checks drawn on the account in blank. The bulk of the checks drawn on that account were signed by John R. Celentano, who was an authorized signatory and who is an attendant in the Workmen's Compensation Court and who was employed formerly as an investigator in Judge Bonafield's law work.

The Reconstruction of Bank Accounts

Mr. Gildea's next step, given the absence of any cancelled checks or other records for the Tedeschi account, was to reconstruct that account through legible bank records of the New Jersey Bank, N.A. When he went to do that job, he found there were actually two accounts in Mr. Tedeschi's name. One was a trustee account which had been opened with a card signed by Mr. Tedeschi. The second, a regular account, was opened with a card in handwriting different than Mr. Tedeschi's. Mr. Tedeschi told Mr. Gildea he did not sign the card opening the regular account.

Mr. Gildea then proceeded to the tedious task of reconstructing both accounts from bank records. The reconstruction showed for the trustee account from its opening in February, 1970 until it was closed out in August, 1972, total deposits of $59,854, with $11,787 being transferred to the regular account. The reconstruction of the regular account showed, from its opening in March, 1970 to its closing out in August, 1972, total deposits of $16,029, with the following payments being made out of that account: $7,733 to Judge Bonafield, $2,000 to Mrs. Charlotte Siderits who was Judge Bonafield's law office secretary, $1,504 to Tedeschi, and $675 to Celentano. Mr. Gildea testified further as to payments from the regular account for legal proceedings and as to indicators that the payments made to Judge Bonafield were actually paid to him personally:

Q. There is a column for clerks of counties and courts, police and hospitals. Will you explain that, please?

A. In the working of liability cases, in order to build up your case you have to get a record of the police reports; you have to get the accident reports; the action that was taken when the party went to the hospital as a result of an accident; and when cases are instituted in various courts, there's payments made to the clerks of the courts to institute the summons and complaint, pay for the action of the sheriff or marshal, whoever delivered, and such payments as that.

Q. And the amount of monies then expended for filing fees and court records amounted to $879 during the period of the account's existence?

A. That's correct.

Q. All right, sir. Now, Mr. Gildea, in your analysis you have indicated the payments were made to James J. Bonafield personally. How do you know they were paid to him personally?

A. Well, the amounts you speak of in that column represent checks to cash or to Bonafield on which the endorsement indicated that the check was deposited into Judge Bonafield's account at the First National Bank of Passaic or where the check was personally endorsed by Judge Bonafield and deposited or cashed by him.

Q. So there wasn't any doubt that he received the money or deposited it?

A. At least, it was credited to his account.

Q. Credited to his account?

A. Or he received it personally.

Mr. Gildea testified additionally how this bank account data did not support Judge Bonafield's claim of getting $250 per month in rent from Tedeschi:

Q. Was there anything in any of these records to indicate that these payments to Bonafield, that $7,700, were paid to him by Marino Tedeschi as rent for the use of the 1458 Main Avenue premises?

A. There was one check, I think, had a notation "rent" on it. There were several checks in the amount of $250. But if you note in the period of March through December, 1970, the checks which he negotiated amount to $5,700. Now, this is only a ten-month period. If the rent was $250 a month, the total would have only amounted to $2,500 not $5,700.

Q. Right. So that if the payments to him had in fact been rent of $250 a month during 1970, they would have equaled $2,500 and not $5,700?

A. That's correct.

Legal Actions Are Identified

From data in the bank account records as a starting point, Gildea was able to find and examine appropriate court records and, thereby, identify 17 legal actions which went through the Tedeschi bank accounts controlled by Judge Bonafield. The 17 did not represent all legal actions handled by Judge Bonafield's law office but rather the number Mr. Gildea could discover with certainty, given the time he had to investigate and his desire to keep the investigation as confidential as possible.

Of the 17 matters, one was started in 1969, eight were started in 1970, six were initiated in 1971 and two were started in 1972. The cases involved negligence actions, real estate closings and probate matters. Gildea testified as to obtaining statements from the Bonafield clients in two of the cases to the effect that they never met Mr. Tedeschi and that all personal contact at Judge Bonafield's office was either with Mrs. Siderits or the Judge:

Q. Did you interview any of the clients?

A. Yes, and I was successful in having two of them sign my memorandum of interviews.

Q. And what did you learn from these interviews?

A. Well, each of these interviews brought out the fact that whereas correspondence received by them and checks made by them in connection with the action involved were all in the name of Marino Tedeschi, these parties, in the course of these actions, had not met Mr. Tedeschi personally.

Q. With whom had they dealt?

A. In both instances all personal contact was at the law office on the ground floor of 1458 Main Avenue, Clifton. In one instance the person handling the matter at all times was Mrs. Siderits, who personally advised the client as to the amount of the fee, amount which was due at that particular time. In other instances, the other instance, all personal contacts were with Judge Bonafield or John R. Celentano.

Q. And were there legal fees involved in these transactions?

A. Yes, legal fees were involved.

Q. So, then, at least so far as your investigation was concerned, Mr. Gildea, you were able to identfy and get signed statements from two clients who while there activity, their legal activity, emanated out of 1458 Main Avenue, they never met Mr. Tedeschi personally, they either dealt with Mrs. Siderits or James J. Bonafield?

A. That is the result of my interviews.

Q. Right. And this was for a period subsequent to January 7, 1970?

A. Yes, both. They were, yes.

Mr. Diana: All right. I will now offer Exhibit C-109, which is a statement prepared by Agent Gildea and signed by the client, Mrs. Stella Schweighardt, S-c-h-w-e-i-g-h-a-r-d-t in which she established that a probate matter arose in 1972; she drew a check drawn on her account at the Elmwood State Bank on June 9, 1972, payable to Marino Tedeschi in the amount of $500; she identified the check was in payment for the probate of her husband's will; she never met Mr. Tedeschi; she spoke to him once over the phone, and all her dealings were with the office secretary, Charlotte Siderits.

BY MR. DIANA:

Q. Did Mrs. Schweighardt mention the second $500 in payment for that probate?

A. No, I didn't bother asking her about that.

Q. You didn't?
A. No, at this time.

Q. You know there is a total fee of $1,000, which we will explain subsequently in these hearings?
A. Yes.

Mr. Diana: Now, in addition, I now offer as C-110 a statement signed by Roscoe J. Shannon, S-h-a n-n-o-n, and that establishes that the Shannons in 1970 arranged for an appointment with Judge Bonafield through his secretary for representation concerning the purchase of a house. According to Mr. Shannon's statement, Bonafield and the secretary were at the office when the Shannons signed the closing documents; they met him, meaning Judge Bonafield, at 6:00 P.M. in the evening; they never met Marino Tedeschi; they've known Bonafield since 1966. The statement also establishes that they asked Judge Bonafield to draw their will and they went back to Bonafield's office on December 17th, 1970. The will had been prepared and Bonafield and Celentano witnessed it.

BY MR. DIANA:
Q. Is that substantially what that statement that you got from that witness establishes, Mr. Gildea?
A. Basically.

* * * * *

Q. All right. Now, I would like to introduce Exhibit C-111, which is a letter on the letterhead of the law offices of Marino Tedeschi, 1458 Main Avenue, dated November 30, 1970, which is a bill for services directed to Mr. and Mrs. Roscoe J. Shannon. The attorney's fee is $290, and there is a signature which purports to be Mr. Tedeschi's and we know that it is not?
A. That's correct.

Mr. Diana: Additionally, I will offer Exhibit C-112, which is the attestation page of the Shannon will, dated Dec. 17, 1970, indicating James J. Bonafield and John R. Celentano as the witnesses, this in corrobration of this statement, and then Exhibit C-113,

which is a letter dated December 8, 1970, from the law offices of Marino Tedeschi. That's the letterhead. This is a bill for services rendered in connection with the preparation of the will, $25.

BY MR. DIANA:

Q. This time Mr. Celentano signs for Mr. Tedeschi?
A. That's my recollection.

Mr. Diana: I also offer Exhibit C-114, which is on the letterhead of the law offices of James J. Bonafield, dated January 5, 1971. It's addressed to the Shannons and encloses the deed, but it is signed, "Marino Tedeschi." However, it was not his signature, it was signed by the office secretary.

I have no further questions of Mr. Gildea.

A Very Loose Arrangement

Marino Tedeschi had known Judge Bonafield since 1945. In late 1969 or early 1970, the two men had a conversation in which the judge noted he could no longer practice law and suggested Mr. Tedeschi take over the work of Bonafield's law office in Clifton, on the condition that Mr. Tedeschi would pay Judge Bonafield rent for the premises. Mr. Tedeschi testified at the public hearings that the rental agreement was a very loose one and that the anticipated turnover of Judge Bonafield's law practice never came to pass:

Q. You mean you orally agreed to pay $250 a month?
A. Yes, but if some months there wasn't any money, I wouldn't pay the rent.

Q. This was at the inception?
A. Inception. Perhaps January, 1970.

Q. All right. So, taking it at that point in time, it was your understanding that your only obligation with respect to the proceeds that would come into the office was the payment of $250 a month rent and you keep the rest for yourself?
A. That is correct.

Q. All right. And did you also have some anticipation that there would be new business generated as a result of your taking over the premises?

A. I thought there would be good possibility of new business.

Q. And upon what did you base that assumption?

A. Well, Clifton is a nice area, that is a pretty nice area up there, and it's sort of building and it's nice area. I was—in fact, I had been thinking of moving in the last few years, and I had thought of moving to Clifton, especially my home.

Q. Well, did Judge Bonafield indicate to you that perhaps through his name and popularity, or the extent to which he was known in the community, that people might come to you?

A. Yes, he did.

* * * * *

Q. Well, you say things hadn't been working out too well. What do you mean by that?

A. Well, I thought that I would go there and look over the files and see what work was to be done and what work wasn't to be done and I would take over the files completely.

Q. I didn't understand your answer. What was it that prompted you to become dissatisfied with the relationship which, I think you said, first came about in April or May of 1970.

A. Right.

Q. When you first expressed dissatisfaction.

A. Right, right.

Q. Well, why was it? Why did you express dissatisfaction?

A. Well, because I was under the impression that what would happen would be, I would go to Clifton Avenue and sit down with Mr. Bonafield and we would go over files and from there on I would handle the files completely.

Q. I see.

A. And since that wasn't done I——

Q. You mean Judge Bonafield was handling the files?

A. Yes.

Q. Now, did you—let's put it this way: How many times total in 1970 do you recall actually having visited the premises at 1458 Main Avenue?

A. Well, I would say maybe ten times.

Q. Maybe ten?

A. Maybe nine.

Q. Somewhere around that number. I'm not asking for a precise figure. I understand recollections have to have some tolerance, obviously.

How about 1971?

A. In 1971—I would say I was there less often.

Q. Less than ten, nine or ten times?

A. Yes.

Q. And do you recall being there at all in 1972?

A. 1972 I was never there, sir.

Q. All right. Now, since you didn't have a key to the premises, I take it you always had to go there when someone else was there?

A. That is correct, sir.

Q. Would that either be Mrs. Siderits or Judge Bonafield or John Celentano?

A. I don't recall John Celentano ever being with me. It was either Mr. Bonafield or Mrs. Siderits.

Q. All right. Did you ever handle any title closings at 1458 Main Avenue?

A. Yes, I did.

Q. How many?

A. I think maybe two or three.

Q. Total?

A. Yes.

Q. And did you ever handle any negligence actions by the sense of preparation of summonses and complaints or any matters which would follow the issuance of a summons and complaint?

A. No, sir, I didn't.

Q. You never handled any?

A. No.

No Rent Was Ever Paid

Judge Bonafield, after his May 3, 1973 appearance before the Commission in private session, proceeded immediately to Mr. Tedeschi's home and together they drove to a Clifton area restaurant where they had a conversation which included an assertion by Mr. Tedeschi that he never paid Judge Bonafield any rent. Tedeschi testified as follows:

Q. All right. You took a ride. Where did you go?

A. Well, we just drove around Clifton area, Clifton area, and then we went to Howard Johnson's. We had a cup of coffee.

Q. And did you have a discussion with him there at Howard Johnson's?

A. Yes, we did.

Q. And what was the discussion about?

A. He had, Mr. Bonafield had told me that he was before the Commission, this Commission, and he was trying to review with me what our agreement was about when he first couldn't practice law and that I was supposed to be a tenant of his.

Q. Right. Did he mention that you were to pay to him $250 a month rent?

A. I believe he did, yes.

Q. You never, in fact, paid $250 a month rent, did you?

A. No.

Q. Did you say that to Judge Bonafield when he raised that issue with you on the evening of May 3rd, 1973?

A. I don't recall saying anything about that. He did most of the talking.

Q. He did most of the talking. Did you ever say, in substance or effect, "But you know, Jim, I never paid you any rent"?

A. In effect, yes.

Q. And what was his response to that?

A. He said something to the effect, "What if I said you did?" And I said, "But it's not true."

Q. I'm sorry. I didn't hear the last part of that answer.

A. I said, he said to me, "What if I said you did?" And I said, "But it's not true."

Q. And then what did he say?

A. I don't recall him saying anything at that time.

The Controlled Bank Accounts

The checkbooks and statements relative to the two bank accounts in Mr. Tedeschi's name were kept at Judge Bonafield's law office. Mr. Tedeschi testified that until July, 1972, he never saw a checkbook or a bank statement relative to those accounts and had no idea how much money had passed through them:

Q. Now, Mr. Tedeschi, did you ever see the bank statements for the trust account or the regular account, first of all, prior to July of 1972?

A. No, sir.

Q. Did you ever see the cancelled checks or the check stubs for either account prior to July of 1972?

A. No, sir.

Q. What did you, in fact, see in July of 1972?

A. In July of 1972 Mr. Bonafield came to my home in the evening, and I think he had a paper bag he had two books in, checkbooks, and he gave them to me. He says, "Here." And so I took a look at them and I saw things were missing and I asked him where the cancelled checks were. He said, "I don't know."

Q. You asked Mr. Bonafield at that time where the other checks were?

A. Where the cancelled checks were.

Q. Where the cancelled checks were. This was an account in your name and you were asking him where the cancelled checks were and he didn't know?

A. (Nodding affirmatively.)

Q. I take it, then, sir, that the only thing he gave to you were the unused checks drawn on the trust and the regular account?

A. Yes, everything I gave to Mr. Gildea——

Q. Yes, I'm just trying to get your recollection of that, Mr. Tedeschi.

Mr. Tedeschi, were you aware at any time prior to your first appearance before the Commission in executive session that some $60,000 had gone through the trust account?

A. No, sir.

Q. Were you aware at any time prior to your first appearance before the Commission in executive session that some $16,000 had gone through the regular account?

A. No, sir.

Q. As far as you knew, Mr. Tedeschi, who controlled the trust account and the regular account?

A. Mr. Bonafield.

Some Interesting Signatures

Using legal action papers discovered by Mr. Gildea in his investigation as exhibits, Attorney Tedeschi identified a number of signatures purporting to be his as not being his:

Q. All right. Mr. Tedeschi, I'm now going to ask you to examine various pleadings with respect to actions that were instituted after January of 1970 and which we have identified from the bank records of the Marino Tedeschi Regular-Trust Account of having been instituted out of the 1458 Main Avenue office. These are Exhibits C-115 through C-134. Now, I will identify them and ask you questions concerning them one by one.

Would you look at the complaint filed in Attenello, A-t-t-e-n-e-l-l-o, v. Grand Union, which was commenced in October 14, 1970, and will you look at the signature at the bottom of the complaint?

A. I'm looking, sir.

Q. All right. Is that your signature?
A. No, sir.

Q. All right. Look at C-116, which is a substitution of attorney in the same action. I've got to find these documents first. They're not in order. If you will just excuse me for a moment.

Yes. Now, you will notice that on C-116—let me ask you first, is that your signature on the substitution of attorney?
A. No, sir.

Q. The language of the substitution of attorney is, I hereby substitute in my place and stead as attorney for the plaintiff Malcolm N. Bohrod B-o-h-r-o-d, Esq., maintaining offices at 1180 Raymond Boulevard, Newark, New Jersey,'' and the signature is ''Marino Tedeschi'' and you're saying that's not your signature?
A. That's correct.

Q. Do you know who Malcolm Bohrod is?
A. I know he's an attorney, but outside of that I don't know who he is.

Q. Do you know him to be an attorney practicing compensation in Newark?
A. No, I don't know that. I just know he's an attorney.

* * * * *

Q. C-117 is a complaint in Celentano v. Doremus. Now, would you look at the signature?

This complaint, by the way, was commenced July 27, 1970. Would you look at the signature at the bottom of the complaint?
A. Yes, sir.

Q. It that your signature?
A. No, sir.

Q. It's your name, isn't it?
A. Yes, sir.

Q. All right. Would you look at C-118, which is a stipulation in the same action? Would you look at the signature ''Marino Tedeschi''?
A. Yes, sir.

Q. Is that your signature?
A. No, sir.

* * * * *

Q. All right. Would you look now at C-120, which is a complaint filed in February of 1971 in Chomko, C-h-o-m-k-o, v. Center Savings and Loan Association of Clifton, and would you look at the signature on the bottom of the complaint?
A. Yes, sir.

Q. Is that your signature?
A. No, sir.

Q. Now, C-121 is an action filed in the Superior Court Didio v. Sylvestri, and the action was commenced in April of 1970. I direct your attention to the signature on the complaint and I ask you to tell me if that's your signature.
A. No, sir.

Q. Now, will you also look at C-122, which is a substitution of attorney in the same action, dated June 16, 1970, whereby Marino Tedeschi substitutes Joseph Piscopo, P-i-s-c-o-p-o, as an attorney for the plaintiff. Is that your signature?
A. No, sir.

Q. Now, would you look at C-123, which is a complaint filed in the Passaic County District Court, Mackey, M-a-c-k-e-y, v. The City of Passaic, and the complaint was filed in June 7, 1971. You will notice the signature "Marino Tedeschi" at the bottom of the complaint. Is that your signature?
A. No, sir.

Q. Now, if you look at C-124, it is a stipulation of dismissal in that action, dated January 3rd, 1972. There is the signature "Marino Tedeschi." Is that your signature? It's the second page of that attachment.
A. Yes, I see it, sir.
No, it's not my signature.

Q. Not your signature. All right. Would you look at C-125, which is a complaint in Rivera, R-i-v-e-r-a, v.

Fronduto, F-r-o-n-d-u-t-o, filed in the Passaic County District Court September 20th, 1971, and would you look at the signature at the bottom which purports to be "Marino Tedeschi." Is that your signature?

A. No, sir.

Q. Mr. Tedeschi, would you now look at C-126, which is a substitution of attorney in the same action whereby Marino Tedeschi substitutes Malcolm N. Bohrod as attorney for the plaintiff, and it's dated February 29, 1972. Is that your signature?

A. No, sir.

Q. Would you look at C-127, which is a complaint in Stoepker, S-t-o-e-p-k-e-r, an infant, v. John W. Meyer, an action filed in the Passaic County District Court, and would you look at the signature at the bottom of the complaint?

A. Yes, sir.

Q. Is that your signature?

A. No, sir.

Q. And the complaint was filed on December 21, 1970. Would you look at C-121, Mr. Tedeschi, which —I mean C-128, which is a substitution of attorney in that action, dated May 3rd, 1971, whereby Marino Tedeschi substitutes Joseph Piscopo. It that your signature, sir?

A. No, sir.

Q. Now, let's look at C-129, which is a complaint in the case of Stout v. Trenz, T-r-e-n-z, and the complaint was filed April 26, 1971, and there is a signature which purports to be "Marino Tedeschi" as attorney for the plaintiff. Is that your signature?

A. No, sir.

* * * * *

Q. Well, we'll go through the rest of these then. Would you look at C-130, which is an order for judgment entered in the Stout case, and the order for judgment is dated January 27, 1972. There is a signature "Marino Tedeschi." Is that your signature?

A. No, sir.

Q. Well, that's well after May of '71, isn't it?
A. Yes, sir.

Q. And you will notice that there is a representation in the first paragraph of the order for judgment that, "This action having come on for trial before the Honorable Joseph M. Harrison, sitting without a jury on January 18, 1972, with Malcolm N. Bohrod appearing for Marino Tedeschi, attorney for plaintiff, and Robert Trenz and Nancy Trenz, defendants, appearing pro se." Did you know that Bohrod was appearing for you in that action?
A. No, sir.

Q. You didn't even know the action had been filed, did you?
A. No, sir.

Q. All right. Would you please, Mr. Tedeschi, look at C-131, which is an action which was filed in the Superior Court of the State of New Jersey entitled Szanto, S-z-a-n-t-o, v. Morzck, M-o-r-z-c-k. The complaint was filed June 8, 1970. Would you look at the signature? Is that your signature, "Marino Tedeschi"?
A. No, sir.

Q. Would you now direct your attention to C-132 which is a complaint filed in the Passaic County District Court, George Welkey, W-e-l-k-e-y, v. Clifton Hydraulic Press Co. The action was commenced November 1, 1971. It is purportedly signed by Marino Tedeschi as attorney for the plaintiff. Is that your signature?
A. No, sir.

Q. Again, this was after your May '71 conversation with Judge Bonafield.
Would you look at C-133, which is an answer to counterclaim filed in the same action, dated November 26, 1971. Would you look, first of all, on the first page, the signature "Marino Tedeschi." Is that your signature?
A. No, sir.

Q. Would you look on the second page where there is another signature, "Marino Tedeschi"? Is that your signature?

A. No, sir.

Q. And that one was notarized by Charlotte L. Siderits on November 26th, 1971?

A. Yes, sir.

Q. So it would be your testimony that she notarized a signature that wasn't yours?

A. That is correct, sir.

Q. Now, would you look at C-134, which is a substitution of attorney Bonafield in the same action, dated February 29, 1972, whereby Marino Tedeschi substitutes Malcolm N. Bohrod as attorney for the plaintiff? Is that your signature on the second page?

A. No, sir that's not my signature.

In subsequent testimony, Mr. Tedeschi was emphatic that he had never authorized anyone to sign his name on the aforementioned legal papers:

Q. Did you ever authorize anyone to sign your name——

A. No, sir.

Q. —to summonses and complaints in any of the actions which I have shown you?

A. No, sir.

Q. Did you ever authorize anyone to sign your name on a substitution of attorney?

A. No, sir.

Q. Did you ever authorize anyone to sign your name on the various orders and judgments that you have seen?

A. No, sir.

Q. Did you ever dictate or prepare summonses and complaints in any of the actions which I have just shown you?

A. No, sir.

Q. Did you ever have any conversations with Charlotte Siderits concerning the language of the complaint in any of those actions?

A. No, sir.

Q. Do you have any recollection of any conversation with Mrs. Siderits concerning the use of your name in preparation of these summonses and complaints?

A. No, sir.

* * * * *

Q. Now, did you know that stationery was going to be prepared in your name; that is, having your letterhead and showing the 1458 Main Avenue address?

A. Yes.

Q. And who did you understand was going to be paying for that stationery?

A. Mr. Bonafield.

Tedeschi Wanted Out

One of the aforementioned cases, *Stout* v. *Trenz*, in which an imitation of Counsellor Tedeschi's signature was affixed to legal papers without his authorization or knowledge, aroused particular recollections in Mr. Tedeschi's mind, because incidents attendant to that case prompted Mr. Tedeschi to attempt to sever connections with Judge Bonafield:

Q. Mr. Tedeschi, do you have any recollection of this action, Stout v. Trenz?

A. Yes. I remember this matter because—of course, I don't remember the date, but I have an answering service, and one day my answering service called me and said to me that Judge Ciolino was looking for me.

Q. Judge Ciolino, C-i-o-l-i-n-o?

A. Yes.

Q. He is a Passaic County District Court Judge?

A. Yes. I think he might be a Superior Court judge now.

Q. But at that time?

A. He was a district court judge.

And I didn't know why Judge Ciolino would be looking for me, so I called Judge Ciolino, you know, because he knows me and I wanted to know why he was looking for me. He indicated there was a matter in court at that time; that if I wasn't there the next ten or fifteen minutes, or sometime, the case would be dismissed. Well, of course, I wasn't aware of any case and I wanted to know the name of the case and the nature of the matter, and Judge Ciolino told me what it was.

So, after that I called Judge Bonafield in Newark and I told him about Judge Ciolino calling me, and I had always been on very friendly terms with Judge Ciolino because I knew him when he was a magistrate in Clifton. I used to appear there when I was in the prosecutor's office. And I told him that I didn't want anything more to do with him or anything of that nature. I says I'm being embarrassed and I'm getting in trouble and I just didn't want anything to do with him.

Q. What did Judge Bonafield say to you?

A. He indicated that it was all right with him. He indicated that this particular gentleman was a relative of his of some type, and I didn't care about that. I just didn't want anything more to do with him, and he said words to the effect it's all right.

Q. Well, did he tell you he was going to discontinue using your name at that time?

A. No, he just said it was all right with him. In other words, I didn't want anything further to do with him. He said words to that effect, it was all right.

Q. And did he ask you whether or not you were still interested in sharing the proceeds of any matters which might have been instituted out of that office?

A. No. We just had an argument and we had, like I say, kind of—I was very angry about it and that was the nature and substance of the——

Q. Well, did you learn that he did not discontinue using your name after that date?

A. No, I really didn't.

Q. Well, the date of that, you say the date of that discussion with Judge Bonafield was in October of 1971?

A. Oh, no; oh, no.

Q. Well, the complaint in this action was filed in April of 1971. There was an order to dismiss the complaint entered in September, September 22, 1971, which would have been about the time you would have gotten the call from Judge Ciolino. Now, did you have a telephone conversation with Judge Bonafield after you got that telephone call?

A. Well, somehow I thought it was probably in May. I don't know what made me think it was May. That's the impression I had.

Q. May of '71?

A. Yes.

Q. That's when you had the conversation?

A. Yes, I think. Yes, that's the impression I had.

Q. Do you know he, in fact, continued to use your name after that date?

A. No, I didn't.

Visits From the Judge

Mrs. Charlotte Siderits was the only secretary in Judge Bonafield's law offices in Clifton during 1962-70. Mrs. Siderits, testifying with a grant of witness immunity, first told of Judge Bonafield's visiting her shortly before she was subpœnaed to appear before the Commission:

Q. Now, is it a fact that on Sunday, May 6th, four days prior to your having been subpoenaed, Judge Bonafield came to your house?

A. Yes.

Q. You will have to talk into the microphone.

Q. Was that an unannounced visit?

A. Yes.

Q. When was the last time you had seen Judge Bonafield before that visit?

A. I beg your pardon?

Q. When was the last time you had seen him before the visit?

A. Probably November or December. Early December was the last.

Q. Of 1972?

A. Yes.

Q. At about the time your employment terminated?

A. Yes.

Q. Now, on the occasion of his visit to you on Sunday, May 6th, did he make any reference about the rent arrangement?

A. Yes, he did.

Q. And what did he say concerning that?

A. Well, he made a statement that he felt that he could wind down his practice and that he could rent out his office for $250, and fixtures.

Q. Do you have any reason to know why he felt it necessary to make that explanation to you on Sunday, the day before you had been subpoenaed?

A. Yes.

Q. What do you know to be the reason? What did you understand to be his reason?

A. He told me that I was—that he had testified and that I might be called in to testify at a public hearing.

Q. And did he describe to you what a public hearing was?

A. That it would likely get in the newspaper and that there would—the public is allowed at the session.

Q. Did he say words, in substance or effect, that it would be in front of a lot of people?

A. Yes.

Q. Did you then tell him you couldn't possibly do that?

A. Yes.

Q. And then did he tell you you could always plead the Fifth Amendment?

A. Yes.

Q. Now, did he make a second visit to you?

A. Yes.

Q. Was that two days later, on Tuesday, May 8th?

A. Yes.

Q. And at this time did he say to you that it wasn't just a possibility of you being subpoenaed, that it was probable?

A. That it was, yes.

Q. Almost a certainty?

A. Yes.

Q. Did he indicate how he knew that?

Mr. Feinstein: Don't guess. If you don't know, you don't know.

A. I don't remember.

Q. You don't remember whether he had any indication or explanation as to how he knew that. Didn't you ask him?

A. I'm sure he did, but I just can't think.

Q. Well, did he indicate that John Celentano told him?

A. That's right, yes.

Q. He said John——

A. He said John Celentano had been served that morning.

Q. Now, does Mr. Bonafield—does he have any reason to know that you are a highly nervous person?

A. Yes.

The Judge Practices Law

In late 1969 or early 1970, Judge Bonafield informed Mrs. Siderits that because of the prohibition against practicing law, he

had made arrangements with Mr. Tedeschi to take over the law offices in Clifton. Mrs. Siderits, however, testified that Judge Bonafield retained control of the law practice and office and continued to be her employer:

Q. Now, what were your office hours during the period commencing with January of 1970?

A. Four hours on Tuesday afternoon and four hours on Friday afternoon.

Q. And that was from one till five?

A. Yes.

Q. That had been your procedure prior?

A. Prior, yes.

Q. And you were paid on an hourly basis?

A. Yes.

Q. And who did you understand to be paying your wages?

A. Mr. Bonafield.

* * * * *

Q. Well, were there pending legal matters in which Judge Bonafield had been the attorney of record in which Marino Tedeschi had to be substituted as attorney of record?

A. It was never a written substitution, but he had told me that Mr. Tedeschi would take over the files.

Q. But there was, in fact, no substitution?

A. No.

Q. All right. Now, during the years 1970, '71 and '72, from whom did you get most of your instructions?

A. Mr. Bonafield.

Q. By the way, when did your relationship with the office terminate?

A. Either in late Nov. or early Dec., I believe.

Q. Of 1972?

A. Yes.

Q. And whom did you look to as your employer?

A. Mr. Bonafield.

Q. And who did you understand to be, again the source of your wages?

A. Mr. Bonafield.

Q. All right. Now, with respect to transfers out of the trustee account to the regular account, on whose instructions did you make those transfers?

A. Mr. Bonafield.

Q. With respect to disbursements out of the regular account, upon whose instructions did you make those disbursements?

A. Mr. Bonafield.

Q. With respect to lawsuits which were instituted out of the 1458 Main Office during 1970, '71 and '72, upon whose instructions did you institute those lawsuits?

A. Mr. Bonafield.

Q. Who dictated the legal documents to you?

A. Mr. Bonafield.

Q. Upon whose instructions did you prepare summonses and complaints and pay filing fees?

A. Mr. Bonafield.

Q. If you had questions concerning the language to be included in the complaints filed after January 7th, 1970, with whom did you consult?

A. Mr. Bonafield.

Q. Would you have occasion to call him at the compensation court in Newark?

A. Yes.

Q. How often would that occur?

A. Oh, maybe ten times a year.

Q. Upon whose instructions did you make case referrals to other attorneys?

A. Mr. Bonafield.

Q. Am I correct that upon Mr. Bonafield's instructions you referred cases to an attorney named Spielman?

A. Yes.

Q. An attorney named Piscopo?
A. Yes.

Q. And an attorney named Bohrod?
A. Yes.

The Simulated Signatures

Mrs. Siderits was unequivocal in her testimony that Judge Bonafield knew she was simulating Mr. Tedeschi's signature on legal papers and notarizing some of those signatures:

Q. Now, upon whose instructions did you affix the name of Marino Tedeschi on summonses and complaints?

A. Nobody told me to affix the signature. I mean, it just couldn't go out without a signature.

Q. Well, who told you to type the name Marino Tedeschi at the bottom of the complaint?

A. Mr. Bonafield.

Q. Did he know that you were signing Tedeschi's name?

A. Yes.

Q. Did you know that it was illegal to sign the name of an attorney to a complaint?

A. No, I didn't. (Whereupon, the witness confers with counsel.)

A. No, I didn't.

Q. Did you assume that because Judge Bonafield knew you were signing the name, that it was okay to do it?

A. Yes.

Q. Were there occasions when you would forge Tedeschi's signature and then notarize the forgery?

Mr. Feinstein: I would only object on behalf of my client, Mr. Chairman, to the use of the word "forgery". It could be with permission of somebody or facsimile.

The Chairman: All right.

Q. How about a facsimile?

A. Yes.

Q. When you facsimilated Mr. Tedeschi's signature?

A. Yes.

Q. And then you would notarize the facsimile? Were there occasions?

A. Yes.

Q. Did Judge Bonafield know you were doing that?

A. Yes.

Q. Did you have some guide to use in signing his name?

A. Yes.

Q. What did you use?

A. A signature card.

Q. And you then tried to make your signature of Tedeschi look as the Tedeschi signature on the signature card?

A. Yes.

* * * * *

Q. All right. I take it Judge Bonafield never told you not to sign Marino Tedeschi's name?

A. No.

The Disbursements to the Judge Didn't Equal the Rent

As keeper of the checkbooks for the two bank accounts in Mr. Tedeschi's name, Mrs. Siderits soon had reason to know the amounts she was disbursing did not equal the purported rent payment figure:

Q. Now, as monies were received from settlements, closing or probate matters, would you make the deposits?

A. I would prepare a deposit slip.

Q. You would prepare deposit slips?

A. Yes.

Q. And when monies were transferred from the trustee account into the regular account, would you

prepare the checks which represented disbursements on the regular accounts?

A. Yes.

Q. They were always signed generally by whom?

A. Mr. Celentano, mostly.

Q. Now, when it came time to make the disbursements out of the regular account, I understand your testimony to be that you followed Mr. Bonafield's instructions with respect to the disbursements?

A. Yes.

Q. And how did he characterize the monies that he was to receive? Did he ever characterize them?

A. I don't think so.

Q. Well, was there a point in time when you knew that monies that you were disbursing to him couldn't possibly be rent?

A. The amounts were not the amount he had told me the rent was.

The Elusive Fixtures

As previously noted, Judge Bonafield would direct Mrs. Siderits to make disbursements from the Tedeschi bank accounts. Mrs. Siderits was asked to testify about a particularly large disbursement to the judge:

Q. Well, let me put the question to you this way: Do you remember making out a check to Judge Bonafield for $2,500 in Dec. of 1970?

A. Not until I saw it at the last hearing.

Q. All right. When you saw it at the last hearing, did you have any recollection then as to what your state of mind was when you prepared that check?

A. No, because I remembered that that's the one he told me was for fixtures.

Q. For fixtures?

A. That's right.

Q. In other words, this was reimbursement to him for fixtures in the office?

A. That's what he told me.

Q. Well, had there been new fixtures which had come in recently?

A. No.

Q. So it couldn't have been for fixtures, could it?

A. The office fixtures is what he said the check was for.

Q. That was his explanation. You didn't question it.

A. No, I didn't.

Legal Fees Are Paid

Mrs. Siderits became aware of a coincidence in time between the division of proceeds from legal matters by Judge Bonafield's office and the payment of money to the judge from the Tedeschi regular bank account. Mrs. Siderits was asked to testify about several specific incidents of legal fees charged after the Jan. 7, 1970 cutoff date for Judges of Compensation to desist from any further practice of the law:

Q. All right. Now, did you find that there was a coincidence in time between the division of proceeds from legal matters and the payment of monies to Bonafield?

A. Yes.

Q. All right. I will ask—let me ask this question first: Do you remember a client by the name of Misajets, M-i-s-a-j-e-t-s?

A. Yes.

Q. Do you remember that as a negligence action?

A. Yes.

Q. Do you remember it as one that was instituted after January 7, 1970?

A. I don't remember when it was instituted, but I'm sure it probably was if you're questioning me on it.

Q. Well, it was, and I would like to show you three checks, which are marked 136, 137 and 138. The checks are dated June 24th, 1971, the date of the settlement.

They're drawn on The Hartford Insurance Group, and they were deposited on July 7, 1971, into the trustee account, and they total $2,460.

Do you remember seeing those?

A. I can't say that I remember, but I must have.

Q. Well, let's see if we could refresh your recollection. Keep those in front of you, if you would.

Now, I want to show you checks drawn on the trust account marked Exhibits 139, 140, and 141. The checks are dated July 9, 1971, and they're payable to the Misajets, and the total amount is $1,845.

(Whereupon, the witness confers with counsel.)

A. On the backs of the Hartford checks I recognize that as my writing.

Q. Your writing on the back of the——

A. Yes.

Q. So you must have——

A. Yes.

Q. ——deposited them in the trust account?

A. Yes.

Q. All right. Do you recognize your writing on the checks drawn on the trust account payable to the Misajets?

A. Yes.

Q. You notice the date, July 9th?

A. Yes.

Q. And the total amount is $1,845?

A. Yes.

Q. You can take my word for the addition.

If we subtract $1,845 from $2,460, we come up with a little over $600.

Now, I will show you Exhibit C-142, which is a check which is a transfer from the trust account to the regular account in the amount of $600, dated July 6, 1971, and ask you if that check is in your handwriting.

A. Yes, it is.

Q. As you sit here today can you tell me if that represents a transfer of proceeds from the trust

account to the regular account, proceeds representing the Misajet settlement?

A. Yes.

Q. It does, does it not?

A. (Nodding affirmatively.)

Q. All right. Now, I will show you checks which are marked C-143-144 and 145. These checks are drawn on the Marino Tedeschi Regular Account. The first one is payable to James J. Bonafield in the amount of $250, and it is dated July 6, 1971. C-144 is payable to cash, endorsed by Bonafield, or endorsed to the account of Bonafield, dated July 9th, 1971, in the amount of $150. C-145 is payable to John R. Celentano in the amount of $25 and it is dated July 9, '71, and C-146, dated July 9, 1971, is payable to Marino Tedeschi, $150. It is marked "Misajet" in the upper left-hand corner.

First of all, I would like you to examine these and tell me if they're in your handwriting.

A. Yes.

Q. And do they represent the division of the proceeds of the settlement of the Misajet case?

A. Yes.

Q. Out of which Judge Bonafield got $400; is that correct?

A. Yes.

Q. And Marino Tedeschi got $150?

A. Yes.

Q. Now, Mrs. Siderits, do you remember the probate of an estate involving a Mrs. Schweighardt?

A. Yes.

Q. Do you remember if that estate was probated in May of 1972?

A. Yes.

Q. Do you recall that the fee for the probate of the will was $1,000?

A. Yes.

Q. And who told you what to charge as a legal fee?

A. Mr. Bonafield.

* * * * *

Q. All right. Now, do you recall, you were here this morning when Mr. Gildea testified concerning the Shannon closing?

A. Yes.

Q. And you recall the statement that we read into the record purportedly signed by Mr. Shannon or Mrs. Shannon concerning their appointment at the 1458 Main Avenue office. Do you recall them calling you and making the appointment?

A. No, I don't.

Q. Do you recall being present?

A. Yes.

* * * * *

Q. Do you recall on Nov. 30, 1970, that a bill was sent out under the name of Marino Tedeschi for an attorney's fee in the Shannon matter?

A. Yes.

Q. For $290.

A. Yes.

Q. Mr. Tedeschi hadn't done any work in connection with that, had he?

(Whereupon, the witness confers with counsel.)

A. To my knowledge, he didn't.

Q. To your knowledge he had not.

The Agreement Was A Blind

Because of incidents as cited above and her knowledge of the law offices' finances, Mrs. Siderits came to realize that the so-called agreement for Mr. Tedeschi to take over Judge Bonafield's law practice and pay rent in return had never materialized:

The Chairman: Let me see if I can't get to the bottom of this. Mrs. Siderits, would you explain for

the benefit of this Commission what your understanding was of the arrangement about the two-hundred-fifty-dollar rent, please?

The Witness: It didn't seem to be what he had originally told me.

The Chairman: And why do you come to that conclusion it wasn't what he initially told you?

The Witness: Because Mr. Tedeschi wasn't doing any of the work.

Examination by Commissioner Farley:

Q. Mrs. Siderits, I only have one or two questions. Isn't it a fact that sometime in 1971 or '72 you realized that the so-called rent agreement with Tedeschi was really a blind; there was no really rent arrangement?

A. There didn't seem to be.

Q. And Bonafield was the man that was calling the shots?

A. Yes.

Q. And the accounts that were set up in the name of Tedeschi were really operated and run by Bonafield through yourself, right?

A. Yes.

The presentation of the facts relative to Judge Bonafield was completed by Special Counsel Diana's offering as an exhibit for the public record a state document filed with the Department of Labor and Industry and attested to by the Judge:

Mr. Diana: I would now like to offer into evidence a document of the State of New Jersey, Department of Labor and Industry, Division of Administration, entitled "Conflict of Interest Questionnaire" as Exhibit C-149. It is dated March 31, 1971. The name of the individual signing the document is James J. Bonafield.

Under Section A of the document he says as follows: "I am not now engaged in any business, trade or profession outside of, or in addition to, my position with the Department of Labor and Industry."

The certification at the bottom reads as follows: "I hereby certify that this conflict of interest questionnaire contains no willful misstatement of fact nor omission of material fact and that before I accept any outside employment or engage in any business activity outside of my position with the Department of Labor and Industry after the date of this questionnaire, I will submit a new questionnaire for decision by the Conflict of Interest Review Board," dated March 31, 1971, James J. Bonafield. Exhibit C-149.

Recommendation for Dismissal of the Judge from Office

Immediately after the testimony relative to Judge Bonafield at the S.C.I.'s public hearings in June, 1973, State Labor and Industry Commissioner Ronald Heymann ordered the Judge be suspended from the Workmen's Compensation Bench. Subsequently, then Governor William T. Cahill appointed John J. Francis, a former Associate Justice of the New Jersey Supreme Court, as Hearing Examiner to conduct a public hearing concerning the charges that Judge Bonafield practiced law unlawfully while holding the office of Judge of Compensation. The hearings, which afforded Judge Bonafield the right of cross examination of witnesses and the opportunity to testify on his own behalf and present witnesses for his defense, were held in October, 1973. Mr. Francis, in December, 1973, found in his report to the Governor that Judge Bonafield had unlawfully practiced law from January, 1970 to July, 1972 and recommended that the Governor dismiss Judge Bonafield from office. Mr. Francis wrote:

> After seeing and hearing the witnesses and studying the transcript of their testimony and the many exhibits introduced, I am satisfied beyond a reasonable doubt that Bonafield was engaged in the practice of law between January 1970 and July 1972 in violation of the statutory prohibition against doing so. I find also that the transgression did not occur through mistake, inadvertence or even negligence. It was done with premeditation, deliberation, and wilfulness, and represented a fully conscious decision to circumvent the statute.

Respondent offered evidence to be utilized on the issue of penalty, if a finding of guilt was made. It consisted of the testimony of a number of attorneys who have substantial practice in the Workmen's Compensation Division, as well as co-workers in the Division. They asserted that Bonafield was a competent and hard working Judge of Compensation. Consideration has been given to that testimony in reaching the determination I believe should be made with respect to the measure of discipline to be imposed upon Bonafield.

I can find nothing to condone or excuse or mitigate his conduct. In my view the violation goes to the very heart of his qualification to be an administrative judge. The Supreme Court in *Campbell v. Dept. of Civil Service,* 39 N.J. 556, 582 (1963) declared that the elemental guides to judicial ethics which have been codified into formal rules to govern the conduct of judges in courts, apply alike to triers or quasi-judges in administrative agencies. Deputy-Commissioners sought and accepted the title of Judge of Compensation, and their actions when holding that office must meet the same standard of integrity as is imposed upon judges of the judicial department of government. If lack of integrity is tolerated in those whose duties require them to engage in the judicial process, a mainstay of our government must become gangrenous. In the present day climate of our society that cannot be allowed to happen.

Respondent's violation of the statute forbidding him to practice law is a more grevious transgression of law and ethics than those involved in *Campbell v. Dept. of Civil Service,* supra. and *Russo v. The Governor of New Jersey,* 22 N.J. 156 (1956). Under the circumstances the public interest can be served only by imposition of the severest of sanctions.

Accordingly, having found the respondent guilty beyond a reasonable doubt of the charge made against him, it is my recommendation that he be dismissed from office as a Judge of Compensation.

Dismissal Is Ordered

Governor Cahill in January, 1974, after review had been made of Mr. Francis's report and of objections filed by Judge Bonafield to that report, ordered that the Judge be dismissed from office.

SOME ABUSES IN "NEURO" AND HEAT TREATMENT

S. Lawrence Torricelli, the attorney whose testimony about a judge's sale of law books to the law firm of Rabb and Zeitler has previously been set forth on pages 84 and 85, testified again at the public hearings as an expert witness relative to abuses in making unwarranted allegations of neuropsychiatric injury in Workmen's Compensation claims and to heat treatment excesses in compensation cases. Torricelli, before he became associated with Rabb and Zeitler, practiced law on his own in Hackensack; was employed by the late John McGeehan, an eminent Newark attorney, and served as a Deputy State Attorney General and as a Referee of Compensation.

Invariably That Doctor

Mr. Torricelli upon joining the Woodbridge law firm found little or nothing had been done about its Workmen's Compensation cases, and he set about organizing the firm's Compensation Department. In that process, he came across a large number of claim petitions which set forth a basic allegation of low back injury, plus an additional allegation of neurosychiatric (which encompasses neurological) injury, with Dr. Herbert Boehm invariably the examining doctor for the "neuro" allegation. Torricelli testified about this overuse of "neuro" allegations and why they might be considered unwarranted allegations:

Q. Well, let's see if I can clear this up a little bit. I take it that when you got there you may have observed that there were claim petitions involving soft tissue injuries to the low back in which there was also a claim for a neurological or a neuropsychiatric disability?

A. That's true, sir.

Q. And that you would have found, I take it, that any examination and report by Dr. Boehm was invariably dated subsequent to the date of the claim petition; isn't that correct?

A. As far as I know, yes.

Q. It was always dated after the claim petition?
A. As far as I know, surely.

Q. Which means, then, that the statement on the claim petition signed by the petitioner under oath concerning a neurological disability was probably untrue?
A. Well, that's a very difficult thing to answer. First of all,——

Q. Why is it so difficult to answer?
A. I didn't have the opportunity of speaking to the clients.

Q. I understand.
A. I didn't have the opportunity of observing the client. But just let me say this: that on just the facts you have given me of the minor soft-tissue injury, I do not think that a neurological examination is warranted.

Proper Practice and a Warning

Mr. Torricelli gave his opinion as to the proper practice in alleging neuropsychiatric injury, told why he had reduced the use of Dr. Boehm to a minimum, and warned of the damage that could be done by careless and unwarranted practices in this area:

Q. Well, what's your practice with respect to the reference to a neurologist or neuropsychiatric physician for the evaluation of disability?
A. Well, I will refer a petitioner for such an examination if it's recommended by the orthopedist, first of all. Number two, in instances where there's plainly an injury of a neurological nature, such as a concussion, or if I have information relative to a particular client who has lost a major member like an arm or a leg. But it's got to be something significant.

Q. So significant that it would be obvious to you as a practitioner that the petitioner was suffering from some neurological overlay or some neuropsychiatric overlay?
A. Yes, in instances where it's obvious.

Q. Well, supposing that the petitioner came in and said he injured his back while lifting a barrel or a drum or something of that nature at work. Would you refer him to Dr. Boehm for——

A. On those facts alone, per se, no.

Q. No. Did you find that that had been done before you became associated with Rabb and Zeitler?

A. Well, in such cases as I have had occasion to review yes.

Q. Yes, that it had been done. And I take it that you have found that there were a great number of cases, in fact, I think I told you at your private hearing that there were something like 200 in the period 1969 through the middle of 1971, where Dr. Boehm was evaluating neuropsychiatric disability for Rabb & Zeitler, and I think you said you were surprised to find out that there were that many. Is that correct, sir?

A. Yes, I was completely amazed.

Q. Yes. And I take it that after that date your use of Dr. Boehm was considerably less; is that so?

A. It's down to an absolute minimum.

Q. All right. Can you tell me the reason for that?

A. Well, for the reason that I have already outlined to you, and I don't see any reason for it, to begin with, and I don't want to put myself in the position of alleging a disability or trying to build one up where it's not there.

Q. Well, yes. And I think I asked you that very same question at your private hearing and you said something like this in answer to my question: you said, "The petition bears a signed oath by the petitioner wherein the petitioner certifies that he has certain complaints. Now, certainly if a petitioner in good faith does not have these neuropsychiatric complaints, I'm not about to allege them."

A. That's quite true, sir, I did say that.

Q. That was your answer to my question why you——

A. And I will reaffirm that answer now as well.

Q. Right. So that if I might summarize—you correct me if I'm wrong, sir—your much less frequent use of Dr. Boehm as opposed to the use that had been made of him prior to the time you came to Rabb and Zeitler was because you didn't want your clients to be signing a statement under oath that wasn't true?

A. That's quite true, and then I have another reason which I would like to outline.

Sometimes you can do an individual a great deal of harm by letting him think that he's a neuropsychiatric case. I mean a lot of these people are uneducated, and right away they think that they're neuros, and you can do a man a great deal of harm that way where it's not warranted. In other words, to put it in plain language, the working man comes out of the entire hearing with a belief that he's crazy.

Q. Yes. If I understand you correctly, sir, you're telling me that many of your clients might not have a complete education, and they might be fearful of the—let's put it this way: If you were to send him to a neuropsychiatric man, they may not understand the reason, it may create or generate a fear in them which shouldn't have been there in the first place?

A. That's exactly, and you may find yourself in a position where you may be creating a neurosis where there's none to begin with.

Q. You might be helping it along?

A. Yes. And I might like to outline another reason as well. In handling compensation cases, we're dealing with peoples' lives, and by that I mean this: that you take a young man who's just starting out in business or industry and you give him a record of neuropsychiatric claim, it goes on his record and it's apt to hurt him.

Q. In other words, if there had been a rather careless allegation of neuropsychiatric disability which just should happen to result in a finding of neuropsychiatric disability, that stays on the man's work record and that could prejudice him?

A. That's exactly it.

Let me put it this way, sir: I wouldn't want it alleged against any member of my family, my son or

my daughter, so I'm not about to inflict this label carelessly and wantonly on any person unless, of course, the facts actually warrant it and there's a neuropsychiatric disability and the truth has to be faced and the man is entitled to be paid for it.

Q. I understand, sir. I think what you're telling me is that an attorney should use extreme care in the allegation of neuropsychiatric disabilty?

A. That's right. As a matter of fact, an attorney should use extreme care in anything that they allege, which is something that I learned through the years and also was fortified by my association with Mr. McGeehan.

* * * * *

Q. So if you're going to allege this willy-nilly as an attorney, I suppose you have to have some belief that you're going to be held up or substantiated, or confirmed rather, by your neuro, your neurologist?

A. I think you have a rather fair anticipation that it will be.

High Heat Treatment Bills

Besides reducing the use of Dr. Boehm's services to a minimum, Mr. Torricelli also put an end to the Rabb and Zeitler practice of running up large bills for unauthorized heat treatments in compensation cases from a set of favored treating doctors. Mr. Torricelli testified additionally that the same set of doctors submitting high treatment bills in compensation cases were also used by Rabb and Zeitler in their negligence action cases:

Q. Yes. Now, when you became aware—and I should preface this question by saying you probably have already answered it, considering the lack or rather the reduced frequency with which you now use Dr. Boehm. But in case the record isn't clear, when you became aware of Rabb & Zeitler's practice to send clients to Dr. Boehm without a proper medical referral, did you take steps to discontinue that practice?

A. Yes, I did. First of all, I told them when I went there that I wouldn't take over this practice unless

I was given absolutely a free hand. I mean as far as my job is concerned I was to have no outside interference at all.

Q. And, in fact, your, shall we say, compensation section of Rabb and Zeitler is physically in a different place?

A. As a matter of fact, it's physically moved. We're down in the basement.

Q. Yes.

A. With no windows.

* * * * *

Q. Now, Mr. Torricelli, when you arrived on the scene at Rabb & Zeitler, and, now with respect to their compensation practice, did you make any observations with respect to their resort to certain doctors who administered heat treatment?

A. Well, I would very frequently come across bills from Dr. Brandwein in the file. And who was the other man? Dr.——

Q. Dr. Gordon?

A. Dr. Gordon. And I was at a complete loss to understand what in heaven's name they were doing there, because they were completely unauthorized, and I'd go to court with these bills and I could never collect them.

Q. Well, I think we better take this step by step. First, let me ask you, what is the definition in a compensation case of unauthorized treatment?

A. Well, any treatment that is not afforded or sanctioned by the insurance carrier, or treatment that is not emergency treatment.

Q. Yes. And if the carrier after you made application to him should reject your request for treatment and you as an attorney felt that there should be further treatment, what would be the proper and legal thing for the attorney to do?

A. Well, the proper legal thing to do is to make a motion for medical treatment. However, if the client is in need for immediate medical care, you can't wait

around for this motion to be listed, and I would like to say something about these motions a little later.

Q. Yes.

A. You then write a letter or communicate with the carrier and tell them that your client is in need of emergency care and you're directing the client to go to Dr. X or to the hospital; if they have any objections, to let you know immediately.

Q. But I take it that the emergency situation is a rare one? I mean, it isn't going to happen every day?

A. It's going to be very rare. It's got to be a situation where a man has a disc and he just can't move. But in the ordinary run-of-the-mill back case it's not that bad.

Q. Well, did you find that prior to the time you had come to Rabb & Zeitler there were several cases, several compensation cases, where in the ordinary run-of-the-mill back case they had incurred the cost of heat treatment on behalf of the client?

A. Well, I'm at a loss to know what treatment was rendered because I didn't see any reference to heat or the diathermy or anything. I just saw bills.

Q. Well, did you see—when you saw these big bills from Dr. Brandwein, I think you said at one point there was one for $400 on a case?

A. That's right.

Q. The settlement value of the case was far less, was less than——

A. That's right, the case was tried to a conclusion and the petitioner got 2½ of total, which is $550. Dr. Brandwein was ruled unauthorized.

Q. Yes.

A. And, therefore, uncollectable. So——

Q. Well, did you understand the nature of the treatment that these doctors like Brandwein were providing?

A. I have no idea, sir. I really don't know what they were doing. If I knew, I'd tell you, but I just don't know because the bills didn't specify what they were doing.

Q. There was no itemization on the bill?

A. Well, I'd see some bill from Dr. Mandell, for instance, chiropractor. He had X-ray and then he had a re-X-ray and then he had a laboratory fee. I said, "What in the hell is a chiropractor doing with laboratory fees?" and then everytime you turn around he's re-X-raying again. Of course, I would completely discount these bills and I couldn't collect them in court. Impossible.

Q. Well, what did you do, then, when you got there and discontinued that practice?

A. Well, first of all I wouldn't refer the client out to anyone. I never sent anyone to Dr. Brandwein, I never sent anyone to Dr. Gordon. I would pursue the proper legal remedy of going back to the carrier and asking for medical treatment, and if that didn't work, then I would go ahead with my motion for medical intent.

Q. Yes. Now, did you have any idea as to the total number of doctors utilized by Rabb & Zeitler on behalf of their clients for treatment? I won't say heat treatment, because apparently you couldn't see anything on the bill which indicated that. You can take my word for it, it was heat treatment.

A. Well, the only doctors I was aware of that were being used, and I understand they were being used in the liability department and negligence, were Drs. Gordon, Lopez——

Q. Lopez?

A. Brandwein.

Q. Mandell?

A. And Mandell.

Q. And did you understand that they were also being used to treat compensation cases?

A. Well, they were before I went there, but not after I took over.

Q. I mean before you went there. You found bills in the compensation files?

A. Yes, they were in there.

Q. Reflecting treatment by these doctors in compensation cases?

A. Yes.

Q. So that you would describe Drs. Lopez, Gordon, Mandell and Brandwein as favored treating doctors for Rabb & Zeitler?

A. I suppose they were.

Q. Yes.

A. I mean insofar as I came across.

Q. And when you got there, you discontinued the practice of sending these clients to treating doctors without authorization?

A. That's right.

Mr. Torricelli told of a problem area in the processing in the Workmen's Compensation Courts of motions for additional medical treatment and how a strong Director of the Workmen's Compensation Division might alleviate that problem:

A. I want to bring out this question of motions for medical treatment which the law affords us. The remedy is there. However, it is very poorly exercised because these motions don't get listed in the Division. They don't get listed. They get lost in the shuffle, and I have to keep calling on the telephone and cajoling the personnel to please list these motions.

Q. Well, these motions——

A. In the meantime, the client is not getting any treatment, the client is not being paid.

Q. Can you account for that in any way?

A. I think what they need is a good effective director to straighten out the whole thing, sit down with the personnel, sit down with the girls, show them what to do. You know, remedy is one thing, but exercise it.

Q. Considering the number of people who have come in to testfy at these hearings about the need for a good, effective director, I would say this poor gentleman is going to be working twenty-four hours a day.

A. I just hope he measures up to it.

Some Heat Treatment Falsities

The Commission's investigation led to questions being raised as to legitimacy of some high treatment bills submitted to Rabb and Zeitler by Dr. Boehm in legal actions being handled by that firm. As a result, the Commission's agents interviewed at random some of the doctor's former patients involved in those actions to check the validity of treatment bills rendered. In the instances of three patients, the Commission was informed they had visited the doctor's office less time than listed on the bills rendered by Dr. Boehm.

A Glaring Example

One of the patients is Mrs. Lydia Jiminez of Perth Amboy who was represented by Rabb and Zeitler in a negligence action arising from injuries she suffered in an automobile accident in 1969. Mrs. Jiminez first went to her family doctor but was subsequently sent by Rabb and Zeitler to a doctor who for about five months gave her massage and heat treatments for the lower back twice a week. When she continued to complain of nervousness, she was directed to Dr. Boehm who, after initial examination, gave her heat type treatments which Mrs. Jiminez found quite an odd step for a psychiatric doctor. Mrs. Jiminez testified about those treatments, her termination of visiting Dr. Boehm, and the falsification of the bill submitted by Dr. Boehm to Rabb and Zeitler:

Q. What kind of a doctor did you understand Dr. Boehm to be?

A. Psychiatrist.

Q. A psychiatrist. Now, when you got to Dr. Boehm, what kind of treatment did he administer?

A. Funniest one.

Q. It was a funny one, yes.

A. Because he just locked me up in this room, which I call a closet, with a heat lamp and a pair of dark glasses.

Q. All right. You say he gave you a funny treatment, he locked you up in a small closet with a heat lamp, a chair and a pair of dark glasses?

A. Yes, sir.

Q. All right. Now, how often did you go to Dr. Boehm for treatment?

A. I was supposed to go there twice a week.

Q. Yes.

A. But I didn't make it up that way.

Q. The first week how often? Did you make the two visits the first week?

A. The first week, yes. Then I skipped.

Q. Then you skipped a week?

A. Then I went back.

Q. And how many visits did you make to him altogether?

A. Six altogether.

Q. You're pretty clear on that, are you, that it was six?

A. Yes, sir.

Q. All right. Now, did something happen on the occasion of the sixth visit which helped you to remember why it was the last visit?

A. Because I had an argument with Dr. Boehm.

Q. What did that argument consist of?

A. Well, I complained about the treatment. I thought that's not the kind of treatment I went there for.

Q. Did you tell him that you're not that bad; that I don't need that kind of treatment. I could lock myself in my own closet.

A. That's right.

Q. Is that what you told him?

A. Yes, sir.

Q. You walked out and didn't go back?

A. I told him not to wait for me, I wasn't coming back.

Dr. Boehm's bill and attendant correspondence in the Jiminez case were marked as an exhibit. Mrs. Jiminez's testimony proceeded with reference to that exhibit:

Q. And you will note that the letter in the second paragraph says as follows, and I shall read it for the record: "At the request of Dr. Pollen I originally examined the patient in my office on October 29, 1969.

At that time she complained of pressure in her chest, frequent headaches and nervousness and restlessness. I saw the patient at regular intervals on thirty-nine occasions from November 6, 1969 to July 30, 1970. The patient suffered from a post-concussion syndrome plus post-traumatic neurosis following injury of the left frontal head. She received tranquilizers, analgesics, reassurance and foradic galvanic treatment,'' which interpreted into English means heat treatment.

Now, you will notice, Mrs. Jiminez, that the bill annexed to those two letters indicated that he examined you on Nov. 29, 1969 and thereafter treated you on thirty-nine separate occasions up through July 30, 1970. Insofar as that bill reflects a treatment of you on thirty-nine occasions, is that bill true or false?

A. That's false.

Q. Because you were only there six times; is that correct?

A. Six times altogether.

After Mrs. Jiminez testified before the Commission Feb. 14, 1973 in private session, she was visited by Messrs. Rabb and Zeitler. They, according to Mrs. Jiminez, tried to put words in her mouth as to the number of times she had been treated by Dr. Boehm:

Q. All right. Now, Mrs. Jiminez, if I may refresh your recollection, you testified before this Commission in private session on February the 14th, 1973. Shortly after that did Mr. Rabb or Mr. Zeitler come to see you?

A. Yes, sir, he came to my house.

Q. And were they both together?

A. They were both together.

Q. And did they say at that time that they learned that you had testified before the Commission?

A. Yes.

Q. And did they indicate that they knew what your testimony had consisted of?

A. Yes.

Q. And did they attempt to try to get you to change your testimony at that time?

A. Not in clear words, but intentional.

Q. I see. Well, what words did Mr. Rabb or Mr. Zeitler say to you the evening they came to your apartment, which indicated to you that they wanted you to change your testimony?

A. Well, he kept on telling me that he, you know, settled a good case for me and he wasn't aware that I only had six visits to Dr. Boehm; that he doesn't know that he was overcharging for the bill. Just trying to put words in my mouth.

Q. And he wanted you to come down to his office and sign a statement?

A. That's the way I understood it.

Q. Did you understand what he wanted to put in the statement?

A. No.

Q. And did you subsequently call him and tell him that everything you testified to before the Commission was the truth and you saw no point in coming down to his office?

A. That's right.

No More Than Nine Visits Each

Two other former patients of Dr. Boehm who were interviewed by S.C.I. agents are Antonio Elias and his wife, Carmen. The Eliases, who live in Newark, were represented by Rabb and Zeitler in a negligence action arising from injuries the Eliases suffered in an automobile accident in August, 1969.

They first were treated by a Dr. Weinstein at his office in Irvington twice a week from August through December, 1969. Dr. Weinstein was scrupulous about sending the Eliases copies of their treatment bills which accurately reflected the frequency of their visits and the amounts charged. Originals of those bills were sent to the law firm.

Mrs. Elias testified why she and her husband had particularly clear recollections of visits made to doctors after their accident because they were without a car of their own:

Q. Perhaps I should ask you now, was there a particular reason why you both would go together to the doctor?

A. Mainly because we had no form of transportation and we always tried to make it convenient for both of us to attend at the same time.

Q. Yes. And your husband at the time was employed as a tractor-trailer driver?

A. No, shortly afterwards.

Q. But speaking only, now, of the period of time involving Dr. Weinstein. I take it your husband's employment was not a factor, then, in when you went to see Dr. Weinstein?

A. No.

Q. But what was a factor was your accessibility to transportation?

A. Correct.

Q. And did you have to borrow a car?

A. Most of the time, or take a taxi.

Q. And would you borrow your father's car?

A. Most of the time.

Q. Or take a taxi?

A. Right.

Q. So that you would be likely to remember the visits that you made because of the manner in which you had to arrange for transportation; is that correct?

A. Yes.

After Dr. Weinstein discharged the Eliases, she continued to suffer from nervousness and headaches and he from tension in the neck and leg. It was recommended the Eliases see Dr. Boehm at his office in Elizabeth. The Eliases think the law firm made that recommendation.

Mrs. Elias testified as to the number of visits she and her husband made to Dr. Boehm's office and what treatment was administered on those occasions:

Q. Now, do you recall that you first saw Dr. Boehm in late March of 1970?

A. Yes, I did.

Q. All right. Now, I take it that you had a baby that was born December 18, 1970?

A. Right.

Q. That would mean that you became pregnant sometime during March, 1970?

A. Yes.

Q. Right. We've got four and I never know exactly how to date it.

A. I know.

Q. But, anyway, I counted back nine months and I got to sometime in March of '70 with respect to your baby.

A. Right.

Q. All right. Now, what kind of treatment did you receive from Dr. Boehm?

A. Just heat treatment, a lamp.

Q. Heat treatment with a lamp?

A. Right.

Q. Did he prescribe tranquilizers?

A. No. I wouldn't take them even if he did.

Q. Because you were pregnant at the time, so you wouldn't take tranquilizers?

A. No.

Q. Now, you recall, if you started in March of 1970, do you recall, first of all how you got transportation to Dr. Boehm?

A. Same manner; we either borrowed my father's car or took a taxi.

Q. And I take it, once again, you and your husband were making these visits together?

A. Right.

Q. Because of the ease of transportation?

A. Right.

Q. You both had to go in the same transportation because you didn't have a car?

A. Right.

Q. Now, by this time had your husband become employed as a tractor-trailer driver?

A. Yes.

Q. And would there be occasions when he would be working at night and say, "I can't make the appointment?"

A. Right.

Q. And you would call and cancel?

A. Right.

Q. Do you recall approximately when, that is what month—let's put it this way. This might help you. Do you recall how many months or weeks before the birth of your baby you stopped going to Dr. Boehm?

A. It must have been about either October or very early Nov. but I can't remember any later than that.

Q. All right. Do you recall how many visits you made to Dr. Boehm?

A. I am not sure, but it couldn't have been more than eight or nine.

The bill and attendant correspondence sent to Rabb & Zeitler by Dr. Boehm in Mrs. Elias' case was marked as an exhibit, and she testified relative to that exhibit:

Q. All right. Mrs. Elias, you will see that I have given you a three-page document, the first page of which consists of a report addressed to Mr. Rabb, dated March 25th, 1970, concerning you; the next page of which is a further report to Mr. Rabb, dated Dec. 4, 1970, and the last page of which is the bill. Now, my first question, did you ever see a copy of Dr. Boehm's bill?

A. No, not until I came to Trenton the previous time.

Q. Right. And you will notice that Dr. Boehm has billed sixteen visits concerning treatment rendered to you. I take it you could not have been there sixteen occasions?

A. No.

Q. Therefore, you could have been there, as you said, perhaps at most nine, so that means seven visits you never made?

A. Right.

Q. Now, you will notice, also, that on his report of Dec. 4, 1970, he says, "This patient was also treated by me on fifteen occasions"—I might insert for the record, the 16th being the first examination—"from April 2nd to November 11, 1970. She received analgesics, tranquilizers and reassurance."

Did you ever receive any tranquilizers?

A. No.

Mr. Elias corroborated his wife's testimony and testified similarly as to the bill submitted to the law firm by Dr. Boehm in Mr. Elias' case.

Q. Mr. Elias.

A. Yes, sir.

Q. I take it that if I were to ask you the same questions that I asked Mrs. Elias, concerning the details of the accident, the trips to Dr. Weinstein, the referral to Dr. Boehm, stopping there, you would answer as she had?

A. Yes, sir.

Q. In other words, you would confirm that you both made the trips to the doctors together because of the transportation problem?

A. Also because we were married.

Q. Also because you were married. I don't know how I could have forgotten that.

Okay. How many visits to Dr. Boehm do you recall?

A. Eight or nine visits.

Q. Eight or nine visits?

A. Yes, sir.

Q. And am I correct in assuming that your recollection as to the number of visits is aided by the difficulty you had in arranging transportation?

A. Yes, sir.

Q. And that if you had been there sixteen times then you would have had to borrow your father-in-law's car on sixteen occasions, or pay for taxis on sixteen occasions, those would be events you would be likely to remember; is that correct?

A. Yes, sir.

Q. So you are very firm in your recollection that it could have been no more than nine visits?

A. Yes, sir.

Mr. Diana: I will ask the reporter to mark Dr. Boehm's report and bill for Antonio Elias as next in order.

(Report and bill of Dr. Herbert Boehm re Antonio Elias received and marked Exhibit C-40.)

Q. Now, you will look at that bill, Mr. Elias. You will notice, by the way, that he has billed for your initial examination on March 25, 1970, in an amount of $50.

A. Yes, sir.

Q. And thereafter he has billed for fifteen office treatments at $20 each, for a total bill of $350?

A. Yes, sir.

Q. Now, on the office treatments that you say you made, which was nine, I think you said, what did the treatment consist of?

A. Well, there was sort of a heat treatment around the neck with some type of a lamp.

Q. About how long would this process take?

A. Ten minutes.

Q. About ten minutes?

A. Yes, sir.

Q. Now, you will notice that he's billed for fifteen visits. I take it it's your testimony that six of those visits have to be padded?

A. Yes, sir.

A MULTIPLE ALLEGATIONS EXAMPLE

Of a number of petitioners in Workmen's Compensation cases interviewed by the Commission's staff in the course of the investigation, James Earl Buie of Newark provided some illuminating information about how he ultimately was referred to a New Jersey law firm and how that law firm handled his case. Mr. Buie was injured in September, 1971 when he slipped and fell while at work. He went to one attorney who filed a compensation claim in October of that year. Mr. Buie later became dissatisfied with Attorney Number One. He testified as follows about going to a second attorney:

Q. And how did you find another attorney?
A. I found another attorney through a cab driver.

Q. You were in a cab and you were talking to him and you said that you wanted to get another attorney or a good attorney, and he recommended Attorney No. 2: is that correct?
A. Yes, that's true.

Q. And did he give you Attorney No. 2's professional card?
A. Yes, he did.

Q. All right. As a result of that, did you make an appointment to see Attorney No. 2?
A. I didn't make an appointment, I was just told to come right into the office.

Q. And went to the office?
A. Yes.

Q. Now, when you went to the office, what was the first thing that happened? I assume you were interviewed by an attorney?
A. That's right.

Q. And did he ask to describe the nature of your complaints?
A. He did.

Q. And what did you tell him?

A. I told him I fell injuring my back and head. That's all I told him.

Q. That's all you told him?

A. Yes.

Q. Then did he proceed to dictate into a recording device?

A. He did.

Q. And during the course of his dictation did you hear him dictate complaints that you had never told him about?

A. Yes.

Q. Would you look at C-41, which is the petition filed on your behalf by Attorney No. 2, and you will notice it says in Paragraph 12, Mr. Buie, "Permanent partial disability to the back, right leg, nervous system, neck, head, internal organs and complications arising therefrom." Now, did you tell Attorney No. 2 about an injury to your back?

A. Yes, I did.

Q. Did you tell him about any injury to your right leg?

A. No, I didn't.

Q. Did you tell him about any injury to your nervous system.

A. No.

Q. Did you tell him about an injury to your neck and head?

A. My head, not to my neck.

Q. Not your neck?

A. No.

Q. Did you tell him about injuries to your internal organs?

A. No, I didn't.

Q. How long did this interview with Attorney No. 2 take?

A. I say, around twenty minutes.

Professional Cards Given

Mr. Buie told of Attorney Number Two giving him (Buie) some professional cards:

Q. During the course of that interview was there a point in time when Attorney No. 2 gave you some of his professional cards?

A. Yes, he did.

Q. And what was the first thing you did when you got them?

A. Well, I looked at the cards when I got them and——

Q. I see. You weren't saying anything, you were just looking at the cards?

A. That's right, I was looking at the cards.

Q. Then did he make some comments?

A. He was telling me that he represent a lot of minority groups, you know, black and Spanish.

Q. I see. Did you understand his statement to that effect to provide a motivation for you to go out and hand out those cards?

A. Right. Well he was telling me if I saw somebody on the job that needed an attorney or I met anybody on the street that needed an attorney, to refer them to him.

Q. And then did you make any comment with respect to that?

A. I didn't make any comments at all.

Q. You still remained silent?

A. That's right.

Q. And did you notice any change in his facial expression at that point?

A. Well, he began to smile when he was telling me that he represent a lot of minority and——

Q. Then did he say anything which led you to believe that you could expect to get something if you sent people in to him?

A. He was telling me one hand washed the other.

Q. He said one washed the other?
A. Right.

Q. All right. Now I'm holding in my hand an envelope in which are contained several professional cards. Is this the envelope and are these the cards that you turned over to this Commission that were given to you by this Attorney No. 2?
A. That is the envelope and that is the cards.

A Suggested Operation

A suggestion that he undergo an operation and the signing of a claim petition in blank were additional elements of Mr. Buie's testimony:

Q. Now, Mr. Buie, during the course of your representation by Attorney No. 2, did he suggest to you that you should have an operation on your back?
A. Yes, he did.

Q. Did he tell you that if you had that operation you would get more money in the settlement or the compensation award?
A. He did.

Q. Was there any doctor, either a petitioner's doctor or a respondent's doctor, who at any time advised you that you should have an operation?
A. No, no doctor advised me that I should have operation.

* * * * *

Q. Mr. Buie with respect to C-42, was that typed out in full, that petition, when you signed it?
A. You say was it typed out?

Q. Yes. Or did you sign it in blank or was it fully typed out?
Let me put it this way: Did you return to that Office No. 2 to sign the petition or did you do that on your very first——
A. Well, I sign all the papers on my first, you know, visit to the office.

Q. Well, do you recall whether all of this information was on the petition when you signed it or did you sign it in blank?

A. I signed it in blank.

THE HOUSE DOCTOR ARRANGEMENT

The Commission's investigation included an examination by the accounting staff of the books and records of three law firms known to have practices in compensation and negligence matters. Those examinations revealed facts as to the relationship or lack of relationship of the firms to favored treating doctors.

The firms were referred to in testimony as Firms A, B and C for the sake of convenience. At the outset, however, they were identified as being: Law Firm A, Freeman and Bass,* Newark; Law Firm B, Rabb and Zeitler, Woodbridge, and Law Firm C, Balk, Jacobs, Goldberg, Mandell and Selighson, Newark.

The examination of the books and records were for the years 1970 and 1971. Julius P. Cayson, the previously identified Chief Accountant of the Commission, noted in his testimony that the Balk firm voluntarily made available its 1972 books and records in addition to those requested by the Commission and that that firm's books and records were kept in the most exemplary fashion.

Mr. Cayson defined, for the purposes of the Commission's investigation, the term "treating doctor" to mean a doctor who renders treatment to individuals injured in accidents, said treatment almost invariably consisting of some form of physiotherapy. Mr. Cayson observed additionally that data as to payments to doctors in compensation cases is contained in the records of the State Labor and Industry Department, since doctors in these cases are paid directly by insurance companies. In contrast, he noted, data as to payments to treating doctors in negligence cases is discernable from the books and records of the law firms involved, since the treating doctors in those cases are paid by the law firm out of the settlement proceeds, after the law firm has received the settlement check from the insurance company and deposited that check in the law firm's trustee account.

Mr. Cayson testified as follows as to what this phase of the Commission's investigation showed relative to the three law firms' use or lack of use of treating doctors in compensation cases:

* Shortly after public testimony was given in which the firm of Freeman and Bass was identified by name, the S.C.I. was enjoined by the United States District Court for the District of New Jersey from referring to this law firm by name. The S.C.I. appealed to the United States Court of Appeals for the Third Circuit which dissolved the injunction. The Circuit Court, however, remanded the matter to the District Court, and the matter is still in litigation.

Q. All right. Now, limiting ourselves to the question of the use of the treating doctor in compensation cases, let us take the firms one by one. You start, then, by explaining the answer to that question with respect to Law Firm A.

A. With respect to Law Firm A, we were able to determine from the records of the Department of Labor and Industry that in the year 1970 one doctor, I repeat, one doctor, was used exclusively by the firm in treating their orthopedic cases.

Q. All right. Now what about Law Firm B?

A. From interviews with doctors who showed up as payees in their liability cases, we determined that these doctors who showed up in the liability cases also simultaneously were doing compensation work. In other words, as this investigation has progressed, we found that one type of medical treatment dovetailed with the other.

Q. Now, Law Firm C: What about that one?

A. In the case of Law Firm C, a partner in that law firm testified at these hearings that his firm has never, I repeat never, sent its compensation clients to doctors who provide heat treatment.

Q. Yes. That was the testimony of Jacob Balk?

A. Yes, it was.

Mr. Cayson next was asked to testify about what the examination of the books and records of the law firms showed relative to the use or non-use of treating doctors in negligence cases. His testimony was accompanied by the marking as exhibits of two charts (Numbers Eight and Nine on pages 330 and 331) which showed in graphic form the house doctor relationships maintained by Law Firms A (Freeman and Bass) and B (Rabb and Zeitler).

Q. All right. What did the disbursements out of the trustee account of Law Firm A disclose for the years under review?

A. They utilized approximately one hundred different doctors in liability cases. However, it is of greatest significance to note that 53% of all funds paid out of their trustee account to treating doctors, or $35,000, was paid to one doctor.

Q. All right. This was the same treating doctor as was used by them in their compensation cases; is that correct?

A. That is correct.

Q. Incidentally, what percentage of this favored doctor's reported gross receipts resulted from business sent by Law Firm A?

A. A minimum of 40%.

Mr. Diana: All right. We will now refer to the chart entitled "House Doctor—Example 1." I will ask the reporter to mark this chart as Exhibit C-43.

(Chart entitled "House Doctor—Example 1" received and marked Exhibit C-43.)

Q. Now, the doctor that we have just been describing is identified how in the chart?

A. He is identified as Dr. B.

Q. All right. Now, since we are going to be identifying Dr. B. subsequently in the hearings, his name is what?

A. His name is Dr. Harold Lippman.

Q. Right.

A. L-i-p-p-m-a-n.

Q. All right. Now, to summarize, what does this chart reflect?

A. This chart, the chart reflects the total payments as reflecting all payments paid to Dr. B.

Q. Now, how many negligence cases did Law Firm A's payments to Dr. B. represent?

A. Approximately 400.

Mr. Diana: All right. Mr. Cayson, in discussing Law Firm B, let us now refer to House Doctor—Example No. 2.

(Chart entitled "House Doctor—Example 2" received and marked Exhibit C-44.)

Q. All right. This chart, first of all, reflects, does it not, Mr. Cayson, that for the year 1970 and '71 Law Firm B paid out of its trust account a total of $230,000 to treating doctors; is that correct?

A. That is correct.

Q. It also reflects, does it not, that of this total five doctors received 54% of all payments made by this firm to treating doctors in liability cases?

A. That is correct.

Q. And it also reflects, does it not, that the balance of monies or disbursements out of the trustee account was divided among 145 doctors?

A. That is correct.

Q. And the average payment to those doctors was $758?

A. That is correct.

Q. You think there can be little doubt based on this chart that Drs. A, B, C, D and E were the favored treating doctors of Law Firm B?

A. There is no doubt about that.

Q. Now, concerning Law Firm C, what did their trustee disbursements indicate?

A. We found no pattern emerging from the disbursements concerning the use of treating doctors.

Q. You mean there was no repetitive use by that firm of any particular treating doctor?

A. Occasionally the journals of Law Firm C would reflect three of four payments to the same doctor, but invariably they were isolated payments here and there.

Q. All right. What did a comparison, then, of disbursements to doctors by Firms A, B and C suggest?

A. We can only conclude from the evidence, Mr. Diana, that the clients of Firm C selected their own treating doctors and that a majority of the clients of Law Firms A & B did not.

The Missing Files

Because of Dr. Harold Lippman's (Doctor B) favored treating doctor status, the Commission's investigation attempted to develop more facts about that doctor's practice and its relationship to Law Firm A. Joseph T. Corrigan, Special Agent for the

Commission, was called to testify about pertinent documents and private testimony accumulated during the course of this phase of the investigation.

The Commission believes the presentation of data through Mr. Corrigan's testimony provided an orderly and concise way of covering pertinent subject matter so that the public hearings could progress on schedule. Mr. Corrigan in his testimony referred to subpœnaed documents and quoted parts of the private testimony of two of Dr. Lippman's Medical Assistants and of a Lippman patient who was referred to that doctor by Freeman and Bass (Law Firm A).

Despite Mr. Corrigan's first hand references, to subpœnaed documents which were publicly displayed and his direct quotation of sworn testimony, there were attempts to label erroneously his testimony as hearsay. In order to make the record inalterably clear on this matter, the private testimony transcripts of the two Medical Assistants, Mrs. Flora Ware and Miss Marion Kingsberry, and of the Lippman patient, Mrs. Bessie Coles, were marked at the public hearings as exhibits so that they would be publicly available for anyone interested in verifying the accuracy of Corrigan's testimony.

The initial phase of Agent Corrigan's testimony covered what facts could be gleaned by what documents Dr. Lippman did produce in response to two subpœnas served on him. Some of the principal points covered in this area of Mr. Corrigan's testimony were:

- The Commission subpœnaed on January 3, 1973 the patient files of Dr. Lippman in 60 Workmen's Compensation cases for 1970 where the doctor received payment as an unauthorized heat treating doctor for Law Firm A (Freeman and Bass). After Lippman's motion to quash the subpœna was denied, he produced, as of January 26, 1973, 48 of the 60 files, claiming the other files had been discarded after being water damaged in his old office in Newark in 1972. In two-thirds of the 48 produced patient files there was correspondence, including a report and bill, with Law Firm A. The correspondence contained in two-thirds of the files showed that in only two instances had the petitioners been patients of Dr. Lippman prior to their accidents, a fact which helped establish that

Law Firm A sent numerous clients to Lippman for heat treatments.

- In response to a second subpœna served on Lippman February 7, 1973 at his present offices in Irvington for all his inactive patient cards reflecting treatments in negligence cases for Law Firm A, including 400 files identified by name in the subpœna, Dr. Lippman on March 1, 1973 produced only 73 of the subpœnaed files, claiming that a water pipe burst in his old Newark office earlier in the year had damaged the other files. Additionally, only 20 of the produced files had the correspondence, including the doctor's reports, despite the subpœna's specification that the correspondence be included.

Records Destruction

One of Dr. Lippman's two Medical Assistants told the Commission of destruction of some records in the doctor's office. Agent Corrigan's testimony continued:

Q. Now, did Dr. Lippman's medical assistants testify before the Commission?

A. Yes, two of them did under a grant of immunity after they invoked their Fifth Amendment rights on advice of counsel.

Q. Did one of those medical assistants testify that she had received instructions from Dr. Lippman to remove documents from the files and destroy them?

A. Yes, sir, she did.

Q. What specifically did she say he told her to remove and destroy?

A. Well, according from her testimony, "letterheads from the lawyer's office and copies of the reports."

Q. Now, were these instructions given to her by Dr. Lippman at a point in time after the list of 400 files was under subpœna?

A. Yes.

High Bills Make High Settlements

The doctor's two Medical Assistants additionally testified of indefinite lengths of heat treatments for patients, the crediting of some patients for treatments not rendered, and of patients' knowledge as to the effect of high heat treatment bills. Mr. Corrigan's testimony continued:

Q. Now, what was the testimony of Dr. Lippman's assistants concerning how they could make the determination that the patient was to continue receiving heat treatment?

A. Well, one testified, "Sometimes we overheard the doctor say this patient is to receive treatment twice a week or three times a week."

This same witness also testified that he never specified any length of time.

Q. Well, now, if the nurses or the medical assistants didn't happen to overhear the doctor's instructions, then how were they to determine or how did they determine the length of time with respect to the heat treatment or how many treatments?

A. One assistant testified that if the patient showed up, it was merely presumed he was to be given diathermy.

Q. Well, were they able to enlighten us, these medical assistants, on how they knew when treatment should stop?

A. Well, the answer given was, if the doctor made that decision, the word "discharge" would be written on the bottom of the patient card. Or if the patient stops coming in on their own, there is nothing written on the chart, or so they said.

Q. Now, how many times did we find that the word "discharge" was written on the 121 patient cards that we actually got pursuant to subpœna?

A. Exactly six.

Q. So if I may summarize, then, these medical assistants testified that they were never told a definite length of time with respect to heat treatment; the patients came in and maybe they would remember ever hearing that the doctor said treat this patient twice

a week or three times a week, and if they didn't happen to overhear that, they would assume that because the patient was there the patient should have treatment, and, finally, the best they could tell us as to how treatment was to stop was, they said, "Well, maybe the doctor wrote it on the card and said discharge, otherwise the patient made the decision himself," and from the evidence we had before us it looked like the patient made most of the decisions. Is that a fair statement?

A. That's exactly right.

Q. Now, did these medical assistants testify that occasionally they would credit patients for treatment not rendered?

A. Yes, sir.

Q. Under what circumstance did one of the girls state this occurred?

A. Sometimes the patient was supposed to come in twice a week and could only make it one of the days and would only make it one of the days and would call and ask to receive credit for the second visit.

Q. And what did the other medical assistant testify?

A. She testified that she would sometimes credit a patient for having been in twice a week and that she did this for various patients.

Q. Now, did we ask these witnesses what was their understanding as to the reason the patients wanted credit for visits that they hadn't made?

A. Yes, sir.

Q. And what was the response?

A. Well, let me refer to the testimony of one of the girls. "Question: Did you ever hear a patient say, "My lawyers told me if I get a higher bill, I will get a higher settlement"?

"Answer: Yes, I did. Most patients would tell you that."

Q. So that one medical assistant testified that she would frequently hear the patient say, "My lawyers

told me if I get a higher bill, I'll get a higher settlement''?

A. Right.

Perfunctory Treatment Is Sometimes the Rule

Mrs. Verdell Avant, who during 1971-72 was a Medical Assistant to Dr. Lippman, subsequently appeared at the public hearings and testified about conditions and practices in the doctor's office which were conducive to perfunctory treatment and overtreatment of patients in compensation and negligence cases:

Q. And about how many people would you observe that were in there on a single day for heat treatment?

A. As many as fifty.

Q. As many as fifty. Now, how long did this heat treatment that was administered last?

A. Until the patient got tired of coming.

Q. No, I mean, was there a time limit on the timer? Is it five minutes; ten minutes?

A. Oh, on the machine itself?

Q. Yes.

A. Yeah, five minutes.

Q. Now, when Dr. Lippman would see the patient on the initial visit, would he give any instructions concerning how often the patient was to come in for heat treatment?

A. Two-three times a week.

Q. You would hear him say to the patient, ''Come in two or three times a week''?

A. Sometimes.

Q. Sometimes?

A. Right.

Q. Sometimes he didn't say anything?

A. Sometimes I didn't hear him.

* * * * *

Q. All right. Would he put any duration in time on that?

A. As far as——

Q. How many weeks?
A. No.

Q. It was an indefinite duration?
A. To my knowledge.

Q. To your knowledge. Now, how were patients discharged?
A. When they got tired of coming, they just go to the doctor and tell him they think they're better.

Q. And would there be times—all right. You said that one way, they might go to the doctor and say, "I don't feel I need any more treatment." Is that correct?
A. Right.

Q. Would there be times when they would just come in until they decided they didn't want to come in any more?
A. That's right.

Heatless Treatments

Mrs. Avant told of a time when treatment of patients continued at Dr. Lippman's office when one heat treating machine was inoperative and the second machine was not emitting much if any heat:

Q. How many machines were there in the office?
A. There were two, two machines.

Q. All right. Was one a new one?
A. One was a new one and one was an old one.

Q. All right. Did there come a time when the new one broke down?
A. Yes, it did.

Q. What about the old machine; did it give off any heat?
A. Not to me it didn't, and to the patients it didn't, either.

Q. The patients complained that it didn't give off any heat?
A. Yes they did.

Q. Were they nevertheless treated with the machine?

A. I'm sorry.

Q. Were they nevertheless treated with that machine——

A. Yes, they were.

Q. ——that didn't give off any heat?

A. Yes, they were.

Q. And did you bring to the attention of Dr. Lippman the fact that the old machine didn't give off any heat?

A. Yes, I did.

Q. And what did he say?

A. Just have to wait till the other machine come back.

Q. He didn't tell you to stop using it?

A. No, he didn't.

Q. And he knew that you were continuing to administer heat treatment to patients using a machine that, from your observation and patients' complaints, didn't work.

A. Right.

Professional Cards Are Distributed

Law Firm A (Freeman and Bass) was more prominent in representing Dr. Lippman's patients than any other law firm, according to Mrs. Avant, who told of professional cards of some law firms being given to lawyerless patients:

Q. All right. During the period of time that you were there, and confining my question only to those patients who came in already with an attorney, do you recall whether or not one attorney was more prominent than the other, than others in representing these patients who came in to Dr. Lippman with an attorney? Do you remember whether one law firm stood out?

A. Yes.

Q. And was that Law Firm A?
A. Correct.

Q. Now, would there also be times when the patients would come in and would not have an attorney?
A. Correct.

Q. All right. What would you do under those circumstances?
A. Well, after the patient went into the examining room with Dr. Lippman, when the patient came out, some of the times Dr. Lippman would instruct me to give the patient a name of a lawyer. I, in turn, would take the patient to the nurses' station, either ask Marion or Flora to give me a card for the patient or they, in turn, would give a card to the patient of a lawyer.

Q. All right. So that if I understand your testimony correctly, if a patient came in and did not have an attorney, generally after he had had his first visit with the doctor he would come out and say that "I'm supposed to get the name of an attorney"?
A. Correct.

* * * * *

Q. First of all, we should establish that when you were working there how many other employees did Dr. Lippman have?
A. Two others besides myself.

Q. And who were those two others?
A. Flora Ware and Marion Kingsberry.

Q. All right. Now, when you would refer the patient to Marion or Flora for an attorney's card, would you have any way of knowing what card they were in fact given by Marion or Flora?
A. Not directly, no, for the simple fact after I took the patient into the nurses' station and referred him to Marion and Flora, and if they gave him the card at that time, I went back to the other patients.

Q. All right. Now, in these circumstances, again confining myself to the question where you might not

necessarily know what card Marion or Flora gave to the patient, we have a patient who came in the first time without an attorney, the patient comes back a second time and now has an attorney. Can you tell us what attorney or law firm the patient generally came back to Dr. Lippman with?

A. Generally, Law Firm A.

Q. Okay. Now, were there occasions when you would get an attorney's card to give to the patient?

A. Yes.

Q. And where would you get the card?

A. In the left-hand-corner at the bottom of Marion's desk.

Q. And were there attorneys' cards in that drawer?

A. Yes, it was.

Q. And how many attorneys can you recall whose cards were in that drawer?

A. To my knowledge, about three or four.

Q. All right. I think you told me that one started with an M?

A. Right.

Q. You mean the first name or the last name?

A. The last name.

Q. And one started with a W?

A. Correct.

Q. And the other was Law Firm A; is that correct?

A. Right.

Patients Are Interviewed

In an effort to determine in specific instances if Dr. Lippman's patients actually received the number of treatments indicated on subpœnaed patient cards, the Commission's staff attempted to locate 30 of his patients and succeeded in locating about 10. Of that number, six had insufficient recollection to be of any help. Four were subpœnaed but all pleaded their Fifth Amendment privilege. One of those four, the aforementioned Mrs. Bessie Coles, was granted witness immunity.

Only Five Visits Recalled

Mrs. Coles had initially been interviewed by Special Agents Corrigan and Anthony Rosamelia because her statements to examining doctors in her Workmen's Compensation case indicated she was treated by Dr. Lippman less than 10 times, rather than the 20 times indicated on her patient card. In the interview, she told the agents that she was referred to Dr. Lippman by Freeman and Bass (Law Firm A), estimated she made five visits to that doctor's office and stated that the number of visits could not have been as many as 15 or 20. (The memorandum of that interview was marked as an exhibit at the public hearings.)

A Change in Numbers

When the patient testified under oath subsequently at a private session of the Commission, she said that she had been thinking back since her interview and that the number of visits could have been more than five. Agent Corrigan testified as to her change of mind on the number of visits and the role of Law Firm A in that change:

> *Q. Now, did we determine that anything had happened between your interview of March 21 and the patient's appearance before the Commission on March 29th which might have caused her to change her story?*
>
> A. Yes, sir. She made two visits to the offices of Law Firm A where she was asked to sign an affidavit that she had been to Lippman's office for twenty heat treatments.
>
> *Q. Did she sign the affidavit?*
>
> A. Yes, sir.
>
> *Q. Why?*
>
> A. At the time we interviewed this patient she had just had a baby. In fact, the baby was eleven weeks old. She testified before the Commission that not being away from her child was uppermost in her mind and she wanted to avoid her appearance before the Commission.
>
> *Q. Did she indicate that her attorney promised her she would not have to appear if she signed the affidavit?*

A. I'll read her testimony.

"Q. By the way, I meant to ask you on the occasion of your two visits to the office of Law Firm A in connection with the subpœna, did you sign any papers?

"A. Yes, I signed papers.

"Q. What did you sign?

"A. A statement, I guess.

"Q. What was the statement? What did it consist of? What did it say?

"A. My name, address, the conversation I had with two investigators, I guess remembering a little bit about the case, the visits to the doctor, and that I had a two-month-old baby at the time, and who referred me to the lawyer, and that's about it.

"Q. Did he tell you why he wanted you to sign that statement?

"A. Well, I was hoping I wouldn't have to appear, you know, because maybe you could accept the paper and disregard me appearing, I don't know.

"Q. Did he tell you that if you signed that statement you wouldn't have to come down here and appear?

"A. I think so, yes.

"Q. In the statement that you signed for Law Firm A in their office, did that indicate the number of times that you had been to Dr. Lippman's office?

"A. I think it did.

"Q. What did that have, the number of times?

"A. I think it said approximately twenty times.

"Q. And you signed that statement?

"A. Yes.

"Q. But it's not true, is it?

"A. I don't think so.

"Q. Why did you sign it? Because that would avoid your testifying?

"A. Yes."

Cooperation Not Forthcoming

Messrs. Samuel Freeman and Samuel Bass, principals in the law firm which bears their names, and Dr. Harold Lippman each were given an opportunity to appear before the Commission in private session during the investigation.

Mr. Freeman did not make an appearance, pleading health as the reason. Mr. Bass and Dr. Lippman did appear before the Commission separately, each was offered an opportunity to cooperate with the Commission, and each chose not to do so.

HEAT TREATMENT FRAUD

The facts obtained from the examination of the books and records of the law firm of Rabb and Zeitler (Law Firm B) by the Commission's accounting staff prompted further investigation of that firm's practices, with particular reference to the heat treatment bills rendered by the firm's favored doctors in compensation and negligence cases.

A Frenetic Atmosphere

Kenneth Oleckna, now an attorney, was employed on a part-time basis by Rabb and Zeitler in 1969-71 as part of his effort to earn money to put himself through law school. Mr. Oleckna testified as to why he disassociated himself with that law firm for a number of reasons, including a frenzied atmosphere and some questionable practices:

Q. Now, did your part-time employment with that firm commence in about September of 1969?

A. Yes.

Q. And did it continue intermittently with them until early 1971?

A. Yes.

Q. And did you discontinue your employment with Rabb & Zeitler at that time?

A. Yes.

Q. And what was the reason why you did so, sir? Would you please talk into the microphone so we can hear you.

A. I discontinued my employment with Rabb & Zeitler for two reasons. Number one, I was unhappy with the treatment I was receiving. I didn't like—well, three reasons. I didn't like the way the place was run, and other people, including some attorneys, told me that the law firm of Rabb & Zeitler was going to get in trouble some day and I should get out of there.

Q. Now, if I understand you correctly, these were some attorneys working for them who told you they thought Rabb & Zeitler was going to get in trouble and you ought to get out of there?

A. Yes, sir.

Q. Did you draw that conclusion yourself, that you thought they were going to get in trouble?

A. Yes, I did, by the manner in which the office operated.

Q. Now, was there a point in time when you were employed by Rabb & Zeitler when the work volume seemed to explode overnight?

A. Yes.

Q. Would you describe, explain that a little bit for me, please?

A. I'd have to go into a story.

Q. Go into a story.

A. When I first started working there, the firm wasn't open that long. My employment consisted of a couple of nights a week and Saturdays. In the beginning there weren't that many cases and it was a normal, what I had conceived to be, a normal office. In early 1970 the place all of a sudden was just—it was unbelievable, the amount of cases that were coming in, specifically Spanish people, clients, Spanish clients.

Q. Was their clientele mainly Puerto Rican and black?

A. I would estimate ninety per cent.

Q. Ninety per cent?

A. In my opinion.

Q. And this was drawn from the community immediately adjacent to Woodbridge where their offices were located?

A. From what I had seen, the vast majority of the cases came from Spanish people from Perth Amboy, New Brunswick and Elizabeth.

Q. Now, did Richard Zeitler have any qualifications which made it possible for him to ingratiate himself with the Spanish community?

A. I believe his mother was Puerto Rican.

Q. And he spoke Spanish fluently, did he not?

A. Yes.

Q. Now, when this work volume exploded, did you find that clients would be kept waiting for hours?

A. Yes.

Q. And did you find that sometimes Zeitler would go out a back door and just leave them waiting?

A. Yes.

Q. And did you find that sometimes a client got so enraged that he punched a hole in an office wall?

A. Yes.

Q. Did things apparently get so bad that, in fact, the office was fire bombed?

A. What happened there, in the summer of 1970 I went away with the National Guard for six weeks, and when I returned this—one of the secretaries' offices, the walls were charred, and I came across several files that were half burned or papers that had been burned. I inquired as to what happened and I had been told that somebody threw a fire bomb in the office.

Q. But no explanation was given?

A. No. I assumed that it was a disgruntled Spanish person.

Alias Mr. Crane

Mr. Oleckna testified that one of his responsibilities at the law firm was to obtain police and medical reports in accident cases so that settlement of those cases could be achieved by a Larry Crane who became associated with that law office in 1970:

Q. In other words, you would prepare all the documents necessary for him to evaluate liability and settle the case?

A. I didn't prepare them, I obtained them.

Q. You obtained them?
A. Yes.

Q. All right. Now, what was your understanding of what Mr. Crane was doing once you prepared these files for him by getting the necessary documents?
A. Settling them.

Q. Settling cases?
A. Yes.

Q. He was calling up the insurance company representative and agreeing on a figure and settling at that figure?
A. Yes.

Q. All right. Now, did you subsequently learn that this Larry Crane's real name was Larry Kirschenbaum?
A. Yes.

Q. And did you subsequent—that's K-i-r-s-c-h-e-n-b-a-u-m, Kirschenbaum. And did you subsequently learn that Larry Kirschenbaum was employed by the Allstate Insurance Company at the same time he was working for Rabb & Zeitler?
A. I came to that opinion. At a later date I came to that opinion. I can't recall whether I developed that opinion while I was still working there or after I left. I recall him having a conversation with someone who told me that Crane was Kirschenbaum.

Q. Well, you know now, don't you, as a fact, that Crane is Kirschenbaum and Kirschenbaum was an employee of Allstate and he was an employee of Allstate when he was settling cases for Rabb & Zeitler?
A. Yes, sir.

Were They Photographers?

Mr. Oleckna testified how he arrived at the opinion that several of the law firm's employees listed as photographers might be ambulance chasers or case runners:

Q. Now, did Rabb & Zeitler employ several men who were described as photographers?
A. Yes.

Q. Did you, in fact, believe them to be ambulance chasers or case runners? I'm asking you for your belief, first of all.

A. I can only give you an opinion.

Q. All right. What's your opinion?

A. In my opinion at this particular time, I can recall relating in my mind the fact that the people, the type of people you just mentioned, were all of Spanish surnames and since the business——

Q. All these photographers had Spanish surnames, didn't they?

A. Almost, yes, I believe they were.

Q. They did.

A. And since most of the business then coming in was Spanish, I became of the opinion that there must have been some relationship.

Q. All right. Let's see if we can do a little better than that. You knew one gentleman who was a photographer there named Ted Orengo, didn't you? O-r-e-n-g-o.

A. Yes.

Q. All right. Orengo told you he was running cases for Rabb & Zeitler, didn't he?

A. He never said it in the manner in which you just said it.

Q. How did he say it? He said, "Richard beat me on a number of cases?"

A. That's what he told me.

Q. Meaning that Zeitler hadn't paid him for some of the cases he brought in, correct?

A. That was one of the ways in which I could have interpreted it, yes.

Q. Give me another way you could have interpreted it.

A. I came to the conclusion it either meant that or else he beat him on the pictures.

Q. Didn't pay him for the pictures he was taking?

A. Yes.

Q. Is that why he had a two-way radio in his car, to help him take pictures?

A. That was the other point which made me think perhaps it was the other reason.

Q. Yes. He had a two-way radio in his car?

A. He told me that.

Q. He told you that. By the way, do you know where he is now?

A. I believe he's in Puerto Rico.

An Unitemized Bill

Mr. Oleckna testified that on one occasion in October, 1970 he was directed to discuss an unitemized heat treating bill for about $700 with Dr. Louis Brandwein, who submitted the bill and was one of the law firm's favored treating doctors:

Q. In other words, Dr. Brandwein had submitted a bill for services to Rabb & Zeitler somewhere in the neighborhood of $700 and there was no itemization indicating when the patient had been in?

A. That's correct.

Q. All right. Now, with respect to that bill, did you go over and discuss it with Brandwein?

A. I went to his office. He was busy, so I sat in the waiting room until nine, nine-thirty until he was free to see me and then I discussed it with him.

Q. All right. Did you tell him that Zeitler said he wanted some dates on this bill?

A. Yes.

Q. What did Dr. Brandwein tell you?

A. I can't recall the exact words. As I recall it, he said to me to the effect of, "I can't put dates. I saw this man once."

Q. All right. Brandwein said, "I can't put any dates on it, I only saw the man once." Did Dr. Brandwein offer to withdraw the bill?

A. He handed it back to me.

Q. He handed it back to you because he expected it to be paid; is that correct?

A. Mr. Diana, you're asking me my assumption.

Q. Anyway, he did hand it back to you?
A. Yes.

Q. Did he say, "Give it back to Zeitler?"
A. I don't know. He just handed it back to me, you know, put it back in the file.

Q. All right. Then what did you do with that bill?
A. Initially I thought I went back that night. Now as I'm recalling, it was the next day. I took those files home with me, left them in my car overnight, went to school the next day. When I went to the office, told Dick, I told Mr. Zeitler what happened.

Q. All right. And what did Zeitler say?
A. He didn't respond to me in one way or another.

Q. Do you know whether or not the bill was ever removed from the file?
A. I don't recall ever having seen that file again, Mr. Diana.

A Menacing Remark

Mr. Oleckna was first interviewed by Special Agents of the Commission on January 11, 1973 and gave private testimony before the Commission January 24, 1973. He testified at the public hearings that on January 21, 1973 he received a phone call from Messrs. Rabb and Zeitler which resulted in Oleckna's meeting those two individuals at a diner. After the conversation had touched on Mr. Oleckna's interview with the agents, the conversation took on a more menacing tone:

Q. When you got to the diner, who was there? Was Zeitler there?
A. Yes, he was waiting for me at the door.

Q. Was Rabb there?
A. Well, Mr. Zeitler met me at the door and he took me over to Mr. Rabb, who was sitting down.

Q. In a booth?
A. Yes.

Q. All right. Now, during the course of your conversation with them, did they tell you not to say anything to the Commission because the Commission couldn't make you say anything?

A. Can I relate in my own words exactly what happened on that day?

Q. Please do.

A. After he called me I called you and you weren't in. Then I called somebody else and they weren't in. I figured if I didn't go to the diner, he's going to come over to my apartment, so I went to the diner. And he met me at the door and there were about—sitting behind him at the counter were five or six people who were Spanish. That area is not inhabited by Spanish people, and since it was a Sunday morning I couldn't understand why there were Spanish people in there except if they were there with Mr. Zeitler.

Q. I see. Did you have any reason to believe that they were friends of Mr. Zeitler other than the fact that they were Spanish?

A. I can only assume they were there.

Q. In any event, I take it—let's put it this way: Did their presence create any apprehension in you?

A. Yes.

Q. All right. Now, during the course of this conversation did either Rabb or Zeitler ask you if you had seen The Valachi Papers?

A. Yes.

Q. Did either—which one, Rabb or Zeitler?

A. Zeitler.

Q. Did Mr. Zeitler say to you after he asked that question, "Things like that really happen?"

A. Yes.

Q. And what did you understand him to mean by that?

A. Well, can I explain?

Q. Please do.

A. After I initially spoke to you and I had been informed about, and guns had been mentioned and

things of that nature, which I had never heard of before, I became very concerned. And then after us talking about the incidents of violence that had occurred in the office in the past, I became very concerned because I realized it was a volatile situation.

Q. You thought he was threatening you, didn't you?

A. Well, if I can explain the whole thing.

Q. I would like an answer to the question.

A. At that time I thought so, yes.

Q. At that time you thought he was threatening you because you had in your mind, did you not, one, the fact that he was known to carry a gun, or at least you believed he was known to carry a gun?

A. Because you had told me.

Q. Right. Two, that the office had been fire bombed, and, three, that there were Spanish-speaking people at the bar or the counter in an area not known for Spanish-speaking people?

A. Yes.

Q. All right. And this created an apprehension in your mind; is that correct?

A. Yes.

The Dr. Gordon Relationship

The relationship between Dr. Edward Gordon, who until 1972 practiced medicine in Rahway, and Rabb and Zeitler (Law Firm B) was a subject of the Commission's investigation since the staff's examination of Rabb and Zeitler's disbursements during 1970-1971 showed Dr. Gordon received the largest payment—$42,000—of any of the favored treating doctors of the law firm.

Dr. Gordon appeared before the Commission for the first time at a private session in January 24, 1973 at which time he asserted his Fifth Amendment right when asked questions about his bills and his relationship with Rabb and Zeitler. The Commission decided that the receipt of facts relative to that relationship was of sufficient importance to the investigation to confer witness immunity on Dr. Gordon and, thereby, to compel him to give

responsive answer to all questions. The doctor reappeared before the Commission in private session February 1, 1973 at which time he testified fully about padding of bills at the behest of Rabb and Zeitler and for several other law firms on a lesser scale. The immunity granted Dr. Gordon and any other witnesses by the Commission is of the limited use-and-derivative-use variety which bars use of the immunized testimony and its fruits in any subsequent criminal prosecution but permits prosecution on any evidence developed independently.

The Commission after February 1, 1973 by a majority vote could at any time have made Dr. Gordon's testimony public. In other words, the Commission had his testimony as it related to various padded bills in hand as of that date.

Subsequently, Dr. Gordon asked if his cooperation with the Commission in producing records and testifying as to them would be made known by the Commission to the Union County Prosecutor's Office which had before it certain criminal charges pending against the doctor. After receiving a pledge from Dr. Gordon of continued cooperation with all agencies interested in matters under investigation by the Commission, the Commission did, in keeping with the time-honored practice existent between agencies interested in effective enforcement of the laws, communicate with the Union Prosecutor's Office relative to Dr. Gordon's cooperation and pledge of continued cooperation.

The Commission was well aware of Dr. Gordon's connection with some unsavory matters. For that reason and because of the Commission's policy of searching for corrobrative and supportive data before proceeding to a public stage, the Commission did not proceed to call on Dr. Gordon to re-testify in public until the following supportive data had been obtained:

- The private testimony of one of Dr. Gordon's medical assistants relative to bill padding and a determination that another of his former assistants would testify similarly.
- The private testimony of two other doctors, supported by their office records, that they, too, had padded treatment bills for Rabb and Zeitler.
- The private testimony of the medical assistant to one of those two doctors relative to bill padding.

- The private testimony of a former employee of Rabb and Zeitler that she had with instructions from the firm's business manager put phony doctor's treatment dates on a doctor's bills rendered to that law firm.

Bill Padding Techniques

Mrs. Judith Manfra was Medical Assistant to Dr. Gordon during 1971-72, succeeding then Miss Edna Mae Thorn but now Mrs. Edna Mae Zaleski. Mrs. Manfra, testifying under a grant of witness immunity, stated that Edna Mae Thorn had instructed Mrs. Manfra how to make out inflated heat treatment bills for the firm of Rabb & Zeitler, with the bill totals being kept usually in the range of $300 to $500. Even though a patient may have been in the office only once or twice, Mrs. Manfra testified she would add enough phony treatment dates to the bill to bring it to the desired total.

Mrs. Zaleski was the doctor's Medical Assistant from the summer of 1969 to July, 1971. She testified, with a grant of witness immunity, how she received instructions on bill padding from Dr. Gordon and accomplished the desired bill totals by adding enough fictitious heat treatment dates at $10 per treatment:

Q. Now, while you were employed by Dr. Gordon, did you prepare and submit reports and bills to the firm of Rabb & Zeitler for treatment not actually rendered?

A. Yes.

Q. All right. At whose direction and instruction did you prepare these reports?

A. Dr. Gordon's.

Q. And where was he getting his instructions from?

A. I believe, from the lawyers.

Q. You don't know it as a fact, but it is your belief that he was getting it from Rabb & Zeitler?

A. Yes.

Q. Now, your instructions with respect to the preparation of these bills, if I understood you correctly, was that they were to be prepared in a predetermined total?

A. About, yes.

Q. What was the dollar range?

A. Usually anywhere from $200 to $500; $200 to $500.

Q. Anywhere from $200 to $500?

A. Well, it would depend what Dr. Gordon would tell me what it was. I mean I didn't decide how much I was going to type up the bill for. I was told how much to make it.

Q. With respect to each bill?

A. Oh, oh, yes, each one.

Q. I see. When it came time to prepare each bill, you were told what the total should be?

A. Right.

Q. Whether it's 200 or 250, or 300 or 400?

A. Right, right.

Q. And then what would you do?

A. Well, then, according to the dates, I would just make it up to enough dates to carry through to that amount.

Q. So if the bill was to be $400 and you needed, then, forty visits at $10 apiece, is that correct?

A. Right.

Q. And you just picked the dates to equal the $400?

A. Usually, yes.

Q. Because I take it that on these occasions the patient card would contain no reflection that the patient had actually been in except on one occasion?

A. Right.

Q. Now, did these instructions apply both to compensation and to negligence cases?

A. Yes.

At this point at the public hearings, Mrs. Zaleski described one padded bill (marked as an exhibit) as typical of the padded bills submitted to Rabb and Zeitler. The patient was in only once but Mrs. Zaleski added enough phony treatment dates to bring the bill to $560.

Mrs. Zaleski testified as to some indices which led her to believe that both Messrs. Rabb and Zeitler knew of and were directing the bill padding practice:

Q. Do you have anything that would cause you to reach a conclusion as to whether these padded bills were being done at the direction of Rabb & Zeitler?

A. Yes.

Q. Anything that would cause you to believe that it was at the direction of Mr. Rabb?

A. Yeah, at times he would.

Q. He would direct you?

A. Well, I knew he would call or state about the case and, you know, "Let's close it out" and things like that.

Q. How about Mr. Zeitler?

A. Oh, yeah.

Q. He was?

A. He was more so.

Q. So that both of them were involved in this whole operation, in your judgment?

A. Yes.

Seven letters (marked as exhibits) were described by Mrs. Zaleski as communications from the firm of Rabb and Zeitler to Dr. Gordon which attempted to induce the doctor to list treatment for individuals who had never been in the doctor's office. Mrs. Zaleski testified she and the doctor refused to go along with such requests. Typical of her testimony is the following excerpt as to one of the letters:

Q. Now, Mrs. Zaleski, would you look at Exhibit C-49?

A. Right.

Q. A letter dated February 25, 1970. Would you read the letter aloud, please? It's from Rabb & Zeitler to Dr. Gordon, is it not?

A. Yes, it is.

Q. Would you read it aloud?

A. It says, "Dear Dr. Gordon: I am handling a case for your patient. The insurance company wants an immediate settlement, but I still need a copy of your bill and report. Please forward this immediately so that we can settle this immediately and insure pay-

ment of your bill in this case. "Your immediate cooperation would be appreciated as this case is immediately ready for settlement. "Yours very truly," and it's signed by Richard Zeitler.

Q. All right. Was that patient ever in your office?
A. No. I have a notation on the top of it in my handwriting that says, "2/28", and it says, "Told him patient never in, cannot do."

Q. When it indicates "told him," who does "him" refer to?
A. Zeitler; Mr. Zeitler.

Q. You called Zeitler and told him the patient was never in?
A. Yes, I must have.

Q. At least, that's what that note indicates?
A. Yes, yes.

Q. Now, were there occasions when you would call Zeitler and tell him the patient was never in and he would say, "That's all right, prepare the bill anyhow?"
A. Yes, he would say that.

Q. He would say that?
A. Oh, yeah.

Q. Did that happen very often?
A. Yes.

Q. I take it you would decline under those corcumstances?
A. Yes.

Q. You have testified as to the padding of bills. Now, you spoke of an instance with Mr. Zeitler wherein you told him that person was never treated by our office?
A. Right.

Q. And then he said to you, "Well, send the bill anyway?"
A. Right, "Don't worry about it."

Q. Well, what was done after that?

A. Well, I would just go back to Dr. Gordon and tell him and we would not type up the bill for the letter stating that we wouldn't handle the case and if Mr. Rabb—Mr. Zeitler wanted, he might call Dr. Gordon and argue the point over with him. But I never typed up the bill. It was never done.

Q. I see. So there is a distinction between a padding of a bill and a nonexistent person that was——

A. Yes.

Q. —never treated by you?

A. Yes.

Mrs. Zaleski described five additional letters marked as exhibits from the firm of Rabb and Zeitler to Dr. Gordon as attempts by that law firm to induce the doctor to prepare reports and bills for patients who came in months after their accidents and had sustained only minor injuries, Mr. Zaleski testified how the doctor rejected a request of this nature:

Q. Would you look, Mrs. Zaleski, at C-59, which was formerly C-22. Now, the top attachment is a letter from Rabb & Zeitler, dated May 11, 1971?

A. Yes.

Q. And is that a request from the firm to Dr. Gordon for a report and bill with respect to the named patient?

A. Yes.

Q. Now, would you read aloud, please, the response of Dr. Gordon to that letter? By the way, that response was signed by you on Dr. Gordon's behalf?

A. Yes.

Q. And, so, would that mean that you typed this letter?

A. Yes.

Q. All right. Would you read the letter aloud?

A. "Dear Mr. Zeitler: The above-named patient was in my office on May 1st, 1971 in regards to her accident which occurred on January 29th, 1971. I wish to inform you that I will not be able to take on this case or do a consultation report. I prefer not to get in-

volved with cases such as this where the patient has been under the care of another physician for these minor ailments and for which I cannot write a consultation."

Q. All right. And would you look at the patient card?

A. Yes.

Q. Is there a comment there about which expresses Dr. Gordon's reaction to this particular injury?

A. Yes.

Q. Would you read that comment?

A. He wrote, "Stinking case."

Mrs. Zaleski, although not fully cognizant of the details of negligence settlements, could see a relationship between the padded bills and larger settlements in negligence actions:

Q. Could you give this Commission an indication in your own words, after thinking about it, as to why Dr. Gordon would submit padded bills to the law firms?

A. Well, if they made padded bills, they all made more money.

Q. You mean make more money by—who would pay this money?

A. I guess everybody did. You know, the lawyers did, the person who was—the case was about, and the doctor, they would all make more money.

Q. Have you ever heard of the word "specials" in an accident case? Specials?

A. No.

Q. It doesn't mean anything to you?

A. Like a specialist doctor?

Q. No. Specials are amounts that a patient supposedly has expended for medical and hospital treatments.

A. The most that they can go that their insurance will cover?

Q. Yes.

A. Yeah.

Q. Now, do you believe that the amount that an injured person has to pay for hospital and medical treatment has some relationship with the amount that he might ultimately recoup for his injuries?

A. I imagine that's how the lawyer got at his figure when he would tell us what to make it for.

Dr. Gordon opened his medical office in 1968 in Rahway, and until he retired from practice in New Jersey in 1972, his practice consisted principally of treatment of persons involved in accident cases of which some were Workmen's Compensation cases but more were negligence actions, with Rabb and Zeitler most frequently representing the injured individuals. Dr. Gordon told how he began padding bills after a conversation with William Rabb in 1968:

Q. Now, Dr. Gordon, soon after you started your practice in Rahway did you meet an individual named William Rabb?

A. Yes, I did.

Q. And was he an attorney?

A. At that time he was.

Q. Was he associated with Mr. Zeitler at that time?

A. Not at that time.

Q. All right. Now, when you met him, and I believe this would have been when, in 1968? Can you give me the approximate time?

A. No, but it was in 1968 because I had just opened my practice.

Q. So it would have been at the time in 1968 when you had just opened your practice. Did he say anything to you about handling some of his negligence and compensation cases?

A. I believe Mr. Rabb and myself were just about beginning our professions about at that time—maybe that probably drove us, made us compatible—and on the first few cases I guess were normal procedures, and then he said to me, look, the bills can be higher, between three and five, but not more than that because we run into trouble with the insurance companies. As long as it's kept between three and five, in other words, you can go as high as three and five on the bills.

Q. Let me see if I understand. There was a point in time in your professional relationship with Rabb where he said to you you can submit a bill between 3 and $500, but don't make it higher than that?

A. (nodding affirmatively.)

Q. All right. Then did you pass those instructions on to your medical assistants?

A. Yes, I did.

Q. And what was the form of those instructions?

A. That the bills were not to exceed 3 to $500; if the patient came in, fine, if he didn't, we can go—we have to either give them excessive treatment to reach the 3 to 500, or, if necessary, to pad the bill to bring it up to that amount.

Q. All right. Let me see if I can refresh your recollection a little bit. Do you recall either Mr. Rabb or Mr. Zeitler ever saying to you, "I'm sending down a patient. Make the usual bill?"

A. Similar to that.

Q. Something like that?

A. Yeah.

Q. How about would they ever say, one or the other, "Keep the bill at that range where they won't bother us?"

A. Exactly.

Q. And who did they refer to?

A. Insurance companies.

Q. Now, would there be times when Zeitler would call you and say, "You can go higher on this one, there's plenty of coverage?"

A. That is correct.

The doctor testified further that he passed on instructions to his Medical Assistants about padding the Rabb and Zeitler bills to the range of $300 to $500 by adding fictitious treatment dates until the desired total was reached. The doctor discontinued further acceptance of any patients referred to him by Rabb and Zeitler during 1971, with Mrs. Zaleski's urging a factor in that decision. Dr. Gordon testified:

Q. All right. I think we established that there was a point in time, you said, when things were getting out of hand because they were making increasing demands to file reports and bills for patients that were never in the office?

A. That is correct.

Q. As a result of that did you discontinue your relationship with Rabb & Zeitler?

A. Partially because of that reason; partially because of that reason and one of my girls probably earlier stated——

Q. You——

A. —that they're trying—if I continue with Rabb & Zeitler I will wind up in trouble because they're sending in patients that were never in my office and they're doing too many phony bills, and after I did submit a bill it was always discounted, whatever he felt he wanted to give me, not what the bill asked for.

Q. Let's go into that, first of all. I take it that you would find frequently Rabb & Zeitler would not reimburse you for the full amount of your bill?

A. That's correct.

Q. In other words, if you submitted a bill for $500 which included phony treatment, they would feel free to cut you back?

A. Whatever reason they did it, but they cut it back.

Q. Whatever reason, but they did cut you back?

A. Right.

Q. And that happened on several occasions?

A. That is correct.

Q. And if I understood your testimony correctly, she became apprehensive that you were going to get into serious trouble and she was one of the reasons why you told Rabb & Zeitler "I'm not going to accept any more of your patients?"

A. That is correct.

Q. But you did nevertheless continue to submit reports and bills for patients that had already been in?

A. Only what had already been taken, but I would not take any more from them.

Dr. Gordon estimated his gross receipts from payments from Rabb and Zeitler from 1968 until he stopped accepting referrals from that firm in 1971 to be $50,000. As previously noted in the doctor's testimony, he received only an average of 70 per cent remuneration for bills submitted to that firm. This would indicate, therefore, that he sent that firm bills which totaled some $70,000. Since settlements in negligence actions are reached on a rule of thumb of three to five times the medical bills, the settlements based on Dr. Gordon's bills to Rabb and Zeitler would be in excess of $200,000.

Fraud Conceded

The doctor testified that he attempted to rationalize the bill padding for Rabb and Zeitler and, to a lesser extent, for several other law firms on the grounds that insurance companies were big, impersonal machines which fleeced the public. He later, however, conceded it was in effect a fraudulent scheme which milked insurance companies.

Q. Now, in effect, what you're saying, and I think it's a rationalization, obviously, is that an insurance company is fair game?

A. I'm sorry, I can't say that. There's no such thing as fair game. It's still stealing no matter how you look at it.

Q. It's what?

A. It's still stealing or fraud no matter how you look at it, not fair game.

Q. So you concede, no matter how you rationalize, it's still a fraud?

A. Yes.

Q. Because you are deliberately padding bills for the singular purpose of getting a better settlement than you would normally be entitled to?

A. That's correct.

Q. And that certain attorneys were in concert with you in doing this?

A. That is correct.

Q. And certain plaintiffs or petitioners would get an award that would be greater than normally awarded to them?

A. That's the purpose of it.

Q. And it was a deliberate, planned, architectured scheme which worked across the board?

A. Not deliberate, planned across the board, it was always like an acceptable thing.

Q. That's the point I want. The system as you understood it operated in this fashion?

A. That's correct.

Q. And you were a part of the system?

A. That's correct.

Q. And the attorneys were a part of the system?

A. Correct.

Q. Obviously the plaintiffs or petitioners were a part of the system?

A. Exactly.

Q. And the thing was to milk insurance companies?

A. Correct.

Two Other Doctors Pad the Bills

The Commission's investigation of the relationship between the firm of Rabb and Zeitler and its favored treating doctors in compensation and negligence cases uncovered further instances of padding relative to the bills of Dr. Manuel Lopez and Dr. Jon M. Mandell.

Miss Diane Martin, medical assistant to Dr. Lopez, testified with a grant of witness immunity at the public hearings how Dr. Lopez began taking cases from Rabb and Zeitler in 1969, and how shortly thereafter she received instructions on bill padding from an attorney at Rabb and Zeitler.

Because a court order* in a civil action was in effect at the time testimony was taken during this segment of public hearings, the

* The same order of the United States District Court for the District of New Jersey, which was previously cited in the footnote on page 148 of this report, additionally enjoined the S.C.I. from mentioning the names of individuals and firms in an adverse manner at public hearings. As previously noted, the S.C.I. appealed to the United States

witnesses were instructed to refer to doctors, lawyers and law firms by code letters rather than by name and to employees of law firms by title only. Since that order has been reversed on appeal, the code letters and employees can now be identified by name. Law Firm B is the firm of Rabb and Zeitler, Dr. E. is Dr. Lopez, and the attorney is Richard Zeitler. Miss Martin testified as follows:

> *Q. Did this attorney that you had conversation with in Law Firm B, did that conversation include a description, a discussion as to the manner in which reports and bills were to be prepared?*
> A. Yes.
>
> *Q. And did he tell you he was going to give you a price to put on each bill?*
> A. Yes, he did.
>
> *Q. And did he tell you that you would then put in enough dates on the bill to equal the price?*
> A. Yes.

Court of Appeals for the Third Circuit which dissolved the injunction.
The S.C.I. firmly believes there is a compelling rationale for the naming of names at public hearings for reasons of credibility and an orderliness of procedure which will result in full and proper consideration of the facts. This rationale was set forth by the United States Court of Appeals for the District of Columbia in the case of *Doe* v. *McMillan*, 459 F.2d 1304 (1972), affirmed in part and reversed in part by the United States Supreme Court, 41 U.S.L.W. 4752 (May 29, 1973).
The Circuit Court in *Doe* held that a special select subcommittee of the House District Committee and its staff were privileged from civil rights actions brought by students mentioned in an adverse manner in a public report of an investigation of the District's school system. In so holding, the Court discussed the merits of the students' claims of a right to anonymity:

> . . . at a time such as this when "credibility gaps" are frequently mentioned, it was entirely reasonable for the House District Committee to include what it considered to be sufficient factual data to support its findings concerning a controversial and complex area . . . All the details of such circumstances including the names of the students involved and their acts were relevant and necessary for a full and proper consideration of the matter.

The sole purposes of the S.C.I. in holding public hearings are to carry out its statutory mandates to convey information to the public and present facts as the basis for recommendations for corrective actions by the legislative and executive branches of government. The United States Supreme Court in *Hannah* v. *Larche* 363 U.S. 420, 441; 80 S.Ct. 1502 (1960), recognized that public proceedings by a purely investigative commission such as the S.C.I. might result in the collateral consequences of individuals being subjected to public opprobium, loss of jobs and the likelihood of prosecution. That ground, however, was held to be of no consequence in *Hannah*, with then Chief Justice Earl Warren writing:

> . . . even if such collateral consequences were to flow from the Commission's investigation, they would not be the result of any affirmative determination of the Commission and they would not affect the legitimacy of the Commission's investigation.

Q. And did he tell you that generally you would pick three visits a week until you arrive at the total?

A. Yes.

Q. Did he tell you how much to charge for the opening visit?

A. Yes.

Q. And what were his instructions concerning that?

A. Well, the opening visits would be about $25.

Q. And what would each subsequent visit be?

A. 10.

Q. And $10 was for what kind of treatment? What was the general treatment to be administered on subsequent visits? Was it heat treatment?

A. Yes, if needed.

Q. "If needed." Did you have the instructions from this Law Firm B with regard to both accident and workmen's compensation cases?

A. Yes.

Q. I take it as a result and pursuant to these instructions you prepared bills in an amount supplied to you by Law Firm B, including charges for treatment never rendered?

A. Yes.

* * * * *

Q. Now, Miss Martin, did any attorney from Law Firm B ever offer you any explanation as to why he wanted phony or padded bills?

A. Yes.

Q. And do you recall what that explanation was?

A. Yes. He told me that this is the way that the insurance companies do business by—and that, also, if the higher the bills, the higher the settlements.

Q. Did he say that if it wasn't high enough, he couldn't settle a case?

A. Yes, I think so.

Miss Martin testified further that the usual range of the padded bills specified by the law firm was from $100 to $500. She estimated she padded bills with phony treatment dates in 40 instances where the patients had been in the doctor's office only once or twice.

The Firm Sends a Secretary

There came a time in 1970 when Miss Martin felt so strongly that the bill padding was wrong that she contacted the Rabb and Zeitler firm and told them they would have to get someone else to make up the doctor's bills. Shortly thereafter, a part-time secretary for that firm, Mrs. Ruth Richards, visited the doctor's office on more than one occasion. Miss Martin testified about those visits:

Q. Now, I take it, then, that a secretary arrived and said that Law Firm B had sent her?

A. Yes.

Q. And can you tell me on the occasion of your first having talked to this secretary what she said to you and what you said to her, as best you can remember?

A. Yes. She had come into the office and identified herself, after that saying that she would be the one making up the reports and bills. I asked her where they were going to be done. I assumed they would be in the office, but she informed me that she could not because of having small children at home, so that she would be taking the reports home and doing them.

Q. I see. And as a result of that did you supply her with letterhead and bills for Dr. E.?

A. Yes.

Q. His stationery?

A. Yes, I did.

* * * * *

Q. All right. Now, shortly after that, or a point in time after that, did you have occasion, then, to submit to her patient cards of Dr. E from which reports and bills were to be submitted to Law Firm B?

A. Yes.

Q. All right. Now, so the record is clear this secretary was only to prepare reports and bills for Law Firm B; is that correct?

A. Yes, it is.

Miss Martin's conviction that bill padding was wrong and could lead to serious trouble led her to urge Dr. Lopez (Dr. E) to stop accepting cases from Rabb and Zeitler (Law Firm B):

Q. All right. Did there come a point in time when you spoke to your employer about discontinuing his relationship with Law Firm B?

A. Yes, I did.

Q. Approximately when was that?

A. It was approximately a year before he actually stopped.

Q. When you say "it was approximately a year before he actually stopped" can you tell me when it was, your first conversation you had concerning that? Was it about the same time you asked to have someone else prepare the reports and bills?

A. Yes, it was around that time.

Q. Around that time?

A. Uh-huh.

Q. That's when you made your first attempt?

A. Yes.

Q. Then did you discuss the matter again with your employer subsequently?

A. Yes, I did, again.

Q. And approximately when was that?

A. That was approximately in the middle of '71.

Q. All right. This time did you say anything differently to your employer than you had said previously?

A. Yes.

Q. What did you say?

A. I told him that what we're doing was wrong, and I also told him that if he hadn't stopped accepting clients from this law firm, that I would quit my job, and I tried to make him understand that, you know, he could probably get in trouble for it.

Q. Well, did you have any belief that because of your employer's nationality he might not have had the same comprehension of, shall we say, right and wrong in this society?

A. Yes, I did.

Q. When you told him that if he didn't discontinue dealing with this law firm that you would have to leave him, what happened next?

A. Well, he finally discovered that what I was saying I meant, and he began to believe that it was true from seeing things going on.

Q. And did you call the law firm yourself and tell them that you would accept no more clients?

A. Yes, on several occasions.

Q. On several occasions. On those occasions were you able to speak to any member of the firm or did you end up talking to a secretary?

A. I ended up talking to a secretary.

Q. But someone who you presumed could convey the message to a responsible member of the firm?

A. Yes.

* * * * *

Q. I see. After you called the first time, did the law firm comply with your wishes or did they just keep sending clients?

A. No, they just kept sending them.

Q. And how long did it take for this firm to get the message?

A. Oh, about, I would say, approximately a month.

Q. And do you know whether your employer also spoke to them?

A. That I'm not sure of.

Dr. Manuel Lopez received his medical degree from National University in Bogota in his native Columbia, South America, in 1959. He later came to this country and eventually opened an office for the general practice of medicine in Rahway. Dr. Lopez testifying with a grant of witness immunity told how he first met Richard Zeitler socially and how Zeitler subsequently asked Lopez to first take cases involving compensation claims and later asked for padded bills in negligence cases:

Q. All right. If I understand your testimony, sir, with respect to the compensation cases, he told you he wanted you to provide unauthorized treatment?

A. Yes.

Q. That is, treatment without the approval of the employer?

A. Yes.

Q. And he would tell you how much to charge?
A. Yes.

Q. Did the amount that he gave you with respect to the compensation cases have any bearing on how often the patient was in your office?
A. Relation between the visits and the price?

Q. Yes.
A. Sometime the patient came once or twice and he wants three of four times the bill.

Q. I see. Sometimes the patient was in once or twice and he wanted a bill reflecting three or four times that amount?
A. Yes.

Q. In other words, whatever the price—strike that. If I understand your testimony with respect to these compensation cases, whatever the price might have been for one or two visits, he wanted you to triple that?
A. Yeah.

Q. So that you would be billing for visits or treatment which was never rendered?
A. Compensation, yes, treatment rendered once or twice in the office.

* * * * *

Q. All right. Now, did you have any discussion, then, with this Law Firm B concerning the handling of the liability cases, the negligence cases?
A. Oh, yes.

Q. And what did they tell you about that?
A. He wants to take all the car accidents, send to my office. He wants a special bill.

Q. He wants a special bill.
A. Special bill.

Q. And did he tell you the total that he wanted you to submit?
A. Yeah, he call later and tell me how much is the bill.

Q. He would tell you how much to bill?
A. Yes, after.

Q. Generally, what amount would he tell you?
A. A—Oh, some big bills; 2, 300, 500.

Q. 400?
A. 4 and 500.

Q. And he would give you the total he wants?
A. Yes.

Q. Would he tell you how much to charge for the opening visit as well?
A. Yeah, he say start the first 25 and then 10.

Q. Start the first 25 and thereafter 10?
A. 10.

Q. You understood you were to submit that bill whether the patient was treated or not?
A. He wants to do the phony bill.

Q. In what language did you communicate with this individual?
A. In Spanish.

Q. "In Spanish." And were all your communications with the——
A. Always in Spanish.

Dr. Lopez testified further that he submitted some 300 to 400 padded bills to Rabb and Zeitler during 1969-72 and that so far he had received $25,000 in payment on those bills with more still due. By January, 1972 Dr. Lopez had been convinced by Miss Martin and friends of the dishonesty of bill padding and he refused to take any more cases from Zeitler. Zeitler is referred to as "he" or "him" or "this lawyer" in the following excerpts from Dr. Lopez's testimony:

Q. Did you ever tell this law firm that you weren't going to accept any more of their clients?
A. Oh, yes, yes.

Q. Approximately when was that, sir?
A. First time it was in the January, '72.

Q. And what was the reason for your telling them that?
A. Because it's dishonest.

Q. You realized it was dishonest and a mistake and you just wanted to have nothing more to do with it?
A. Yes.

Q. As a result, did you call this firm up?
A. I spoke personally.

Q. You spoke personally with him. And did he make any comment to you?
A. Oh, yeah. You don't want to make chowa, it's the only——

Q. Did he tell you, say, no gusto chowa va inferno?
A. Yes.

Q. What does that mean in English?
A. If you don't like money——

Q. If you don't like money, go to hell?
A. Go to hell.

Q. This is when you told him you wanted to discontinue?
A. Yes.

Q. He said, "If you don't like money, go to hell"?
A. Yes.

* * * * *

Q. And did—let's put it this way: When you entered into this arrangement with Law Firm B, what understanding did you have as to whether or not it was legal?
A. I never was doing business with lawyer and now have the business. I think it was honest the first time when he came to the office, and after I found it was complete dishonest.

Q. Did you associate what you were doing with conditions that you found in this country?
A. My nurse told me this is dishonest.

Q. She told you it was dishonest?
A. Dishonest, and after I speak with couple of friends, told me, "You better stop."

Q. But would it be fair to say that because of your recent national origin, having come from South

America, would it be fair to state that your frame of mind was you didn't see the right and the wrong when you were first approached?

A. Yes, I didn't see.

Q. It made no impact on you? You had no experience with dealing with lawyers?

A. No experience, no.

Q. And your basic language was, and is, Spanish?

A. Is Spanish.

Q. Did this lawyer, who you said spoke Spanish, ———

A. Perfect Spanish.

Q. Perfect Spanish.

A. Perfect.

Q. Did he give you any explanation or rationale about this?

A. It was correct.

Q. He told you it was correct?

A. Correct.

Q. You would be helping people who were hurt; is that what he said?

A. Yes, help poor people, and after I find it was not right.

Q. And then when finally your nurse or secretary made you understand that it was wrong, you took——

A. Yes.

Q. ——*steps to put an end to it?*

A. Yes, complete.

The Secretary Gets Instructions

Mrs. Ruth Richards, the previously mentioned part-time secretary employed by the firm of Rabb and Zeitler (Law Firm B), had been with the firm only two weeks when she was asked to type the medical bills and reports of Dr. Lopez in cases involving individuals being represented by the law firm. At first she typed only unitemized bill totals because Dr. Lopez's patient cards contained only a total dollar figure with only one or two office visits recorded

in each case. Those bills were returned to her by the law firm with the direction for her to get instructions as to itemization from Dr. Lopez. Mrs. Richards, testifying with a grant of immunity, said she got only vague statements from Dr. Lopez's medical assistant as to itemization, and the bills she typed subsequently were again rejected because the itemized treatment dates were not sufficient to justify the totals of the bills.

Mrs. Richards then testified that the law firm's office manager, Charles Haus, instructed her on the exact way to pad Dr. Lopez's (Dr. E) bills with sufficient itemization of phony treatment dates:

Q. All right. Did the office manager then tell you how to arrive at the bill total?
A. Yes, he did.

Q. What did the office manager tell you?
A. He wrote it out on a yellow sheet of paper that I should charge $25 for the initial visit and examination and than $10 per visit after that until the total was arrived at that was on the back of the doctor's card.

Q. All right. Now, did he indicate to you that you could find the dates on the patient card?
A. No, sir. He told me to use a six-month period.

Q. He told you, in effect, to make up the dates?
A. Yes, sir.

Q. And he told you to charge $25 for the first visit?
A. Yes, sir.

Q. And $10 thereafter until you arrive at the bill total?
A. Yes, sir.

The yellow sheet prepared by Mr. Haus was marked as an exhibit. To illustrate the bill padding technique, a $275 treatment bill prepared by Mrs. Richards on Dr. Lopez's letterhead was marked as Exhibit C-70. Mrs. Richards testified as follows about that bill:

Q. All right. Do you see anything on Exhibit C-70 which indicates the instructions to you in the handwriting of the office manager for Law Firm B as to how to correct the bill?

A. He has a note, "Need correct itemized bill."

Q. And what did that mean to you?
A. That I had to retype it to equal the amount of money that was on the——

Q. You had to add more dates, right?
A. Yes.

Q. And you just picked dates out of thin air?
A. Yes, sir.

Q. At this point in time, Mrs. Richards, did it dawn on you that these dates were fictitious?
A. Yes, sir.

Mrs. Richards testified further as to the duration and extent of her typing padded bills for Lopez patients for submission to Rabb and Zeitler (Law Firm B):

Q. Mrs. Richards, for how long a period of time were you employed part-time by Law Firm B?
A. A little over one year.

Q. From approximately May of '71 to June of '72?
A. Yes, sir.

Q. Can you estimate for me how many fictitious bills you typed for Law Firm B?
A. I really can't tell you exactly.

Q. Would it be more than a hundred?
A. I believe so.

Mrs. Richards from February to June of 1972 worked in the law firm's office. She testified about an instance where Zeitler sent two "photographers", who can now be identified as Manuel Cartegena and Librado Apatano, to a hospital to see an accident victim and about the frantic pace at the law office:

Q. Did you ever overhear a conversation from a partner of Law Firm B to two of the photographers to go to Perth Amboy Hospital?
A. Yes, sir.

Q. Would you describe the circumstances surrounding that instruction?

A. Well, it was really one morning, and a person from Firm B came in with a newspaper and he said, "This looks like a good accident case," and said to two people there to take a run over to Perth Amboy Hospital.

Q. In other words, the instruction was to go over to the hospital and see the patient?

A. Yes, sir.

Q. You don't know for what purpose, do you?

A. Yes, sir.

Q. It certainly wasn't to bring the patient flowers, I take it, in any event?

A. No, sir.

Q. Did you make any observations while you were there concerning the number of new cases that might have generated over a weekend?

A. It was fantastic, yes.

Q. Would you describe that to me?

A. Well, you would arrive on Monday morning, there would be twenty or thirty new files piled on the girl's desk to have numbered.

Q. Were you able to determine that these were cases which were acquired over the weekend?

A. I assume so.

Q. That was an assumption on your part?

A. Yes.

Instructions on Testimony

The Commission first subpœnaed Mrs. Richards on March 1, 1973 to appear at a private hearing. She immediately notified the firm of Rabb and Zeitler of the service of the subpœna. On the next day, according to Mrs. Richards, Zeitler and another of the firm's attorneys and the business manager, Haus, came to her home and gave her some instructions on how to testify before the Commission:

Q. Did any of them make any statement which would have indicated to you that your function with respect to those bills was simply mechanical?

A. Yes, sir, they told me I was a machine and that I typed what I saw just as a machine would do.

Q. Now, did one of the attorneys make any comment to you which put you in any fear or apprehension?

A. Yes, sir, one of them mentioned to me twice that he's known as the head of the Spanish Mafia.

Q. I take it that is not a comment that you took lightly?

A. No, I got frightened.

Q. Now, did any of the individuals who came to your house that afternoon from Law Firm B give you any instructions on how you were to testify before the Commission?

A. They told me to tell the truth.

Q. And would you explain to me what they meant or what you understood them to mean by the truth?

A. Well, the truth being that there were no—that you would have no records to disprove that I just typed from those bills as I saw them and that's what I put on the bills and reports.

Q. In other words, am I correct, then, they told you that since you have no way to disprove whether the patient had in fact been all those days, all you had to say was, "I typed them up"?

A. Right.

Q. And that you shouldn't indicate any knowledge you might have that those dates were fictitious?

A. Right.

Q. Is that what they told you?

A. Yes, sir.

Dr. Jon Mandell, a chiropractor with offices in Metuchen, testifying with a grant of witness immunity, told how he padded some bills for the firm of Rabb and Zeitler after a conversation with Zeitler who is referred to as "he" or "him" in the following testimonial excerpts:

Q. Well, in your early conversation with him in early '69, did you indicate to him that you treated accident cases?

A. I did.

Q. And did you tell him that you would be happy to treat any clients that he might send?
A. I did.

Q. And did he tell you that he could send you a lot of business?
A. He did.

Q. Did he tell you that he needed large bills?
A. Yes, he did.

Q. Did he tell you why he needed large bills?
A. Yes, he did, Counsel.

Q. What did he say as to why?
A. The bigger the bills, the bigger the settlements. That's all.

* * * * *

Q. Now, as a result of this conversation did he start sending you clients?
A. Yes, he did.

Q. And over the course of your relationship with him, roughly, approximately how many cases did he send you?
A. Approximately 400 cases.

Q. Do any percentage of those 400 cases involve the submission by you of bills including charges for treatment not rendered?
A. Yes, sir.

Q. Approximately how many?
A. Approximately sixty-three to sixty-five.

Q. Out of 400?
A. That is correct.

Q. All right. Now, were there any occasions when Law Firm B would send you cases and say, "I'm sending So and So up and I need a backdated bill?"
A. Yes, sir.

Q. And did you supply him with a backdated bill?
A. Yes, sir.

Q. And were there occasions when he indicated to you that he needed lots of visits reflected on the bill?

A. Yes, sir.

Q. And did you provide him with bills on those occasions?

A. Yes, sir.

Q. And that meant you were providing him with bills including charges for services not rendered; is that correct?

A. Correct.

Q. Now, with respect to these sixty-five or so cases that you described, we have already established, have we not, that those sixty-five cases were all cases in which charges for phony treatment were included?

A. Yes, sir.

A PADDED BILL AND THE STATE

To highlight the adverse impact of bill padding, the investigation included the tracing of a padded bill in a negligence case and the key role of that bill in a $2,000 settlement paid by the state through its Unsatisfied Claim and Judgment Fund. The fund is maintained to protect persons injured by uninsured motorists or in hit-and-run accidents.

Charles E. Waldron, Special Investigator for the Commission, was recalled to testify how the heat treatment bill in this case caught his attention and how the records of the case were traced to the ultimate settlement of the suit. A summary of the salient points of Mr. Waldron's testimony follows:

- Mr. Waldron extracted a heat treatment bill, rendered by Dr. Manuel Lopez to Rabb and Zeitler (Law Firm B), from Dr. Lopez's file because the bill, totaling $365, listed 35 visits by the patient, Stephen Potash, while the patient card reflected only two visits. The bill bore the initials, R.R., indicating it had been prepared by Mrs. Ruth Richards, the former part-time employee of Rabb and Zeitler, who padded Dr. Lopez's bills on that firm's instructions.
- Mr. Waldron checked the Superior Court files of the negligence action case of Stephen Potash vs. the State Director of Motor Vehicles. The records reflected Potash had been injured in a hit and run accident, so that suit was brought by Rabb and Zeitler against the state for collection from the Unsatisfied Claim and Judgment Fund.
- The records also showed that in answer to the State's demand for further answers to interrogatories in the case, Rabb and Zeitler submitted a letter with the 35-visits, Dr. Lopez bill for $365 for treatment of Mr. Potash as an attachment. After receipt of that bill, the Unsatisfied Claim and Judgment Fund agreed to a $2,000 settlement of the case.

Less Than Ten Visits

Stephen Potash, who is employed as an investigator for the Essex County Welfare Board, was injured in an accident in Plain-

field in 1969 when his car was struck by a vehicle driven by a hit-and-run motorist. He was referred to the law firm of Rabb and Zeitler (Law Firm B) who in turn sent him to Dr. Manuel Lopez for treatment. Mr. Potash testified as to the number of visits he made to that doctor's office and the falseness of the Dr. Lopez bill which listed 35 visits:

Q. All right. Now, how many visits for treatment did you make to Dr. Lopez?

A. Anywhere from five to ten visits. It didn't exceed ten visits.

Q. It didn't exceed ten?

A. Right. He examined us—excuse me. He examined us twice and then told us to come back for heat, heat treatments which we did, and somewhere six-seven visits.

Q. Well, how did it happen that you discontinued going to Dr. Lopez?

A. I wasn't uncomfortable any more. I didn't have the pain in my neck. I didn't have to go for treatment, I didn't feel, anyway.

Q. So you just discharged yourself?

A. Right.

* * * * *

Q. Were you aware—at any time did you see a bill for treatment rendered to you of Dr. Manuel Lopez?

A. No, I didn't.

Q. Do you now understand the exhibit that you see in front of you to be the bill that Dr. Lopez submitted in this lawsuit?

A. Yes.

Q. In your lawsuit?

A. Correct.

Q. Is that an accurate reflection of the number of times that you were in his office?

A. No, it isn't.

A Skimpy Share of a Settlement

Mr. Potash then testified that his suit was settled by the law firm without prior consultation with him and that he was surprised and dismayed by the amount he received:

Q. Did they ever ask your approval concerning the figure at which the case should be settled?

A. No. I was told the case was settled.

Q. The only thing, if I understand your testimony correctly, you were told after the fact; is that correct?

A. Right.

Q. All right. Did they tell you the amount in which the case had been settled?

A. Right, $2,000.

Q. At the time they told you that, what was your expectation as to the amount of money you were to receive from the settlement?

A. Two-thirds.

* * * * *

Q. Did you complain when you were handed a check by Law Firm B in only the sum of $600 plus?

A. Yeah. I said "Wow," and the manager of the law firm went on to explain that there are numerous costs and expenses involved with a case like this, and I really thought I had no recourse.

In Lieu of Formal Amendment

The Potash negligence suit, in accord with the procedures of the State Unsatisfied Claim and Judgment Fund, was assigned for an investigation by an insurance company which turned that task over to the General Adjustment Bureau. That agency submitted to the Fund a field investigation report which contained files referring to "specials" or medical expenses—$365 for Dr. Lopez and $50 for Rahway Hospital, for a total of $415.

As previously noted in Mr. Waldron's testimony, the interrogatories submitted by Rabb and Zeitler to the state in this suit were inadequate as to medical expense data, and the state demanded further answers. In response, Rabb and Zeitler sent a

letter, with a copy of the Lopez bill for 35 visits for a total charge of $365 attached, requesting that the bill's submission by letter be accepted in lieu of formal amendment of the interrogatories. The request was apparently accepted by the Fund. Salvatore Capozzi, Manager of the Fund and an attorney, testified the acceptance of the request was not unusual in New Jersey:

Q. Let me ask you this, Mr. Capozzi: Would it have struck you as unusual that the material contained in the letter of May 15, 1972, and its attachments were unsworn?

A. No. It's quite a common practice in this state for supplemental material to interrogatories to be supplied by the attorney with his representation, asking that they be accepted as if they were under oath, so that it's not an unusual practice.

Q. I didn't get the last part of your answer. Would they be accepted as if they were under oath?

A. Yes.

Q. Is that——

A. Interrogatories, of course, are sworn to by the party. When supplemental interrogatories are furnished, to properly comply with the rules they should be also sworn to by the party. However, the attorneys in this state commonly accept a letter reciting "This will supplement interrogatories and you may accept them as if they were under oath."

Q. Well, there is nothing in the letter that says you may accept it as if they were under oath, though, is there, the letter of May 15th, 1972?

A. Well, I take the last sentence to that letter to be the equivalent of that. "If we do not hear from you, we assume that you will accept these answers in lieu of a more formal amendment." Now, that basically says the same thing because the amendment——

Q. Well, I don't interpret it to say basically the same thing. I interpret it as rather artful language to avoid saying the same thing.

A. Perhaps.

The Bill Was Influential

The field investigation report by the General Adjustment Bureau recommended to Mr. Capozzi that the Potash case be settled for $2,500. Mr. Capozzi, after evaluating the report, recommended to the Board of the Fund a $2,000 settlement. The Board approved the recommendation, and a check (marked as an exhibit), drawn on the Department of the Treasury, State of New Jersey, was issued to effect the settlement. Mr. Capozzi testified how significant the doctor's medical bill was in the settlement figure and how that settlement was unwarranted in light of the falsity of the bill:

Q. Now, obviously when you made this settlement you had no knowledge or warning that approximately twenty-eight of these alleged treatments were fraudulent or spurious?

A. We had no such knowledge.

Q. And had you known that, it certainly would have been a primary element in assessing the value of this case?

A. Very significant element.

Q. So the fact that you relied upon a three-hundred-sixty-five-dollar medical bill of Dr. Lopez based upon thirty-five treatments, in effect, was the reason why you gave the $2,000?

A. It was a very important factor in the weighing of the decision to arrive at a settlement, yes.

Q. And had you known the true facts, a two-thousand-dollar check would not have gone out of your office?

A. I tried to run quickly through my mind an evaluation based upon what Mr. Potash testified as to the actual treatment and number of visits and I—the $2,000 would obviously be a gross overpayment for that kind of injury.

Q. Yes. If you were talking in the context of two treatments by the doctor and four or five heat treatments, you're talking about a totally different evaluation on the case; is that not so?

A. Yes, substantially, yes.

Q. So that you would agree that a substantial portion of this two-thousand-dollar check was as of today unwarranted?

A. Yes.

Commissioner Farley: That's all I have.

WORKMEN'S COMPENSATION INSURANCE RATES

The Accounting Staff of the Commission expended considerable time and effort analyzing the structure and processes underlying the setting of rates charged by insurance companies for Workmen's Compensation coverage in New Jersey. The goal was to determine if there were areas of possible changes and improvements which would tend to minimize rate increases and get more of the premium dollar paid to the injured workers. The accounting staff had the benefit of consultation with a leading expert in the financial structure and rate making process of insurance companies.

The Rating Bureau

The Compensation Rating and Inspection Bureau is the body which establishes and maintains the premium rates for Workmen's Compensation insurance in New Jersey. The Bureau has an excellent reputation in the rate-making field. However, Julius P. Cayson, C.P.A., the Commission's Chief Accountant, was recalled as a witness to describe the Bureau's operations and possible ways of improving them. Mr. Cayson, in response to questions from Martin G. Holleran, Executive Director of the Commission, testified as follows:

Q. Now, Mr. Cayson, are you familiar with the Compensation Rating and Inspection Bureau of the State of New Jersey?

A. Yes, I am.

Q. Department of Insurance?

A. Yes, I am.

Q. And where is it located?

A. 60 Park Place in Newark.

Q. And when was it established, sir?

A. It was established on March 27th, 1917, by statute.

Q. Can you tell us what its function is?

A. By law, New Jersey Statute 34, Sections 15 to 89, its primary purpose, among others, is to establish and maintain rules, regulations, and premium rates for workmen's compensation and employer liability insurance and to equitably adjust the same as far as practicable to the hazards of individual risks. Thus, basically its function is rate making for the insurance industry; that is, to develop manual rates.

Q. Is the rate-making process in New Jersey in any way an adversary process?

A. It is not.

Q. And of whom or what does the membership of the Compensation Rating Bureau consist?

A. The membership consists of every mutual association and stock company authorized to write compensation or liability insurance in the state. According to New Jersey Statute 34:15–90, if you are not a member of the Bureau, you will not receive your authorization to write workmen's compensation insurance.

Q. You used the term "mutual association and stock company." Will you define them, please?

A. A mutual association is an organization in which the ownership of assets and control of operations are vested in policyholders, who have ownership rights only as long as they continue being policyholders; upon the expiration of their policies, they lose all rights and interest in the company. A stock company is an ordinary corporation organized for profit; ownership of assets and control of corporations are vested in the stockholders.

Q. Can you tell me what the personnel makeup of the rating bureau is?

A. There is a governing committee which consists of three representatives from stock companies and three from mutual companies. The Bureau is headed by a chairman appointed by the Commissioner of Insurance who is the government's representative on the Bureau, but he has no vote. He is a——

Q. The government's representative has no vote on the governing board?

A. That's right, sir.

Q. Would you continue, please?

A. There are in all, according to Bureau figures, 135 employees in the Rating Bureau.

Q. Before we get into that, could you tell me by whom the special deputy of the Commissioner of Insurance is paid?

A. By the State of New Jersey.

Q. Now, according to Rating Bureau figures, how many employees are there in the Rating Bureau?

A. 135.

Q. And how many of these 135 are paid by the state?

A. Four.

Q. And with the exception of these four, how are all others paid?

A. They're paid from quarterly assessments which are made against the particular insurance carriers in the state in proportion to the amount of workmen's compensation that they're writing.

Q. You mean they're paid by members of the Bureau?

A. That's right, yes.

Q. And these are the people to whom they report?

A. That is true.

Q. And are the employees of the bureau subject to the approval and ratification of the Commissioner?

A. Yes, they are. However, there is one other provision there that is quite interesting.

Q. And what is that, sir?

A. It says that no person shall be employed at an annual salary in excess of $7,500 without specific approval of the governing committee.

Q. Meaning the stock companies and the mutual companies and their representatives?

A. Well, I would say the representatives of the stock companies and the mutual companies, the governing committee consisting of six people, yes.

Q. Can you tell us what the income was for the Rating Bureau in the last year that it reported and how this income was generated?

A. The total income was $1,411,228, and $1,370,153 was generated from quarterly assessments and approximately $41,000 came from miscellaneous sources.

Q. And can you tell us what the expenditures totaled?

A. $1,317,977.

Q. And how much was expended on salaries?

A. $825,835.

Q. Of your $1,317,977 of that total, how much was expended in employee relations?

A. $106,771.

Q. And what expenses does the line item employee relations and welfare encompass?

A. Blue Cross-Blue Shield, major medical and pensions.

Q. Fringe benefits?

A. Fringe benefits, yes.

Q. All right. So, then, according to Bureau statistics, of the $1,317,977, $923,607 is allocated to salary and fringe benefits?

A. That is correct.

Q. And this is paid by the mutual and stock companies, whose rates are made by this Bureau; is that right?

A. That is correct, yes.

Q. All right. Now, you indicated that the Bureau has been in existence for approximately fifty-six years, since 1917. During that period of time has any outside agency, either governmental or otherwise, done a cost study or rate review on the rating practices or conducted a review of rates of the Rating Bureau procedures?

A. No, they haven't.

Q. And is there anywhere within the laws of the State of New Jersey a requirement that such a study or review be conducted?

A. Well, New Jersey Statute 17:29A-12 is considered a deemer clause.

Q. And what do you mean by that?

A. That is that all the Commissioners of Insurance, and down through the years Commissioners of Banking and Insurance, have deemed that particular clause as not to be applicable to the New Jersey Compensation and Rating Bureau.

Q. You mean every commissioner so far has traditionally taken the position that this statute is not applicable to the Rating Bureau?

A. That's correct, yes.

Q. And do they view this study review as necessary or unnecessary?

A. Well, they can see some merits in it but they don't see the necessity of it at the present.

Q. Well, what reputation does the New Jersey Rating Bureau have among its peers?

A. It has a very excellent reputation; it's a very professional organization.

Q. Well, could you tell me, even though it has this excellent reputation, whether it is necessary to undertake such a study?

A. Well, we feel that without undertaking such a study it's impossible to determine whether the cost of the premium to the employer is either too great or too little, or it is equally impossible to determine whether the practices and procedures of the Rating Bureau are proper.

Q. Do any other states have laws requiring that special reviews or studies be conducted at specific intervals?

A. Yes.

Q. Can you name a couple?

A. Yes, contiguous states such as New York, Massachusetts and Pennsylvania.

Q. And are laws such as these beneficial to the Workmen's Compensation system?

A. It is the belief of the Commission that it is, yes.

Q. And could you give us some illustrations of the benefits that it might serve?

A. Well, if the examination confirms the reputation of the Rating Bureau, this should definitely be brought to the attention of the public. If, on the other hand, a cost study review uncovers material deficiencies in the rate-making process, immediate steps should be taken to correct these deficiencies. Such a review would act as a self-correcting mechanism if rates are set too high or too low. Such a rate review by an outside agency or department would serve as a counter balance to the rate-making bureau. It would confirm the accuracy of in-house practices and procedures and it would highlight deficiencies. Either result, of course, would be beneficial to the public.

Open Rating as an Alternative to Rate Making in Concert

The question of the use of open rating, as a viable alternative to rate making in concert, was briefly touched on at the public hearing. This method is used in several states, notably, the State of California, the nation's largest. Open rating's principal appeal lies in the opportunity for well-run carriers to introduce an element of competition in the Workmen's Compensation rate structure.

A brief summary of the pros and cons of the use of Open Rating was presented at the public hearings through the testimony of Mr. Cayson:

Q. And what other type of rating process besides rating in concert are there?

A. Well, in the State of California they have open rating.

Q. And what is open rating?

A. Open rating is a file and use system which would eliminate the prior approval of the commissioner as a prerequisite for a rate change. To implement its decision to change rates, all that a carrier would have to do would be give notice of an intended change and file that notice with the commissioner. Of course, if such rates are unconscionable, the commissioner could, on behalf of the public, institute proceedings to block such changes.

Q. Well, could you tell us what some of the advantages are of the open rating system?

A. Open rating would make all premium levels more responsive to the current costs and markets instead of being excessive for some and inadequate for others as happens with rate making in concert. Rates would be held down by economics of competition accompanied by vigorous enforcement of the existing state and federal antitrust laws.

Inadequacy Of Loss Data Submitted For Rate Making Purposes

The absence of outside verification of loss data which is submitted or "called in" by over 200 members of the Rating Bureau caused the S.C.I. to reevaluate it's approach to an analysis of the loss data at this central source. Further complicating the problem was the discovery by the Commission staff that there is no uniformity in claim petition evaluation among the major insurance carriers which were contacted.

Some companies utilized very liberal estimates as to their ultimate loss exposure, whereas others evidenced conservatism in their assessment of future liability on claims. The investigation disclosed that the problem is particularly acute in the area of evaluations of Occupational Disease (O.D.) cases. A trend toward the filing of a claim of job-related disabilities falling in the O.D. category, was noted in Essex, Hudson, Bergen and Mercer Counties.

Therefore, the thrust of the S.C.I. inquiry into a study of actual losses centered on a review of the overall loss experience reported in annual reports covering the years 1967 to 1971, inclusive, which were filed by the Rating Bureau and the Department of Labor and Industry.

The public hearing testimony is summarized below:

1. Earned premiums for the years 1967 to 1971 were $1,236,105,964 (Chart 10 on Page 332).

2. "Paid Losses" for the same period were $560,901,112 whereas Incurred Losses were $736,824,951. (Chart 10.)

3. A comparison of earned premiums and actual loss payouts applicable to these premiums, in the year received, illustrate the

cash flow generated by Workmen's Compensation business: (Charts 10 and 11 on Pages 332 and 333).

Year	*Earned Premium*	*Paid losses-current*
1967	192,000,000	13,000,000
1968	232,000,000	16,000,000
1969	253,000,000	17,000,000
1970	273,000,000	18,000,000
1971	284,000,000	19,000,000

4. Loss Reserves increased 100% from 172 million dollars at 1/1/67 to 347 million in 1971. Despite the fact that the total paid losses, for which they were set up, followed a fairly predictable trend and only increased 50% from 1967 to 1971: (Chart 11).

Year	*Paid Losses*
1967	$ 92 million
1968	104 "
1969	109 "
1970	122 "
1971	132 "

5. Using the average ratio of Loss Reserves to Paid Losses relating to prior years (Chart 11), an average of 241% was developed. When this ratio was applied to the 12/31/71 reserve of $347,000,000, an excess reserve of $182,000,000 resulted.

Occupational Disease-Reserves

Investigation into the loss reserve methods employed by five carriers writing one-third of all Workmen's Compensation business in the State disclosed a wide disparity in the evaluation of these petitions. Chart 12 on Page 334 illustrates a difference of 19% in the evaluation of a typical O.D. case which is initially set at 25%; whereas the ultimate average settlement, as reported by the Department of Labor and Industry, was 6%.

In fairness to the carriers, it should be noted that they cannot initially determine which O.D. cases are authentic and which cases represent legalistic "puffing" by the petitioner's attorney. The disparity in claim evaluation of O.D. cases is a manifestation of the insurance carrier's reaction to the increase in the trend by certain segments of the bar to apply a "shot gun" approach to force a settlement from the insurance companies.

Allocation Of A Percentage Of Investment Income In Rate Making

The S.C.I. hearings disclosed that the "cash flow" generated by Workmen's Compensation premiums provided funds for investment purposes. (Chart 13 on Page 335) illustrates the percentage of net investment income allocated to Workmen's Compensation business. Percentages ranged from a low of 5% to a high of 55%. Seven major Workmen Compensation carriers averaged 32% in investment income which was derived from Workmen's Compensation (Chart 13).

The same carriers earned approximately 80% of their total income, on *all* lines of business, from investments whereas 20% was derived from underwriting. (Chart 14 on Page 336.)

It is clear that a significant portion of the investment income is derived from Workmen's Compensation premiums. It remains for the Court to apply a formula for the allocation of some percentage of investment income to a reduction in the Compensation rates.

Allocation Of Earned Standard Premium To The N.J. Worker

Finally, the most tragic aspect of the Workmen's Compensation system in the State is the small percentage of premium which ultimately inures to the benefit of the worker. Despite the fact that over 1.2 billion dollars was credited to premium income by insurance carriers from 1967-1971, only 41% or $502,808,716 ultimately found its way to the person for whom the system was formed, the worker. Chart 15 (on Page 337) graphically illustrates the fact that:

1. 499 million dollars was retained by insurance carriers as operating expenses or returned to employers in the form of dividends or discounts.

2. 58 million dollars was allocated to petitioner's doctors and attorneys.

3. 175 million dollars was allocated to the reserve for future losses and contingencies of a catastrophic nature. While it may be argued that a portion of these funds are ultimately paid to the injured worker, this argument pales in view of the statistical evidence of a 100% increase in Loss Reserves as of 12/31/71 viz. a. viz. 1/1/67, while both Incurred and Paid Losses merely increased 50%. Therefore, if we assume that one-half of 175 million dollars is ultimately paid to the worker, his share of the premium dollar is increased by 7%, or to a total of 48%.

TWO TIER BILLING

The investigation found evidence in several instances of physicians engaged in a two tier billing system whereby they charged a normal fee for a patient not engaged in Workmen's Compensation or liability litigation but increased their charges in those cases where an attorney was representing the patients. They attempted to justify this increase in fees by citing additional office expenses, such as correspondence in a litigated case, and the long wait for settlement and payment of the doctor bill. Although these facts might justify a minimal increase in fees to cover expenses, there was a differential of up to 200% in cases of Dr. Lewis J. Brandwein between ordinary cases and those involving litigation.

Miss Irene Tomalavage, Office Manager of Dr. Brandwein, Kenilworth, N.J., from June 1967 to February 1972, was asked about the billing system used by the doctor. She was shown an index card from the file of patient Harold Miles containing two columns of figures. Miss Tomalavage gave her explanation for the different charges.

Q. And would you tell me what those two columns of figures represents?

A. Well, the first column is the charge that would be given to the patient, and the second column of fees is a column that was—it's marked here, "Lawyer's Column." "Attorney's Column."

Q. Well, for the record, give me a comparison. How much would the patient charge be for an office call?

A. Well, if the patient came in, it depended on what type of treatment was given, but a usual office call, I guess, would be considered around $8, somewhere in that vicinity.

Q. I beg pardon?

A. Somewhere in that vicinity.

Q. And that would be—well, it is, in fact, $8 on the card you're holding in your hand?

A. Yes, right.

Q. And the treatment indicated is physiotherapy for the eight-dollar charge; isn't that correct?

A. Right.

Q. Now, what is the lawyer charge for the same treatment?

A. The lawyer charge for the same treatment was $15.

Q. Now, why the difference between the patient charge and the lawyer charge?

A. Okay. At the time that the patient comes in, the doctor usually explains to the patient that being that this is, you know, a legal case and the amount of time that we have to, you know, wait to get paid and the amount of paper work involved and correspondence with insurance companies and attorneys, that there would be, you know, an increase in fees versus if the patient came in and paid us, you know, as he went along.

Q. Now, you correct me if my understanding is wrong, but is it fair to state that basically the nearly fifty per cent increase in the charge to the patient as opposed to the charge to the attorney was justified on the grounds that there would be delay in receiving payment from the attorney?

A. I'm sorry. Could you——

Q. Yes. The reason given to the patient for the difference in charge, to wit, $8 if he were to pay it and $15 if it were to be paid by the attorney, is because the doctor would have to wait longer to get his money from the attorney?

A. And also, you know, the amount of paper work involved in corresponding with attorneys, insurance companies, because, you know, there's more paper work and time involved.

Q. Well, you mean in order to collect payment there would be more paper work and time involved?

A. Yeah, right.

Q. Can you give me a description of the paper work?

A. Well, like medical reports would have to be, you know, typed up, and bills typed up and recorded, and treatments, and things of that sort. It's just keeping more records.

Miss Tomalavage testified that the charges varied for x-rays as well as physical therapy:

Q. What was the difference in charges for x-rays?

A. Well, on this particular card here it varies with the different x-rays.

Q. Would you explain the difference for the record please?

A. Well, like the cervical thoracic spines which are normally 15, there's a charge of $30, and an x-ray of the chest, which is normally $10, was $30.

Q. So that an x-ray of the chest was $10 for the patient but the attorney would be billed $30?

A. Right.

* * * * *

Q. You have already given to me factors which you said were explained to the patient to explain the difference between physiotherapy charges to him and physiotherapy charges to the attorney?

A. Right, so are you saying like different——

Q. Were the factors the same so far as the difference in——

A. The reason for the increase, are you saying, was the same as the increase in the therapy, is that what you're trying to say, because of the amount of paper work?

Q. Yes.

A. Yes.

Q. So the explanation, then, would be the same?

A. Yes.

Q. That there would be more paper work involved?

A. Right.

Commissioner Farley brought a specific bill to the attention of Miss Tomalavage. She contended the higher fee is due to extra work by the physician and the length of time elapsed before receiving final payment:

Q. Now, this bill is in two forms, Column 1 is the patient; is that correct?

A. Correct.

Q. Column 2 is marked "Lawyer" or "Lawyer's"?

A. Correct.

Q. Now, would you read what the total bill for this patient was? What was the patient billed for?

A. In patient column are you referring to?

Q. Yes.

A. $430.

Q. And what was the lawyer billed for?

A. The lawyer's bill was $1,035.

Q. So you would agree if my mathematics is correct that the lawyer's bill for the same patient and the same treatment was $605 over and above that bill which went to the patient, correct?

A. Yes.

Q. And you say that the reason that there is a hundred fifty percent increase for the lawyer's bill over and above the patient's bill is for paper work?

A. Well, there was really a lot taken into consideration, like, you know, lawyer's reports, insurance reports.

Q. Yes. Would you take a look at the last item on the lawyer's bill, and what does that say?

A. I'm sorry. Would you repeat that?

Q. Would you take a look at the last item under the lawyer column prior to the total, and what does that say?

A. "Report fee."

Q. How much?

A. $25.

Q. So you were paid for a report fee over and above treatments, correct?

A. Correct. But the increase also included in the amount of time that we had to wait to get paid. Sometimes a case wasn't settled for two or three or four years.

* * * * *

Q. The card says the patient bill was $435, correct?
A. Right.

Q. And the lawyer's bill is $1,035?
A. Right.

Q. The $605 is due to extra work that the physician has to render?
A. And the amount of time that we had to wait, you know, in order to get paid.

Commissioner Farley: Thank you.

Lewis J. Brandwein, Doctor of Osteopathy licensed to practice in New Jersey, appeared with counsel, Theodore J. Romankow, and was sworn. Counsel Diana produced a Blue Shield form which had been submitted by Brandwein which contains the following certification.

"I certify that all statements in Part 2 herein are true and constitute all the services as set forth in lines 28 through 32 which I personally rendered; that the charges shown above represent my usual charges." Mr. Diana asked, "Well, can you tell me now which are your usual charges, that which you charge Blue Cross or that which you charge the attorneys?" Brandwein then attempted to explain his billing system with testimony as follows:

A. I would like the opportunity of explaining my system to you at this point, if I may, regarding your question, direct answer to your question.

The reason I charged the Blue Cross $8 is because I know that is all they're going to pay me. That is not my usual charge for this accident case. The usual charge is $15. However, I billed the Blue Cross at $8 because, using their code book, that is all they're going to pay me, and so, I bill out $8 so that when I receive the money from Blue Cross if they pay me anything less, then I have to look into it and see why they paid me less. If I had billed them the full amount of my charges, $15 then naturally they're going to pay me an amount less, and the amount of work that would entail investigating the reason they paid me less, it's of an academic procedure is what the problem is here.

Commissioner Farley: Doctor may I interrupt you there.

The Witness: Yes, sir.

Commissioner Farley: Assuming that a patient came to you that had no accident case,——

The Witness: Yes.

Commissioner Farley: —no Blue Cross, received heat treatment from you and paid you in cash that day, how much would you get for the heat treatment?

The Witness: Usually, approximately $8.

Commissioner Farley: Well, isn't that inconsistent with the statement you just gave?

The Witness: No, sir, because the statement——

Commissioner Farley: I thought you said that the reason that you charged $8 to Blue Cross is that wasn't your real fee?

The Witness: It was not my real fee for accident liability cases, sir.

Commissioner Farley: So you had two systems, do I understand that correctly, one for accident cases and one for like patients off the street?

In reply to Commissioner Farley's question, Dr. Brandwein attempted to justify his $15 fee by saying he felt it was a fair and a reasonable fee for the amount of work entailed. He sometimes would cut his fee at the request of attorneys when there was a poor settlement or he would be placed on call for a possible court appearance. There was paper work and filing to be done and also many of the accident patients did not keep their appointments.

Dr. Brandwein's answer obviously did not get to the point of the question and Chairman McCarthy asked:

The Chairman: Well, how about physio therapy treatment for a person who came in off the street?

The Witness: If a person came in off the street and there was no accident cases, no files to be opened up, I would charge $8.

The Chairman: And what would you charge the lawyer if the lawyer sent that person over there?

The Witness: If the lawyer came in and the patient did not pay and I had to go through the— all the things I had just mentioned before, reiterated before, the charge would be $15 and the patient was so advised.

The Chairman: Supposing it was an accident case that a lawyer referred to you but the person still wanted to pay cash; what would the charge be?

The Witness: If the patient wanted to pay cash, then I would instruct the patients that I would accept that amount of money that he paid me, I would bill him out, but for each and everything that I had to do I would expect to be paid. For instance, lawyers sent me a bill—ask for report, I charge him. If he sends for an interim report, I'd charge him. If he sent for a final report, I charge him. If he said, "Doctor, cancel ours because you may be on call for court," I say, "Not until I received a check for the amount of time I lose."

Q. Well, Dr. Brandwein, the Blue Cross statement doesn't say "These are my usual charges to Blue Cross," does it? It says, "These are my usual charges?"

A. The reason it says—the reason I put down $8 is that——

Q. Let me ask you the qestion. They're not your usual charges, are they?

A. It depends if this is an accident case or if it's not.

Q. In other words, you would explain it this way: that in the letter to Law Firm B of March 19th, 1973 when you said, "The reason in the reduction from my usual charges," you meant "my usual charges for attorneys," and when you signed the Blue Cross statement that these were your usual charges, you meant "These were my usual charges to Blue Cross;" is that right?

A. That's right, because that's their fee schedule.

Q. So you have usual charges for attorneys and usual charges for Blue Cross?

A. Well, may I just expand on that?

* * * * *

The Chairman: I think you can answer yes or no, then if you have a brief explanation——

A. Okay, the answer is yes, because this is what the Blue Cross fee schedule allows for this. For instance, if I would send the same bill to Medicaid or Medicare for the same services and I would bill them, say, $15, they have allowed me $13.40. I think I've testified to that previously, and that this was an allowance. Different insurance companies allow different amounts. Now, it all depends. I pull out their fee schedule and I put down the amount that they allow. This does not mean that this is my charge for services. I am just putting down what they will allow me, so from my bookkeeping sake, so when I get paid from them, I know if they have not paid me what I put down, then I have to look into it. It's an academic nature.

Q. Let me ask you this: What amount did Blue Cross allow, what was the maximum amount they allowed for spinal manipulation under anesthesia?

(Whereupon, the witness confers with counsel.)

A. I don't recall.

Q. $50, wasn't it? What did you charge Law Firm B? $150, right?

A. $150.

USE OF UNLICENSED PERSONNEL IN THE OPERATION OF X-RAY EQUIPMENT

The investigation uncovered incidents whereby two physicians with large workmen's compensation and liability practices used unlicensed personnel to operate x-ray machines. Dr. Harold Lippman of Irvington and Dr. Lewis Brandwein of Kenilworth allowed unlicensed employees to operate these machines even though they had been notified on two occasions that this conduct was a violation of New Jersey statute. John J. Russo, Chief of the Bureau of Radiation Protection, Division of Environmental Quality, Department of Environmental Protection, was called as a witness and explained that the operation of x-ray machines by unlicensed personnel posed a great threat to the public safety and welfare and that the physician should be held responsible for such conduct.

Mr. Russo stated there had been a law enacted in 1968 which required licensing of those persons administering x-rays under penalty of a misdemeanor. As background, a registration program of known x-ray sources was instituted previously so that these machines could be analyzed and inspected to protect the general public and the environment from the hazards of unnecessary radiation. Mr. Russo testified:

> A. So a determination was made as far back as '64 by Dr. Kandle an attempt should be made to regulate the user as well as the machine, because it made no sense to repair these machines, put them in proper working order and then have an untrained or uninformed individual apply these x-rays on humans.
>
> Certain surveys taken during that period indicated there were many retakes because of improper training, inadequate position by these technicians. A survey also revealed there were about 3,000 of these people applying x-rays on humans that had no prior experience other than on-the-job training. So, on the insistence of Dr. Kandle, in 1964 the Commission on Radiation Protection was ordered to begin a draft of a law to provide for control of these individuals with at

least a minimum of two years' training and experience before they'd be allowed to apply these x-rays on humans.

Between the period of '68 and '72 another survey was conducted, and for the first time in the history of this country we were able to determine that as a result of another survey that there is beginning to show a decrease in the application of these medical x-rays on humans as a result of this legislation, so the——

Q. You mean they're not administered as indiscriminately as a result of this legislation?

A. That is correct, sir. Even the quality of the x-rays have shown tremendous improvement. The number of retakes on individuals have been reduced.

Mr. Russo explained the dangers of radiation:

A. It has been known and still accepted fact based upon the knowledge we have today all radiation is injurious to tissue. It destroys tissues, and the only reason medical x-rays are allowed is that the benefits outweigh the risks, when a physician, properly trained, indicates that due to pathology a radiograph is required.

As a result of the registration program, an immediate inspection of new x-ray equipment is required by the Bureau of Radiation Protection and then inspections every one, two, or three years are made. By September, 1968 a list of 9,000 medical owners of x-ray equipment in New Jersey was in the possession of the Bureau. Mr. Russo testified:

Q. Was one of those medical owners Dr. Lewis J. Brandwein?

A. Yes, sir.

Q. And you had in your files information indicating that he owned an x-ray machine?

A. Yes, sir.

One of the routines the inspector involves himself with is the determination of those individuals on the premises actually in-

volved in x-ray technology. A "facility questionnaire" is used to determine the number of operators after observation and questioning of the physician.

There were two circulars sent out to all medical owners of x-ray equipment informing them of the change in the law requiring licensed personnel. A copy of the code and act were enclosed with the actual notification. Mr. Russo believes the law is too narrow:

Q. I take it the law as it is presently written does not per se make it a crime for a physician who allows unlicensed personnel to use his equipment?

A. The law itself does not address itself at all to the physician, yet the responsibility should be there.

Q. Has your agency recommended the change in the law to provide for that?

A. As a result of our findings, yes, sir, it has, and it will place the responsibility, if it's introduced and approved, on the physician to make a determination that, at least, every operator is qualified under Chapter 291 to operate that machine.

* * * * *

Q. Do you know if it's come yet to the attention of your agency that this investigation has disclosed that two doctors, one in Newark and one in Kenilworth, both with large liability and compensation practices, were allowing unlicensed personnel to use their equipment?

A. Well, sir, it came as a shock Monday when one of your investigators so notified me, because the records indicated that in response to the doctor's answers to questions, that this occurrence did not occur.

Q. In other words, your records with respect to Dr. Brandwein reflected that he was not using unlicensed personnel?

A. That's correct, sir.

Robert Dabb, Radiation Physicist, Bureau of Radiation Protection, testified about his duties as to the inspection of premises containing x-ray equipment. He explained the procedure used:

A. As I enter the office of the doctor, the first things I do is get a release paper signed which gives me permission to operate the x-ray equipment, and, second, then I ask the doctor is there anyone beside the doctor who gives the x-rays, and if his answer should be no, I write down "none" on my technician questionnaire, and 90% of the time I go on my own and inspect the doctors' x-ray equipment.

Mr. Dabb was shown a copy of a facility questionnaire.

Q. Mr. Dabb, do you recognize that as a copy of a document from your file?

A. Yes, I do.

Q. And do you recognize that as a questionnaire that you prepared upon the occasion of your visit to the premises of Dr. Lewis J. Brandwein?

A. Yes, I do.

Q. And what does that form indicate that Dr. Brandwein told you concerning his use of unlicensed radiology technicians?

A. It indicated that the doctor is the only one in the office that administers x-rays to humans.

Q. And what is the date of that report?

A. 10/27/72.

Irene Tomalavage, former office manager of Dr. Brandwein, was shown the letter sent by the Department of Health in 1968 to the 9,000 medical owners of x-ray equipment in New Jersey and the letter sent by the Department of Environmental Protection to the owners in 1971. Miss Tomalavage was asked:

Q. First of all, do you remember seeing the letter of November, '68?

A. No, I don't.

Q. How about the letter June of '71?

A. No.

Q. Did you ever overhear any discussion in the office concerning the necessity to be licensed as an x-ray technician?

Mr. Butler: Up till this time?

Mr. Diana: Up till this time.

A. I can't really recall. I mean, like it's such a long time ago I don't remember if there was a discussion or there wasn't.

Q. Would you remember whether you ever had any conversation with Dr. Brandwein concerning the law that x-ray technicians be licensed and certified? Do you recall such a conversation?

A. No, I don't remember.

Dr. Lewis Brandwein was questioned concerning office procedure for the operation of x-ray machines. He claimed they were taken under his direct supervision:

Q. Now, was there a period of time when unlicensed x-ray technicians were taken x-rays at your office?

A. Under my direct supervision, yes.

Q. Well, that wasn't the question I asked you. I asked whether or not unlicensed technicians were taking x-rays.

A. Yes.

Q. Now, how long did allowing of unlicensed x-ray technicians to take x-rays go on at your offices? When did the practice stop? Let's put it that way.

A. I'm sorry. When did it stop?

Q. Yes.

(Whereupon, the witness confers with counsel.)

A. When I found out I was not allowed to do it.

Q. You mean as a result of the appearance in executive session before this Commission of your medical assistants?

A. Yes.

Q. And who takes x-rays at your offices now?

A. I do.

Dr. Brandwein said he did not recall speaking to an inspector from the Department of Radiation in October 1972:

Q. Now, did you ever make a statement to an inspector from the Bureau of Radiology that you were not using unlicensed x-ray technicians?

(Whereupon the witness confers with counsel.)

A. Would you please clarify it? When? What time?

Q. On October the 27th, 1972.
A. I do not recall.

Q. Do you think it's possible?
A. I would—I wouldn't want to venture a guess.

Q. At any time in 1972 did you ever make a statement to an inspector from the Bureau of Radiology that you were not using unlicensed technicians?
A. I do not recall.

Q. Did you ever make such a statement in 1971?
A. I do not recall.

Nor did the doctor recall receiving the letters previously identified by Miss Tomalavage concerning the need for licensed operators.

Joan Anton, medical assistant of Dr. Brandwein, testified as follows: (It should be noted that the Dr. C referred to in her testimony is Dr. Brandwein).

Q. All right. You are not a registered nurse?
A. No.

Q. Does Dr. C employ any registered nurses?
A. No.

Q. All right. You are not a licensed radiologist?
A. No.

* * * * *

Q. Prior to February 7th did you take x-rays for Dr. C?
A. Before I was called?

Q. Before you were called to testify, yes.
A. Before, yes.

Q. All right. Now, who trained you to take x-rays? Another employee of Dr. C?
A. Yes.

Q. And did you know her to be a licensed radiologist?
A. No.

Q. Did you know, in fact, that she was not a licensed radiologist?

A. Yes.

Q. Is it not a fact that throughout the course of your employment for Dr. C and prior to February 7, 1973, except for the doctor himself, everyone who took x-rays had no license to do so?

A. Yes.

Q. That is true, is it not?

A. Yes.

* * * * *

Q. Did you understand at the time that you were taking x-rays that it was in violation of New Jersey criminal law?

A. No, I did not.

Q. You did not know it was a misdemeanor punishable by fine or imprisonment?

A. No, I did not.

Q. Okay. Dr. C never so advised you?

A. No.

Q. Who takes the x-rays for Dr. C presently?

A. He does.

Q. He takes them all himself?

A. Yes.

Q. And how many patients does he x-ray a day?

A. Afternoon and evening?

Q. Yes.

A. Maybe about ten, eleven.

Q. Ten or eleven at the most?

A. At the most. It differs.

Miss Anton was not supervised while taking x-rays which is a violation of N. J. S. A. 45:25–13B:

Q. Now, during that period of time when you were taking x-rays for Dr. C, were you taking them without medical supervision, that is with no one else in the room except you and the patient?

A. Yes.

Q. I take it that Dr. C. would have been in the office, but not necessarily?

A. He was in the office, but he wasn't in the same room.

Q. Were there occasions when he wasn't even in the office?

A. Yes.

Q. And how often would that happen?

A. Well, on—aside from Mondays, Tuesday, and Thursdays, and Fridays, he was always there except on Wednesdays. There were times on Wednesdays when he wasn't in the office.

Q. There were times on Wednesday when he wouldn't be in the office?

A. Yes.

Mrs. Verdell Avant, former medical assistant of Dr. Harold Lippman, testified as follows concerning Dr. Lippman's use of unlicensed personnel to operate x-ray equipment:

Q. Was there an x-ray machine in the doctor's office?

A. Yes, there was.

Q. And who would administer the x-rays?

A. Marion, Flora, and they tried to teach me, but I couldn't learn the hang of it.

Q. Now, is Flora Ware a registered nurse, do you know?

A. To my knowledge, I don't know.

Q. Is Marion Kingsberry?

A. Not to my knowledge.

Q. And you are not a registered nurse?

A. No, I'm not.

Q. Or licensed——

A. No, I'm not.

Q. —person to give x-rays?

A. No, I'm not.

Q. Have you ever actually tried to administer an x-ray?

A. Upon—as for learning, yes. When they would teach me to take the x-ray, it would be an actual person.

Q. I see. Who tried to teach you to administer x-rays?

A. Both Marion and Flora.

Q. I see. And how many x-rays would be taken in an average week, would you say?

A. About four or five, because whomsoever had to have these x-rays and it was during the business hour, during the office hours, Dr. Lippman would instruct the patient to come on Wednesday, which he didn't have office hours in the morning.

Joseph Corrigan, Special Agent to the New Jersey State Commission of Investigation, was recalled and testified* as follows concerning medical assistants Flora Ware and Marion Kingsberry:

Q. All right. Now, on to another subject area concerning Dr. Lippman and his office procedures.

Did his medical assistants testify under a grant of immunity that they administered x-rays without medical supervision and without having been licensed?

A. Yes, sir, they did.

Q. Did one of them testify that they were permitted to continue this practice despite notification from the State of New Jersey concerning its illegality?

A. Yes.

*As noted on the instance of Agent Corrigan's previously presented testimony at the public hearings, he was testifying with direct and accurate reference to the private testimony given by Dr. Lippman's two medical assistants. Copies of the transcripts of the private testimony were placed on the record of the public hearings so that the accuracy of Agent Corrigan's testimony could be verified by anyone wishing to do so.

FINAL RECOMMENDATIONS

PREAMBLE

The New Jersey State Commission of Investigation (S.C.I.) herewith presents its final recommendations based on the investigation of the Workmen's Compensation system and some practices found to be common to that system and the liability or negligence field. The recommendations have been given final formulation after lengthy study and deliberation by the Commission and its staff. The Commission believes they provide a sound legislative and administrative framework for elimination of abuses and progress toward an improved system which will adequately and equitably protect the injured worker and which will assure that more of the compensation dollar flows expeditiously to that worker.

REVIEW AND SUMMARY

At the close of the public hearings on the Workmen's Compensation investigation on June 22, 1973, the then Chairman of the Commission, John F. McCarthy, Jr., read into the record a statement which set forth the Commission's preliminary recommendations for halting abuses and improving the system. The Chairman stated then that a principal reason for making immediate, preliminary recommendations was to provide the Governor's Workmen's Compensation Study Commission with the S.C.I.'s best thinking at that time. The Chairman noted additionally in his statement that the Study Commission was searching for ways of fundamentally restructuring and re-orienting the Workmen's Compensation system. The S.C.I. anticipated that while the Study Commission would deal with areas beyond the scope of the S.C.I.'s investigation, a number of recommendations of the Study Commission would interrelate with and overlap the recommendations of the S.C.I.

The above mentioned possibilities became realities with the issuance of the Study Commission's report on October 1, 1973. In this presentation of the S.C.I.'s final recommendations, set forth in detail on subsequent pages of this report, each recommendation delineates, where appropriate, the interrelationships between the reports of the S.C.I. and the Study Commission. The reports are

mutually supportive in some instances and complementary in some others, and may be said to offer a diversity of ideas for action by the legislative and executive branches of government.
To summarize:

- The proposals of the S.C.I. include enactment of 13 bills and the taking of eight administrative and executive steps to implement 21 of the S.C.I.'s recommendations.

  Of the 21, 10 were given general endorsement by the Study Commission, two were not evaluated by that Commission, five are appropriate and needed despite overlapping recommendations of the Study Commission, and the balance would be needed in the event that overlapping recommendations of the Study Commission are not enacted. The bills proposed for enactment and the proposed administrative-regulatory promulgations have been drafted by the S.C.I.'s legal staff, and those drafts are included in the details presented in subsequent pages of this report.

- Two Joint Legislative Resolutions to establish Study Commissions are proposed for enactment to implement six S.C.I. recommendations.

- The texts are recorded of several formal S.C.I. communications which have been sent to the appropriate governmental units or professional agencies to implement six S.C.I. recommendations.

The S.C.I. is gratified that the Study Commission mentioned the S.C.I.'s preliminary report as an important input on which the Study Commission relied and that that Commission saw fit to generally endorse most of the S.C.I.'s recommendations aimed at terminating abuses and illegalities and to note how some of the Study Commission's recommendations might reach the same desirable ends sought by the S.C.I.'s preliminary recommendations.

Although the S.C.I. does not have the expertise to indulge in evaluation type commentary on many of the far-reaching, basic reforms proposed by the Study Commission, the S.C.I. does endorse in general a principal goal of that Commission's report, namely the processing of more of Workmen's Compensation claims by an informal process. Indeed, the reports of both Commissions seek ways to expand the scope and use of the informal process and were

quite identical in recommending an increase in the quantity and quality of state-paid doctors who evaluate injuries at the informal level.

It should be noted that basic reform and restructuring of the Workmen's Compensation system has been stymied for decades over issues which have so far defied resolution. The S.C.I. hopes and trusts the issues may this time be resolved without undue delay.

If, however, basic restructuring and reform is not reached without prolonged stalemate, the full spectrum of all the S.C.I. recommendations presented in detail in the subsequent pages of this report provide at least a way of improving promptly the present Workmen's Compensation framework and curbing its abuses.

Priority Recommendations

In areas where the Study Commission's recommendations and those of the S.C.I. are basically in accord and where the S.C.I.'s recommendations for halting flourishing abuses have been endorsed by the Study Commission, the S.C.I. respectfully recommends and requests expeditious legislative and executive action to implement recommendations. These priority areas are discussed briefly below and in more detail in the subsequent subsection of this report entitled "Final Recommendations in Detail."

Legislative Priorities

Strong Director

Both the report of the Study Commission and that of the S.C.I. have stressed the overriding importance of a strong Director of the Division of Workmen's Compensation as a principal key to the establishment and maintenance of an expeditious, well administered and excellence-oriented Workmen's Compensation system. The S.C.I. recommends enactment of a bill to provide specifically that the Director shall possess sufficient powes to achieve that goal.

Additionally and importantly, the S.C.I. recommended bill provides for the Director to be nominated and confirmed for a seven-year term as a way of insulating the Workmen's Compensation

Division from the impact of political administration changes and encouraging development of the Division Directorship as a high-level, career type post.

The Study Commission and the S.C.I. both recommend that the Director, under the final determination power of the State Commissioner of Labor and Industry, be specifically empowered to initiate removal proceedings for good cause against the Judges of Compensation.

Both the preliminary and final recommendations of the S.C.I. have been formulated with the possibility in mind that a decision might well be made to retain the present framework whereby the Workmen's Compensation Courts are part of the State Workmen's Compensation Division. The S.C.I. notes that the Study Commission's report recommends such retention as part of its overall restructuring plan.

If a consensus develops that attempts to improve the Compensation Judiciary within the present framework should be given an opportunity to prove their worth, the S.C.I. will hold in abeyance its alternative recommendation for transfer of the Workmen's Compensation Courts to the Judicial Branch. The S.C.I., however, reasserts its preliminary recommendation statement that transfer of the courts to the Judicial Branch is a viable and effective method of establishing higher standards of atmosphere and operation for those courts. Indeed, the subsequent S.C.I. recommendations for improving the caliber of those courts through a screening process and through higher salaries could lead to an improved Compensation Judiciary which could be a more valuable addition to the Judicial Branch in the future.

Salaries of Judges

For many thousands of New Jersey residents, their only courtroom experiences occur in the Workmen's Compensation Courts. Accordingly, the conditions in those courts should enhance the professionalism and dignity necessary to provide an aura conducive to excellence in the dispensation of justice. The citizenry of the state is entitled to no less, and, therefore, wise expenditures of money to achieve that goal will in the long run inure to the benefit of the public.

The S.C.I. believes a single most important step which should be taken in this area is to increase significantly the salary scales

for the Judges of Compensation to attract more highly qualified individuals to that Bench. If this is done, the salary of the Director of the Workmen's Compensation Division, who supervises the Judges, should also be increased.

Specifically, the S.C.I. urges enactment of a bill to raise those salaries by tying the salary of the Director to that of a Superior Court Judge ($37,000) and the salaries of the Judges of Compensation to those of a County District Judge ($34,000). The bill would, if enacted, have the flexibility factor of the salaries of the Director and the Compensation Judges automatically being adjusted upward when salaries of the Judicial Branch are increased.

False Medical Reports

A bill should be enacted to make it a misdemeanor for a doctor to knowingly submit a false medical report intended for use in any legal or administrative proceeding. This measure is needed as an additional tool to counter knowingly misleading or fraudulent bill padding practices as uncovered in the S.C.I.'s investigation. The Study Commission generally endorsed this recommendation.

Certified, Itemized Bills

An additional recommendation of the S.C.I. is for enactment of a bill which would require, under possible penalty of being a disorderly person, that doctors render true, accurate and itemized copies of bills to patients for treatment rendered in instances where the bills will form the basis of a legal claim. A further requirement of this bill is that the doctor by his signature attest to the actuality and accuracy of treatment rendered, a provision which would protect a patient in event of a criminal prosecution of a doctor who had treated that patient. The Study Commission has generally endorsed this recommendation.

Court Orders for Treatment

The enactment of another bill is recommended to require petitioners to move to obtain a Workmen's Compensation Court order allowing medical treatments not authorized by the respondent employer or his insurance company. In a companion step, the S.C.I. has written the Director of the Workmen's Compensation Division, urging him to issue appropriate directives to insure that the motions are heard promptly. These recommendations have been endorsed generally by the Study Commission.

Doctors Contingency Fees

A bill should be enacted banning outright the practice whereby some law firms pay doctors only a part of their fees if settlements in court were "low," thereby effecting a form of contingency fee system which tends to breed abuses of high fees, overtreatment and false reports of treatment. The Study Commission generally endorsed this recommendation.

Temporary Disability Payments

Enactment of a bill is proposed to impose a 25 per cent penalty payment on employers or their insurance companies who unreasonably or negligently delay in initiating payments of temporary disability benefits to injured workers. The Study Commission has made a parallel recommendation for penalizing such dilatory tactics by a 10 per cent penalty payment. The S.C.I. believes the 25 per cent level will be more effective in spurring prompt payments of these benefits which are designed to partially replace wages lost due to job connected injuries.

I.R.S. Form 1099 Information

There should be enactment of a bill which would require insurance carriers doing business in New Jersey to report all remittances of $600 or more to physicians in a calendar year to the Secretary of State. This is the same type of information now required to be reported on the Federal Internal Revenue Service Form 1099. The S.C.I. found widespread non compliance with the issuance of Form 1099 by insurance companies, a failure which tends to encourage some physicians to divert income through creation of cash hoards which can be used covertly for improper purposes. The S.C.I. also has sent communications to the Congress of the United States urging enactment of legislation to increase monetary penalty for failure to comply with the I.R.S. Form 1099 requirements. The Study Commission generally endorsed the S.C.I. recommendation in this area.

Employees Workmen's Compensation Booklet

It is recommended that a bill be enacted to make it a duty for the Director of the Workmen's Compensation Division to approve appropriate booklets explaining to employees their opportunities and rights under the Workmen's Compensation statute and requiring employers to provide the booklets to all employees.

The proposed bill is designed to encourage the approval and use of one standard booklet but leaves room for more than one such publication. The Study Commission endorses the goal of this S.C.I. recommendation but is of the opinion that some of the Study Commission's proposals would take care of the matter. The S.C.I. recommendation, however, should be viewed as an important complementary step to the Study Commission's recommendations in this area.

X-Ray Technicians

Testimony at the public hearings found that instances of use of unlicensed personnel to administer x-rays in some doctors' offices posed a threat to personal health in the state. Accordingly, it is recommended that a bill be enacted to make it a misdemeanor for doctors to knowingly or negligently employ an x-ray technician who does not have a valid certificate to engage in the activities of that type of technician. The Study Commission generally endorsed the S.C.I. recommendation in this area.

Two-Tier Billing

Recommendation is made for enactment of a bill to outlaw the practice of two-tier billing by doctors whereby a differential of as much as 200 per cent higher is charged for treatments in Workmen's Compensation and negligence actions than the doctor's normal charges. The S.C.I. believes legislation is in order in this area because of what appears to be inadequate vigilance and aggressiveness in the medical profession's program of self-policing. The Study Commission has generally endorsed this recommendation.

More and Better Paid State Doctors

The testimony of expert witnesses at the public hearings delineated the facts that the state-paid doctors who examine individuals and evaluate their injuries in the informal process are much too few in number and underpaid. The result has been a tendency to bypass the informal process, since hasty, unthorough examinations and evaluations have given that process the adverse reputation of not awarding the injured worker his due. The S.C.I. recommends enactment of a joint resolution setting up a five-member special Commission to study the number and types of doctors needed by the state to expand fully the effectiveness and scope of

the informal process and the rates at which those doctors should be compensated. This recommendation may be viewed as complementary to the Study Commission's basic recommendations for expanding the scope and role of the informal process.

Audits of Insurance Companies and Evaluation of the Rating and Inspection Bureau

Bills should be enacted to require annual C.P.A. audits of insurance companies in lieu of state examinations and rate-making examinations by C.P.A.'s of the Compensation Rating and Inspection Bureau, the insurance rate-setting body, at least once every two years. The Study Commission, due to time limitations, was unable to further study the rate-making process but expressed its general agreement with the S.C.I. view of the great importance of this subject.

Board Membership for the Rating and Inspection Bureau

Enactment of a bill is recommended to permit the Governor to appoint to the Board of Governors of the Compensation Rating and Inspection Bureau three voting members who are not associated with the insurance business and who will represent the public interest on that board.

Rate Making Study

A joint legislative resolution is recommended for enactment to establish a nine-member study commission, specifically authorized to employ expert actuarial staff, to study in depth the following Workmen's Compensation insurance rate-making areas brought into question at the S.C.I.'s public hearings—1) The possibility of an Open Rating system; 2) The inclusion of investment income in the rate-making structure, and 3) The possible use of actual paid losses and costs, properly adjusted for trends and/or legislative changes in the rate-making process. As previously noted, the Study Commission shares the S.C.I.'s concern in the area of the rate-making process.

Administrative-Regulatory Changes

Screening of Judicial Nominees

The S.C.I. by letter to the Governor has respectfully recommended and requested that he, by publicly pronounced policy,

establish a State Bar Association screening process, including screening by that Association's County Workmen's Compensation Sections, for selections of potential nominees to the Workmen's Compensation Bench. The process should be similar to that which has long been established for potential nominees to be judges of the regular courts. The S.C.I. notes that carrying out of this recommendation would be especially important if the previous recommendation is enacted for raising the salaries of the Judges of Compensation. The Study Commission generally endorsed the S.C.I. recommendation in this area.

Neuropsychiatric Allegations

It has been recommended to the Director of the Workmen's Compensation Division, by letter from the S.C.I., that he take administrative steps in order to circumscribe instances where petitioners attorneys may allege neuropsychiatric injury above and beyond the basic injury alleged. The S.C.I. heard public testimony that unwarranted allegations of neuropsychiatric injury were increasing and were often used as a wedge to extract a higher award. The Study Commission generally endorsed this recommendation.

Multiple Allegations

A letter has been sent to the Director of the Workmen's Compensation Division recommending that he issue appropriate administrative directives requiring petitioners to have evaluating medical examination reports for each injury alleged where multiple allegations of injury are made. Testimony at the S.C.I.'s public hearings showed the practice of making unwarranted multiple allegations was on the increase and that that practice was often used as a wedge to extract a higher award. The Study Commission generally endorsed the S.C.I. recommendation in this area.

Attorney Recommended Doctors

A letter has been sent to the Director of the Division of Workmen's Compensation recommending and requesting that, by administrative directive and other appropriate communications, he require Judges of Compensation to scrutinize closely those cases where medical treatment payment is requested and the treating physician was recommended by the petitioner's lawyer and that he require the Judges to quash vigorously any patterns showing

the use of "house doctors" or favored treating physicians by petitioners' lawyers. The Study Commission has generally endorsed this recommendation.

Medical Society Standards

The New Jersey Medical Society, by letter from the S.C.I., has been urged to conduct a study aimed at formulating guidelines and standards governing the practice of doctors in treating patients in negligence and compensation cases. The S.C.I.'s investigation indicated lack of a sufficient policy of self-policing by the medical profession in this area. Self-policing by professional societies has been quite effective in the law and public accounting professions. The Study Commission has generally endorsed this recommendation.

Penalties for Attorney Delays

By letter to the Director of the Workmen's Compensation Division, the S.C.I. has recommended that he review the Division's provision's for penalizing dilatory tactics by petitioners and respondents attorneys, with emphasis on the proper enforcement of the penalties. The S.C.I. agrees with the Study Commission that the Director now has considerable powers to penalize but believes study and evaluation of the whole area of penalties and their enforcement is in order.

FINAL RECOMMENDATIONS IN DETAIL

I. Immediate Corrective Measures

a) Legislative Action

1) The Need for Additional Powers for the Director of the Division of Workmen's Compensation

The Testimony:

The most clearly articulated statement of the widely-held view that the Workmen's Compensation Division desperately needs a stronger director came from Matthew Parks of the firm of Tomar, Parks, Seliger, Simonoff and Adourian, Camden, who testified in an expert capacity to the urgent need for a stronger director, properly empowered to regulate the conduct of personnel and supervise the overall efficiency of the system.

The S.C.I. hearings revealed a clear need for the director to serve as career official, free of the vagaries of electoral politics, rather than as an executive appointee whose tenure of office expires with that of the Governor.

The S.C.I. Recommendation:

The Director of the State Workmen's Compensation Division, if the present administrative framework of the Workmen's Compensation System is to continue, should be empowered thoroughly and specifically by statute and by departmental regulations to supervise and regulate the performance and conduct of judges and referees of compensation, with emphasis on the Director's responsibility to see that high standards are maintained and to take preventive and remedial steps toward that end. Included in this power should be the right to removal for just cause. The Commission notes that the petitioners' attorneys and the judges of compensation who testified at these public hearings are unanimous in their opinion that a strong, active director enforcing regulations and standards could be a giant step toward remedying ills that beset the Compensation Court System.

The Background:

Under the current law, N.J.S.A. 34:1A–12 provides:
Division of Workmen's Compensation; officials and employees in Division; director; powers and duties

The Division of Workmen's Compensation shall consist of the Commissioner of Labor and Industry who shall act as chairman, a director who shall be appointed as hereinafter provided, judges of compensation appointed by the commissioner, and such referees and other employees as may, in the judgment of the commissioner, be necessary. Appointments of such judges of compensation, referees and other employees shall be made in accordance with the provisions of Title 11 of the Revised Statutes, Civil Service.

The Director of the Division of Workmen's Compensation shall be a person qualified by training and experience to direct the work of such division. He shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve during good behavior and until the director's successor is appointed and has qualified. He shall receive such salary as shall be provided by law.

The Director of the Division of Workmen's Compensation shall, subject to the supervision and direction of the Commissioner of Labor and Industry:

(a) Be the administrative head of the division;

(b) Prescribe the organization of the division, and the duties of his subordinates and assistants, except as may otherwise be provided by law;

(c) Direct and supervise the activities of all members of the division;

(d) Make an annual report to the Commissioner of Labor and Industry of the work of the division, which report shall be published annually for general distribution at such reasonable charge, not exceeding cost, as the commissioner shall determine;

(e) Perform such other functions of the department as the commissioner may prescribe.

The Director of the Division of Workmen's Compensation shall also serve as secretary of such division, and may perform the duties of a judge of compensation.

While section (c) arguably authorizes the Director to take such action as is necessary to control activities within the Division, the recent controversy over the power of either the Commissioner of Labor and Industry or the Director of Workmen's Compensation to remove judges of compensation demonstrates at least the ambiguity of the statutory powers conferred by N.J.S.A. 34:1A–12.

Additionally, the statute pegs the Director's term to the Governor's term thus tending to politicize, rather than professionalize, the office.

Suggested S.C.I. Proposal:

N.J.S.A. 34:1A–12 should be amended to read as follows:

Division of Workmen's Compensation; Officials and Employees in Division; Director; Powers and Duties

The Division of Workmen's Compensation shall consist of the Commissioner of Labor and Industry who shall act as chairman, a director who shall be appointed as hereinafter provided, judges of compensation appointed by the *Governor*, and such referees and other employees as may, in the judgment of the commissioner, be necessary. Appointments of such referees and other employees shall be made in accordance with the provisions of Title 11 of the Revised Statutes, Civil Service.

The Director of the Division of Workmen's Compensation shall be a person qualified by training and experience to direct the work of such division. He shall be appointed by the Governor, with the advice and consent of the Senate, *for a term of 7 years,* and shall serve during good behavior and until the director's successor is appointed and has qualified. He shall receive such salary as shall be provided by law.

The Director of the Division of Workmen's Compensation shall, subject to the supervision, direction *and final determination* of the Commissioner of Labor and Industry:

(a) Be the administrative head of the division;

(b) Prescribe the organization of the division, and the duties of his subordinates and assistants, except as may otherwise be provided by law;

(c) Direct and supervise the activities of all members of the division, *with responsibility to set high standards of conduct for judges of compensation, referees, and other employees of the division;*

(d) *Take preventive and remedial action with regard to unexemplary conduct by judges of compensation, referees and other employees of the division, including, but not limited to, the power to remove from office upon a showing of just cause in an administrative hearing.*

(e) Make an annual report to the Commissioner of Labor and Industry of the work of the division, which report shall be published annually for general distribution at such reasonable charge, not exceeding cost, as the commissioner shall determine;

(f) Perform such other functions of the department as the commissioner may prescribe.

The Director of the Division of Workmen's Compensation shall also serve as secretary of such division, and may perform the duties of a judge of compensation.

Commentary:

The S.C.I. proposal makes three principal revisions in the current law. By providing a 7-year term for the Director of Workmen's Compensation, the threat of a shake-up in the Division every time a new administration takes office is eliminated. While a new Governor will eventually have the opportunity to nominate a new man, the length of the term should encourage retention of a qualified, career-Director from one administration to the next. The 7-year term also parallels the initial term of appointment for Superior Court judges. While the Director would not receive tenure upon reappointment the S.C.I. believes that reappointment would greatly encourage his career retention by subsequent Governors. The addition of a "good behavior" clause safeguards against any possibility of a proven incompetent continuing in office for an extended period of time.

The other two changes deal with the duties of the Director. Section (c) is amended to articulate and clarify the Director's responsibility to oversee the functioning of the Division scrupulously. The new section (d) grants the Director the clear power to remedy misfeasance and non-feasance in office, specifically authorizing him to remove offenders for cause.

In the exercise of these powers, as in all his other duties, the Director remains subject to the supervision and direction of the Commissioner of Labor and Industry. The S.C.I. proposal makes explicit the fact that the Commissioner of Labor and Industry makes the *final determination* in matters involving the exercise of the Director's duties. Thus, for example, as long as the workmen's compensation judiciary remains within the Division of Workmen's Compensation the Commissioner will make the ultimate decisions regarding their discipline or removal whenever necessary.

The S.C.I. proposal also corrects two inaccuracies in § 34:1A–12, noting that the judges of compensation are appointed by the Governor, rather than the Commissioner of Labor and Industry, thus bringing § 34:1A–12 into conformity with N.J.S.A. 34:15–49. It also deletes reference to judges of compensation with regard to Title 11, thus bringing § 34:1A–12 into conformity with N.J.S.A. 11:4–4.

To accommodate the new section (d), our proposal reletters the current sections (d) and (e) as (e) and (f) respectively.

New Jersey Workmen's Compensation Study Commission:

The New Jersey Workmen's Compensation Study Commission has endorsed the concept of a strong director. (See *Report,* pp. 154-155). The S.C.I. proposals implement all positive aspects of the Study Commission's Recommendations. Provision is made to guarantee the director the highest salary in the division in a separate statute. (See I. Immediate Corrective Measures; a) Legislative Action, 2) A Judicial Wage Commensurate With Excellence).

S.C.I. proposed revisions in the statute make clear that the ultimate sanction of the Commissioner of Labor & Industry is necessary before the Director can remove subordinates within the Division.

Although the Study Commission believes its recommendations implement the S.C.I.'s goals (see Report, p. 203), the S.C.I. believes that any successful effort to depoliticize the Division of Workmen's Compensation must include a provision for the Director to serve not for the duration of the Governor's term but rather for a term of 7 years. This helps to guarantee a competent professional administrator but still allows removal for cause.

I. Immediate Corrective Measures:

a) Legislative Action

2) A Judicial Wage Commensurate With Excellence

The Testimony:

Both Jacob L. Balk and Judge Stanley Levine urged that the judges of compensation be given salaries comparable to those of other New Jersey judges as a step towards attracting more qualified and capable persons to the Compensation Judiciary. The current pay scale for judges of compensation ($29,500) neither compares with the salaries of parallel practitioners in the private sector nor approaches the salary of other State judges, even at the domestic relations or county district court level ($34,000).

The S.C.I. Recommendation:

Political considerations and appointments of judges and referees must be subordinated to competence and integrity. A wage commensurate with excellence is a practical necessity which must not be overlooked.

The Background:

Under the current law, N.J.S.A. 34:15–49 provides:
Original jurisdiction of claims; salaries of director and judges

> The Division of Workmen's Compensation shall have the exclusive original jurisdiction of all claims for workmen's compensation benefits under this chapter. The judges of the Division of Workmen's Compensation shall hereinafter be appointed on a bipartisan basis by the Governor, with the advice and consent of the Senate and shall serve during good behavior. The salaries of the director of the division and the judges of compensation shall be $27,000.00. Judges of compensation shall not engage in the practice of law and shall devote full time to their judicial duties.

The section was rewritten to its present form in 1969 in a bill offered by then Assemblyman Parker. Before amendment the bill set the salaries of the director and the judges of compensation on a par with judges of the county district court.

The present Legislature has passed a bill (S. 1215) raising the director's salary to $32,000 and that of judges of compensation to $29,500. Additionally, supervising judges would receive a supplemental $1,500 per annum.

Suggested S.C.I. Proposal:

N.J.S.A. 34:15–49 should be amended to read as follows:
Original jurisdiction of claims; salaries of directors

The Division of Workmen's Compensation shall have the exclusive original jurisdiction of all claims for workmen's compensation benefits under this chapter. The judges of the Division of Workmen's Compensation shall hereinafter be appointed on a bipartisan basis by the Governor, with the advice and consent of the Senate and shall serve during good behavior. The salary of the director of the division *shall be the same as that of the judges of the County Court and the Superior Court.* The salaries of the judges of compensation shall be *the same as those of the judges of the county district courts who are required to devote their entire time to their judicial duties. In addition to his salary, a judge of compensation regularly assigned as a supervising judge of compensation by the director shall receive additional compensation of $1,500.00 per annum during the period of such assignment.*

Judges of compensation shall not engage in the practice of law and shall devote full time to their judicial duties.

Commentary:

The S.C.I. proposal remedies the inadequacies in the current workmen's compensation pay-scale. By tying the salaries of the director and judges to those of other State judges, not only are the positions upgraded to the level of the general state judiciary, but the need for any separate future legislation with regard to these salaries is eliminated—they will increase as those of the general state judiciary do.

The pay-scales chosen provide the director with a salary of $37,000, supervising judges of compensation with a salary of $35,500, and judges of compensation with a salary of $34,000. This distributes the amount of compensation in accordance with the level of responsibility.

New Jersey Workmen's Compensation Study Commission:

The report of the Study Commission endorses the S.C.I. recommendation in this area. Additionally, the S.C.I. proposal implements the Study Commission's recommendation that the Director be the highest paid employee of the Division. (See *Report,* p. 154).

I. Immediate Corrective Measures:

a) Legislative Action

3) False Medical Report

The Testimony:

Testimony given at the S.C.I. hearings indicated that a recurrent source of abuse in the workmen's compensation field is the incentive among the unscrupulous to submit false medical reports as a means of increasing compensation awards. Judge Kelly agreed that a statute which made such willing and knowing falsification of a medical report a criminal act might serve as a useful deterrent to the practice.

The S.C.I. Recommendation:

A statute should be enacted making it a misdemeanor for any physician to fill out or execute a false medical report of the type that may be used in a Workmen's Compensation or negligence case or any other type of legal proceeding.

The Background:

There is no current statutory regulation governing the accuracy of medical reports. Title 45, on Professions and Occupations, provides a definition of physicians and surgeons (N.J.S.A. 45:9–5.1) which we can rely upon to avoid a definitional problem. The general structure of misdemeanor statutes provides drafting guidelines.

Suggested S.C.I. Proposal:

Any physician or surgeon, as defined in N.J.S.A. 45:9–5.1, who, with intent to mislead, misrepresents or

authorizes or approves the misrepresentation of, any material fact called for or included in any medical report, which is subsequently submitted to any judicial or administrative proceeding in this state, or which is used in negotiations seeking the settlement of any such proceeding, is guilty of a misdemeanor.

Commentary:

This statute covers knowing and willing falsification of material facts, whether done personally by the physician or surgeon or by another with his authorization or approval. It covers all fields rather than in just the workmen's compensation field. If it is desired to limit this recommendation to workmen's compensation, the words "any judicial or administrative" can be deleted and replaced with "workmen's compensation." The area of criminal liability is extended to cover "pre-trial" or "pre-hearing" negotiations to provide a further safeguard against such abuses.

New Jersey Workmen's Compensation Study Commission:

The report of the Study Commission endorses the S.C.I. recommendation in this area.

I. Immediate Corrective Measures

a) Legislative Action

4) Certified, Itemized Bills

The Testimony:

During the S.C.I. hearings testimony indicated some disagreements over bills and services between physicians and patients involved in the workmen's compensation process. As one example, a Mr. and Mrs. Elias, patients of doctor Herbert Boehm, testified that they had been to his office no more than 8 or 9 times while Boehm's records listed them for 16 visits.

The S.C.I. Recommendation:

Physicians should be required by law in cases where they expect to receive payment for treatment in a compensation award

or from damages in a negligence case, to provide patients in those cases with a true, accurate and itemized copy of the bill for treatment rendered, properly certified under penalty of law. Any new statutory provisions should require the doctor to attest by his signature on all originals and copies of bills to the actuality and accuracy of the examinations and treatments rendered and the amounts charged for them.

The Background:

Title 45, Chapter 9 of New Jersey Statutes Annotated governs the practice of medicine and surgery, with N.J.S.A. 45:9–5.1 defining "physicians and surgeons." The statutes frequently impose fines for non-compliance with the requirements of the chapter.

Suggested S.C.I. Proposal:

N.J.S.A. 45:9—*Certified, itemized bills.*

Any physician or surgeon who renders treatment which he knows or reasonably should know is or will be related to or is or will be the basis of a legal claim for workmen's compensation or damages in negligence shall provide his patient with a true, accurate and itemized copy of the bill for treatment rendered. Such physician or surgeon should certify and attest by his signature on all originals and copies of such bills to the actuality and accuracy of the examinations and treatments rendered and the amounts charged for them.

Any person who violates any provision of this section is a disorderly person.

Commentary:

By placing this section in title 45, chapter 9, we avoid having to define "physician or surgeon." The statute enacts all the features of the S.C.I. recommendation and includes a penalty of up to 6 months in jail and/or a fine of up to $500 as a disorderly person under N.J.S.A. 2A:169–4.

New Jersey Workmen's Compensation Study Commission:

The report of the Study Commission endorses the S.C.I. recommendation in this area.

I. Immediate Corrective Measures

a) Legislative Action

5) Court Orders for Treatment—Prompt Hearings

The Testimony:

Attorney Matthew Parks testified that when examining physicians recommend more treatment for his clients he follows the proper practice of making a motion in court for temporary medical treatment. S. Lawrence Torricelli, a former workmen's compensation referee, now affiliated with a law firm and seeking to curb that firm's most flagrant abuses of the workmen's compensation, agreed that in cases where respondent refuses to authorize more treatment, proper procedure is to seek court authorization for treatment. He complained however, that the Workmen's Compensation Division is lax in listing such motions for hearings.

The S.C.I. Recommendation:

The practice of payment for unauthorized medical treatments as part of settlement, except for emergency treatment of petitioners in Workmen's Compensation cases, should be ended, with provision for treatment above and beyond what the respondent employer or insurance carrier will authorize to be undertaken only on Court Order after formal motion for the additional treatment is made before a judge of the Compensation Court. The body charged with administration of the Compensation Courts should take steps to insure the prompt listing of these motions for hearings.

The Background:

Paragraph 2 of N.J.S.A. 34:15–15, *Medical and hospital service,* provides:

> If the employer shall refuse or neglect to comply with the foregoing provisions of this section the employee may secure such treatment and services as may be necessary and as may come within the terms of this section, and the employer shall be liable to pay therefor; provided, however, that the employer shall not be liable for any amount expended by the employee or by any third person on his behalf for any such physicians' treatment and hospital services, unless such employee or any person on his behalf shall have requested the employer to furnish

the same and the employer shall have refused or neglected so to do, or unless the injury occurred under such conditions as make impossible the notification of the employer, or unless the circumstances are so peculiar as shall justify, in the opinion of the workmen's compensation bureau, the expenditure assumed by the employee for such physicians' treatment and hospital services, apparatus and appliances.

Suggested S.C.I. Proposal:

Paragraph 2 of N.J.S.A. 34:15–15, *Medical and hospital service,* should be amended to read as follows:

If the employer shall refuse to neglect to comply with the foregoing provisions of this section the employee may secure such treatment and services as may be necessary and as may come within the terms of this section, and the employer shall be liable to pay therefor, provided, however, that the employer shall not be liable for any amount expanded by the employee, or by any third person on his behalf for any such physicians' treatment and hospital service unless such employee or any person on his behalf shall have requested the employer to furnish the same and the employer shall have refused or neglected so to do *and in the case of continuing treatment not just technically unauthorized, including, but not limited to physical therapy, chiropractic, neurological and neuro-psychiatric treatment, the employee has obtained a court order for the treatment on formal motion before a judge of compensation,* unless the nature of the injury required such services, and the employer or his superintendent or foreman, having knowledge of such injury shall have neglected to provide the same, or unless the injury occurred under such conditions as make impossible the notification of the employer, or unless the circumstances are so peculiar as shall justify, in the opinion of the workmen's compensation bureau, the expenditure assumed by the employee for such physicians' treatment and hospital services, apparatus and appliances.

The second part of the S.C.I. recommendation, that the Workmen's Compensation Division list all additional treatment motions for prompt hearing should be handled by a Rule promulgated by

the Director. A letter from the S.C.I. Chairman should make such a recommendation to the Director of the Division of Workmen's Compensation. The letter reads as follows:*

Dear Mr. Dezseran:

During the course of its investigation into the Workmen's Compensation system, the New Jersey State Commission of Investigation conducted public hearings at which the Commissioners took extensive testimony. The testimony at these hearings told of a disconcerting frequency of petitioners' attorneys pressing for payment of unauthorized medical treatments, where no court order had been obtained for such treatments.

The Commission believes the practice should be ended, and to that end, the Commission has recommended amendment of Paragraph 2 of N.J.S.A. 34:15–15 to specifically require petitioners to obtain a court order for treatment not authorized by the respondent.

The Commission also heard testimony that court orders for unauthorized treatment were not processed as promptly as they should be. The Commission recommends and requests that you take whatever appropriate administrative steps which may be needed to insure that all such motions are processed expeditiously. Such measures might include the institution of continuous trials, the maintenance of separate motion lists, and the preemptory lists of cases in which there is a denial by the carrier.

Sincerely,

Chairman,
N. J. State Commission of
Investigation

Commentary:

The S.C.I. amendment to N.J.S.A. 34:15–15 retains the basic structure of 34:15–15 with regard to payment by the employer for unauthorized employee treatments. It adds to the "request-and-refusal" requirement, the requirement for a motion for a court order in all cases of unauthorized continuing treatment unless statutory exceptions exempt the employee from the "request-and-refusal" requirement.

* A single letter, incorporating all recommendations to the Director, will be sent and is included in this report at p. 318.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorsed the S.C.I. recommendation in this area.

I. Immediate Corrective Measures

a) Legislative Action

b) Doctor's Contingency Fees

The Testimony:

Testimony before the Commission indicated that certain law firms paid doctors only part of their fee if settlements were "low", thus effecting a form of contingency-fee system. The information gathered in the hearings suggested that contingency fees might breed such abuses as high fees, overtreatments and false reports of treatments.

The S.C.I. Recommendation:

It is the opinion of the Commission that the practice of physicians rendering treatment on a contingency basis, that is to say, waiving their entire fee if the petitioner receives no award or waiving that portion of their fee which was not included in the award, tends to breed abuses and is therefore strongly disapproved.

The Background:

N. J. Court Rules of General Application 1:21–7 (a) defines a contingency fee as follows:

> As used in this rule the term "contingent fee arrangement" means an agreement for legal services of an attorney or attorneys, including any associated or forwarding counsel, under which compensation, contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement, is to be in an amount which either is fixed or is to be determined under a formula.

The A.M.A.'s *Principles of Medical Ethics,* Section 7, Opinion 15, bars any *Fee Contingent On Outcome of Litigation*:

The contracting for, or acceptance of, a contingent fee by a doctor, which is based on the outcome of litigation, whether settled or adjudicated, is unethical. The laborer is worthy of his hire and the physician, having only his services to sell, has an obligation to place a fair value on those services. Ethically this value should be based upon the value of the service rendered by the physician to the patient and not upon the uncertain outcome of a contingency that does not in any way relate to the value of the service. Furthermore, the physician's obligation to uphold the dignity and honor of his profession precludes him from entering into an arrangement of this nature because, if a fee is contingent upon the successful outcome of a claim, there is the ever-present danger that the physician may become less of a healer and more of an advocate—a situation that does not uphold the dignity of the profession of medicine.

Suggested S.C.I. Proposal:

The following statute should be adopted: N.J.S.A. 45:9–

Contingent fee arrangements prohibited.

a) As used in this section the term "contingent fee arrangement" means an agreement for medical services of one or more physicians or surgeons, including any associated or forwarding medical practitioners, under which compensation in whole or in part is contingent upon the successful accomplishment or disposition of the legal claim to which such medical services are related.

b) In any matter where medical services rendered to a client form any part of the basis of a legal claim for damages or workmen's compensation, a physician or surgeon shall not contract for, charge, or collect a contingent fee.

Commentary:

Insertion of this provision in Title 45, Chapter 9 allows us to avail ourselves of the statutory definition of "physician or surgeon" contained in N.J.S.A. 45:9–5.1. The statute adopts the "contingent fee arrangement" definition of the *N.J. Court Rules*. It proceeds to ban the practice outright.

Despite the A.M.A. prohibition on the subject the matter seems appropriate for legislation. It deals not with the internal functioning of the medical profession but rather with an area of interaction between the medical profession and society in general. As an activity with potentially grave social consequences, it is a matter which the Legislature should affirmatively regulate, not one which can be left to the supervision of the profession itself.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorses the S.C.I. recommendation in this area.

I. Immediate Corrective Measures

a) Legislative Action

7) Penalty for Delay in Paying Benefits

The Testimony:

Both attorneys who testified as expert workmen's compensation practitioners before the S.C.I., Matthew Parks and Jacob Balk, noted the practice of foot-dragging by respondents in making temporary disability payments. As a solution to the problem Balk recommended Oregon's approach, charging a 25% penalty for unreasonable delays.

The S.C.I. Recommendation:

In order to insure prompt payment of temporary disability to disabled workers, statutory provision should be made for imposition of sanctions upon respondent employers or their insurance carriers who, through indifference or neglect, delay in initiating disability payments or in continuing those payments. Temporary disability payments to disabled workers are a partial substitute for their usual weekly paychecks. Therefore, temporary disability checks should be given the same priority by an employer as he would in rendering the normal paychecks. Petitioners should not have to pry out temporary disability payments from employers of their insurance carriers. Abuses in this area must be ended.

The Background:

N.J.S.A. 34:15–17 sets the requirements for notification of an employer that a compensable injury has occurred:

> Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the employee, or some one on his behalf, or some of the dependents, or some one on their behalf, shall give notice thereof to the employer within fourteen days of the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety days, and if the employee, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse, then compensation may be allowed, unless, and then extend only that the employer shall show that he was prejudiced by failure to receive such notice. Unless knowledge be obtained, or notice given, within ninety days after the occurence of the injury, no compensation shall be allowed.

The pertinent provision of Oregon's Revised Statutes, ORS 656.262 (8) states:

> If the fund or direct responsibility employer unreasonably delays or unreasonably refuses to pay compensation, or unreasonable delays acceptance or denial of a claim, it shall be liable for an additional amount up to 25 percent of the amounts then due plus any attorney fees which may be assessed under ORS 656.382.

Suggested S.C.I. Proposal:

The following should be adopted as N.J.S.A. 34:15-:

> If an employer or employer's insurance carrier, having actual knowledge of the occurrence of the injury, or

having received notice thereof such that temporary disability compensation is due under N.J.S.A. 34:15–17, unreasonably or negligently delays or refuses to pay temporary disability compensation, or unreasonably or negligently delays denial of a claim, it shall be liable for an additional amount up to 25 per cent of the amounts then due plus any reasonable legal fees incurred by the petitioner as a result of and in relations to such delays or refusals. Absent a positive showing to the contrary a delay of 30 days or more shall be considered unreasonable and negligent.

Commentary:

This law provides that whenever an employer or his insurer is legally notified (in compliance with N.J.S.A. 34:15–17), and delays or refuses payment or delays a denial of liability, for 30 days or longer, they are presumed to be negligent and unreasonable and liable to a 25% penalty plus any causally related petitioner's legal fees.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission, while endorsing the S.C.I. goal in this area, believed that its proposals solved the problem of delays in paying temporary benefits and thus eliminated the need for the S.C.I. proposal. The S.C.I. believes that the recommended 10% penalty proposed by the Study Commission for unreasonable delays in paying temporary disability is inadequate. In view of the fact that workers subjected to such delays may be forced to resort to high interest short-term borrowing or may face substantial disruptions in their pattern of economic consumption, the S.C.I. proposal for a potential penalty of 25% plus any consequent legal fees incurred by the claimant reflects both a more workable and a more flexible approach to the problem. Precedent for such proposal is found in the parallel approach taken by the State of Oregon which has long shared, with New Jersey, a reputation as one of the Nation's more progressive states.

I. Immediate Corrective Measures

a) Legislative Action

8) Employee's Workmen's Compensation Booklet

The Testimony:

See the Commission's statement under The S.C.I. Recommendation immediately following:

The S.C.I. Recommendation:

It has come to the attention of the Commission that although signs are required to be posted in all places of employment setting out the procedures and benefits in the event of on the job injury, employees nevertheless remain ignorant of their rights upon injury and the procedures to be followed to secure these rights. Therefore, the Commission recommends that upon employment of a new employee, every employer be required to provide a booklet or pamphlet to the new employee outlining his rights in the event of on the job injury and the proper procedure for securing same.

The Background:

N.J.S.A. 34:15–9 stipulates that contracts of hiring made or in operation after July 4, 1911 are presumed to have been made with reference to the Statutory Article on Workmen's Compensation absent an express written statement to the contrary prior to any accident.

Suggested S.C.I. Proposal:

N.J.S.A. 34:15–8A

> When an employer and employee shall by agreement, whether express or implied, as hereinafter provided, accept the provisions of this article, the employer shall provide each current and future employee, as of January 1, 1974, with a booklet or pamphlet in English and Spanish, approved by the Director of the Division of Workmen's Compensation, stating and explaining the employee's substantive rights, and the proper procedure for securing those rights, in the event of an injury or death arising out of and in the course of his employment. The employer shall annually notify the Division of compliance, in the manner indicated by the Director.

Commentary:

This provision ties into the statutory presumption that the Workmen's Compensation Article is contained in all contracts. It gives the Director of Workmen's Compensation the duty to approve appropriate booklets (thus encouraging approval and use of *one standard* booklet) and then requires employers to provide them to all employees.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission, while endorsing the S.C.I. goal in this area, believes that its proposals for a Worker Support Section (WSS) and a Safety & Evaluation Section (SES) within the Division alleviate the need for the S.C.I. proposal. The S.C.I. proposal, however, does not duplicate the work of the Study Commission in this area. The S.C.I. pamphlet proposal should be enacted as a concisely articulated, complementary program. The pamphlet proposal offers a simple concrete method for implementing the Study Commission goals, especially in view of the fact that the Director may delegate responsibility for approving such a pamphlet to either of these two sections in the event legislation establishing them is enacted.

I. Immediate Corrective Measures

a) Legislative Action

9) Liability of Physicians for Unlicensed X-ray Technicians

The Testimony:

Mr. John J. Russo, Chief of the Bureau of Radiation Protection, emphasized that the operation of X-ray machines by unlicensed technicians constituted a grave threat to the public safety and welfare. Statutory enactment has already made it a misdemeanor for anyone unlicensed to operate an X-ray machine. Despite this testimony given at S.C.I. public hearings revealed that Dr. Louis Brandwein employed unlicensed technicians to operate such machines.

The S.C.I. Recommendation:

In view of the irreparable medical injury that could result from the use of unlicensed personnel for the administration of X-ray and radiation treatment, information gathered relative thereto will be turned over to the proper prosecuting authority, the State Board of Medical Examiners and the State Medical Association for whatever action they deem just and necessary. We support the State Environmental Protection position that the X-ray technician statute should be amended to hold physicians legally responsible for the use of unlicensed technicians.

The Background:

Under the current Article governing the regulation and operation of X-ray machines by appropriate technicians, certain unlawful conduct and violations of the Article are made misdemeanors. The Provision, N.J.S.A. 45:25–13 provides as follows:

(a) It shall be unlawful for any person to

(1) Sell or fraudulently obtain or furnish an X-ray technician diploma, certificate, or record, or to aid or abet in the same;

(2) Engage in the activities of an X-ray technician under cover of a diploma, or certificate illegally or fraudulently obtained or signed or issued unlawfully, or under fraudulent representation or mistake of fact in material regard;

(3) Engage in the activities of an X-ray technician under a false or assumed name;

(4) Engage in, or hold himself out as entitled to engage in, the activities of an X-ray technician without a valid certificate;

(5) Otherwise violate any of the provisions of this act.

(b) Any person who violates any provision of section 13(a) of this act shall be guilty of a misdemeanor.

Suggested S.C.I. Proposal:

N.J.S.A. 45:25–13 should be amended to read as follows:

(a) It shall be unlawful for any person to

(1) Sell or fraudulently obtain or furnish an X-ray technician diploma, certificate, or record, or to aid or abet in the same;

(2) Engage in the activities of an X-ray technician under cover of a diploma, or certificate illegally or fraudulently obtained or signed or issued unlawfully, or under fraudulent representation or mistake of face in material regard;

(3) Engage in the activities of an X-ray technician under a false or assumed name;

(4) Engage in, or hold himself out as entitled to engage in, the activities of an X-ray technician without a valid certificate;

(5) *Knowingly or negligently employ an X-ray technician without a valid certificate to engage in the activities of an X-ray technician;*

(6) Otherwise violate any of the provisions of this act.

(b) Any person who violates any provision of section (13)(a) of this act shall be guilty of a misdemeanor.

Commentary:

This amendment incorporates the S.C.I. recommendation into the section on conduct prescribed as a misdemeanor. N.J.S.A. 45:25–13 is oriented toward unlicensed technicians themselves or those who help them procure fraudulent licenses, and not toward the hiring physicians. Thus, if a separate statute directed specifically toward physicians is desired, the following proposal may be offered as N.J.S.A. 45:25–14:

> Any person who knowingly or negligently employs an X-ray technician without a valid certificate to engage in the activities of an X-ray technician shall be guilty of a misdemeanor.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorses the S.C.I. recommendation in this area.

I. Immediate Corrective Measures

a) Legislative Action

10) Two-Tier Billing

The Testimony:

S.C.I. investigators came across several instances where doctors engaged in a two-tier billing practice whereby they charged a normal fee for a patient not connected with litigation in compensation or negligence cases but increased their charges in those cases where they were to be paid by the lawyers handling them. In one instance a normal fee of eight dollars for physical therapy treatment became fifteen dollars in a compensation case. Reasons advanced in support of such double billing was the increase in expenses on a litigated case and the long wait for settlement of the case and payment of the doctor bill. While such factors could perhaps justify a minimal increase in fees charged for treatment connected with litigation, the Commission found it incredible that such factors could require such an enormous differential (ranging to 200%) between ordinary cases and those involving litigation.

The S.C.I. Recommendation:

In light of testimony on two-tier billing practices (a differential of as much as 200 per cent) by some physicians in Compensation and negligence cases, statutory provision should be made to bar the practice. Two-tier billing consists of charging a normal fee for a patient not involved in a litigated accident case but charging much higher fees where the physician is to be paid by a Compensation Court award or by a law firm in a negligence action.

The Background:

At present there are no statutory controls on medical fees in litigated cases. However, the N.J. Court Rules section which defines the percentage rates attorneys may charge in contingency cases can provide the framework for one approach to determining the minimal increased costs a physician confronts when he dispenses services or treatment in a case involving litigation. It is important to provide for this because although two-tier billing of 200% obviously indicates flagrant over-charging, there may be some justification for a small surcharge on medical services rendered in W/C cases, covering additional clerical costs. Permitting such a small surcharge might have the added advantage of blunting any

constitutional challenge to legislation or regulations banning excessive two-tier billing for medical services related to legal proceedings. The medical profession could probably establish some minimal additional cost for rendering services related to legal proceedings; thus they could challenge any requirement of uniform charges as a taking of property without due process. Such a challenge would be similar to the one against the recent New Jersey Supreme Court ruling on attorney's contingency fees. In the alternative, uniform rates might simply result in increased "normal" charges, thus passing these small additional clerical costs in W/C cases onto the general public.

Suggested S.C.I. Proposal:

The following statute should be adopted:

In any matter where medical services rendered to a client form any part of the basis of a legal claim for damages or workmen's compensation, a physician shall not contract for, charge, or collect a fee in excess of the following limits:

1) the physician's standard fee for the same medical services which do not form any part of the basis of a legal claim for damages or workmen's compensation; plus

2) the standard or established incremental costs, clerical or otherwise, incurred in rendering medical services which form any part of the basis or a legal claim for damages or workmen's compensation.

Commentary:

There are essentially two approaches to a statute placing restrictions on the amount a physician may charge for the increased clerical and other expenses entailed in treatment related to litigated cases. One limits charges in such cases to the standard fee plus the additional standard established cost in such cases. The other limits fees in litigation related cases to the standard fee plus the established additional costs, but places a sliding percentage ceiling on how much such additional costs shall be presumed to total. In so doing it follows the format of the Court Rule controlling attorney fees in negligence cases. The problems inherent in estimating "reasonable" percentages by which to measure such additional clerical costs mitigates against this approach. The S.C.I. lacks the

resources for the necessary analysis of the matter and establishing a legislative study commission for such a limited purpose is impractical. The simpler proposal, above, places the burden on the physician to establish any additional costs he may claim while at the same time leaving the door open for the appropriate body (perhaps the New Jersey Medical Society) to formulate standard guidelines in the field.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorses the S.C.I. recommendation in this area.

I. Immediate Corrective Measures

a) Legislative Action

11) I.R.S. Forms 1099

The Testimony:

The S.C.I. public hearings on the Workmen's Compensation System in New Jersey revealed that to an extensive degree insurance companies writing compensation insurance in the State are failing to provide I.R.S. Form 1099 with regard to payments of $600 or more made to petitioners' doctors. The magnitude of the problem was outlined by S.C.I. Chief Accountant Julius Cayson who reported that approximately half of the insurance companies writing compensation insurance in New Jersey do not provide Form 1099 (which is similar to the commonly used W-2 Form) to petitioners doctors. This stands in sharp contrast to the record of 100% compliance by the same companies with regard to their own doctors. This practice continues despite the fact that William H. Rogers, Chief of the Administrative Provisions Branch of the I.R.S., has expressed the I.R.S. position that such forms must be provided.

Such non-compliance poses two related problems. Doctors, for whom Form 1099 is not provided, are encouraged to allow such income to go unreported. As a result substantial tax revenues are being lost to the federal government.

With regard to the effect of non-compliance on petitioners' doctors, the S.C.I. investigation disclosed that three of the five

petitioners' doctors whose records were examined had diverted income from Workmen's Compensation to cash hoards. Among insurance company doctors only one of four had made such a diversion.

Despite this tendency, S.C.I. research indicated that fully $800,000, half the amount paid out to petitioners doctors by such insurance companies, went unreported on Form 1099. The non-complying companies do business on a national basis, and Cayson estimated that this means that a minimum of $16 million nationally goes unreported to the federal government on Form 1099.

The S.C.I. Recommendation:

All insurance companies should immediately start to issue federal tax return form 1099 for payments to petitioners' doctors who have received more than $600 each from a company during a calendar year. The Internal Revenue Service by letter has confirmed this Commission's position that I.R.S. regulations require the issuance of these forms by the companies to both petitioners and respondents doctors.

The Background:

The Internal Revenue Code section upon which the Form 1099 requirement is based provides as follows:

> (a) Payments of $600 or more.—All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income . . . of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary or his delegate, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary or his delegate, setting forth the amount of such gains, profits and income and the name and address of the recipient of such payment.

(d) Recipient to furnish name and address.—When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

In explaining the application of this section with regard to insurance carriers paying fees in excess of $600 to physicians in workmen's compensation cases, William Rogers, Chief of the I.R.S. Administrative Provisions Branch, referred to the Income Tax Regulations which supplement and clarify the Internal Revenue Code. His letter read in part:

> Section 1.6041(d)(2) of the Income Tax Regulations provides that fees for professional services paid to attorneys, physicians, and members of other professions are required to be reported in returns of information if paid by persons engaged in a trade or business and paid in the course of such trade or business. The insurance carriers come within this category.
>
> Section 1.6041-1(f) of the Regulations states that the amount is deemed paid for purposes of the above requirement when it is credited or set apart to a person without substantial limitation or restriction . . .
>
> Accordingly, insurance carriers writing Workmen's Compensation are required to furnish Form 1099 when payments of $600 or more are made to a physician.

At the present time New Jersey does not require workmen's compensation insurance carriers to report such payments to the State.

Despite this, insurance companies receive little statutory incentive to comply with the regulations, since the I.R.S. may impose a fine of only $1 for each violation. I.R.C. § 6652(b); Reg. § 301.6652-1.

Suggested S.C.I. Proposal:

There is a two-pronged approach which the S.C.I. takes with regard to such widespread non-compliance with Form 1099 requirements. Since the requirement currently contains no particular penalty for failure to comply, an amendment imposing a specific monetary penalty for failure to file Form 1099 provides the necessary incentive to comply. In this regard the S.C.I. should notify the members of the New Jersey Congressional Delegation, as well

as the Chairmen of the appropriate House and Senate Committees, of the widespread failure to comply on the part of insurance carriers. Federal legislation could come in the form of a simple amendment to § 6041:

> (e) Failure to comply with the requirements of this section shall result in a fine of not more than $1,000 for each violation and/or imprisonment for not more than six months.

A letter, communicating this recommendation to the members of the New Jersey Congressional Delegation, the Chairman of the House Ways and Means Committee (Rep. Wilbur Mills) and the Senate Finance Committee reads as follows:

> Dear Chairman:
>
> In the course of its recent investigation into the New Jersey Workmen's Compensation the New Jersey State Commission of Investigation discovered that to an extensive degree insurance companies writing compensation insurance in New Jersey fail to provide I.R.S. Form 1099 with regard to payments of $600 or more made to petitioners' doctors. The magnitude of the problem was outlined by the State Commission of Investigation's Chief Accountant, Julius Cayson, who reported that approximately half of the insurance companies writing compensation insurance in New Jersey do not provide Form 1099 to petitioners' doctors. This stands in sharp contrast to the record of 100% compliance by the same companies with regard to their own doctors. This practice continues despite the fact that William H. Rogers, Chief of the Administrative Provision Branch of the I.R.S., has expressed the I.R.S. position that such forms must be provided.
>
> Such non-compliance poses two related problems. Doctors, for whom Form 1099 is not provided, are encouraged to allow such income to go unreported. As a result substantial tax revenues are being lost to the federal government.
>
> With regard to the effect of non-compliance on petitioners' doctors, the Commission's investigation disclosed that three of the five petitioners' doctors whose records were examined had diverted income from Workmen's Compensation into cash hoards. Among insurance

company doctors only one of four had made such a diversion.

Despite this tendency, the Commission's research indicated that fully $800,000, half the amount paid to petitioners doctors by such insurance companies, went unreported on Form 1099. The non-complying companies do business on a national basis, and Commission analysis indicates that as a result on a national basis, a minimum of $16 million goes unreported to the federal government on Form 1099.

At the present time, the State Commission of Investigation believes that the I.R.S. cannot coerce compliance with these regulations because of inadequate statutory penalties in view of the fact that I.R.C. § 6652(b) provides a penalty of only one dollar for each violation. To remedy this inadequacy the State Commission of Investigation respectfully recommends the following amendment to the Internal Revenue Code § 6041:

> (e) Failure to comply with the requirement of this section shall result in a fine of not more than $1,000 for each violation, and/or imprisonment for not more than six months.

Sincerely,

Chairman,
N. J. State Commission of
Investigation

The other approach cures the problem at the State level, by requiring insurance carriers to report such payments to the Secretary of State as a condition of doing business within the State. Such legislation reads:

> Every insurance company authorized to transact business in this State, and which is not authorized to do life insurance, health insurance, or annuities business as defined in Title 17B shall cause to be filed with the Secretary of State, on or before June 30 of each year the names and addresses of, together with the amount paid or credited to, all physicians residing within this State, to whom the insurance company, in the course of its business, paid or credited an amount of $600 or more in the preceding calendar year.

Commentary:

The suggested proposals assure the correction of the Form 1099 abuse uncovered by the S.C.I. investigation. Federal legislation, imposing a fine on non-complying companies, would solve the problem directly by providing an incentive to file through a monetary penalty for non-compliance. Because of the obstacles inherent in any attempt to foster and achieve passage of a Congressional bill, the alternate course of remedial state legislation offers the most feasible, if not the optimum, solution to the problem. The proposed state legislation simply requires the filing of Form 1099 information as a condition of doing business and thus provides a cross-check on whether or not such companies have complied with the Federal Form 1099 requirement.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorses the S.C.I. recommendation in this area.

I. Immediate Corrective Measures

a) Legislative Action

12) Annual C.P.A. Audits of Insurance Companies and Evaluation of the Compensation Rating and Inspection Bureau

The S.C.I. Recommendation:

On a regular basis, at least once every two years, the business affairs, methods of operation and rate making procedures and practices of the Compensation Rating and Inspection Bureau of the State Department of Insurance should be reviewed by an independent firm of C.P.A.s. The Commission recommends that the State Commissioner of Insurance approve and prequalify the C.P.A. firms and that the cost of such services should be borne by the insurance industry through assessments by the Rating Bureau.

It is also recommended that the State Commissioner of Insurance should explore the feasibility of eliminating state insurance examinations in selected cases and substituting annual examinations of insurance companies by C.P.A. firms. The thrust of the annual,

state sanctioned C.P.A. audits should be directed toward in-depth reviews of the companies loss data and the possibility of over-reserving procedures as outlined in the Commission's public hearing on Workmen's Compensation Systems. This recommendation should be considered as a supplement to the generally accepted auditing procedures as outlined by the American Institute of C.P.A.s.

Commentary:

This recommendation requires two statutes for its implementation, one for annual audits of insurance companies, and one for evaluation of the Compensation Rating and Inspection Bureau.

Suggested S.C.I. Proposals:

1. On annual audits of insurance companies:

Every insurance company authorized to transact business in this State, and which is not authorized to do life insurance, health insurance or annuities business as defined in Title 17B, shall cause to be made a comprehensive annual audit of a scope satisfactory to the Commissioner of Insurance by independent auditors approved and pre-qualified by him. Certified copies of the report of the findings of such independent auditors, along with any recommendations, shall be filed forthwith by them with the Commissioner of Insurance and shall be available to State officials and at his discretion to the general public. The deadline for filing such reports shall be June 30 for audits of the previous calendar year and December 31 for audits of the previous fiscal year.

2. On the Compensation Rating and Inspection Bureau:

As often as he deems necessary, but at least once every two years, the Commissioner of Insurance shall cause to be made a comprehensive audit and evaluation of the business affairs, methods of operation and rate making practices and procedures of the Compensation Rating and Inspection Bureau by an independent firm of C.P.A.s approved and pre-qualified by him and having no connection with any insurance company authorized to transact business in this State. Certified copies of the report of the findings of such independent firm or agency, along with

any recommendations shall be filed forthwith by them with the Commissioner of Insurance and shall be available to State Officials and to the general public.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission noted with regret its inability, due to time limitations, to examine the Rate Making Process. The Study Commission expressed its general Agreement with the S.C.I. view of the great importance of the subject.

I. Immediate Corrective Measures

a) Legislative Action

13) Public Members for the Governing Board of the Compensation Rating and Inspection Bureau

The Testimony:

S.C.I. Chief Accountant Julius Cayson testified as to the role of the Compensation Rating and Inspection Bureau and outlined its current shortcomings. The Bureau, which has its office in Newark, is the body which maintains the premium rates for Workmen's Compensation in New Jersey. While the Bureau has a generally high reputation in the rate making field, it determines premium rates without an adversary procedure. Its membership is composed of the mutual associations and stock companies which write compensation or liability insurance in New Jersey. The public is represented on the Bureau's Governing Board through a special deputy of the Commissioner of Banking and Insurance. Such special deputy serves as ex-officio chairman of the Bureau but has no vote on the Governing Board.

The S.C.I. Recommendation:

It is the opinion of the Commission that the representation base in the rate making structure should be broadened; therefore the Commission recommends that three persons having no connection with the Insurance Industry such as a member of the Attorney General's Office, a representative from the Department of Consumer Affairs and a representative of the accounting profession be placed upon the Governing Board of the Compensation

Rating and Inspection Bureau to serve without compensation to represent and protect the rights of the general public.

The Background:

At the present time the relevant statutory organization of the Compensation Rating and Inspection Bureau, as outlined in the public hearings by Julius Cayson, is contained in N.J.S.A. 34:15–90:

Insurance companies, members of bureau

No mutual association or stock company shall be authorized to write compensation or liability insurance in the State unless it is a member of the compensation rating and inspection bureau.

Each member of the bureau writing such insurance shall be represented by one representative and shall be entitled to one vote in the administration of bureau affairs.

The bureau shall adopt such rules and regulations for its procedure and provide such income as may be necessary for its maintenance and operation.

The Commissioner of Banking and Insurance shall appoint a special deputy to be ex-officio chairman of the bureau. Such deputy shall serve with the bureau solely as a representative of the Commissioner of Banking and Insurance and of the Department of Banking and Insurance and shall hold no other office with the bureau nor shall he receive any compensation from the bureau. In the absence of the chairman or his inability to serve, the Commissioner of Banking and Insurance shall designate another person to serve in his stead.

All officers, members of committees and employees of the bureau shall be subject to the approval and ratification of the Commissioner of Banking and Insurance.

Suggested S.C.I. Proposal:

N.J.S.A. 34:15–90 should be amended to read as follows:

No mutual association or stock company shall be authorized to write compensation or liability insurance in the State unless it is a member of the compensation rating and inspection bureau.

Each member of the bureau writing such insurance shall be represented by one representative and shall be entitled to one vote in the administration of bureau affairs.

The Governor shall appoint one member of the Division of Consumer Affairs, one member of the Office of the Attorney General, and one certified public accountant resident of this state to serve with the bureau as representatives of the general public. Each as such shall be entitled to one vote in the administration of bureau affairs, and shall serve on the Governing Board of the bureau but shall receive no compensation from the bureau.

The bureau shall adopt such rules and regulations for its procedure and provide such income as may be necessary for its maintenance and operation.

The Commissioner of Banking and Insurance shall appoint a special deputy to be ex-officio chairman of the bureau. Such deputy shall serve with the bureau solely as a representative of the Commissioner of Banking and Insurance and of the Department of Banking and Insurance and shall hold no other office with the bureau nor shall he receive any compensation from the bureau. In the absence of the chairman or his inability to serve, the Commissioner of Banking and Insurance shall designate another person to serve in his stead.

All officers, members of committees and employees of the bureau shall be subject to the approval and ratification of the Commissioner of Banking and Insurance.

Commentary:

This amendment provides for the appointment by the Governor of three voting representatives of the general public as members of the Compensation Rating and Inspection Bureau. It also guarantees them seats on the Governing Board of the Bureau. Thus, the amendment seeks to remedy the shortcomings which result from the Bureau's lack of an adversary procedure as part of its rate making process.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission noted with regret its inability, due to time limitations, to examine the Rate Making Process. The Study Commission expressed its general agreement with the S.C.I. view of the great importance of the subject.

I. Immediate Corrective Measures

b) Administrative Action

1) Multiple Allegations

The Testimony:

One of the most flagrant abuses brought to light during the S.C.I. hearings was the use of multiple allegations in claim petitions, unsupported by either facts or the eventual award. Both Judges Levine and Kelly recognized this and Judge Levine urged requiring physicians' reports relative to all allegations.

Additionally, S.C.I. Chief Accountant Cayson explained that the practice of unsubstantiated multiple allegations leads to higher insurance rates in workmen's compensation by forcing insurance companies to set higher reserves.

The S.C.I. Recommendation:

Prior to allegation of multiple disabilities above and beyond the alleged principal disability, attorneys for petitioners in Workmen's Compensation cases should be required by administrative court ruling to have examining physicians' reports relative to each and every multiple disability alleged.

The Background:

At present, the Director of the Division of Workmen's Compensation could promulgate the appropriate rule. In the S.C.I. recommendation on transferring the compensation courts to the Administrative Office of the Courts, the proper remedy might be a Court Rule in place of, or in addition to, a Division rule.

Suggested S.C.I. Proposal:

A formal Employee's Claim Petition for Compensation, when filed with the Division of Workmen's Compensation shall be accompanied by supporting examining reports from qualified physicians or surgeons with respect to each injury alleged.

A letter from the Commission should make such a recommendation to the Director of the Workmen's Compensation Division. The letter reads as follows:*

* A single letter, incorporating all recommendations to the Director, will be sent and is included in this report at p. 318.

Dear Mr. Dezseran:

During the course of its investigation into the Workmen's Compensation system, the New Jersey State Commission of Investigation conducted public hearings at which the Commissioners took extensive testimony. The testimony showed a growing and abusive practice on the part of petitioners attorneys to resort to the use of multiple allegations in claim petitions, said allegations unsupported by either facts or the eventual award. The testimony also showed that this multiple allegation technique was being used as a wedge to attempt to attain a higher award and that the cost of the additional medical examinations involved was a factor in driving up the cost of workmen's compensation insurance coverage. The State Commission of Investigation naturally abhors the use of boilerplate petitions in this manner.

To end this abuse of the system, the Commission recommends and requests that you promulgate an administrative directive to quash this practice. The Commission believes that the following rule, or one similar to it, might solve this problem:

A formal Employee's Claim Petition for Compensation, when filed with the Division of Workmen's Compensation shall be accompanied by supporting examining reports from qualified physicians or surgeons with respect to each injury alleged, which shall also state the name and address of the person, if any, who referred the petitioner to the physician. With the approval of a judge of compensation, such claim petitions may be amended up to 30 days after filing.

Sincerely,

Chairman,
N. J. State Commission of
Investigation

Commentary:

This proposal, together with the S.C.I. proposed statute making false medical reports a misdemeanor, should provide a solution to the problem of unsubstantiated multiple allegations. Attorneys will not be able to submit these claims without medical reports and doctors filing false reports to support multiple allegations will be subject to criminal prosecution.

Additionally, this requirement will assist in policing unwarranted attorney referrals of clients for medical treatment. It also prevents the settlement of a formal claim without having the relevant medical reports available.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorsed the S.C.I. recommendation in this area. Since the multiple allegation abuse is flourishing, it is urgent that it be ended immediately by administrative directive regardless of the outcome of the move toward basic reform of the Workmen's Compensation system.

However, the thorough structural overhaul of the system proposed by the Study Commission may eventually solve this problem by increasing the number and quality of state doctors and expanding their role. If state doctors efficiently evaluate claimants' injuries and if countervailing testimony is required to challenge the determinations of the state doctors, it may be that the problem, immediately cured by the S.C.I. proposal, would be solved by the Study Commission proposal, if that proposal is enacted and proves to be effective. In the interim, implementation of the S.C.I. proposal provides immediate relief.

I. Immediate Corrective Measures

b) Administrative Action:

2) Limitations on Neuro-Psychiatric Examinations

The Testimony:

Attorneys Balk and Parks indicated that they did not refer clients for a neuropsychiatric examination except on the recommendation of the initial examining doctor, unless the injury is to the head or involves an amputation. Judges Levine and Kelly also testified that they believed allegations of neuropsychiatric injuries were often unwarranted.

The S.C.I. Recommendation:

An administrative court ruling should be promulgated delineating obvious injuries (i.e., injury to the head or amputation

of a major member) where petitioners' attorney may refer clients for neuropsychiatric examination by the doctor examining and evaluating the basic disability alleged. In all other instances, the proposed ruling should bar petitioners' attorneys from referring clients for neuropsychiatric examination above and beyond the basic disability alleged and permit neuropsychiatric examination in those instances only on the recommendation of the doctor examining and evaluating the basic alleged disability.

The Background:

The Division of Workmen's Compensation promulgates the rules governing such aspects of the workmen's compensation practice.

Suggested S.C.I. Proposal:

No attorney, nor any other person at the instance of any attorney, shall refer a client in a Workmen's Compensation claim to any physician for a neuropsychiatric examination, except on the recommendation of the physician evaluating the basic disability, unless the injury on which the claim is based involves the head or an amputation.

A letter from the Commission should make such a recommendation to the Director of the Workmen's Compensation Division. The letter reads as follows:*

Dear Mr. Dezseran:

> During the course of its investigation into the Workmen's Compensation system, the New Jersey State Commission of Investigation conducted public hearings at which the Commissioners took extensive testimony. That testimony showed a growing and abusive practice on the part of petitioners' attorneys to refer clients for neuropsychiatric examination so that a neuropsychiatric allegation could be made above and beyond the basic injury alleged. The testimony also showed that the neuropsychiatric allegation was often used as a wedge to attempt to attain a higher award and that the cost of additional neuropsychiatric examinations was a factor in driving up the cost of workmen's compensation insurance coverage.

*A single letter, incorporating all recommendations to the Director will be sent and is included in this report at p. 318.

To end this abusive practice, the Commission recommends and requests that you promulgate an appropriate administrative directive and indicate that the Division will subject such neuropsychiatric allegations to careful scrutiny. The Commission believes that the following rule, or a similar one, might solve the problem:

> No attorney, nor any other person at the instance of any attorney, shall refer a client in a Workmen's Compensation claim to any physician for a neuropsychiatric examination except on the recommendation of the physician evaluating the basic disability, unless the injury on which the claim is based involves the head or an amputation. The report of such examining physician shall indicate what portion, if any, of any disability is neurological, and what portion, if any, is psychiatric.

Sincerely,

Chairman,
N. J. State Commission
of Investigation

Commentary:

This rule limits the use and resort to neuropsychiatric examinations without a physician's recommendations except in the cases noted above. Our other recommendations require medical reports in support of each injury alleged in a compensation claim. They also impose criminal liability on physicians for willful material misstatements in those reports. This recommendation goes a step further, reaching the initiating phase of such examinations. It places a responsibility on the attorney to act only upon professional recommendation except in obvious cases.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorsed the S.C.I. recommendation in this area. Since the neuropsychiatric allegation abuse is flourishing, it is urgent that it be ended immediately by administrative directive regardless of the outcome of the move toward basic reform of the Workmen's Compensation system.

However, the thorough structural overhaul of the system proposed by the Study Commission may eventually solve this

problem area by increasing the number and quality of state doctors and expanding their role. If the state doctors efficiently evaluate claimants injuries and if countervailing testimony is required to challenge those determinations of the state doctors, it may be that the problem, immediately cured by the S.C.I. proposal, will be solved by the Study Commission proposal, if that proposal is enacted and proves to be effective. In the interim, implementation of the S.C.I. proposal provides immediate relief.

I. Immediate Corrective Measures

c) Executive Action:

1) Advance Bar Association Evaluations of Gubernatorial Nominations to the Workmen's Compensation Bench.

The Testimony:

The S.C.I. took testimony from 4 expert witnesses in the course of its workmen's compensation hearings. In addition to Mr. Parks, they were Mr. Jacob L. Balk, senior partner in the firm of Balk, Jacobs, Goldberg, Mandell and Selighson in Newark, Judge Stanley Levine, Supervising Judge of the Workmen's Compensation Courts in Elizabeth, and Judge Roger W. Kelly, then Supervising Judge of the Workmen's Compensation Courts in Newark. All four strongly advocated a procedure for screening candidates prior to nomination and confirmation. They indicated the absence of such a procedure fostered the frequent selection of unoutstanding judges of compensation; Judge Kelly went even further, indicating his belief that political considerations dominate the selection of such judges.

The S.C.I. Recommendation:

It is recommended that the Governor, prior to appointments of judges of the Workmen's Compensation Court, notify the State Bar Association of his intent to make the appointments. The recommendations of that Association relative to the prospective appointees, while not binding, should be heavily considered in the interest of obtaining high quality and competence in the Workmen's Compensation judiciary.

The Background:

At present, Gubernatorial nominations for courts within the framework of the state court system are submitted to the New Jersey State Bar Association for referral to the appropriate local county bar association which evaluates them as either qualified or unqualified. This policy has become executive custom but does not now extend to nominations for the workmen's compensation judiciary.

Suggested S.C.I. Proposal:

This area seems ill-suited for legislation, since it would require subjecting an entire area of executive policy to the restrictions of statutory controls. Appropriate action could be taken in the form of an official letter from the Chairman of the Commission, to the Governor noting the S.C.I.'s findings and requesting a formal announcement by the Governor that henceforth the custom of submitting judicial appointments to the Bar Association for screening in advance of their nomination will be extended to the workmen's compensation judiciary. The letter, which should be "For Public Release", reads as follows:

Dear Governor Byrne:

During the course of its investigation of New Jersey's Workmen's Compensation system, the New Jersey State Commission of Investigation conducted public hearings and took testimony from expert witnesses. These witnesses, both judges of compensation and active practitioners in the field, all indicated a belief that a process for screening potential nominees for the workmen's compensation bench would greatly improve the quality of the Workmen's Compensation Judiciary. Accordingly, the State Commission of Investigation respectfully recommends and requests that you announce and institute as a matter of executive policy, a procedure for submitting the names of potential nominees to the New Jersey State Bar Association for referral to the Judiciary and Workmen's Compensation Committees of the appropriate local county bar association for evaluation prior to their actual nomination as judges of compensation. The State Commission of Investigation believes that such a policy would serve the public interest through assisting both the executive in nominating, and

the New Jersey State Senate in confirming, qualified judges of compensation.

Sincerely yours,

Chairman,
N. J. State Commission
of Investigation

Commentary:

This recommendation can be carried out quickly and efficiently by executive order, avoiding the perils inherent in seeking to gain passage of new legislation. By awaiting the inauguration of a new governor we assure that the custom will be of at least 4 years standing before any change of administrations occurs, and thus help to guarantee its continued practice from one administration to the next.

New Jersey Workmen's Compensation Study Commission:

The report of the Study Commission specifically endorses the S.C.I. recommendation in this area.

II. Proposed Legislative Study Commissions

1) More & Better-Paid State Doctors

The Testimony:

Attorney Parks testified in the public hearings that one of the barriers to more widespread use of the informal process for workmen's compensation claims was that the pay scale for state-paid doctors fell so far below the market level as to impede the recruitment of competent examining physicians for the informal process.

The S.C.I. Recommendation:

The State Department of Labor and Industry should consider increasing the number of state paid doctors used in the informal process and taking steps to increase the examining and evaluation expertise of those doctors as ways of encouraging petitioners' attorneys to make more use of the informal process.

The Background:

A brief glance at the statistics supplied by the Director of the Division of Workmen's Compensation, Mr. George Dezseran, indicates that both the number of examining doctors employed by the state for such purposes, and the level of compensation they receive, are woefully inadequate. Only four full-time doctors are authorized, at a salary of $16,000 per annum. Five part-time doctors receive $63 per diem. In some instances per diem doctors examine as many as 40 claimants in the course of a day of informal hearings. The resulting compensation average of $1.50 per examination guarantees either incompetent or inadequate examinations. The problem is compounded by the complete absence of specialists among the examining physicians.

Suggested S.C.I. Proposal:

The following Joint Legislative Resolution, authorizing the necessary study of the problem, should be enacted:

> Whereas, the informal hearing process of the Division of Workmen's Compensation is designed for settling workmen's compensation claims at the lowest possible cost to the claimants involved;
>
> Whereas, the efficient functioning and optimum utilization of the informal hearing process is in the public interest;
>
> Whereas, the full time and per diem services of competent physicians, both specialists and general practitioners are essential to foster and enable the efficient functioning and optimum utilization of the informal hearing process;
>
> Whereas, the number of physicians authorized on a full time and per diem basis is clearly inadequate to permit the efficient functioning and optimum utilization of the informal hearing process;
>
> Whereas, the levels of compensation authorized for such physicians fall so far below the fair market wage as to preclude the attraction of the competent physicians necessary to the efficient functioning and optimum utilization of the informal hearing process;
>
> Whereas, the complete absence of specialists among the state doctors available in the informal hearings dis-

courages the efficient functioning and optimum utilization of the process;

Be it resolved by the Senate and General Assembly of New Jersey that a Special Five-Member Commission, two members to be appointed by the Governor, one by the President of the Senate, one by the Speaker of the General Assembly, and one by the Director of the Division of Workmen's Compensation is hereby established and authorized to determine the number and types of full-time physicians required to enable the efficient functioning and optimum utilization of the informal hearing process of the Division of Workmen's Compensation. The Commission is also authorized to determine the number and types of per diem physicians required, as well as the levels of compensation necessary to insure recruitment of the competent full-time and per diem physicians of all types in the required number.

The Commission shall appoint an executive secretary and such other staff as is necessary to complete its study and shall report on its findings to the Legislature within six months of the date of the enactment of this Resolution.

A sum of $50,000 is hereby appropriated to this Commission to meet its necessary expenses.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission shares the S.C.I. goal in this area but believes its recommendations eliminate the need for S.C.I. action in this area. The S.C.I. proposal offers a legislative vehicle to achieve the parallel goals of the Study Commission and the S.C.I. in this area, because the study will facilitate the enactment of appropriate legislation with regard to meeting the realistic needs of the Division of Workmen's Compensation in this field.

II. Proposed Legislative Study Commissions

2) The Rate Making Process: Open Rating; The Rating Base; Loss Data; and Over-Reserve Reforms

Study of Open Rating

The S.C.I. Recommendation:

The Commission does not pass upon the merits of Open Rating, however, the Governor's Study Commission on Workmen's Compensation should explore and consider the feasibility of open rating in New Jersey for Workmen's Compensation insurance.

Investment Income in the Rating Base

The Testimony:

S.C.I. hearings disclosed that among those insurance carriers examined (four stock companies and three mutual companies), four-fifths of their gross income from investments and only one-fifth of their gross income from underwriting. For both years surveyed (1971 and 1972) these proportions obtained. Despite this fact, investment income is not considered in the rate making process.

The S.C.I. Recommendation:

The Governor's Study Commission on Workmen's Compensation should explore and consider the feasibility of implementing the anticipated decision of the New Jersey Supreme Court on application of investment income to rate making in the automobile liability field to the Workmen's Compensation field.

The Background:

On July 11, 1973 the New Jersey Supreme Court, in *In re Application of Ins. Rating Board,* 63 N.J. 413 (1973), affirmed a decision by the Commissioner of (Banking and Insurance) requiring the inclusion of income from investments in the rate making process in the automobile insurance industry. The Court allowed an after-federal-income-tax profit on premiums of 3.5%, from which sum "after-tax income (other than capital gains) from investment(s)." Id. at 417. This is expected to reduce the 3.5% figure to about 2%.

N.J.S.A. 34:15–89, states the powers of the Bureau of Compensation Rating and Inspection. The statute describes the duties of The Bureau of Compensation Rating and Inspection in pertinent part:

> It shall establish and maintain rules, regulations and premium rates for workmen's compensation and employer's liability insurance and equitably adjust the same, as far as practicable, to the hazard of individual risks, by inspection by the bureau.

Study of Actual Losses & Costs as Prime Rating Ingredient

The Testimony:

Testimony at S.C.I. Public Hearings revealed the following:

> No in depth cost studies of the rate making process for Workmen's Compensation in New Jersey have been made in more than half a century.
>
> Regular state insurance company examinations do not cure this defect since the audits are basically liquidity reviews (i.e. verification of cash, stocks, bonds, mortgages, etc.) and a review of the loss reserves of the company results only in recommendations for increases in reserves.
>
> Cost studies and reviews are conducted in New York, Massachusetts and Pennsylvania. The Compensation Bureau in New Jersey must rely on unverified data of more than 200 insurance carriers, only 15 of which are based in New Jersey.

The S.C.I. Recommendation:

The Governor's Study Commission on Workmen's Compensation should study the basic assumptions of the rate making process to determine their validity and to determine whether actual losses over a specific period of time and actual costs for the same period should not be the prime ingredient in the rate making process.

Study of Possible Over-Reserve Reforms

The Testimony:

Testimony at S.C.I. Public Hearings indicated that the procedure of valuing cases for loss reserve purposes failed to account

for the fact that the value of workmen's compensation recoveries by injured workers (i.e. actual loss experience) ran dramatically behind the value placed on complaints for loss reserve purposes. The estimated overstatement of workmen's compensation incurred losses by all insurance carriers for the period 1967-1971 could exceed $182 million.

The S.C.I. Recommendation:

The State Commissioner of Insurance should undertake to re-evaluate the statutory mandates that require insurance companies to over-reserve for the catastrophic losses and the like. Additionally, the Commissioner should determine whether actual loss experience over a specified period of years, combined with an actuarially sound modification of the rate structure might not give reserves for liquidity purposes, a greater credibility.

Suggested S.C.I. Proposal:

The following Joint Legislative Resolution should be enacted:

> Whereas, no thorough study of the rate making process in Workmen's Compensation has yet been undertaken in New Jersey;
>
> Whereas, the Report of the New Jersey Workmen's Compensation Study Commission recognized the importance of such a study;
>
> Whereas, the New Jersey State Commission of Investigation recommends a study of the feasibility of open rating for Workmen's Compensation insurance in New Jersey;
>
> Whereas, the New Jersey State Commission of Investigation recommends a study of the feasibility of implementing the New Jersey Supreme Court's decision in *In re Application of Insurance Rating Board* on the application of investment income to rate making in the field of Workmen's Compensation insurance;
>
> Whereas, the New Jersey State Commission of Investigation recommends a study of the basic assumptions of the Workmen's Compensation rate making process, particularly with regard to over-reserves for catastrophic losses, actual losses and actual costs as ingredients in the rate making process;

Be it resolved by the Senate and General Assembly of New Jersey that a Special Nine-Member Commission be established, three members to be appointed by the Governor, two by the President of the Senate, two by the Speaker of the General Assembly, and two ex-officio members, the Commissioner of Insurance or his designee, and a member selected by the Governing Board of the Compensation Rating and Inspection Bureau.

The Commission shall conduct a thorough study of the rate making process in workmen's compensation insurance in New Jersey and shall report on its findings to and recommendations to the Legislature within six months of the enactment of this Joint Legislative Resolution.

The Commission shall be authorized to employ an executive secretary, two actuaries, and such staff as shall be necessary to conduct this study; the Commission shall be authorized to expend as needed the sum of money necessary to conduct this study.

Commentary:

In view of the fact that the New Jersey Workmen's Compensation Study Commission lacked the time to study the rate making process in workmen's compensation insurance, this legislative study commission offers the most feasible means by which to undertake a thorough examination of the rate making process.

III. Areas for Administrative Attention

1) Study of Penalties for Attorney Delays

The S.C.I. Recommendation:

The body charged with administration of the Workmen's Compensation Court system should study the advisability of a system of penalties to be assessed against both petitioners and respondent attorneys for any dilatory tactics in the handling of cases, said penalties to be integrated into the awarding of counsel fees and costs where practical.

The Background:

The Rules of the Division of Workmen's Compensation, II. The Formal Process, contain three provisions penalizing attorneys for dilatory tactics. The first governs failure to appear at, prepare for or report on scheduled pre-trial conferences. It allows the hearing judge to adjust the allocation of costs accordingly:

> . . . When a party or his attorney fails to appear at a pre-trial conference or to participate therein or to prepare therefor the Referee or Judge of Compensation conducting the pre-trial conference shall make proper note thereof in the case file. The Judge of Compensation assigned to hear the case, in his discretion, may make such order with respect to the imposition of costs and counsel fees and with respect to the continued prosecution of the cause, as is just and proper.

With regard to respondents dilatory manuevers in pretrial conferences, any time a respondent negligently fails to produce a needed medical report at pre-trial, and thereby blocks moving the case, the respondent incurs liability not less than 80% of the counsel fees of a successful claimant:

> Any case set down for pre-trial on more than one occasion, if not moved because of failure of respondent to have a report of medical examination, shall be placed on the trial list, and in the event an award is made, not less than 80% of the counsel fee allowed to petitioner's attorney shall be assessed against the respondent. This Rule shall not apply in any case in which the failure to have said medical examinations is due to petitioner's neglect or refusal to appear for the examinations, in which event the case shall be marked "not moved."

With regard to petitioners and their Attorneys, whenever cases are marked "not moved" through their fault, negligent Attorneys can have their fees reduced 20% for each such instance and negligent petitioners may be penalized appropriately:

> Any case listed peremptorily or listed within the first ten for hearing on a trial calendar, or set down for a second listing on a pre-trial calendar, in which no appearance is made on behalf of petitioner or which is not adjourned for good cause, shall be marked NOT MOVED and shall not be restored to the calendar except on motion

made upon five days notice served upon respondent; provided, however, that the Judge of Compensation or Referee, Formal Hearings may, for good cause and on his own motion, restore a case marked NOT MOVED to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced 20% for each time a case has been marked NOT MOVED, when the attorney for the petitioner is responsible for such marking. Where a case has been marked NOT MOVED because of the petitioner's failure without good cause to submit himself for a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees at the discretion of the presiding officer.

Commentary:

The Division of Workmen's Compensation Rules thus contain several monetary penalties for delay. The problem would therefore seem to be largely one of enforcement. The Commission proposed amendment to Rule 8 (Section II, Formal Hearings) expands the scope of attorney's delays for which respondent will be penalized. Since such fees cannot be included in the insurance rate base, respondents will have further incentive to expedite the handling of formal cases.

Suggested S.C.I. Proposal

The Chairman or Executive Director should communicate by formal letter with the Director of the Division of Workmen's Compensation, and recommend the Division review its provisions for penalizing dilatory attorney tactics by petitioners and respondents. Specifically, such a review should be directed to ascertaining whether or not the provisions are sufficiently severe and whether or not they are being properly enforced. Such a letter, which should also be "For Public Release" reads as follows:*

Dear Mr. Dezseran:

During the course of its investigation into New Jersey's Workmen's Compensation system, the New Jersey State Commission of Investigation conducted public hearings at which the Commissioners took extensive

* A single letter, incorporating all recommendations to the Director will be sent and is included in this report at p. 318.

testimony. The testimony at these hearings indicated the need for an adequately enforced system of penalties, integrated where possible into the awarding of costs and counsel fees, which would be assessed against both petitioners and respondent attorneys for any dilatory tactics in the handling of cases. The State Commission of Investigation notes that the Rules of the Division of Workmen's Compensation contain provisions in this regard. In light of the proposals contained in the Recommendations of the New Jersey State Commission of Investigation and in the Report of the New Jersey Workmen's Compensation Study Commission, the State Commission of Investigation recommends and requests that the Director of the Division of Workmen's Compensation review the Division's provisions for penalizing dilatory tactics by petitioner's and respondent attorneys. Such a review should evaluate the adequacy of such provisions and examine whether or not they are being properly enforced.

In addition, the State Commission of Investigation recommends that Rule 8 of the Division of Workmen's Compensation, Section II, Formal Hearings be amended to read:

> Any case set down for pre-trial on more than one occasion, if not moved because of failure of respondent to appear, to proceed, or to have a report of medical examination, shall be placed on the trial list, and in the event an award is made, not less than 80% of the counsel fee allowed to petitioner's attorney shall be assessed against the respondent. This Rule shall not apply in any case in which the failure to have said medical examinations is due to petitioner's neglect or refusal to appear for the examinations, in which event the case shall be marked "not moved."

Sincerely,

Chairman,
N. J. State Commission
of Investigation

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission stressed its belief that the matter of assessing penalties for attorney delays was one which should remain within the discretion of the Director of the Division of Workmen's Compensation. The S.C.I. sees validity in this position, but believes that the Director of the Division of Workmen's Compensation should undertake a thorough study of the adequacy of such penalties and their enforcement. Accordingly, the S.C.I. should proceed to communicate its recommendation.

III. Areas for Administrative Attention

2) Attorney-Recommended Doctors

The Testimony:

The S.C.I. investigation revealed a pattern of reliance upon specific doctors by certain law firms, suggesting that the firms in question were recommending the doctors to clients. Jacob Balk, one of the Commission's experts in the workmen's compensation practice, testified, and S.C.I. investigation verified, that his firm does not engage in the repetitive use of any particular doctors.

The S.C.I. Recommendation:

Judges of the Workmen's Compensation Courts should be under administrative direction to scrutinize closely cases where payment for medical treatment is requested and the treating physician was recommended by the petitioners' attorney.

Suggested S.C.I. Proposal:

Since the remedy in this case is one of administrative directive within the Division of Workmen's Compensation, it seems inappropriate to propose the language of that directive. Any action to implement this S.C.I. proposal should be in the form of a letter from the Chairman of the Commission, noting the S.C.I. findings and requesting action thereon by the Director of the Division of Workmen's Compensation. The letter, which should also be "For Public Release", reads as follows: (This letter also

executes the next recommendation, III. Areas for Administrative Attention and Medical Society Action; 3) *House Doctors.**

Dear Mr. Dezseran:

During the course of its investigation into New Jersey's Workmen's Compensation system, the New Jersey State Commission of Investigation conducted public hearings at which the Commissioners took extensive testimony. The testimony at these hearings revealed a disconcerting pattern of reliance by certain law firms upon specific physicians in workmen's compensation cases. Because of the inherent dangers of abuse and collusion which are possible whenever attorneys recommend physicians to their clients, in such cases the State Commission of Investigation recommends and requests that your office issue an appropriate administrative directive to the judges of compensation, requiring that they scrutinize closely those cases where payment for medical treatment is requested and the treating physician was recommended by the petitioners' attorney.

In the course of its investigation and public hearings the Commission also uncovered a "house doctor" practice among certain law firms engaged in workmen's compensation practice. The Commission believes that patterns indicating the repeated use of a few favored physicians by particular law firms manifest possible abuses and improprieties in the system. Therefore, the Commission recommends and requests that the judges of compensation be placed under administrative directive to quash such patterns vigorously whenever necessary. The Commission believes that the public interest would be greatly served if a clear message went forth from the Division of Workmen's Compensation that in these matters only the highest ethical standards and conduct will be accepted from those attorneys and physicians practicing in and before the workmen's compensation courts.

Sincerely,

Chairman,
N. J. State Commission
of Investigation

*A single letter, incorporating all recommendations to the Director will be sent and is included in this report at p. 318.

New Jersey Workmen's Compensation Study Commission:

The report of the Study Commission endorses the S.C.I. recommendation in this area.

III. Areas for Administrative Attention

3) House Doctors

The Testimony:

S.C.I. Chief Accountant Julius Cayson testified to the fact that specific law firms were engaging the same doctors repeatedly for heat treatments, and in one case less than 40% of the doctors treating clients of a particular firm received 54% of the firm's total disbursements. This clearly indicated the use of "favored treating" doctors.

The S.C.I. Recommendation:

When a pattern exists in compensation or negligence cases to indicate use by a particular law firm of a particular physician or a few favored physicians as an adjunct or adjuncts of that law firm, such a situation should signal an outward manifestation of possible abuse of the system, which does in fact breed improprieties, and thus judges and referees in the system should sharply scrutinize their trial lists and be vigorous in quashing the emergence of any such patterns. A clear message should go forth from the Division that only the highest of ethical standards and conduct will be accepted from those attorneys and physicians practicing in and before the Workmen's Compensation Courts.

Suggested S.C.I. Proposal:

As with the problem of remedying abuses spawned by attorneys recommending particular doctors to clients, the solution in the area lies in administrative directives within the Division of Workmen's Compensation. Therefore, any S.C.I. action seeking implementation of our recommendation would best take the form of a letter from the Chairman to the Director of the Division of Workmen's Compensation, noting the S.C.I. findings and our

recommendation. The letter, which should also be "For Public Release" is contained in the preceding section (III. Areas for Administrative Attention and Medical Society Action; 2) *Attorney-Recommended Doctors*).

New Jersey Workmen's Compensation Study Commission:

The report of the Study Commission endorses the S.C.I. recommendation in this area.

III. Areas for Administrative Attention

4) Medical Society Standards and Guidelines for Treatment in Compensation and Negligence Cases

The Testimony:

Analyses of many cases suggested that frequently high numbers of treatments were authorized without any re-checking of the need for treatment over the history of the case.

The S.C.I. Recommendation:

It is recommended to the Medical Society of New Jersey that a study be undertaken to formulate possible standards, guidelines and procedures to be followed by treating doctors in compensation and negligence cases. This recommendation is aimed at ending such abusive practice as setting a high number of treatments without periodic re-examination and re-evaluation of the case.

Suggested S.C.I. Proposal:

Since this is an area in which the remedies must flow from Medical Society action, S.C.I. action to implement our recommendation should take the form of a letter from the Chairman of the commission to the Executive Director of the Medical Society of New Jersey, noting the S.C.I. findings and urging the Medical Society to conduct a study aimed at formulating the necessary guidelines and standards to require periodic re-evaluations of treatment orders in compensation and negligence cases. The letter, which should also be "For Public Release", reads as follows:

Dear Mr. Maressa:

As you know the New Jersey State Commission of Investigation recently completed an investigation of the workmen's compensation system in New Jersey. During the course of the investigation numerous public hearings were held and extensive testimony was taken. One of the abuses revealed at the public hearings was a tendency among some physicians in compensation cases to authorize a high number of medical treatments for claimants without undertaking any re-evaluation of the need for treatment over the history of the case. Because self-policing among professional occupations has proved to be a fruitful method of controlling this type of abuse, accordingly the New Jersey State Commission of Investigation recommends and requests that the Medical Society of New Jersey undertake a study to formulate possible standards, guidelines, and procedures to be followed by treating doctors in compensation and negligence cases. The State Commission of Investigation believes that such a study should be primarily directed at ending the practice of setting high numbers of treatments in compensation cases without providing for re-evaluation of the case. The State Commission of Investigation invites the response of the Medical Society of New Jersey on this matter, particularly with regard to the Medical Society's evaluation of the problem, and with respect to the manner in which the Commission may be able to assist the Medical Society in this effort, such as by providing information which the State Commission obtained during its investigation and public hearings and which the Medical Society feels may be helpful.

Sincerely,

Chairman,
N. J. State Commission of Investigation

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorsed the S.C.I. recommendation in this area.

III. Areas for Administrative Attention

5) Doctors Duty to Report Unethical Conduct to the Medical Society.

The Testimony:

Testimony revealed instances of perfunctory treatment or overtreatment by doctors in compensation cases. One way to curb such abuses would be to encourage other doctors to report such possibly unethical conduct.

The S.C.I. Recommendation:

Physicians should be under a responsibility to report to the Medical Society as a possible unethical practice any instances they observe of perfunctory or overtreatment being used to build up the dollar value of a compensation or negligence case.

The Background:

Section 4 of the A.M.A.'s Principals of Medical Ethics provides:

> The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

The Rule on the Exposure of Unethical Conduct provides:

> A physician should expose, without fear or favor, incompetent or corrupt, dishonest or unethical conduct on the part of members of the profession. Question of such conduct should be considered, first, before proper medical tribunals in executive sessions or by special or duly appointed committees on ethical relations, provided, such a course is possible and provided, also, that the law is not hampered thereby. If doubt should arise as to the legality of the physician's conduct, the situation under investigation may be placed before officers of the law, and the physician-investigators may take the necessary steps to enlist the interest of the proper authority.

Suggested S.C.I. Proposal:

The problem is clearly one of enforcement. The requirements urged by the S.C.I. are already included in the ethical canons of the A.M.A. so no further action by the S.C.I. is appropriate.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission has endorsed the S.C.I. recommendation in this area.

IV. Alternate Proposals to Revamp the System

1) Transfer of the Workmen's Compensation Judiciary to the Administrative Office of the Courts.

The Testimony:

Much of the expert testimony given before the S.C.I. centered on the problems inherent in maintaining a court system within the executive branch of government. Judge Levine noted that supervisor of the Court system in workmen's compensation, the Director, was a political appointee, subject to change every four years. In contrast to this situation, regular state courts in the judicial branch are supervised by the Director of the Administrative Office of the State Courts, appointed by the Chief Justice of the New Jersey Supreme Court and thus subject to change much less often.

Judge Kelly, too, recommended transfer, noting that the location of the workmen's compensation courts in the executive branch tended to politicize the courts. Jacob Balk, concurred, observing the thoroughly judicial nature of the activities of the Judges of Compensation.

The S.C.I. Recommendation:

In the course of our investigation it has been made abundantly clear that the atmosphere pervading the entire Workmen's Compensation System in this state is less than conducive to a confidence in the forum. Unethical patterns which tend to unfairly increase awards or reduce rights of petitioners, such as bill padding, excessive treatment, withholding or delaying temporary disability payments, payment of unauthorized medical expenses as part of

settlement, allegations of injuries in petitions inconsistent with the actual injury, attempting to increase the value of a case through unfounded neurolgical claims have been countenanced or at least tolerated through passivity and these abuses and improper practices have thus become ingrained in the system. The Commission is of the opinion that the system should remain adversary in nature, since petitioners' rights are best protected in this manner. However, to meet abuses, improprieties, unethical conduct and obvious fraud squarely, the Workmen's Compensation Court and its supporting personnel should be placed under the Administrative Director of the State Courts.

The Background

The duties of the Director of the Administrative Office of the Courts are set out in N.J.S.A. 2A:12–1 through 2A:12–6. Courts which are subject to his supervision are simply established as courts in specific sections of Title 2A.

At the present time the supervision of the Workmen's compensation courts is under the authority of the Director, pursuant to N.J.S.A. 34:1A–12.

Suggested S.C.I. Proposal:

The following statute should be inserted in Title 2A of the New Jersey Statutes Annotated:

> The judges of compensation and their supporting personnel in the Division of Workmen's Compensation are hereby constituted the workmen's compensation court, which shall be a court of record and have the right to use a seal. Such court shall be under the supervision of the Director of the Administrative Office of the Courts, who shall establish and maintain such courts of workmen's compensation, as may be necessary, within each of the workmen's compensation districts of this state.
>
> The workmen's compensation court shall have exclusive jurisdiction to hear and determine all cases of workmen's compensation which are not resolved (by the referees and supporting personnel) in the Division of Workmen's Compensation.

Commentary:

The opening sentence, establishing the workmen's compensation court, conforms closely to the language used in statutory enactments of other state courts in the judicial article. The second sentence specifies that the courts are under the Administrative Office of the Courts and clearly gives the Director the controls which our proposals would otherwise be given to the Director of Workmen's Compensation. This language is inserted to avoid any dispute as to the distribution of authority. The jurisdiction of the court, defined in the third and final sentence, makes it clear that the transfer of the courts does not usurp the role of the Division of Workmen's Compensation as a forum of first resort in compensation claims.

New Jersey Workmen's Compensation Study Commission:

While sharing the S.C.I. goals in this area, the Report of the Study Commission took issue with the S.C.I. recommendation, believing that the Study Commission's proposal for a thorough overhaul of the workmen's compensation system would alleviate the problem. (See *Report,* p. 204.) Since the Study Commission proposals may deal with the problem adequately, the S.C.I. holds in abeyance its proposal on transfer until it becomes clear whether or not the Study Commission proposals are enacted, and if enacted, solve the problem. If not, the S.C.I. proposal can be offered as an alternate solution to the problem.

Additional Commentary and Alternative Suggested Proposal:

In the event that the N.J. Workmen's Compensation Study Commission's proposal for overhauling the Division is not enacted, the S.C.I.'s Workmen's Compensation Alternate Proposal #1 (Transfer of the Workmen's Compensation Judiciary to the Administrative Office of the Courts) merits consideration. If our proposal on transfer is enacted, our proposal on the Need for Additional Powers for the Director of the Division of Workmen's Compensation must take account of that and becomes the following:

34:1A–12 Division of Workmen's Compensation; Officials and Employees in Division; Director; Powers and Duties

The Division of Workmen's Compensation shall consist of the Commissioner of Labor and Industry who shall act as chairman, a director who shall be appointed as hereinafter provided, and such referees and other employees as may, in the judgment of the commissioner, be necessary. Appointments of such referees and other employees shall be made in accordance with the provisions of Title 11 of the Revised Statutes, Civil Service.

The Director of the Division of Workmen's Compensation shall be a person qualified by training and experience to direct the work of such division. He shall be appointed by the Governor, with the advice and consent of the Senate, *for a term of 7 years,* and shall serve during good behavior and until the director's successor is appointed and has qualified. He shall receive such salary as shall be provided by law.

The Director of the Division of Workmen's Compensation shall, subject to the supervision, direction, *and final determination* of the Commissioner of Labor and Industry:

(a) Be the administrative head of the division;

(b) Prescribe the organization of the division, and the duties of his subordinates and assistants, except as may otherwise be provided by law;

(c) Direct and supervise the activities of all members of the division, *with responsibility to set high standards of conduct for referees and other employees of the division;*

(d) *Take preventive and remedial action with regard to unexemplary conduct by referees and other employees of the division, including, but not limited to, the power to remove from office upon a showing of just cause in an administrative hearing.*

(e) Make an annual report to the Commissioner of Labor and Industry of the work of the division, which report shall be published annually for general distribution at such reasonable charge, not exceeding cost, as the commissioner shall determine;

(f) Perform such other functions of the department as the commissioner may prescribe.

The Director of the Division of Workmen's Compensation shall also serve as secretary of such division.

IV. Alternate Proposals to Revamp the System

2) The Informal Process: Role and Scope; and the $750 Cut-Off

Informal Proceedings Role and Scope:

The Testimony:

The S.C.I. public hearings on Workmen's Compensation revealed an unfortunate trend to by-pass the informal process in favor of the formal. The testimony is recorded in the next subsection, The $750 Cut-Off.

The S.C.I. Recommendation:

A study, if not already initiated, should be undertaken by the Governor's Study Commission on Workmen's Compensation to determine the feasibility of steps to eliminate minor injury claims from the formal petition area by increasing the role and scope of the informal proceeding, if the present basic framework of the Workmen's Compensation system is to be maintained.

Commentary:

The Commentary in the following subsection explains the effect of the $750 "Cut-Off".

New Jersey Workmen's Compensation Study Commission:

See this heading in the next subsection, The $750 Cut-Off.

The $750 Cut-Off

The Testimony:

S.C.I. Public Hearings revealed that one of the most salient defects in the Informal Process in the workmen's compensation system is the fact that the existing regulatory disincentive to by-passing the Informal Process "cuts off" at the relatively low recovery level of $425. The S.C.I. expert witnesses strongly recommended raising that level. Attorneys Parks believed a "cut-off" level of $550 would encourage greater use of the Informal Process. Judge Kelly, noting the absence of statutory authorization for the Informal Process, suggested that a statute should be enacted, and that it should raise the so-called "cut-off" level to $1,000. In the

same vein, testimony at the public hearings indicated that the Informal Process is being increasingly by-passed in favor of the Formal or Litigated Process, entailing additional medical and legal fees for petitioners.

The S.C.I. Recommendation:

The cut-off point for transition from automatic informal to formal hearings should be increased from the present $450 per case level to $750 per case.

The Background:

An explanation of the so-called "Cut-off" and how it operates is in order. At the present time statutory regulation of the award of Attorneys fee resides in N.J.S.A. 34:15-64. It provides that "the official conducting any hearing under" the workmen's compensation system may allow a reasonable attorney fee not to exceed 20% of the judgment. Such fees must be approved by the Division of Workmen's Compensation and are deducted from the petitioner's award and paid directly to the persons entitled to them.

It is within these statutory limits that the Informal and Formal Processes of the Division of Workmen's Compensation must operate. With regard to the award of attorney fees in the Informal Process, the Rules of the Division of Workmen's Compensation, Section I — Informal Hearings provide:

> The Referee conducting an informal hearing may allow a counsel fee for services rendered by claimant's attorney based on the standard considerations of reasonableness. The Referee may also allow a reasonable fee for necessary medical examinations and x-rays ordered by the claimant or his attorney. Such medical and counsel fees may be deducted from accrued compensation when consent in writing has been obtained from the claimant on a form provided by the Division of Workmen's Compensation. In allowing fees at informal hearings, the officials approving such fees will regard the purpose and function of informal hearings and the policy of the Division of Workmen's Compensation to provide a prompt remedy to claimants without undue hardship or expense.

Thus, while nothing in this rule precludes an attorney's fee of 20%, the concluding sentence stipulates a Division policy of

construing "reasonable" attorney fees at Informal Hearings in light of the cost-reducing function such Hearings serve with regard to claimants. The Division thus seems to seek to hold attorney fees in the Informal Process significantly below the 20% level.

By itself, such a policy would encourage attorneys to by-pass the Informal Process in favor of the Formal. But the Division provides a disincentive to such by-passing in a later rule:

> A. In all formal cases involving disability to fingers and toes, regardless of the amount of recovery, and all cases involving disability to the foot or hand which are settled with recovery of less than $425.00, and which cases had not been previously submitted to an informal hearing, the allowance for counsel fees in favor of the attorney representing the petitioner shall not exceed 5% of the amount of the award or settlement, regardless of whether there is a denial of accident in the Answer. All cases which fall within the above category, wherein a discontinuance is filed, the counsel fee allowed on such discontinuances shall not exceed 5%.
>
> B. In this category of cases, where the question of the statute of limitations might, to the detriment of the claimant, be involved, a formal petition may be filed. After the filing of the petition the claim should be handled informally. Thereafter appropriate disposition shall be made of the formal petition. Failure to follow the above procedure shall invoke Item 1 hereof.

This rule is obviously designed to discourage attorneys from by-passing the Informal Process in cases of minor, uncomplicated injuries. It does so by limiting attorney fees to 5% of the recovery in all cases involving finger and toe injuries which by-passed the Informal Process, and in all cases involving hand and foot injuries in which the Formal Process recovery is less than $425 and in which the Informal Process was by-passed.

It is this provision which offers the most viable foundation for expanding the role and scope of the Informal Process.

Suggested S.C.I. Proposal:

The Rules of the Division of Workmen's Compensation should be amended to read as follows:

A. In all formal cases involving disability to fingers and toes, regardless of the amount of recovery, and all cases involving disabilities which are settled with recovery of less than *$750.00,* and which cases had not been previously submitted to an informal hearing, the allowance for counsel fees in favor of the attorney representing the petitioner shall not exceed 5% of the amount of the award or settlement, regardless of whether there is a denial of accident in the Answer. All cases which fall within the above category, wherein a discontinuance is filed the counsel fee allowed on such discontinuances shall not exceed 5%.

B. In this category of cases, where the question of the statute of limitations might, to the detriment of the claimant, be involved, a formal petition may be filed. After the filing of the petition the claim should be handled informally. Thereafter appropriate disposition shall be made of the formal petition. Failure to follow the above procedure shall invoke Item 1 hereof.

Additionally, the Division Rules, Section I, Informal Hearings, should be amended to read:

The Referee conducting an informal hearing may allow a counsel fee for services rendered by claimant's attorney based on the standard considerations of reasonableness. The Referee may also allow a reasonable fee for necessary medical examinations and x-rays ordered by the claimant or his attorney. Such medical and counsel fees may be deducted from accrued compensation when consent in writing has been obtained from the claimant on a form provided by the Division of Workmen's Compensation. In allowing fees at informal hearings, the officials approving such fees will regard the purpose and function of informal hearings and the policy of the Division of Workmen's Compensation to provide a prompt remedy to claimants without undue hardship or expense. *In the absence of special circumstances a reasonable fee shall be presumed not to exceed twelve percent of the award.*

Commentary:

This recommendation expands the Division's regulatory disincentive to by-passing the Informal Process to cover all dis-

abilities rather than just those involving the hands, feet, fingers, and toes. It also raises the so-called "cut-off" level to $750.

If statutory action is preferred, this can be done without drafting a statute to cover the entire Informal Process by making the following two insertions in 3.A:

> i) The statute would begin: "In all formal cases *arising under this chapter* involving . . .
>
> ii) The clause mentioning submission of cases to the informal hearings (3.A., sentence one) would read: "and which cases had not been previously submitted to an informal hearing *as provided for in the Rules of the Division of Workmen's Compensation,"*

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission noted the parallel goals shared by the S.C.I. and the Study Commission in this area. The Study Commission plan, if enacted, thoroughly restructures the informal hearing process and, if successful, obviates the need for the S.C.I. proposal. Thus, the S.C.I. proposal should be held in abeyance until it can be determined whether or not the Study Commission plan will be enacted and, if so, be effective. If not, the S.C.I. proposal offers an alternate solution to the problem.

IV. Alternate Proposals to Revamp the System

3) The Rotation of Judges of Compensation

The Testimony:

One of the chief sources of abuse of the system brought to light in testimony given during the S.C.I. hearings was the clubish atmosphere which pervades many of the courts of workmen's compensation. By nature workmen's compensation is a rather closed practice and the resulting continual appearance of the same attorneys before the same judges fosters a situation which at least suggests the existence of a clique. Attorney Matthew Parks suggested a transfer of judges among the various workmen's compensation vicinages of the state if they do not perform well.

The S.C.I. Recommendation:

The body charged with the administration of the Workmen's Compensation Court System should study the advisability of judges being rotated semi-annually within the respective geographical areas of the state so as to prevent the constant appearance of the same attorneys before the same judges with the same type of cases throughout the Court's calendar year.

The Background:

At the present time there is no statutory provision specifically governing the assignment of judges of compensation. Such transfers as are made by the Director are done under the authority of N.J.S.A. 34:1A–12, the current compilation of the Director's duties. Additionally, the administrative structure of the Division of Workmen's Compensation appears to be at odds with the Division's statutory mandate, since N.J.S.A. 34:15–53 requires the location of compensation courts in each county and the Division maintains such courts in only 18 of the State's 21 counties. Above these are the district hearing offices, which will number 12 upon the completion of the New Brunswick office. Such districts could serve as the framework within which a statutorily authorized rotation could operate.

South Carolina recently restructured its court system, pursuant to the recommenations of a survey by N.Y.U.'s Institute of Judicial Administration. Among the changes was a statutory provision for the interchange of circuit judges between and among South Carolina's judicial circuits. S. Car. Statutes § 15–129 provides:

> *Assignment of circuit judges by roster.*—Between the first and fifteenth days of December in each year the Chief Justice or, in his absence or inability to attend, the senior associate justice shall form a roster of the circuit judges of the several circuits in order to arrange a regular and continuous assignment and interchange of circuits among such judges and make an order assigning the several circuit judges to hold the several circuit courts in all of the circuits of the State for the whole of the succeeding year in such order as will effect a continuous interchange of circuits according to such numerical series.

Suggested S.C.I. Recommendation:

As a basis for establishing statutory authorization for an efficient rotation of workmen's compensation judges the following statute should be adopted:

34:15– Workmen's Compensation Districts enumerated and boundaries stated

For the purpose of administering the Division of Workmen's Compensation, this State shall be divided into 12 districts as follows, namely:

First. The counties of Atlantic, Camden, Cape May, Cumberland, Gloucester, and Salem shall constitute and be called the first district;

Second. The county of Ocean shall constitute and be called the second district;

Third. The county of Monmouth shall constitute and be called the third district;

Fourth. The counties of Burlington, Hunterdon, and Mercer shall constitute and be called the fourth district;

Fifth. The county of Somerset shall constitute and be called the fifth district;

Sixth. The county of Middlesex shall constitute and be called the sixth district;

Seventh. The county of Morris shall constitute and be called the seventh district;

Eighth. The counties of Passaic and Warren shall constitute and be called the eighth district;

Ninth. The counties of Bergen and Sussex shall constitute and be called the ninth district;

Tenth. The county of Union shall constitute and be called the tenth district;

Eleventh. The county of Essex shall constitute and be called the eleventh district;

Twelfth. The county of Hudson shall constitute and be called the twelfth district.

Within each district the Director of Workmen's Compensation shall establish and maintain a district hearing office and such (courts of workmen's compensation

and) other facilities as may be necessary and proper for administration of justice.

Additionally, to harmonize the practice of the Division of Workmen's Compensation with its apparent statutory authorization, N.J.S.A. 34:15–53 should be amended to read as follows:

Time, place and notice of hearing; adjournment

Within 20 days after the filing of an answer, or the expiration of the time for filing an answer if no answer is filed, the secretary of the division shall fix a time and place for hearing the petition, or shall send the petition and answer or a transcript of the petition and answer to the director, a deputy director or one of the referees, in which case such director, deputy director or referee, within 20 days after the filing of the answer, shall fix a time and place for the hearing of the petition. Such time shall be not less than 4 weeks nor more than 6 weeks after the filing of the petition, provided however, that in cases where the extent of permanent disability, total or partial, is an issue, the determination of such issue shall be deferred as provided in section 34:15–16 of this Title. The petition shall be heard either in the county in which the injury occurred or in which the petitioner or respondent resides, or in which the respondent's place of business is located, or in which the respondent may be served with process, *or in the appropriate court or office within the workmen's compensation district in which any of the foregoing counties are located.* When a time and place has been fixed for such hearing, the director, deputy director of the referee to whom the cause has been referred shall give at least 10 days' notice to each party of the time and place of hearing. The director, deputy director or any referee to whom a cause has been referred, shall have power to adjourn the hearing thereof from time to time in his discretion.

The establishment of workmen's compensation districts yields a basis on which the basic S.C.I. recommendation will operate. There are two drafts of the S.C.I. proposal, the former assuming a transfer of the court system to the Administrative office of the Courts, and the latter envisioning the continuation of the courts in the Division of Workmen's Compensation:

1) *Assignment of Workmen's Compensation judges by roster*

Between the first and fifteenth days of July in each year *the Chief Justice, or in his absence or inability to attend, the senior associate justice, either in their own capacity or through the Director of the Administrative Office of the Courts,* shall form a roster of the judges of compensation of the workmen's compensation courts in order to arrange a regular and continuous assignment and interchange of judges of compensation among the several workmen's compensation districts and make an order assigning the several judges of compensation to hold workmen's compensation courts in all of the workmen's compensation districts of the State for the whole of the succeeding judicial term in such order as will effect a reasonable and efficient interchange of judges of compensation among the workmen's compensation districts of the State. Additional assignments and reassignments may be made as necessary.

2) *Assignment of Workmen's Compensation judges by roster*

Between the first and fifteenth days of July in each year the Director of *the Division of Workmen's Compensation, or in his absence or inability to attend, an appropriate designee of the Commissioner of Labor & Industry,* shall form a roster of the judges of compensation of the workmen's compensation courts in order to arrange a regular and continuous assignment and interchange of judges of compensation among the several workmen's compensation districts and make an order assigning the several judges of compensation to hold workmen's compensation courts in all of the workmen's compensation districts of the State for the whole of the succeeding judicial term in such order as will effect a reasonable and efficient interchange of judges of compensation among the workmen's compensation districts of the State. Additional assignments and reassignments may be made as necessary.

Commentary:

The statutory provision for workmen's compensation districts is patterned on the provision for establishing congressional

districts. It provides statutory authorization for the Division of Workmen's Compensation to operate, as it now intends to, from a basis of twelve districts. Courts are currently located in 18 counties, and the proposed statute provides for their continuation at the discretion of the director, and even for additional courts. More importantly it allows the director to reduce the number of courts by as many as one-third since only one court is required within each district. The language within brackets, ("courts of workmen's compensation"), can be deleted if the courts are transferred to the Administrative Office of the Courts, with the Director of Workmen's Compensation retaining control over the other features of the department.

The amendment to N.J.S.A. 34:15–53 cures a statutory defect which apparently required the maintenance of a compensation court or hearing office in every county. It does so by permitting the hearing to take place anywhere within the district encompassing the county in which it would otherwise be heard.

The statutory proposal for a rotation roster is in two drafts to accommodate the possible shift of the workmen's compensation courts to the Administrative Office of the Courts, or their retention in Labor and Industry. Use of the phrase "reasonable and efficient interchange" should allow interchanges as infrequently as semi-annually and within areas of the State rather than the State as a whole. The closing sentence on additional assignments, etc., prevents the use of a roster from "locking-in" the person in charge of the rotation and thus allows him the freedom to cope with developments which arise during the course of the year.

New Jersey Workmen's Compensation Study Commission:

In this area the Report of the Study Commission took issue with the S.C.I. recommendation, believing the matter should rest with the Director's discretion. (See *Report*, p. 204.) There is no inherent conflict between the S.C.I. position and the Report of the Study Commission because the S.C.I. proposal for legislation permits the Director to alter and revise the rotation schedule "as necessary." Nonetheless, the Study Commission's proposals for structural reform of the workmen's compensation share the same goal and may have the same effect as the S.C.I. recommendation in reducing the frequency with which attorneys appear before the

same judges. Additionally, Director Dezseran has shown a willingness to transfer judges in the exercise of his discretion. Thus, it may be wise to hold S.C.I. legislative proposals in this area in abeyence until it can be determined whether or not the Study Commission's recommendations will be enacted, and if enacted, alleviate the problem in this area. If not, the S.C.I. proposal may offer a means of solving the problem without undertaking a thorough structural overhaul of the workmen's compensation system.

IV. Alternate Proposals to Revamp the System

4) Second Injury Fund

The Testimony:

Judges Levine and Kelly indicated that the Second Injury Fund, which encourages employers to hire partially disabled workers by exempting them from liability from any ensuing total disability, is being abused in cases where the ensuing total disability is age-related.

The S.C.I. Recommendation:

It is recommended that an in-depth study, possibly by the Governor's Study Commission on Workmen's Compensation, be made, of ways to diminish the growing use of the Second Injury Fund in Workmen's Compensation cases to get what amounts to supplemental payment to pensions and Social Security for persons aged 65. The Study's goal should be recommended legislation relative to the fund and should consider a recommendation made at these hearings that the fund still be available to those 65 but that persons of that age would have to overcome a presumption of ineligibility before they could receive benefits from the fund.

The Background:

The pertinent provisions of the statute governing the Second Injury Fund, N.J.S.A. 34:15–95, provides:

> The sums collected under section 34:15–94 of this Title shall constitute a fund out of which a sum shall be set aside each year by the Commissioner of Labor and Industry from which compensation payments in accord-

ance with the provisions of paragraph (b) of section 34:15–12 of this Title shall be made to persons totally disabled, as a result of experiencing a subsequent permanent injury under conditions entitling such persons to compensation therefor, when such persons had previously been permanently and partially disabled from some other cause; provided, however, . . . that no person shall be eligible to receive payments from such fund:

(a) If the disability resulting from the injury caused by his last compensable accident in itself and irrespective of any previous condition or disability constitutes total and permanent disability within the meaning of this Title.

(b) If permanent total disability results from the aggravation, activation or acceleration, by the last compensable injury, of a pre-existing noncompensable disease or condition.

(c) If the disease or condition existing prior to the last compensable accident is not aggravated or accelerated but is in itself progressive and by reason of such progression subsequent to the last compensable accident renders him totally disabled within the meaning of this Title.

(d) If a person who is rendered permanently partially disabled by the last compensable injury subsequently becomes permanently totally disabled by reason of progressive physical deterioration or pre-existing condition or disease.

Nothing in the provision of said paragraphs, a, b, c and d, however, shall be construed to deny the benefits provided by this section to any person who has been previously disabled by reason of total loss of, or total and permanent loss of use of, a hand or arm or foot or leg or eye, when the total disability is due to the total loss of, or total and permanent loss of use of, 2 or more of said major members of the body, or to any person who in successive accidents has suffered compensable injuries in conjunction result in permanent total disability. Nor shall anything in paragraphs a, b, c and d, aforesaid apply to the case of any person who is not receiving or who has heretofore received payments from such fund.

Suggested S.C.I. Proposals:

The pertinent provisions of N.J.S.A. 34:15–95 should be amended to read as follows:

> The sums collected under section 34:15–94 of this Title shall constitute a fund out of which a sum shall be set aside each year by the Commissioner of Labor and Industry from which compensation payments in accordance with the provisions of paragraph (b) of section 34:15–12 of this Title shall be made to persons totally disabled, as a result of experiencing a subsequent permanent injury under conditions entitling such persons to compensation therefor, when such persons had previously been permanently and partially disabled from some other cause; provided, however, . . . that no person shall be eligible to receive payments from such fund:
>
> (a) If the disability resulting from the injury caused by his last compensable accident in itself and irrespective of any previous condition or disability constitutes total and permanent disability within the meaning of this Title.
>
> (b) If permanent total disability results from the aggravation, activation or acceleration, by the last compensable injury, of a pre-existing noncompensable disease or condition.
>
> (c) If the disease or condition existing prior to the last compensable accident is not aggravated or accelerated but is in itself progressive and by reason of such progression subsequent to the last compensable accident renders him totally disabled within the meaning of this Title.
>
> (d) If a person who is rendered permanently partially disabled by the last compensable injury subsequently becomes permanently totally disabled by reason of progressive physical deterioration or pre-existing condition or disease, *whether age-related or otherwise.*
>
> (e) *If a person who is rendered permanently partially disabled by the last compensable injury is 65 years of age or older at the time he subsequently becomes permanently totally disabled, absent a positive showing to the contrary, such person shall be presumed to be ineligible to receive benefits from such fund by reason of section (d).*

Nothing in the provision of said paragraphs, a, b, c, d and *e,* however, shall be construed to deny the benefits provided by this section to any person who has been previously disabled by reason of total loss of, or total and permanent loss of use of, a hand or arm or foot or leg or eye, when the total disability is due to the total loss of, or total and permanent loss of use of, 2 or more of said major members of the body, or to any person who in successive accidents has suffered compensable injuries in conjunction result in permanent total disability. Nor shall anything in paragraphs a, b, c and d, aforesaid apply to the case of any person who is not receiving or who has heretofore received payments from such fund.

Commentary:

The amending provisions of the S.C.I.'s proposed N.J.S.A. 34:15–95 retain the basic structure of the Second Injury Fund as well as the essential requirements for qualification as Fund beneficiary. It makes the following changes:

1. Under section (d) the S.C.I. proposal clarifies the fact that progressive physical deterioration, subsequent to a compensable injury, does not qualify a person for Second Injury Fund benefits if it is age-related. That may already be the meaning and intent of section (d) but it is arguably ambiguous as it now stands.

2. The new section (e) establishes a rebuttable statutory presumption that persons 65 years of age or older who seek benefits from the Fund have become permanently disabled because of age-related deterioration, and are thus ineligible. The inclusion of "e" in the paragraph following section (e), listing specific categories of persons not affected by the foregoing provisions on ineligibility, assures that no one 65 or older will be presumed ineligible if they otherwise fall into the exempted eligible categories outlined in the paragraph. Thus in all other respects except those noted, the Second Injury Fund's structure and set-up remain unchanged.

New Jersey Workmen's Compensation Study Commission:

While endorsing the S.C.I. goal of eliminating Second Injury Fund "old age pensions" in this area, the Study Commission

indicated a belief that its proposals with regard to the Second Injury Fund alleviate the problem outlined by the S.C.I. Essentially the S.C.I. and Study Commission proposals differ in approach. The S.C.I. proposal seeks to cull superfluons old age pensions from the Second Injury Fund by creating a rebuttable presumption of ineligibility among those over 65 years of age. The Study Commission seeks to cull them by curtailing the original injuries which qualify for consideration as contributing total disability for Second Injury Fund purposes. Until it can be determined whether or not the Study Commission proposal will be enacted and, if so, effective the S.C.I. proposal should be held in abeyance. Then, if the Study Commission proposal is not enacted or is ineffective the S.C.I. proposal can be offered as an alternate solution to the problem.

IV. Alternate Proposals to Revamp the System

5) Court Testimony by Doctors

The Testimony:

The S.C.I. hearings revealed that a serious problem facing petitioners is the unwillingness of doctors, particularly specialists, to testify in workmen's compensation cases.

The S.C.I. Recommendation:

The medical profession in light of the Hippocratic Oath should re-evaluate its position with relation to Workmen's Compensation and refusal of physicians to appear and testify on behalf of their patients in both Workmen's Compensation matters and negligence matters.

The Background:

The S.C.I. Recommendations on expanding the role and scope of the Informal Process (II *Proposed Legislative Study Commissions;* 1) More & Better-Paid State Doctors; and IV. *Alternate Proposals to Revamp the System;* 2) The Informal Process: Role and Scope; and the $750 Cut-off) should alleviate this problem by encouraging more use of the informal process and especially through providing state-paid specialists at the informal level. Beyond that, little more can be done other than to forward

the recommendation on such testimony to the New Jersey Medical Society. In any event, the S.C.I. has brought the matter to the attention of the public and the legislature.

New Jersey Workmen's Compensation Study Commission:

The Report of the Study Commission endorsed the S.C.I. recommendation in this area.

Composite Letter Sent to the Division Director:

Dear Mr. Dezseran:

During the course of its investigation into the Workmen's Compensation system, the New Jersey State Commission of Investigation conducted public hearings at which the Commissioners took extensive testimony. The testimony showed a growing and abusive practice on the part of petitioners attorneys to resort to the use of multiple allegations in claim petitions, said allegations unsupported by either facts or the eventual aware. The testimony also showed that this multiple allegation technique was being used as a wedge to attempt to attain a higher award and that the cost of the additional medical examinations involved was a factor in driving up the cost of workmen's compensation insurance coverage. The State Commission of Investigation naturally abhors the use of boilerplate petitions in this manner.

To end this abuse of the system, the Commission recommends and requests that you promulgate an administrative directive to quash this practice. The Commission believes that the following rule, or one similar to it, might solve this problem:

> A formal Employee's Claim Petition for Compensation, when filed with the Division of Workmen's Compensation shall be accompanied by supporting examining reports from qualified physicians or surgeons with respect to each injury alleged, which shall also state the name and address of the person, if any, who referred the petitioner to the physician. With the approval of a judge of compensation, such claim

petitions may be amended up to 30 days after filing.

Our testimony also showed a growing and abusive practice on the part of petitioners' attorneys to refer clients for neuropsychiatric examination so that a neuropsychiatric allegation could be made above and beyond the basic injury alleged. The testimony also showed that the neuropsychiatric allegation was often used as a wedge to attempt to attain a higher award and that the cost of additional neuropsychiatric examinations was a factor in driving up the cost of workmen's compensation coverage.

To end this abusive practice, the Commission recommends and requests that you promulgate an appropriate administrative directive and indicate that the Division will subject such neuropsychiatric allegations to careful scrutiny. The Commission believes that the following rule, or a similar one, might solve the problem:

> No attorney, nor any other person at the instance of any attorney, shall refer a client in a Workmen's Compensation claim to any physician for a neuropsychiatric examination except on the recommendation of the physician evaluating the basic disability, unless the injury on which the claim is based involves the head or an amputation. The report of such examining physician shall indicate what portion, if any, of any disability is neurological, and what portion, if any, is psychiatric.

Additionally, the testimony at these hearings revealed a disconcerting pattern of reliance by certain law firms upon specific physicians in workmen's compensation cases. Because of the inherent dangers of abuse and collusion which are possible whenever attorneys recommend physicians to their clients, in such cases the State Commission of Investigation recommends and requests that your office issue an appropriate administrative directive to the judges of compensation, requiring that they scrutinize closely those cases where payment for medical treatment is requested and the treating physician was recommended by the petitioners' attorney.

In the course of its investigation and public hearings the Commission also uncovered a "house doctor" practice among certain law firms engaged in workmen's compensation practice. The Commission believes that patterns indicating the repeated use of a few favored physicians by particular law firms manifest possible abuses and improprieties in the system. Therefore, the Commission recommends and requests that the judges of compensation be placed under administrative directive to quash such patterns vigorously whenever necessary. The Commission believes that the public interest would be greatly served if a clear message went forth from the Division of Workmen's Compensation that in these matters only the highest ethical standards and conduct will be accepted from those attorneys and physicians practicing in and before the workmen's compensation courts.

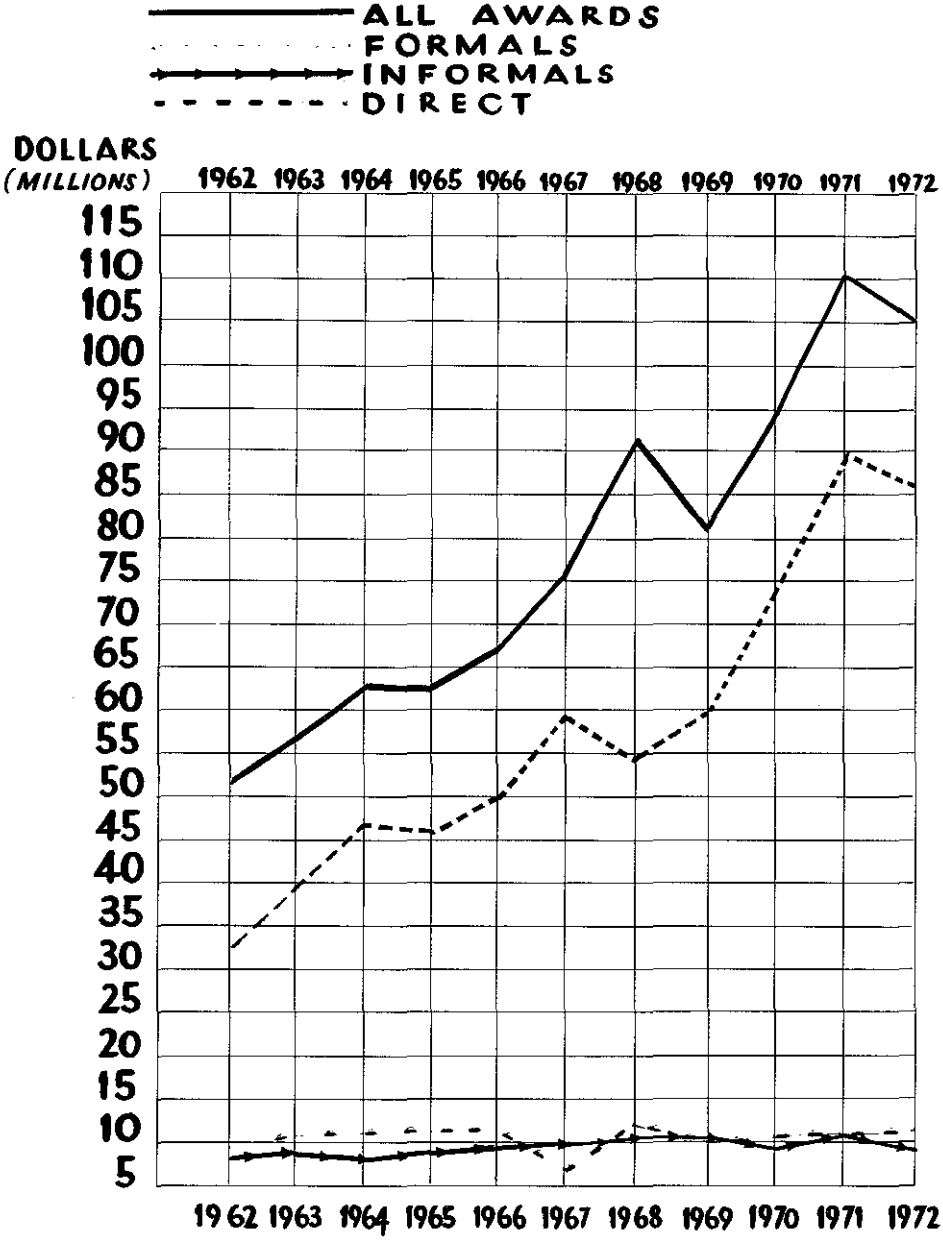
The testimony at these hearings indicated the need for an adequately enforced system of penalties, integrated where possible into the awarding of costs and counsel fee, which would be assessed against both petitioners and respondents attorneys for any dilatory tactics in the handling of cases. The State Commission of Investigation notes that the Rules of the Division of Workmen's Compensation contain provisions in this regard. In light of the proposals contained in the Recommendations of the New Jersey State Commission of Investigation and in the Report of the New Jersey Workmen's Compensation Study Commission, the State Commission of Investigation recommends and requests that the Director of the Division of Workmen's Compensation review the Division's provisions for penalizing dilatory tactics by petitioner's and respondents attorneys. Such a review should evaluate the adequacy of such provisions and examine whether or not they are being properly enforced. Such measures might include the institution of continuous trials, the maintenance of separate motion lists, and the pre-emptory lists of cases in which there is a denial by the carrier.

Sincerely,

Chairman,
N. J. State Commission of
Investigation

APPENDIX

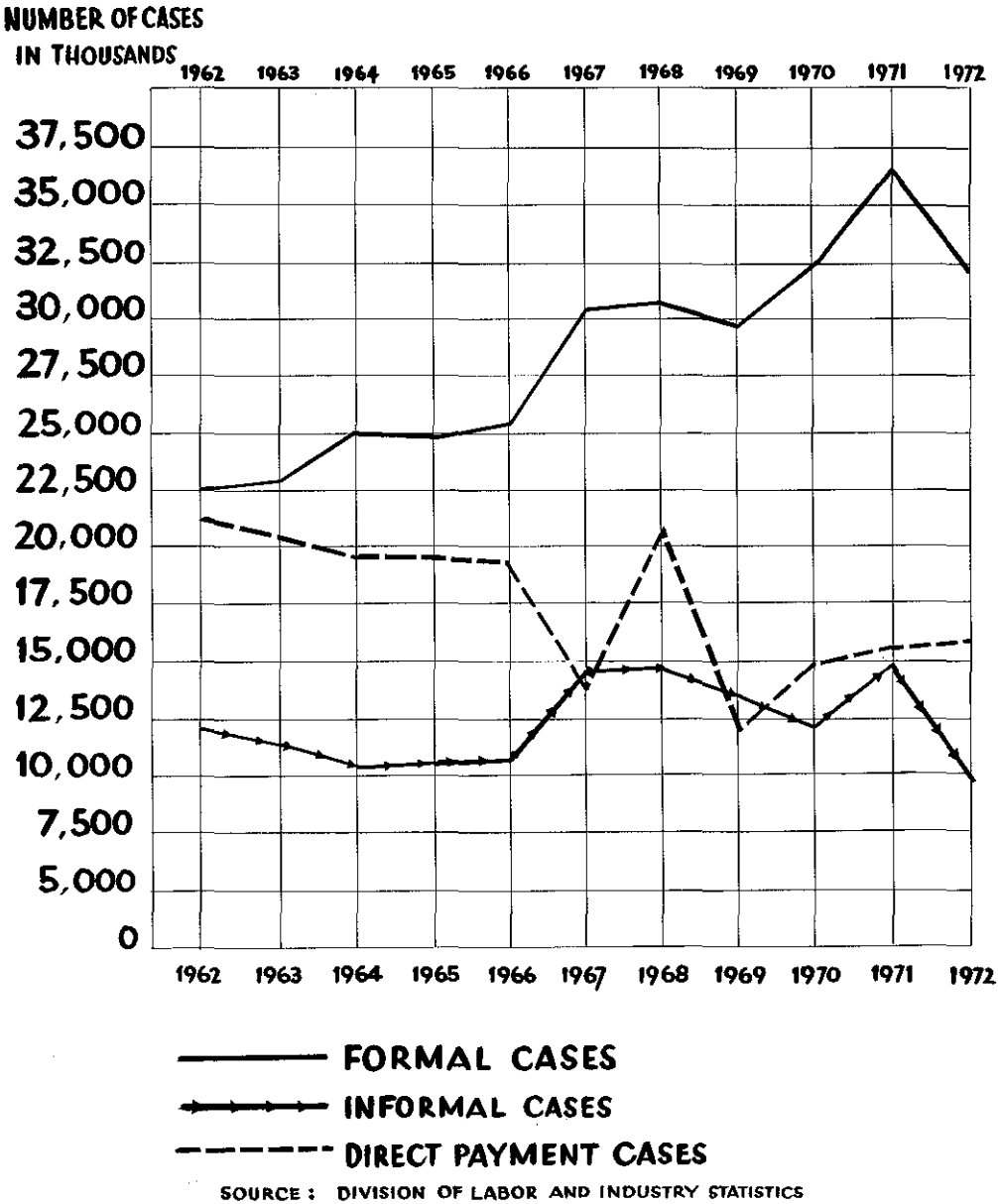
AWARD DOLLARS 1962-1972



SOURCE: DIVISION OF LABOR AND INDUSTRY STATISTICS

CHART TWO

NUMBER OF COMPENSATION CLAIMS PROCESSED 1962 - 1972

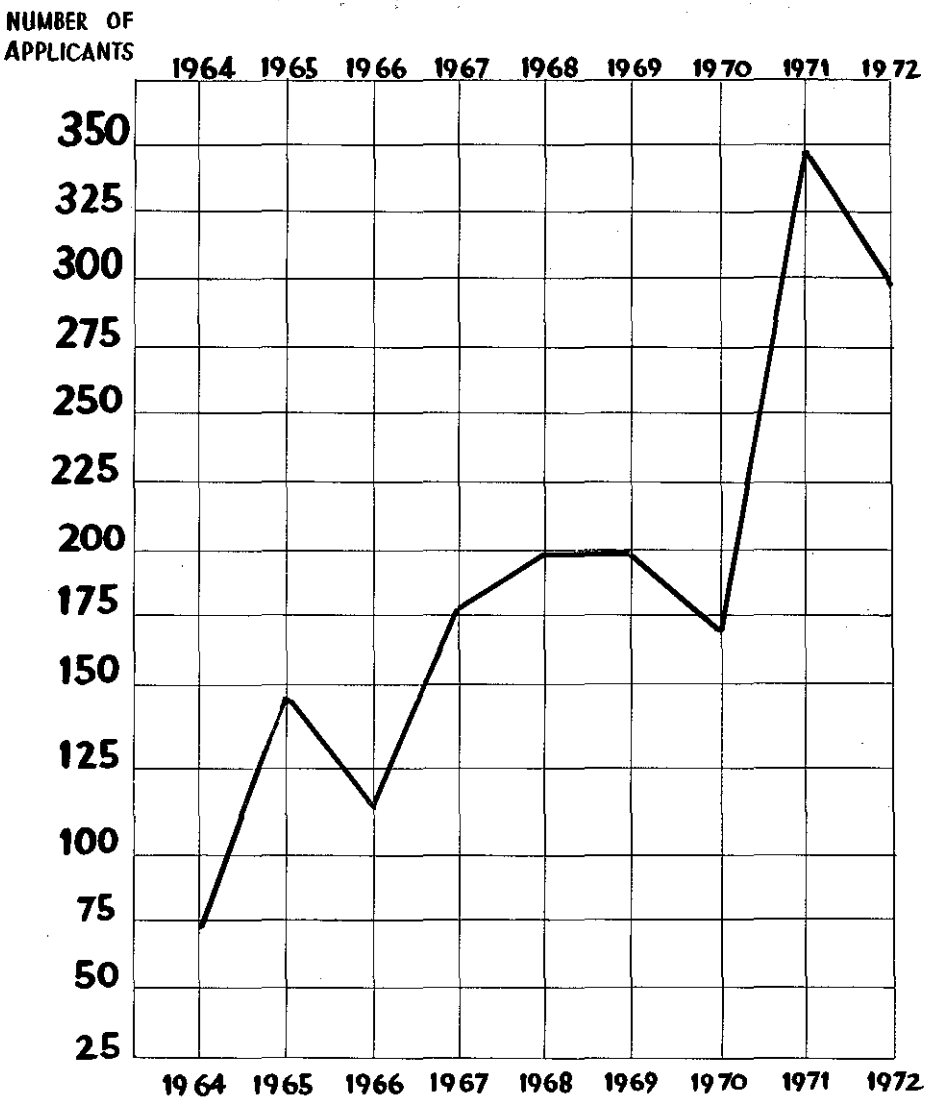


SOURCE : DIVISION OF LABOR AND INDUSTRY STATISTICS

CHART THREE

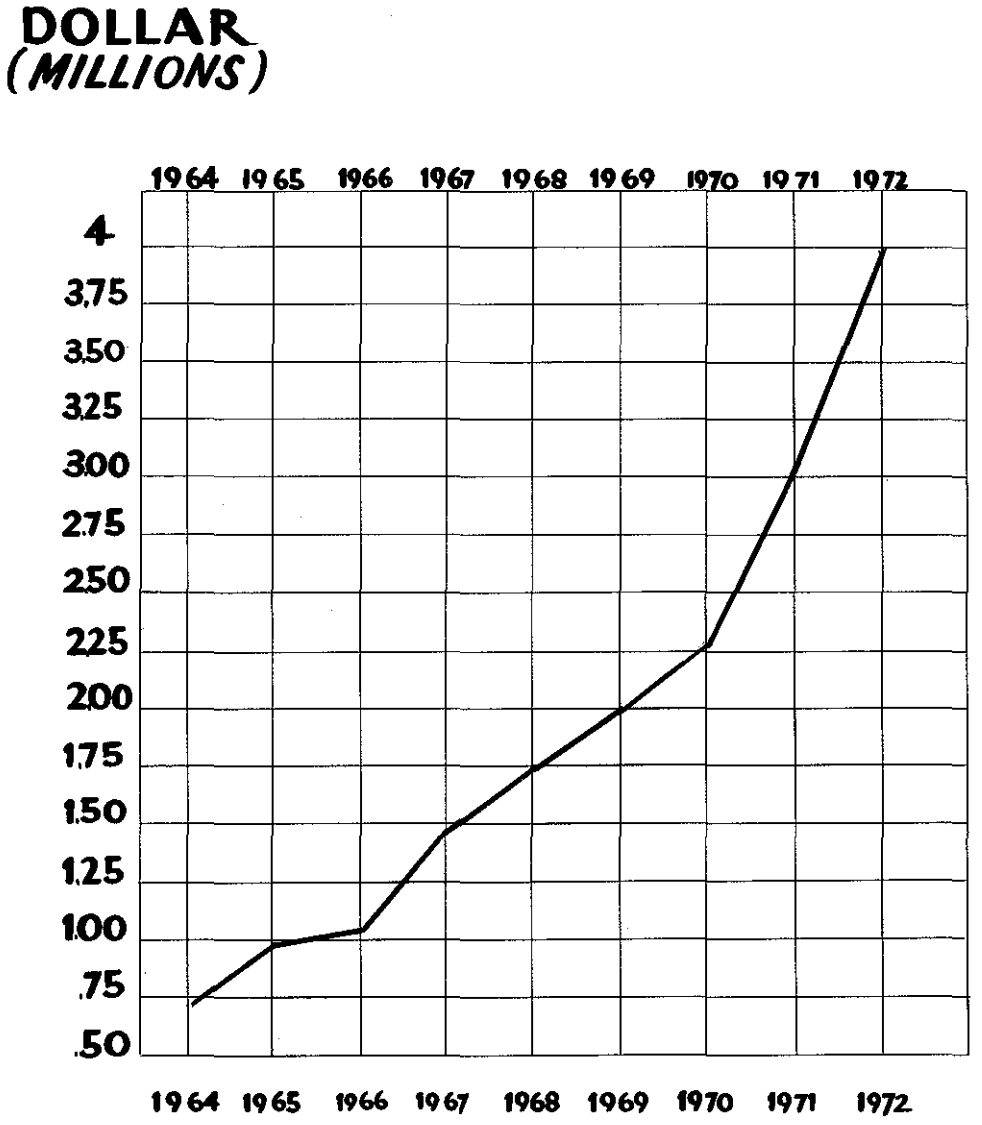
SECOND INJURY FUND

NUMBER OF APPLICANTS PLACED ON FUND



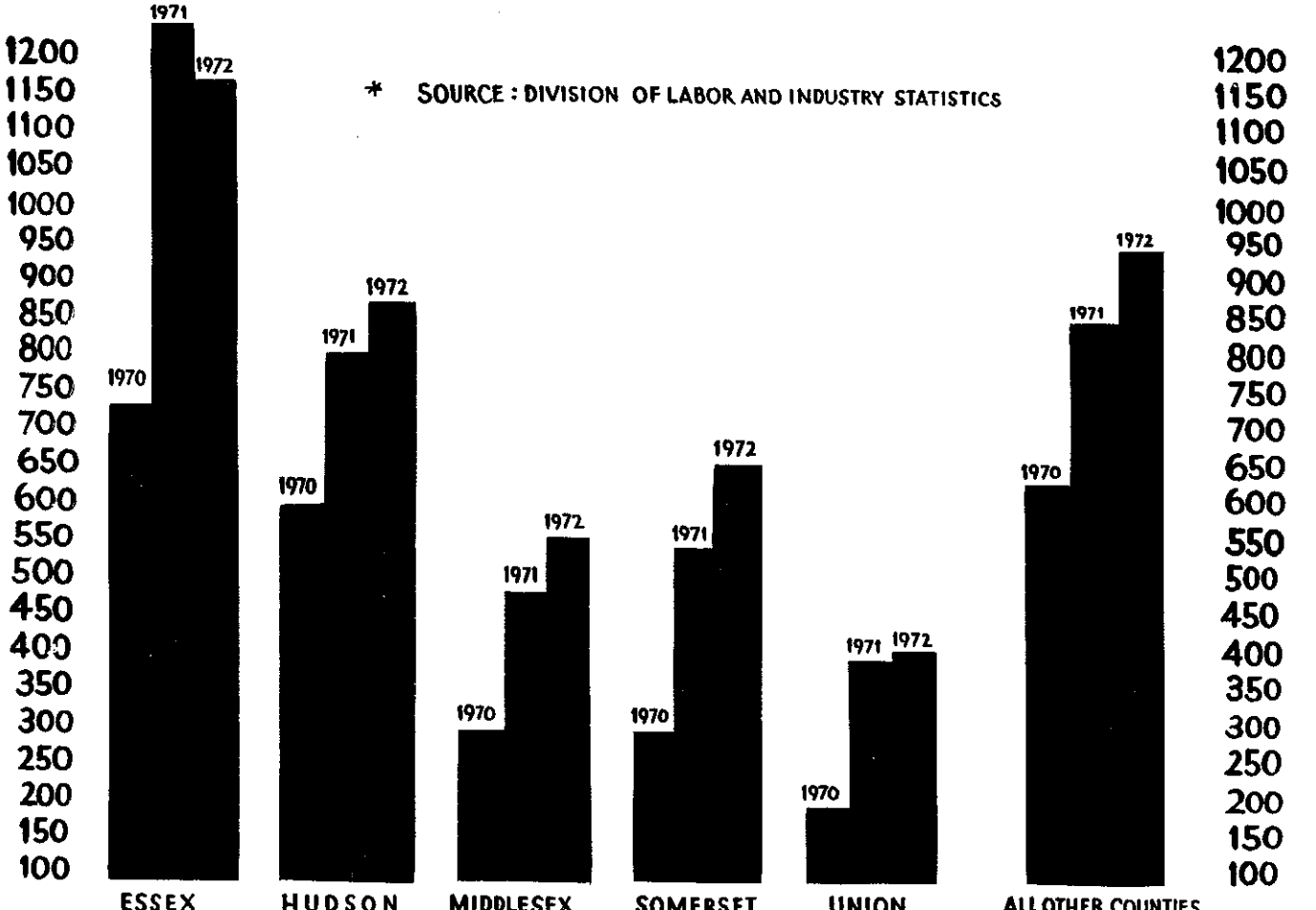
SOURCE: DIVISION OF LABOR AND INDUSTRY STATISTICS

SECOND INJURY FUND
DOLLAR VALUE
OF ALLOTTED BENEFITS



SOURCE : DIVISION OF LABOR AND INDUSTRY STATISTICS

NUMBER OF OCCUPATIONAL DISEASE CASES *



OCCUPATIONAL DISEASE * 3YR. HISTORY

YEAR	NUMBER OF CASES	% OF ALL CASES	AWARD DOLLARS	% OF ALL AWARD DOLLARS
1970	2985	5.2	8,759,384	9.4
1971	4670	7.0	10,030,123	9.0
1972	5062	8.7	12,431,708	11.8

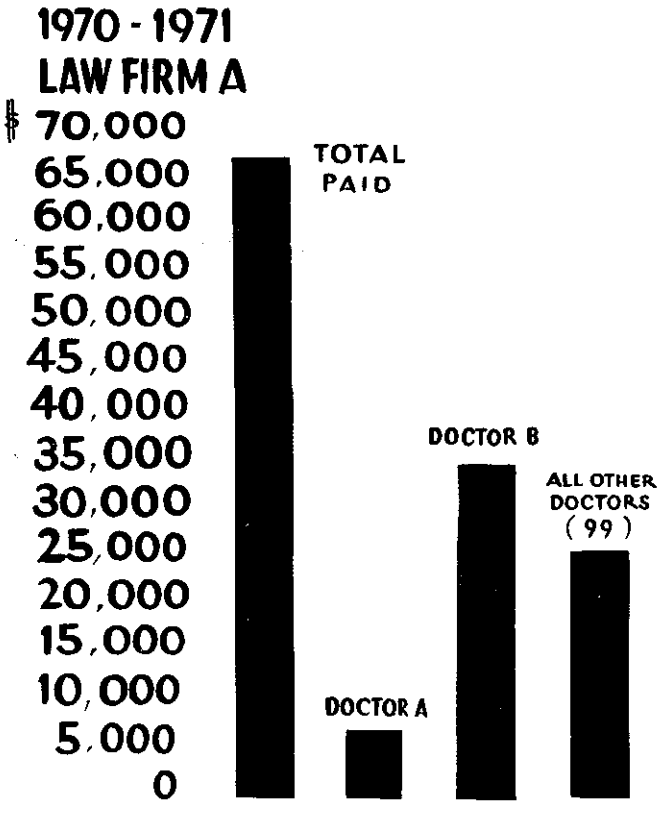
* SOURCE: DIVISION OF LABOR AND INDUSTRY STATISTICS

MUSCLE SPRAINS *
3YR. HISTORY

YEAR	NUMBER OF CASES	% OF ALL CASES	AWARD DOLLARS	% OF ALL AWARD DOLLARS
1970	13,193	23	14,402,733	15.5
1971	15,489	23	17,976,457	16.0
1972	13,531	23	15,492,801	14.6

* SOURCE: DIVISION OF LABOR AND INDUSTRY STATISTICS

THE HOUSE DOCTOR *EXAMPLE 1* *



* Source: Records subpoened by the Commission

Doctor B received 53% of all payments made by this firm to Treating Doctors in Liability Cases.

(Additionally he received 100% of all payments made by Insurance Companies to this firm's Treating Doctor in Compensation Cases)

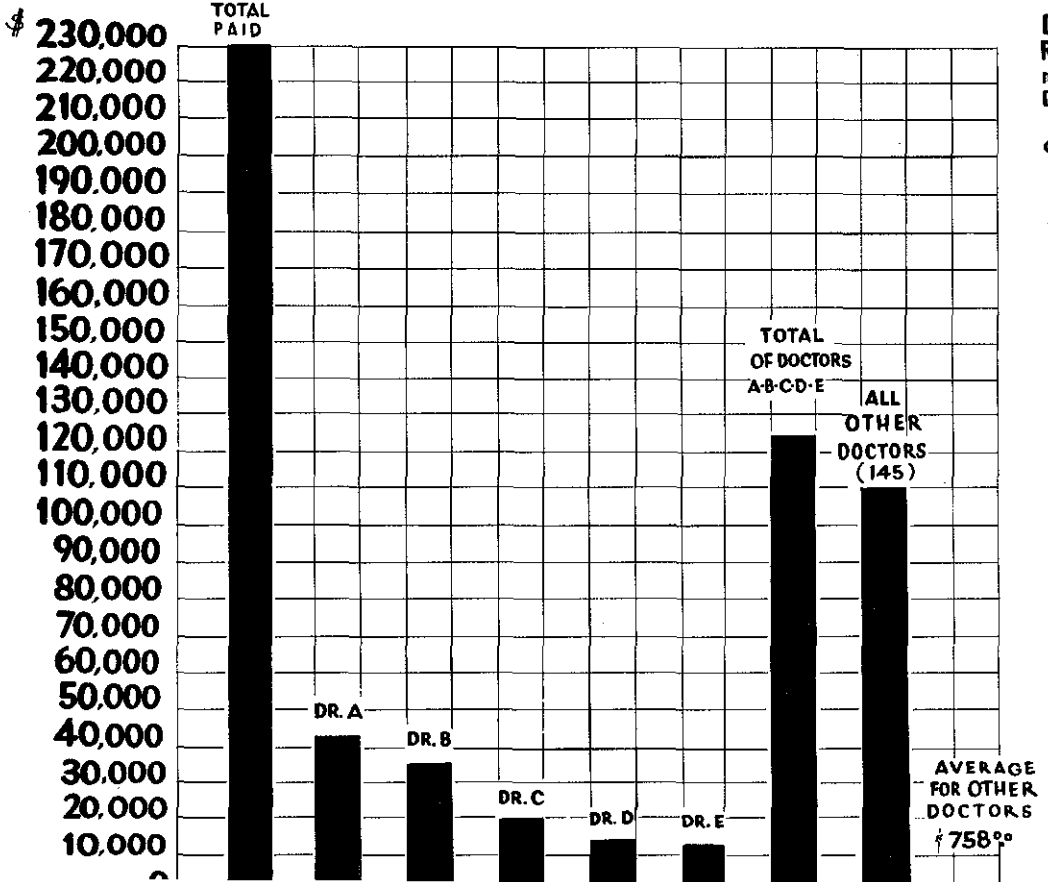
Doctor A received 7% of all payments . . .

Balance of all payments to Treating Doctors was divided among 99 Doctors.

THE HOUSE DOCTOR *EXAMPLE 2*

1970 · 1971
LAW FIRM B

(Source: Records subpoened by the Commission)



DOCTORS A · B · C · D · E
Received 54% of all payments made by this firm to Treating Doctors in Liability Cases. The balance was divided among 145 Doctors . . .

Doctor A
pleaded 5th Amendment
(Granted Immunity)

Doctor B
pleaded 5th Amendment
(Granted Immunity)

Doctor C
claimed *No* Impropriety despite contrary documentation

Doctor D
was not called because he has been indicted for Tax Evasion

Doctor E
pleaded 5th Amendment
(Granted Immunity)

CHART NINE

EARNED PREMIUMS - INCURRED LOSSES
YEARS 1967 - 1971, INCL.

YEAR	STANDARD WRITTEN PREMIUM	EARNED PREMIUMS	INCURRED LOSSES	PAID LOSSES
1967	$ 204,399,286	$ 191,663,727	$ 121,706,685	$ 92,557,825
1968	236,015,305	232,314,072	137,477,633	104,539,598
1969	260,634,146	253,468,183	143,146,697	109,337,722
1970	278,380,150	273,993,821	157,716,621	122,020,261
1971	291,356,047	284,666,161	176,777,315	132,445,706
	$ 1,270,784,934	$ 1,236,105,964	$ 736,824,951	$ 560,901,112
			INCREASE IN RESERVES	175,923,839
				$ 736,824,951

N.J. WORKMAN'S COMPENSATION
INCURRED LOSSES 1967 - 1971

PAID LOSSES (67 - 71)	$ 560,901,112
ADD RESERVE FOR LOSSES 12/31/71	347,550,747
TOTAL	$ 908,451,859
LESS RESERVES FOR LOSSES 12/31/66	171,626,908
INCURRED LOSSES	$ 736,824,951

FORMULA FOR DEVELOPING EXPERIENCE RATE OF UNPAID LOSSES NEW JERSEY WORKMANS COMP. 1967 - 1971

Total Paid Losses in Year Indicated		Actual Paid Losses Current Year	Actual Paid Losses Relating to Prior Years	Percentage of Reserve to Paid Losses
Reserve 12/31/66			171,626,908	
1967 92,557,825	1967	12,866,261	79,691,564	214.227%
Reserve 12/31/67			200,775,768	
1968 104,539,598	1968	15,687,455	88,852,143	225.301%
Reserve 12/31/68			233,713,803	
1969 109,337,722	1969	16,629,434	92,708,288	251.943%
Reserve 12/31/69			267,522,778	
1970 122,020,261	1970	17,869,231	104,151,030	256.896%
Reserve 12/31/70			303,219,138	
1971 132,445,706	1971	18,510,967	113,934,739	266.152%
TOTAL PAID LOSSES 1967-1971 $560,901,112		AVERAGE 5 YEAR		241.456

Loss Reserve 12/31/71	$ 347,550,747
Dividing Reserve by 241.456%	
Computed Reserve	143,266,866
Add: 15% for trends - Unpaid Allowances, etc.	21,490,029
Computed Reserve 12/31/71	164,756,895
Excess Reserve 12/31/71	$ 182,793,852

New Jersey Workmen's Compensation Valuation of Occupation Disease Cases 1972

1972 W/C	CARRIER	PERCENTAGE VALUATION	DOLLAR VALUE
9.6	A	10%	$2,500
10.8	B	DOUBLE CARRIER'S DOCTOR VALUATION	NOT INDICATED
23.3	C	15-17%	3,300-3,740
66.6	D	25%	5,500
2.3	E	50%	11,000
	AVERAGE	25.5%	5,610
	AVERAGE CASE SETTLEMENT N.J. W/C CASES 1972	6%	$ 1,320
	AVERAGE DIFFERENCE IN VALUATION	19.5%	$ 4,290

N. J. Workmen's Compensation
Net Investment Income - Allocated to Comp. Business

CARRIER **	GROSS INVESTMENT INCOME *	PERCENTAGE ALLOCATED	ALLOCATED TO W/C BUSINESS
A	$ 53,778,473	29%	$16,074,140
B	66,550,575	16%	10,872,972
C	104,912,359	5%	5,768,340
D	11,770,434	54%	6,359,336
E	39,054,758	34.%	13,559,902
F	92,805,943	29%	26,614,000
G	9,935,004	55%	5,505,468
		Average 32%	

* National Figures
** Carriers write 45% of W/C in New Jersey

SOURCE: Insurance Company Reports - 1972

UNDERWRITING & INVESTMENT INCOME
MAJOR WORKMEN'S COMPENSATION INSURANCE CARRIERS
1971 & 1972 (In Millions)

CARRIER	1971 UNDERWRITING	1971 INVESTMENT	1972 UNDERWRITING	1972 INVESTMENT	PERCENTAGE OF INVESTMENT INCOME ATTRIBUTED TO W/C
STOCK CO. A	$ 2.9	$ 73.7	$ 14.0	$ 53.7	29%
STOCK CO. B	L (35.8)	101.8	2.6	66.5	16%
STOCK CO. C	37.5	61.1	18.1	104.9	5%
STOCK CO. D	2.5	11.6	L (4.3)	11.7	54%
MUTUAL CO. E	13.5	34.7	5.9	39.0	34%
MUTUAL CO. F	37.1	73.6	34.1	92.8	29%
MUTUAL CO. G	27.3	10.3	32.5	9.9	55%
	$ 85.0	366.8	102.9	378.5	Average 32%
	TOTAL	$451.8		$481.4	
PERCENT OF UNDERWRITING INVESTMENT INCOME TO TOTAL	19%	81%	21%	79%	

SOURCE: ANNUAL REPORTS SUBMITTED TO N.J. DEPT. OF INSURANCE 1971 - 72

L - LOSSES

NEW JERSEY WORKMEN'S COMPENSATION
ALLOCATION OF EARNED STANDARD PREMIUM DOLLARS FOR YEARS - 1967 - 1971, INCL.

EARNED STANDARD PREMIUM		$1,236,105,964	100%
LESS:			
Allocation to Reserves for Losses	$175,923,839		14%
Payments to Petitioners Attorneys and Medical Doctors	58,092,396		5%
Insurance Company Operating Expenses, Profit Incl. Dividends, Discounts and Adjust.	499,281,013		40%
TOTAL		733,297,248	59%
Balance to Injured Workers		502,808,716	41%

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

May 4, 1973

MARTIN G. HOLLERAN
Executive Director
State of New Jersey
Commission of Investigation
28 West State Street
Trenton, New Jersey 08608

Dear Mr. Holleran:

This is in reply to your letter, dated April 13, 1973, in which you request a ruling to the effect that private insurance carriers writing Workmen's Compensation are required to furnish Forms 1099 when payments of $600 or more are made to a physician.

Section 1.6041-1(d)(2) of the Income Tax Regulations provides that fees for professional services paid to attorneys, physicians, and members of other professions are required to be reported in returns of information if paid by persons engaged in a trade or business and paid in the course of such trade or business. The insurance carriers come within this category.

Section 1.6041-1(f) of the Regulations states that the amount is deemed paid for purposes of the above requirement when it is credited or set apart to a person without substantial limitation or restriction.

Section 1.6041-3(c) of the Regulations distinguishes corporations engaged in providing medical and health care services or engaged in the billing and collecting of payments of these services from other corporations which have an exemption from the requirement to file information returns.

Accordingly, insurance carriers writing Workmen's Compensation are required to furnish Forms 1099 when payments of $600 or more are made to a physician.

Sincerely yours,

WILLIAM H. ROGERS,
Chief, Administrative
Provisions Branch