



Report (#1)
and
Recommendations
of the
STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION
INQUIRY
into the
NEW JERSEY
HOUSING FINANCE AGENCY





State of New Jersey

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March 23, 1981

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TO: The Governor and the Members of the Legislature of
the State of New Jersey:

The New Jersey State Commission of Investigation herewith submits its Report (#1) and Recommendations on its investigation of the New Jersey Housing Finance Agency, as requested by the Governor. This transmittal is made under Section 4 of L. 1979, Chapter 254 (NJSA 52:9M-1, et seq), of the Act Creating the Commission.

Respectfully Submitted,*

Arthur S. Lane, Chairman
Lewis B. Kaden, Commissioner**
Henry S. Patterson, II, Commissioner

* Commissioner John J. Francis, Jr., disqualified himself from participation in this investigation and report because the law firm with which he is associated represents charitable sponsors of HFA projects.

** Commissioner Lewis B. Kaden participated in the formulation and approval of this report but resigned prior to this transmittal.

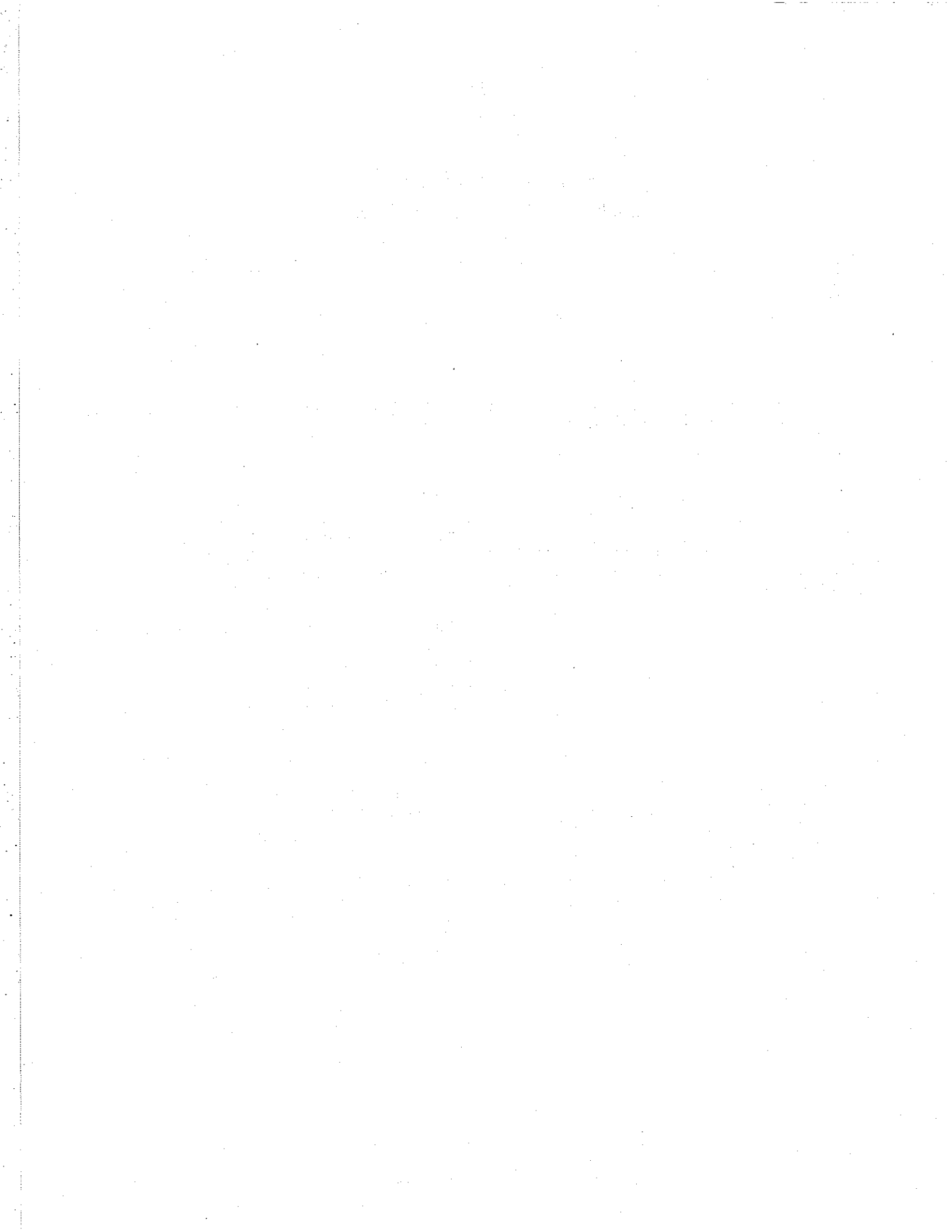


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STATE COMMISSION OF INVESTIGATION
INQUIRY INTO THE
NEW JERSEY HOUSING FINANCE AGENCY

SECTION I

THE SCI INVESTIGATION

INTRODUCTION

Governor Brendan T. Byrne requested the State Commission of Investigation (SCI) to investigate the New Jersey Housing Finance Agency (HFA) on February 27, 1979. At about that time certain criminal investigations of the agency also were in process by the offices of New Jersey's Attorney General and by the United States Attorney's office at Newark. Both before and after the Governor's directive to the SCI, certain newspapers -- most notably the Trenton Times -- were publishing exposes of various questionable activities at the HFA and these articles also focused an increasingly sharp spotlight on the agency. The accumulation of allegations about the HFA came as a surprise because of its national acclaim as a successful producer of low cost housing. However, the HFA's production achievements over the years had obscured the instability, mismanagement and other adverse conditions that were dominating the agency's internal functions. These were the circumstances under which the Commission was requested to conduct its inquiry. The Governor's letter-request follows:

Honorable Arthur S. Lane
Chairman
State Commission of Investigation
28 West State Street
Trenton, New Jersey 08625

Dear Chairman Lane:

Recent allegations about the management practices of the New Jersey Housing Finance Agency have been called to my attention. The services performed by that Agency are of great importance to the people of our State and public confidence in its capability and integrity is essential. Accordingly, after consultation with the members of that Agency, I hereby request that the State Commission of Investigation undertake, pursuant to N.J.S.A. 52:9M-4, a formal, prompt and comprehensive investigation of the New Jersey Housing Finance Agency.

I have been advised by Treasurer Goldman that the Agency's high credit rating could be eroded by unanswered allegations of mismanagement. A thorough and dispositive investigation of the Agency's conduct would serve to comfort bond investors and, at the same time, facilitate future agency financings.

Needless to say, the Board and the Agency will cooperate in every way possible with such an investigation. I look forward to your cooperation and your review.

Sincerely,

GOVERNOR

INVESTIGATIVE METHODOLOGY

Upon receipt of the Governor's letter, the Commission, as required by its enabling law, authorized by formal resolution an investigation of the HFA. A team of SCI accountants and special agents initiated the inquiry by obtaining all relevant files from the agency on various projects and internal transactions. More than 200 boxes of HFA paperwork were transported to the Commission's office. These included procedural and legal forms, internal memos and other in-house correspondence relative to every project processing step from application to commitment and closing, site inspection requests and reports, on-site building progress and other references to projects that had been completed or were under construction, communications between the agency staff and project developers, consultants and contractors, construction contracts and related correspondence on change orders, building delays and tenant problems, as well as available mortgage contracts and bond transcripts and other similar legal papers. A scrutiny of these files, particularly by the Commission's accounting staff, led to requests for even more data from one or another of the agency's divisions, chiefly its operations, property management, technical services and finance sections. In line with the Governor's assurance of HFA cooperation, all requests for available files generally were complied with by agency officers and employees as expeditiously as their day-to-day operations permitted.

Meanwhile, the Commission's special agents began a series of extensive interviews in the field, at the HFA and at the SCI with past and present agency officials and employees and with promoters and sponsors and affiliated loan consultants, lawyers, accountants and other individuals associated with dozens of nonprofit and limited dividend housing projects.

The SCI staff's auditing of agency files and assessment of field interviews led to an investigative focus on certain potentially questionable

activities and transactions within the agency. These involved more than 50 housing projects that either had been processed to mortgage commitments and final closings or had gained the HFA's official consideration short of attaining final approval. Dominant among the projects on which the SCI centered its attention were some that were or had been in the process of being converted from nonprofit entities to ownership for income tax shelter purposes by limited dividend partnerships, so-called "bail-out" and rehabilitation projects in which the agency developed an active interest in the 1973-75 period, as well as projects that became limited dividend entities after mortgage closing at the agency as nonprofit programs.

More than 250 subpoenas have been issued by the SCI since the Spring of 1979, of which at least 175 were for the return of books and records by developers, sponsors, consultants, contractors, suppliers and others connected with the projects on which the Commission's investigative efforts centered. As of December, 1980, some 75 witnesses have appeared before the Commission, most of them under subpoenas requiring sworn testimony relevant to the Commission's inquiry. Many of these witnesses were required to return for further interrogation.

The subpoenaed and volunteered testimony, the reports by special agents who conducted interviews (as well as surveillances in the field as required) and the dissection of agency, project, corporate and individual books and records and correspondence by developers, consultants and contractors, suppliers, syndicate associates and others provided the Commission with a massive factual record of the HFA's operation during the past decade. The Commission's initial report is based solely on its assessment of this factual record.

SECTION II

BACKGROUND OF THE HFA

LEGISLATIVE HISTORY

For six years prior to the creation of the HFA various State legislators had made numerous attempts to provide an acceptable, workable financing vehicle to ease an increasingly acute shortage of housing. The most perplexing hurdle had been the need to generate millions of dollars from year to year for developing low-cost housing projects without imposing an obviously impossible burden on annual state budgets. Finally, however, a feasible and comprehensive solution to the basic problem took shape in March, 1967, when then-Governor Richard J. Hughes submitted a package of six proposals to the Legislature. In submitting this plan to the lawmakers, the Governor expressed in a message the hope that it would constitute "a giant step forward" in the long crusade to substantially reduce the enormous housing shortfall in the nation's most urban state. The Governor's plan was transformed into Assembly Bill #770. The Legislature, after considerable debate and deliberation, approved this bill, and the Governor enacted it as the New Jersey Housing Finance Agency Law of 1967. The major components of the statute, although complex, are of importance to the contents of this report. The Commission therefore has included the following summary of its details:

The Five-Member Agency

The act creates a five-member agency, with the Commissioner of the Department of Community Affairs (DCA) as an ex officio chairperson and chief executive officer. The State Treasurer and Attorney General are also designated as ex officio members, the other two members being residents of the State appointed by the Governor with the advice and consent of the Senate. Staggered three-year terms are set for the Governor's appointees, who are not compensated. Surety bonds in the amount of \$50,000 for the agency treasurer and \$25,000 for each of the other members are required before issuance of any obligations. Thus secured, the agency is empowered to authorize mortgages, temporary loans and advances in anticipation of permanent loans, to issue bonds, bond anticipation notes and other obligations, all without pledging the faith, credit and taxing power of the state.

Qualified Housing Sponsors

Housing sponsors who may apply for loans include corporations qualified under the "Limited-Dividend Non Profit Housing Corporations or Associations Law" (P.L. 1949 Chapter 184, C.55:16-1 et seq.); the "Urban Renewal Corporation and Association Law of 1961" (P.L. 1961, Chapter 40, C.40:55C et seq.), and Titles 14 and 15 of the Revised Statutes; or any formed under the "Horizontal Property Act" (P.L. 1963, Chapter 168, C.46:8A-1 et seq.), provided such corporation or other entity has as one of its purposes the construction, rehabilitation, or operation of housing projects.

Preliminary Requirements

The HFA accepts loan applications for processing on forms furnished by the agency only after a municipality has adopted a resolution of need for moderate income housing projects and filed a certified copy with the secretary of the agency. First priority is given to construction in connection with urban renewal programs, with further consideration of the comparative need and available facilities in an area, the applicant's performance ability and eligibility to make payments in lieu of local property taxes. Payments in lieu of taxes may equal up to 20 percent of the estimated annual gross revenue from the project. The HFA is empowered to make loans for periods up to 50 years, covering up to 90 percent of the agency-determined total project cost. Not-for-profit and mutual housing projects may have 100 percent financing with the requirement that project ownership not be transferred prior to repayment of 10 percent of the original loan. A sponsor or contractor must post labor and materials and construction performance surety bonds. The agency must set limits on the fees and profits of a development team and limit a sponsor's return on investment to 8 percent per year. Sponsors must agree to certify the actual project cost at project completion and apply any overpayments to reduction of the loan principal. The prevailing wage rate, as determined by the Commissioner of Labor and Industry, must be paid to workers on a project.

Powers over Projects and Sponsors

The agency is empowered to inspect a project without notice, order changes, repairs and compliance with all rules and regulations, prescribe accounting practices and reports, and enforce agreements by court action between a sponsor and the agency and with a municipality. The agency may remove and replace all directors and officers of a sponsor who violates agency rules, regulations or agreements. No reorganization of a sponsor can be effected without HFA approval. The HFA must also be a party to any foreclosure proceeding, and in any other action there can be no sale of real property of housing projects except upon 60 days' written notice to the agency.

Tenant Categories, Income Provisions

The act directs the agency to implement rules and regulations providing priority categories for applicants and to insure that the entry level tenants' family income does not exceed six times the annual rental or carrying charge, or seven times the annual rental when there are three or more dependants, to a maximum of \$32,100. (The dollar amount is subject to change by HFA regulation). The agency or sponsor may terminate the tenancy of families whose income exceeds 25 per cent of the prescribed amount for six months with reasonable notice or may levy a graduated surcharge fixed by the agency. The threshold for a surcharge is 125 per cent of maximum income. Surcharges are generally added to the "in lieu of tax" payments to the municipality.

Agency Funding Resources

The act contemplated various sources of funding for HFA-sponsored housing projects, including state appropriations, federal grants and guarantees, joint loans by the agency and private lenders and other charges, fees, revenues earmarked by the agency. In addition, the HFA is authorized to issue bonds, bond anticipation notes and other obligations, under terms set by the agency by resolution. Resolutions may include pledges of agency assets, establishment of reserves and sinking funds, limitations on issuance of additional obligations, limitations on use of proceeds, procedures for amendment of contracts, trust agreements and any covenants that are not inconsistent with the act.

Housing Finance Fund

The Housing Finance Fund mandated by the act consists of moneys appropriated by the State for inclusion of proceeds of sales of bonds. Also included in this fund are other obligations required by resolution for deposit in the fund and any other moneys transferred to the fund by the agency. The fund is to be used for principal and interest payments and retirement of bonds and other obligations as they mature, and excess funds may be used for early redemption as long as a required minimum capital reserve is preserved that is sufficient to meet all principal and interest payments and to retire all obligations maturing during the next calendar year. Excess interest may be transferred to other agency funds. Shortfalls in the reserve are to be certified yearly to the Governor by the agency chairperson for inclusion in the annual budget message to the Legislature. Funds provided by departments or agencies of the federal government are to be received by the state treasurer and credited to the Housing Finance Fund.

Housing Development Fund

The agency is directed to establish a Housing Development Fund to make non-interest advances to not-for-profit or mutual housing sponsors to defray development costs. Funding is derived from state appropriations, repayment of advances and other funds designated by the agency.

Protection for Bondholders

To protect bondholders, the State pledges not to interfere with the agency's ability to meet its obligations, not to alter its rights and powers, nor modify tax exemptions until the obligations to holders are satisfied. Bonds and other obligations are exempt from taxation except transfer, inheritance and estate taxes. The agency may obtain insurance or guarantees of payments of principal and interest from the federal government.

Other Assorted Powers

The act endows the agency with assorted powers to adopt by-laws, an official seal and rules and regulations; to maintain offices anywhere in the State; to sue and be sued in its own name; to conduct examinations and hearings in public or private hearings, to issue subpoenas and to apply to any court to have non-complying witnesses held in contempt. The HFA may also acquire or dispose of or encumber any real or personal property with or without public bidding, make contracts, receive contributions from any source, insure property, modify contracts with sponsors and holders of obligations within the terms of their agreements, and to charge fees making itself self-sustaining. In addition, the HFA must encourage research and demonstration projects to develop new and better means of increasing the supply of low-cost housing.

Conflict Prohibitions

The act forbids any member or employee of the agency from having or attempting to have a personal interest in any project. Any violator of this provision is subject to a five-year ban on public employment in New Jersey and to prosecution as a disorderly person. An attempt to obtain financial aid or project occupancy by false or misleading information is made a misdemeanor.

Initial Amendments

The first amendments (P.L. 1967, Chapter 247) made technical corrections to the act and incorporated suggestions of bond counsel to promote an advantageous position in the market place for HFA bonds. Section 34 (p) was bifurcated, allowing the agency to invest moneys of the agency not immediately required for disbursement in certificates of deposit secured by obligations of the United States or New Jersey, and also moneys in the sinking funds, reserve funds and Housing Finance Fund in obligations of, or obligations whose principal and interest payments are guaranteed by, the United States or New Jersey. Section 34 was amended again in 1969 to allow the agency latitude to invest any moneys not required for immediate use, including sinking funds, reserve funds and the Housing Finance Fund, in certificates of deposit secured, or with principal and interest payments guaranteed, by the United States, or secured by obligations of the state. The Legislature also authorized the delegation of all functions, powers, and duties of investment and reinvestment to the Director of the Division of Investment, at the request of the agency accompanied by written directions signed by an authorized officer.

A year later technical corrections were made to the definition of qualified housing sponsors by P.L. 1970, Chapter 32, and the definition of eligible sponsors was enlarged to include condominiums formed under the "Condominium Act" (P.L. 1969, Chapter 257, C.46:8B-1).

Other Amendments

Qualified sponsors for the first time were allowed to seek loans for financing or refinancing of partially or fully completed projects, whether occupied or not, under a 1975 amendment. Such projects must still meet all requirements of the act except compliance with prevailing wage rates to be paid construction employees as established by the Commissioner of Labor and Industry.

A 1976 amendment gave the HFA increased discretion in handling fees and charges and appropriated \$4.558 million to support bond sales for retirement of bond anticipation notes. Excesses above the local municipalities' share of surcharges paid by families whose incomes exceed admission levels for projects financed prior to January 1, 1973, were to continue to be paid into the Housing Finance Fund securing the bonds issued to finance the project. For later-financed projects, the surcharge excess was to be paid to the agency.

The amendments authorized the agency to set up Housing Finance Funds to secure bonds and other obligations of the agency, not only bonds issued under a General Housing Bond Resolution. This departed from prior agency practices of depositing all fees and charges from all projects, regardless of which resolution authorized the bond sales, in the General Fund which is pledged to holders of bonds issued under a General Housing Bond Resolution. Later in 1976, an amending Chapter 133 established the Mortgage Assistance Account of \$8 million, consisting of funds derived from sales of State Mortgage Assistance bonds, repayments of loans and advances from the Mortgage Assistance Fund, and other departmental funds from any source allocated by the Commissioner of DCA to this fund. The State Treasurer was also authorized to maintain any future financial grants from the federal government in this fund. The act approved the transfer of \$6 million to the HFA for reserve funds to assist in providing permanent financing for developments. Another \$2 million was authorized to provide financial stability for senior citizens in low and moderate income family projects. Chapter 133 also authorized additional loans (e.g., second mortgages) to qualified housing sponsors to avoid a default where it is in the best interest of the agency and its bondholders to do so. Another appropriation for HFA and a supplement to the original law was embodied in P.L. 1977, Chapter 104. This appropriated \$4 million from the Mortgage Assistance Fund to DCA for use in construction and financing assistance to enable projects with a conditional mortgage commitment from HFA to achieve financial feasibility and stability.

In 1978, Superior Court invalidated a tax exemption resolution for a proposed Weehawken project and endangered a pending \$130 million bond sale. The Legislature responded to this court decision by enacting P.L. 1978, Chapter 122, which confirmed that each existing and future HFA low and moderate income project "facilitates the clearance or redevelopment of blighted areas within the state and assists in the prevention of blight", obviating the need for a formal local designation of blighted areas. At the same time, Section 30 of the law was

amended so that tax exemption agreements coupled with in lieu of tax payments expire when a project's mortgage is repaid in full to the agency, with in-lieu payments agreed to before substantial completion of projects being limited to the amount of tax on the site for the year preceding the recording of a mortgage.

In 1979 the section pertaining to tenant admission standards was amended, allowing projects financed by agency mortgages insured or guaranteed by the federal government the flexibility to adopt the federal programs admission requirements (P.L. 1979, Chapter 74).

The HFA has had four executive directors during its 13-year tenure. Thomas A. Seesel was appointed as the first chief administrative officer soon after the agency's initial guiding board -- DCA Commissioner Paul N. Ylvisaker, Attorney General Arthur J. Sills, State Treasurer John A. Kervick, and Lester V. Chandler and Verne S. Atwater, the gubernatorial appointees -- took office. John P. Renna succeeded Seesel in 1970, followed by William L. Johnston as acting executive director in 1974 and as executive director in 1977. In mid-1979 Johnston resigned and was replaced by Bruce G. Coe. The agency board currently (1981) consists of DCA Commissioner Joseph A. LeFante (chairman), Attorney General John J. Degnan, Treasurer Clifford A. Goldman, and gubernatorial appointees Richard B. Rivardo (vice chairman) and Rev. William J. Linder.

FUNCTIONING OF THE AGENCY

Organization

The HFA comprises seven divisions under three assistant executive directors. The Management and Development (formerly Operations) divisions are the responsibility of Joseph Chieppa. The Administration division reports to Robert Johnston. The Policy Development and Intergovernmental Relations divisions are under Kathleen Okenica. Technical Services is headed by Robert Lee. The Finance division is headed by Mathew Raftree. Lee's and Raftree's status is similar to that of the assistant executive directors and they also report directly to the executive director.

The Administration division, which was created recently under Executive Director Coe, and which was previously an informal function of the Finance division, does the agency's general administrative work. This includes purchasing, payroll, budgeting and development of formal job descriptions. The Development division is charged with assuring the feasibility of proposed projects and monitors projects from application through mortgage closing. The Finance division audits projects and construction loans and handles general financial duties at the agency. Its responsibilities no longer include administrative functions. The Policy Development division handles the agency's legal work and reviews project development team contracts. The Management division concerns itself with the administration of projects from the time they are substantially completed. It must assure that a project is properly

finished, oversee rent-up procedures, administer subsidies and monitor a project's own management. This division's responsibility no longer includes audits of project books. Technical Services reviews a development team's technical submissions and conducts site inspections to insure the structural and site integrity of each project. Intergovernmental Relations division serves as legislative liaison for the agency, providing studies and information to support the agency's official reaction to legislation that might affect it. It includes a public affairs office. This division also is involved in the DCA's demonstration grant program and researches subsidy programs.

The internal organization of the HFA was more loosely structured during most of William Johnston's tenure as the agency's top official -- the period primarily scrutinized in this report. From 1974 until February, 1978, the executive director operated through a deputy executive director and five divisions -- technical services, management, research, operations and finance. From early 1978 until shortly before Johnston left, the allocation of executive responsibilities became more precisely defined. Three assistant executive director positions were created. One of these posts was responsible for technical services and legal activities, another for finance and research and the third for operations and management.

Project Processing

Processing of projects begins with the filing of a site inspection request, which is the initial application to HFA by a sponsor or a loan consultant on the sponsor's behalf. This request is accompanied by a site inspection fee of \$500 for limited dividend sponsors or \$250 for nonprofit sponsors. The site is evaluated by Operations (now Development) and Technical Services divisions whose personnel visit sites and file inspection reports. A letter of conditional site approval is issued to a sponsor whose project site meets agency standards subject to a later land valuation.

To advance beyond this point, a sponsor must either testify that a municipal Resolution of Need is on file at the HFA or procure one. Once conditionally approved, a site must be appraised. For this purpose, exhibits consisting of a site location map and neighborhood plan, a plot plan or survey, evidence of site control in the form of title or option agreements, and of compliance with zoning ordinance and zoning map must be submitted. Also before a site is appraised, a \$1,000 appraisal fee must be paid. This is considered a mortgagable expense.

A prospective nonprofit sponsor files a Preliminary Determination of Nonprofit Sponsor Eligibility form and an application for a preconstruction development (seed money) loan. Other sponsors file a Certificate of Limited Dividend Sponsor Developer form. Both types of sponsors file a Certificate of Interested Parties, architects' qualification form (by the architect), the federal HUD-required forms if the project is to be federally assisted, an urban renewal plan if the project is located in an urban renewal area and a certification by public utilities of the availability of service. A proposed loan

consultant or project planner must also file his resume with the HFA. The agency evaluates a project, utilizing its site appraisal and a consultant's report to generate a preliminary project evaluation report. A project concept is established by the HFA and the sponsor.

The formal application for project approval consists of eight forms which document the project parameter and the qualifications of the development team. These forms include: Sponsor's loan application, Site Data, Certificate of Developer, Certificate of Principal, Certificate of Contractor, Multi-Family Housing Experience of Attorney, Real Estate Experience of Loan Consultant, followed by certain miscellaneous forms, and finally a Form 10 containing the important Financial Estimates. These must be accompanied by the following exhibits: Three sets each of schematic drawings and outlined specifications, test borings, topographic site survey, preliminary title report, land disposition contract for urban renewal sites, two copies of HUD land appraisals for urban renewal sites, one draft of a proposed Certificate of Incorporation and proposed corporate By-laws, and the resume of the proposed rental agent. Provisional project approval is granted based on these submissions and the review of the loan consultant, architect, attorney, test boring and surveying contracts.

After provisional approval is granted a sponsor files a certified copy of the local tax abatement resolution, preliminary design drawings and a certified survey and legal description of the site. The general contractor's financial statement is recertified and a construction cost proposal is presented to the agency. The terms of the construction contract are fixed and letters showing the authorized signatures of general contractor and sponsoring corporation, association or partnership are filed. Before a mortgage commitment is granted, Form 10's financial estimates are recertified. The technical services and operations divisions sign off on the project. A mortgage commitment resolution is drafted and the Executive Director presents his findings and recommendations to the HFA board.

When the commitment resolution is passed, the sponsor is notified. The commitment may have conditions attached which must be satisfied before a mortgage closing. The HFA approves the rental agent and management agreements and the sponsor and rental agent are required to submit a fidelity bond. The general contractor must post a payment and performance bond and submit a construction schedule, trade payment breakdown and local and state building permits. The architect submits final working drawings and specifications.

The project is ready to close when the sponsor files the deed, a mortgagor's affidavit of title, a corporate resolution to borrow and enter into a construction contract, a contractor's subordination to a lien of mortgage, a uniform commercial code security agreement and a financing statement, and an executed agreement for payments in lieu of taxes.

While a project is under construction, the contractor submits monthly requisitions for payments based on work as completed. The HFA field representative must approve these requisitions before they are paid. The agency must approve all plans and construction change orders. Ten percent of each payment to a general contractor is retained to protect the agency from a default by the contractor. When a project is 50 percent completed, the agency may, in its discretion, cease further retainage of a contractor's requisitions, resulting in a 5 percent retainage on the project as a whole. The retainage is released to the contractor only after cost certifications are completed. An HFA management representative is assigned to a project from six months to a year before rent up or occupancy to oversee the project, including its rental procedures, its management and its financial records. A periodic review of financial and management actions and records continues throughout the life of a project.

Where joint processing between HFA and HUD occurs, the sponsor deals with the state agency only. HUD notifies the HFA of the amount of available funds from either or both of HUD's Newark and Camden offices. The state agency is required to advertise the amount of subsidies available. Suitable projects in the pipeline at the agency are also considered for subsidy allocations. When HFA's field processing of a project has progressed to a point where sufficient information is available, it files a HUD set-aside application to have subsidy funds allocated to the project. This application contains certifications that HFA has made a public announcement that a set-aside has been allocated from HUD's appropriate area office and that a need for these dwelling units exists in the municipality and that the project will complement the allocation program of the area office. HUD reviews the application and makes its own determination of need. HUD sends the HFA a letter of "Notification of Application Approval," commonly called a "reservation."

Subsequently, the HFA and/or HUD initiate staff and federal environmental clearances and the HFA submits the project proposal to HUD. The proposal identifies the owner, developer, builder and managing agent and contains a neighborhood map, description of the area's racial composition, estimated date of construction completion, sketches and drawings for the project, and affirmative action fair housing market plan, details of the rents, the term of the contract and numerous other certifications. HUD reviews these certifications and submissions and, if approved, notifies the HFA by means of a Notification of Approval, which may be conditioned upon fulfillment of applicable requirements.

Following this approval notice, HFA's Technical Services division submits certification of minimum property standards and completion of design drawings as well as a design and construction report. The HFA submits the Annual Contributions Contract to HUD in quadruplicate with a copy of the agreement to enter into a housing assistance plan executed by the HFA and the project owner. HUD ascertains that rent levels are acceptable and that there have been no substantial changes in the plans since initial approval. It then signs off and construction begins.

HUD's Section 236 subsidies are determined at the beginning of a mortgage and remain constant throughout the life of the mortgage. These subsidies are calculated as the difference between the debt service computed at a 1 per cent interest rate and debt service computed at the going interest rate. The sponsor/owner pays the debt service at the 1 percent rate and the subsidy payments make up the difference between that and the going rate of interest. While Section 236 subsidies are no longer being allocated, previous authorizations are still being honored. A project receiving HUD's Section 8 subsidies certifies the income level of its tenants yearly. Tenants pay 25 percent of their income toward rent and HUD makes up the difference between their payment and the approved market rent. Residents in Section 236 housing may also qualify for Rental Assistance Program payments from HUD. These payments flow directly from HUD to the sponsor and are not administered by the HFA. The sponsor does file a copy of his application for such payments with the HFA's management division.

AGENCY FINANCIAL OPERATIONS

Cash Flow

The Legislature appropriated \$50,000 in 1967 to finance the start-up of the HFA. Further funding for the agency has come from its own fees and other charges in connection with individual projects, making the HFA largely self-sustaining as envisioned by the Legislature not only when it approved the HFA law in 1967 but also when it enacted the 1968 and 1976 Bond Assistance Acts that "loaned" \$37.5 million to the HFA.

The 1968 act made \$12.5 million available to the HFA. Of this, \$3,757,000 was used to fund second mortgages, \$1,448,050 for grants and \$7,228,000 for investment funds. Of the \$25 million from the 1976 act, \$13,461,663 was allocated to second mortgages, \$2 million was specifically earmarked for Camden's Northgate project, and \$2.5 million was allotted to neighborhood preservation. Another \$6 million was placed in a contingency fund in support of an agency bond issue for funding a list of projects including the Mansions rehabilitation project at Pine Hill in Camden County. A sum of \$1.1 million was earmarked to complete the Mansions project and the remaining \$4.9 million was to be returned to the State Treasury when the last project funded by the 1976-aided bond issue was completed. These and additional funds are being returned to the State through DCA as individual projects make payments on their second mortgages. (Of the 36 projects with second mortgages funded by the 1968 and 1976 acts, only five are making payments).

The Legislature gave the agency considerable latitude in project funding methods. In the early stages of the HFA, it funded projects through the use of bond anticipation notes (BANs) and construction loan notes (CLNs). Both are interim financing mechanisms prior to bonding. After construction of such projects was completed, the agency permanently financed them through bond sales. When CLNs and

BANs came due before a project was ready for bonding, the HFA would roll over the short-term debt via a new short term issue.

A project financed by construction loan notes had permanent financing commitments from the Government National Mortgage Association (popularly known as "Ginny Mae") before the HFA consented to construction period financing. At the end of a construction period, the project had a Ginny Mae "take out" and the HFA, therefore, ceased its connection with it.

BANs differed from CLNs in that they were sold under the pool concept for projects the HFA itself would permanently finance. The agency sold the BANs and retained the money until mortgage closings occurred for BAN projects. After a standard closing, funds would then flow to institute project construction. When a permanent sale was completed, the agency would use long-term bond money to pay off the BANs as they came due.

In the mid-1970's short-term financing became increasingly difficult. Agencies in New York and Massachusetts were stricken by financial crises, a moratorium on federal housing subsidies was imposed and general economic conditions led to a corset-tight money market. The HFA responded by eliminating--despite these prevailing conditions--its short-term debt, focusing instead on long-term bond financing. These long term issues were so successful that by 1976 the agency had developed a receptive market for its bonds.

The agency's first lead underwriter and senior bond issue manager was Dillon Reed & Co., Inc. (Dillon Reed). In 1971, when the agency's first bonding activity began, Smith, Barney, Harris, Upham (Smith, Barney) became a syndicate participant. In 1972, Smith, Barney became a managing underwriter. The management team for its May, 1972, bond sale consisted of Dillon, Reed; Smith, Barney; and Soloman Brothers. For the November 1972 sale Dillon, Reed and Smith, Barney were augmented by Blythe, Eastman, Dillon & Co. and L.F. Rothschild & Co. In 1973 Smith, Barney was appointed as senior manager in place of Dillon, Reed, and the management team consisted of Smith, Barney; Dillon, Reed; Blythe, Eastman; Merrill, Lynch, Pierce, Fenner and Smith (Merrill, Lynch); First National State Bank; Kidder, Peabody & Co.; and Rothschild. In November, 1975, Dillon, Reed was moved down as a participant in the syndicate and ceased to be a managing underwriter. The firm of Bache, Halsey, Stuart was added in May, 1976. The only subsequent change came when Kidder, Peabody was removed in 1979 to avoid any appearance of a conflict of interest that might result from the appointment of Coe, a former Kidder, Peabody employee, as the agency's executive director.

Two firms have served as bond counsel to the agency. Mudge, Rose was bond counsel from the agency's outset. The HFA in 1975 solicited proposals from other firms and chose Sykes, Galloway and Dikeman, which later changed its name to Wilkie, Farr and Gallagher. It continues to serve the agency as bond counsel.

All HFA bond, BAN, and CLN sales have been negotiated through the agency's underwriters rather than being subjected to competitive bidding. During and since Johnston's tenure, the agency negotiated bond sales with its senior manager, Smith, Barney. The pattern for these sales follows a traditional course. As investment banker and manager, Smith, Barney files a financial plan outlining the alternatives, the current market conditions and forecast. The plan is sometimes presented orally and is geared to any significant changes in the market. A few months prior to a bond sale, the HFA contacts Smith, Barney and informs the firm that it is interested in issuing bonds. This notice includes an assurance that mortgage commitments have been voted by the agency board and that all agency statutory and regulatory criteria have been met by the projects to be financed.

The senior manager then decides the best structure for the issue and puts together a team, including underwriter's counsel, the document printer, the underwriting syndicate, etc. The necessary information, including bond counsel's opinion of the tax status of the bond, is gathered and the information package is sent to the rating services. The preliminary official statement is drafted by the senior manager. A resolution is passed for each individual bond sale and the marketing period begins.

During this period, meetings are held and information is exchanged between the syndicate members and agency personnel. The officials in charge of agency management, development, legal, research and technical services functions and the agency's comptroller, along with the agency's accounting firm of Peat, Marwick and Mitchell (now Touche Ross & Co.) have been involved in the process in the past in answering underwriters' questions about projects. A sales memorandum, including typical questions of investors and sample responses, is circulated to syndicate members for use in testing the market. Based on the results of the underwriters' survey of investors and of general market conditions, the issue is priced.

The underwriters present their price proposal to the agency, and a purchase contract is prepared but not signed until all parties are positive the sale will go through. The official statement, or prospectus, is prepared by the senior manager. When the contract is signed, the agency receives payment from the senior manager and delivers the bonds to it. These bonds are then sold to investors.

The price of a particular bond issue depends on several factors. It consists of the highest price at which the syndicate believes the bonds may be reoffered to investors and the gross spread. The gross spread is a total of the take down, management fee, underwriters' fee and concession fee.

The management fee, as its name implies, compensates the managing underwriters for their efforts. The underwriters fee covers the syndicate members' expenses for underwriting the issue and fee for assuming the risk of non-sale. The calculation of risk is based on the condition of the market and the "unsold." The unsold is the number

of bonds that the underwriters were unable to develop a tentative commitment for while canvassing the market before committing itself to the sale. The take down is the commission for selling the bond, and the concession fee is the allowance available to induce sales by discounting the bond. The largest part of the gross spread is usually the take down.

The timing of the sales is directed by a vote of the HFA board. Presently, Treasurer Goldman, the board member most knowledgeable in this area, maintains substantial contact with the senior manager throughout the development phase. As a result, when the senior manager firm suggests a time to go to market, the agency generally approves its suggestion if Goldman concurs.

When the bonds are sold to the underwriters, the bond sale proceeds may go into five funds: (1) Housing Finance Fund, (2) Debt Service Fund, (3) Construction Fund, (4) Paying Agents Fund, and (5) Agency Trust Fund.

The Housing Finance Fund is required to have funds equal to the principal and interest maturing during the fiscal year. An amount necessary to restore the fund to this level including the just sold bonds is transferred from the proceeds into the fund. Accrued interest on bonds is transferred to the Debt Service Fund to pay the principal of bonds coming due and interest coming due. When needed, funds are also transferred from the Housing Fund into the Debt Service Fund.

The total amount of mortgage money committed to the various projects included in the bond series is transferred to the Construction Fund. These funds are segregated in Project Mortgage Loan Accounts according to the particular projects being funded. Periodic advances are made to nonprofit sponsors totalling 100 percent of approved project costs, and to limited dividend sponsors totalling 90 percent of approved costs. Amounts stated, if any, for the Paying Agents Fund are used to fund notes or other obligations of the agency previously incurred relating to mortgage loans.

The balance of the bond proceeds go to the Agency Trust Fund. Interest earned on Construction Funds is invested and any funds remaining after projects are completed also go into this fund. The Agency Trust Fund makes monthly payments to the Debt Service Fund, restoring its balance to the accrued debt service as of the first day of the following month. (Where insufficient, the Housing Finance Fund supplements these payments). If necessary, a monthly payment is made into the Housing Finance Fund to restore that fund to the required balance. Funds may be transferred from the Agency Trust Fund into the agency's administrative accounts.

Auditing

The HFA's enabling legislation provides adequate agency access to project records for auditing. In practice, audits have been limited in scope and number. The HFA does both cost certification reviews upon

project completion and project management auditing.

Although the agency currently has five auditors in its financial division, it has had a shortage of trained auditors throughout most of its existence. In 1975 it had one management auditor, with responsibility for rewriting the accounting manual, developing new internal audit and control programs for projects, and doing project audits. Peat, Marwick, and Mitchell in 1976 and 1977 brought the need for additional staff to the agency's attention. In 1978 the management auditor was promoted to Chief Management Auditor with a staff of two auditors. However, the new staff remained focused on obviously troubled projects that were having difficulty in making required payments to the agency, were failing to file monthly reports, or were requesting rent increases. In February, 1979, the Chief Management Auditor's title changed to Chief Management Analyst for subsidy administration. Project auditing functions were transferred to the Finance division.

In addition to the shortage of auditors, the agency's limited audit objectives made more difficult the identification of problem projects. The classic CPA approach to auditing assumes there is no fraud in the records being audited, and is geared toward certifying that the financial statement fairly presents an actual picture of the entity's finances as reflected in its books. The HFA has adopted this traditional approach and has not made the identification of fraud a specific objective of its audits.

GLOSSARY

Bond Anticipation Notes (BANs):

Short term instruments of indebtedness, usually one year in duration, issued with the same formalities as a long-term bond, but usually at a lower interest rate. BANs may be rolled over when due. These were used by the HFA extensively before 1976.

Bond Counsel:

Special counsel hired by the agency to render an opinion as to the validity and tax-exempt status of the bonds.

Concession Fee:

Allowance firm selling bond has to induce sale by discounting.

Construction Loan Notes (CLNs):

Bond anticipation notes issued to finance construction of projects that have ginny mae permanent financing. These cannot be rolled over beyond the actual construction period.

Direct Sales:

Private placement of bonds to fund projects with local banks in the community that will encompass the project site.

Gross Spread:

Total of take down, management fee, underwriters' fee, concession fee.

Investment Banker:

Dealer or dealer bank which purchases bonds from the issuing municipality or agency and sells them to investors, with responsibility for getting the best possible terms for each.

Management Fee:

Fee to managing underwriters for duties involved in managing the sale.

Managing Underwriters:

The group of underwriters within the syndicate who organize the sale, hold the meetings, and set the price, in addition to selling bonds.

Preliminary Official Statement:

Also known as the "red herring," this document includes the basic investment information about the bond issue, except price.

Prospectus:

Official statement including the investment information on the bond issue to be relied on by investors.

Roll Over:

Selling a short-term instrument of indebtedness to pay another short-term debt as it matures.

Senior Manager:

Co-ordinator of the bond issue. The senior manager structures the sale, gathers the team, acts as liaison between the syndicate and the agency, oversees the preparation of necessary documents.

Syndicate:

Group of underwriters who sell the bonds to investors after purchasing them from the agency.

Take Down:

Commission for selling bonds. The profit. Usually the largest part of the gross spread.

Take Out:

One entity taking over the permanent financing of a project.

Underwriter:

Buys the bonds from the issuing agency and resells them to individual investors. It guarantees to the agency that all the bonds will be sold.

Underwriter's Counsel:

Counsel hired by the underwriting syndicate to advise on the tax exemption status and legality of purchase by various prospective buyers.

Underwriter's Fee:

Covers expense of underwriting issue and assuming risk of unsold bonds.

Unsold:

Number of bonds not committed after underwriters canvass the market with the red herring. Although uncommitted when underwriters agree to handle the sale, generally are committed when actual sale occurs.

HFA'S HOUSING ACHIEVEMENTS

Paradoxically, despite the internal mismanagement and misconduct documented by the SCI in this report, New Jersey's HFA has been a widely acclaimed success as a housing promoter. Even in the face of a prolonged series of official probes and media critiques, its reputation as one of the most effective HFAs in the United States has remained intact. However, the agency's achievements, coupled with the sensitive nature of its multi-million-dollar bond market and project transactions, tended until recently to obscure warning signs of serious operational instability. The Commission believes this report, which includes constructive proposals to improve the agency's operations, will generate increased public confidence in the HFA.

The HFA's record of achievements during the past 13 years in the development of low and moderate income housing is self-evident.

Since its inception in 1967, the agency has sold more than \$1 billion worth of tax-free housing bonds at favorable interest rates under frequently adverse market conditions. Such public offerings have funded 145 projects with mortgages totaling \$978,206,400. These projects have eased severe housing shortages, particularly in urban areas, to the extent of 28,126 dwelling units in 71 municipalities in 17 of the state's 21 counties. The production output, as of October 1, 1980, has consisted of 89 projects with 14,713 dwelling units for senior citizens, 50 projects with 10,452 units for families other than senior citizens and eight projects with 2,961 units for a mixture of these two groups. The latest HFA occupancy estimates indicate that some 77,000 low and moderate income tenants are residing in 26,140 dwelling units in 132 completed projects.

Aggressiveness in tapping available federal subsidy funds and in promoting public investment in its bonds has been an agency characteristic from the outset. In fiscal 1968, its first full year of operation, the agency was able to commit permanent financing for two projects to the extent of \$6,175,000 in mortgage funds. During each of the following two fiscal years five projects went to mortgage closings. Eleven more gained final commitments in 1971.

Such progress in its formative years quickly fostered a favorable image of New Jersey's HFA that became a highly supportive factor in the agency's continuing production during the financially troubled 1972-1976 era. In 1973 the federal government imposed a moratorium on housing grants, the life-blood for HFA-type of project funding. Spiraling inflation and the onset of the energy crisis ballooned construction costs for projects in process and maintenance costs for projects in place. The collapse of many real estate investment trusts, chaos in the municipal bond market and a general economic recession combined to undercut investor confidence. The New York State Urban Development Corporation defaulted in early 1975, followed by the widely publicized funding crisis at the Massachusetts HFA. It was during this period of economic adversity that the absence of managerial checks and balances, the intrusion of unsavory outside pressures and the failure to adequately watchdog a highly autonomous operation spawned many of the questionable decisions and transactions at the agency that are a target of this SCI report.

Nonetheless, the agency managed to continue producing substantial quantities of housing. After 1972, when the HFA authorized about \$60 million in mortgages for 12 projects, it went on to commit permanent financing for an additional 41 projects with 8,267 dwelling units during 1973, 1974, 1975 and 1976. At a time of an unusually acute shortage of housing for the people it was specifically created to serve, the agency produced 22 projects with 4,125 dwelling units for senior citizens, 18 projects with 3,458 general family units and one project with 684 units for both groups. Since 1976, the HFA has provided permanent financing for 69 additional projects with 12,484 dwelling units.

After the federal government's Section 236 mortgage interest subsidy program was augmented by the more flexible Section 8 rental subsidies, the agency sponsored the first Section 8 project in the country. It floated the first uninsured 100 per cent Section 8 bond issue in 1976. Beginning in the previous November, it began to eliminate a backlog of \$247 million in short term debt, an objective that was achieved within 18 months. In 1978 the agency obtained the largest Section 8 subsidy awarded to any state housing agency, representing a 27 per cent increase over its 1977 subsidy allocation.

As the new executive director, Bruce G. Coe, noted in the agency's annual report for 1979, the HFA became for the first time a billion-dollar financing operation, having marketed a total of \$1,071,510,000 in long term obligations.

During 1979, the year in which the Commission's investigation commenced at the Governor's direction, the HFA's new leadership inaugurated a number of administrative and operational improvements. This represented at least the beginning of a transformation of a myth of internal stability into an actuality. The Commission hopes to significantly expand that progress through the implementation of many additional reforms directly related to the machinations at the HFA that are scrutinized in this report.

SECTION III

INFLUENCE PEDDLING - PART 1

INTRODUCTION

The Commission's investigation of the HFA disclosed that certain aggressive, politically connected housing entrepreneurs were able to have their projects aided through a combination of loose agency procedures, an authoritarian executive director in the person of William L. Johnston and, for the most part, a malleable staff.

The susceptibility of the agency to influence peddling, which became rampant during Johnston's leadership from the mid-1970s to the Spring of 1979, actually predated Johnston's return to the HFA in 1974 and his assumption of the executive director's post. The SCI inquiry revealed that James Canino of Englewood and Alvin Raphael of Tenafly (Raphael died in January, 1981) had been active in soliciting special favors for their West New York housing projects when John P. Renna, a Republican administration appointee, was executive director and Johnston was a subordinate but high-placed management official.

The investigation centered on the fact that certain sponsors and loan consultants were unusually successful at the HFA either because of political ties or of some favor owed to them or their associates by Johnston. In turn, whenever Johnston asserted his power over his subordinates at the agency, he was rarely questioned, even when his directives represented a marked departure from customary, or even statutory, procedure.

Thus, the natural course for the SCI in undertaking the HFA inquiry was to probe the reasons for Johnston's favoritism and for the reaction of agency personnel to his assertions of power. This report deals with both of these issues. In this section of the report, the SCI scrutinizes the exertions of influence by housing project sponsors Canino and Raphael, by loan consultant Jack Stein and by Daniel J. Horgan, the then assistant commissioner of the Department of Community Affairs and also at the time the executive director of the state Democratic Party. In Section IV of this report, entitled "Agency Atmosphere," the Commission addresses the many and varied instances of Johnston's -- and the agency's departure from accepted standards of integrity, credibility and propriety.

THE \$10,000 BRIBE OFFER

As sworn testimony at the SCI indicated, there was easy access to the agency office, and the director's suite, by project promoters during the final days of the Renna regime. One

witness, Stephen Hecker of West Orange, testified that he rejected an offer of a \$10,000 bribe in April, 1973, in connection with the Canino-Raphael Parkview Towers project in West New York but never reported the incident because he "would have been cutting my own throat." Hecker was a senior project manager at the HFA from 1970 to through 1974. He was one of the more qualified Renna administration's political appointees since his background included four years of experience in marketing tract and multi-family housing. He testified about the bribe incident as follows:

Q. During your tenure of time as Project Manager in Parkview, were you ever offered any money as an incentive to move the project along?

A. Once, yes.

Q. And what were the circumstances? Where did that occur?

A. In the lower floor of the H.F.A. at 101 Oakland Street, I think was the address.

THE CHAIRMAN: When?

THE WITNESS: Shortly after being assigned the project. No, I withdraw that.

Whatever the official date of the project being taken away from me. It was approximately two weeks before that.

THE CHAIRMAN: What took place? Describe it.

THE WITNESS: Mr. Canino came into my cubicle. The whole lower floor was divided into cubicles. He came into my cubicle. Mr. Raphael waited in the doorway, blocked the doorway, however you want to look at it.

THE CHAIRMAN: The door of your cubicle. How far away were these two men removed?

THE WITNESS: These cubicles, the total size was about four foot by six foot, very tiny, enough room for a desk and a chair and a filing cabinet.

Mr. Canino stood by my desk, and within two feet of him, [Mr.] Raphael blocking the doorway. And Mr. Canino they had the run of the Agency, up and down the hallways. They didn't have to sign in or anything. Mr. Canino told me -- he didn't ask

for my cooperation. He just made a simple statement that if I were able to give him cooperation and to move the project for him, that he would like to give me a present of \$10,000. My response was that he didn't have to do that because I was going to produce for him as I produced for everybody and I could not accept that.

THE CHAIRMAN: Both were within earshot of your remark and his remark to you.

THE WITNESS: Yes. Well, Mr. Canino was as close to me as the reporter and Mr. Raphael was another foot-and-a-half away from him.

Q. There was another -- there were more than one Mr. Canino connected with the Agency in some way. What was Mr. Canino's first name?

A. Jim. James.

Q. And Mr. Raphael's first name?

A. Alvin. I didn't know any other Canino.

Q. Did anything occur after your refusal to accept this offer?

A. Well, at that immediate moment of my rejection there was no, no untoward reaction by Mr. Canino. He, you know, he smiled and just took it as a matter of course, but within two weeks I was taken off the project.

THE CHAIRMAN: By whom?

THE WITNESS: The official act was done by Mr. Osborne.

THE CHAIRMAN: What position was he in?

THE WITNESS: He was either Chief of Operations or Acting Chief. I'm not positive of the time sequence. Mr. Corrado might have left the Agency then. He was attacked physically in the Agency. He might have been out by then, but I'm not really sure when he left. All I know for sure is that I received a letter from -- a memo from Mr. Osborne on May 1, 1973 reassigning me to Mr. Chieppa, Mr. Joseph Chieppa.

THE CHAIRMAN: What does that memo say? Is it short?

THE WITNESS: It's very short.

THE CHAIRMAN: What's the date on it?

THE WITNESS: May 1, 1973. It is to myself and Mr. Chieppa from Harris Osborne, re Parkview Towers.

"The above-captioned project is being reassigned to Joseph Chieppa. Please see to it that all the files are consolidated and turned over to Joe Chieppa." With carbon copies to Mr. Renna, Mr. Johnston, Mr. Feddish and Mr. Clark.

Mr. Osborne at the time told me that was Mr. Renna's decision with no official reason for it.

THE CHAIRMAN: Did you discuss it with Mr. Renna?

THE WITNESS: No.

THE CHAIRMAN: Did you discuss it with anybody but Mr. Osborne?

THE WITNESS: No. No, I felt I knew why and there was no sense in my discussing and getting onto thin ice.

THE CHAIRMAN: What can you attribute the move to?

THE WITNESS: My rejection of the offer, of the present.

THE CHAIRMAN: The \$10,000?

THE WITNESS: Right.

Hecker also told the Commission why he did not report the bribe offer to his superior:

COMMISSIONER PATTERSON: I believe you said you didn't report the offer of the ten-thousand-dollar gift to your superiors because you felt you had taken care of it by refusing the gift. Is that what you said?

THE WITNESS: Correct, yes.

COMMISSIONER PATTERSON: But you didn't take care of it that way because you got replaced. Did you assume when you got replaced as Project Manager on the -- on that particular project, that the new Project Manager had been offered this same gift or had been offered a gift.

THE WITNESS: Knowing the way that Canino and Raphael were able to throw their weight around the Agency, in and out at whim, at will, there was no question in my mind that at least an offer would be made.

COMMISSIONER PATTERSON: And you didn't feel at that point that you should report to your superior that an offer had been made to you? Obviously the result of your not accepting the offer had been your replacement as Project Manager.

THE WITNESS: No. Very frankly, I felt that I had been replaced because of my rejection of the offer, and and for all I knew they, Canino and Raphael, immediately went upstairs and spoke to the Director and implied for some reason that I had rejected an offer and, therefore, was dangerous and, therefore, I was taken off so I didn't have to deal with that.

COMMISSIONER PATTERSON: So the reason in the end that you didn't report the offer of the gift was that you felt that it wouldn't do any good to make such a report to your superior.

THE WITNESS: Absolutely no good.

COMMISSIONER PATTERSON: So you're also, perhaps, saying that you were pretty sure that your superior knew that a gift had been offered?

THE WITNESS: Either that a gift had been offered or, in my view, that such a close personal relationship existed between Canino and Raphael and Renna that I would have been cutting my own throat if I had reported that obvious bribe offer.

COMMISSIONER PATTERSON: I believe your testimony just a minute or so ago indicated that you thought it was likely that the gentlemen who offered you the gift had gone upstairs, as you put it, and suggested that you were not the right project manager because you hadn't accepted the gift?

THE WITNESS: Right.

COMMISSIONER PATTERSON: Is that what you said?

THE WITNESS: Yes, that's just what I said.

COMMISSIONER PATTERSON: And that's what you believe?

THW WITNESS: I believe that, yes.

THE CHAIRMAN: Now, why? What was the basis for your concluding that these two could go upstairs and talk to the head person of the Agency?

THE WITNESS: Because they seemed to have carte blanche to Mr. Renna's office at any --

THE CHAIRMAN: Over a period of time before this?

THE WITNESS: It started slowly. There had been originally, from what I could see, a semiantagonistic relationship between the two of them, between the three of them, but eventually they became very close friends, okay?

You know, when I say that, it was obvious. I mean things that all of us could see with our own eyes. You know, the constant friendship exhibited between them; the lunches, dinners and so forth that they went out together; the comradery shown between them in the Agency.

If one was an employee who wanted to stay an employee, one did not mess with that kind of relationship. They seemed to be able to get anything they wanted.

THE "GO" PROJECTS

A system by which certain projects' processing was advanced or problems were resolved by the executive director's personal intervention was imposed at the agency during Johnston's 1974-79 administration. Under this system, favored housing promoters received a "go project" rating by Johnston. An example of this policy was a memo exchange in September, 1975, between Joseph Chieppa, then operations director, and Johnston. Chieppa wrote: "To: WLJ re: Nevada Street - Newark - Is this a go project?" Johnston returned the memo with an encircled "Yes" handwritten on it. Upon receiving this response, Chieppa quickly relayed a copy marked "F. Y. I." (For Your Information) to the project manager.

Gary Anastasia, presently the director of the agency's operations division and a former project manager, testified at the SCI about his experience with "go" projects:

Q. Okay. Did you ever hear the term this is a "go-project"?

A. Yes.

Q. Did Bill Johnston have "go-projects"?

A. Yes.

Q. Can you remember any of Bill Johnston's "go-projects"?

A. The ones that I was assigned to, I can recall Maplewood Senior Citizens being a "go-project" and Old Oak Estates, the only two that I can recall off the top of my head.

Q. Of the ones you were assigned to?

A. Yes.

Q. You were in a pretty, fairly close-knit group of Project Managers during your tenure at the Agency, I take it, you got fairly close to Kaulakis, Klotz, various other Project Managers; is that fair to say?

A. Yes.

Q. You ever recall them telling you that they'd been advised that a project was to be fast tracked or a "go-project"?

A. I don't recall any specific conversations. I think we had general discussions which certain projects were moving faster than others.

Q. Did you ever get mad or frustrated or exacerbated being told to fast track or make a project a "go-project"?

A. At times, I did, yes.

Q. All right. Is it safe for me to assume that you would get upset being told that a "go-project" is a "go-project" where your opinion didn't comport with the opinion that it should be a "go-project"; if you understand that question?

A. Yes. Well, I generally got upset because I felt some other projects who were in processing gone longer.

Q. Deserved your attention?

A. Yes.

CHAIRMAN LANE: Let's have a definition of a "go-project"?

THE WITNESS: A "go-project" is one which we were advised how to priority for processing for commitment.

CHAIRMAN LANE: Were you advised the reasons for it having a priority or being given a priority?

THE WITNESS: It was indicated to us that it was -- it had a good responsive development team attached to it and it could get itself approvals much more quicker than a lot of non-profit projects because of the expertise of the people involved.

CHAIRMAN LANE: Good development team in what sense? Good in ability or good in influence or what?

THE WITNESS: Well, if they had the money available to hire people who could work rapidly on the projects such as architects and so forth.

CHAIRMAN LANE: That's the only good they were attributed to them; is that your understanding?

THE WITNESS: That was my understanding.

CHAIRMAN LANE: Just money?

THE WITNESS: (Witness nods his head in the affirmative.)

BY MR. SIAVAGE:

Q. Well, I'm not going to be argumentative, Mr. Anastasia. I'm not going to ask the reporter to read back your prior answer, but you told me before that a go-project, and what I defined as a "go-project", what Bill Johnston "go-project" as designed, Bill Johnston's "go-project" through your immediate supervisor or so, you were told this project is going to move because Bill Johnston says it is a "go-project" and has nothing to do, as far as you knew in the least with the outset of the feasibility of the development?

- A. Those were some of the reasons that were given to me as to why it was a "go-project" because these people could do it.

CHAIRMAN LANE: Now, what are some of them? I thought you gave us one. What are the others?

THE WITNESS: Well, by some, I meant money, and the ability to use that money to hire competent people to push the project through.

CHAIRMAN LANE: That's pretty speculative; isn't it? Sounds like that to me. How does one predict all that? Money and the ability to hire people could put it through -- what stage of the game these "go-projects" determined?

THE WITNESS: Some of them were determined fairly early in the processing from my recollection.

BY MR. SIAVAGE:

- Q. Doesn't that require quite a bit of guessing or predicting or certain predicting?

A. It is possible, yes.

- Q. Maybe even before you even know who this quality development team was comprised of, right?

A. That's possible, yes.

- Q. So, that since we don't know who the development team is now, we're kind of left with one reason; that is the reason being communicated that it was the boss' intent that this project be fast tracked, and you've been told that as Project Manager, have you not?

A. Yes, I was told that it was a priority project and to concentrate on it, yes.

CHAIRMAN LANE: But, again, when you were told that what reasons were given for it being a priority project?

THE WITNESS: Again, the standard reasons that it was a good site, that the development team was responsive, and it had where-withal to process it quickly. Those are the reasons that were given to me.

BY MR. SIAVAGE:

Q. All right. Maybe the problem is since you are answering me one way and then answering Commissioner Lane in another way --

A. I don't mean to, I'm trying to line them up.

Q. Maybe the problem is timing. Maybe you were given certain reasons by your immediate supervisor that were good and formal reasons, and you later found out that those were not the actual reasons.

Let me ask you whether that's a possibility.

CHAIRMAN LANE: Not a possibility, you mean in actuality.

BY MR. SIAVAGE:

Q. Yes, in actuality.

A. Whether I was told that the project was a "go-project" for these reasons and later on discovered that they were not really the reasons?

Q. Right.

A. Yes, I think that's what happened.

Q. I mean, the inconsistency that I see is that you're admitting to me on the one hand that you've been involved in projects that you know were "go-projects" because they were Bill Johnston's "go-projects", and then you are also telling Judge Lane that you were given good reasons that they were "go-projects".

So, I'm trying to find out which it is, and maybe it is both; but, if it is both, then you need to help us with your explanation.

A. I was never told directly by Bill Johnston that this was a "go-project".

Q. All right.

A. And it should be processed. I was told by my supervisor that this project was to receive a priority for processing.

CHAIRMAN LANE: Who was your supervisor?

THE WITNESS: At that point at that time it was Joe Chieppa.

BY MR. SIAVAGE:

Q. We're talking about Old Oak Estates and Maplewood?

A. Yes.

Q. And you have -- but, you were never advised of that by Bill Johnston, personally? Was it Chieppa in both cases that advised you?

A. Yes, he indicated to me that it was a priority case for processing.

Q. Did Chieppa also indicate to you that it was a priority project and he's been advised by Bill Johnston that it was a priority project?

A. I don't recall him specifically saying that Bill Johnston told him that, but that's the assumption.

Johnston and Marciante

Having received this information, the Commission examined both the Maplewood and Old Oak Estates projects. An entity known as LHS (Lerner, Horgan and Stein) was connected to the Maplewood project as the managing entity, and Charles Marciante, head of the State AFL-CIO and a close friend of Johnston, was a partner. Marciante was also a partner in the Old Oak Estates project. That project's loan consultant, John J. Lynch, testified that Johnston advised him the project would not move unless Marciante was part of it. Lynch's testimony on that subject follows:

Q. Did Mr. Johnston ever indicate to you that in order for a certain project to continue, the project would have to take on a designated partner?

A. He did on one occasion.

Q. Could you tell us about that occasion?

A. He didn't use exactly that language. It is the only situation that I had ever run into with him where he implied something other than the significant pressures that he gets from politicians. He would say he would get pressure from the board to push certain projects and the pressure would sometimes come from the governor and I don't know

how much of that was real and how much of that was fabrication.

In the early stages of processing Old Oak Estates, Sam Fruscione -- this was shortly after I became the consultant and, I believe, you are aware that I was not the consultant from the time that project started, Jack Stein was. After Jack Stein's death, I became the consultant on a call from Sam Fruscione who got my name from the list of housing consultants at the agency.

The indication or the way this whole thing developed was we were in the process of preparing documents for the agency, which would match their checklist of closing documents. One of the items was the disclosure forms of who the owners were. As we were submitting those documents, we had certain documents for HUD review.

Also, it required a signoff by everybody having a ten per cent or more interest in the project. That signoff would have to disclose any other projects that they happened to be involved in as an owner.

I went to Sam Fruscione, who was my contact as the owner, and told him we needed those forms signed, and worked with his attorney on making sure they were properly prepared. When we brought those documents in, so the initial processing with HUD could proceed, while I was in the office I was told by Johnston's secretary or by Gary Anastasia, who was our project manager at the time, that Johnston wanted to see me alone.

I went back and saw Johnston, and he said, "Have you brought in the forms indicating the ownership?" and I said, "Yeah." He said, "Who is on the form?" I said, "Sam Fruscione."

"Apparently, going to Syndicated later on. I can't believe he would need all that tax shelter himself. I assume it will be him now and Syndicated later."

He said, "That's not the way it was indicated to me when that project first came in."

He said, "It was indicated to me that Marciante would be one of the partners." He said, "Frankly, if he is going to start messing around by using Marciante's name to get more favored processing and now he is going to come in without Marciante and try to process that thing, he is going to have some problems."

He says, "You know, you just better let him know that he is going to have some problems. I don't want him making one representation and then coming in and making another representation."

I said, "I will tell him. I will tell him what you said."

He said that Marciante has experience as a developer, which Fruscione doesn't have and he is involved with other projects or project, but that that would be a prerequisite because of development experience for getting that project.

So I went back and saw Sam and I said, "Did you ever talk to Johnston about Marciante being involved in this thing?"

He said, "Yeah. I mentioned that in the beginning, but he said it was, you know, maybe he would; maybe he wouldn't. I didn't commit to it."

I said, "Well, it sounds like this project isn't going anywhere unless Marciante is part of the ownership."

Sam said, "If that's the way it is, that's the way it is." Subsequently that was Marciante and J.J. Pierson was the other owner and got their signatures on the forms and those forms were then submitted to HFA and the project is not built, but I think it did get favored processing. It is one of those things.

I always take people at their -- I always give everyone the benefit of the doubt and my reaction to it when Johnston said that to me, was that as a human being, he didn't want people processing with the agency, making one representation and then coming in and making another.

I thought it was kind of strange that Marciante would have any development expertise.

Q. Did you know Mr. Marciante?

A. Not until I met him in that meeting. We happened to be members of a group called the New Jersey Housing Forum, which is an organization which has one meeting a year,

one annual conference a year, and he represents the AFL-CIO, and I represent the New Jersey Association of Consulting Planners. It is a group of eighty or eighty-five people who represent various housing interested organizations around the state.

I never -- he wouldn't have known me if he fell over me. Except for that one meeting we had in his office to get his signature on the HUD forms --

- Q. But after talking to Sam Fruscione, you had a different opinion of what that conversation with Johnston meant?
- A. Sam didn't say in as many words, but I guess maybe Sam is more street-wise than I am. Sam knew he couldn't use all the tax shelter himself, and I guess he figured that that was the price of processing.

As with many of the projects which received priority treatment by the HFA staff, Old Oak Estates' progress through the agency was marked by inconsistent activity. On September 12, 1977, Vincent Pedicini, the project's manager, filed a site inspection report recommending that the project be denied because it was surrounded by industrially zoned land, because it was adjacent to Route 295 which would create severe noise problems, because the location was remote, and because there were no utility hookups. On October 6, 1977, however, Pedicini authored a letter accepting the site and suggesting that the problems alluded to in his site inspection report of September 12 could be ameliorated. Subsequent to Johnston's departure from the agency, this project was sold to the National Kinney Corporation.

Additional relevant testimony on the issue of "go projects" and fast tracking was supplied by Michael A. Kaulakis, now of Twin Peaks, California. Kaulakis had worked as a project manager at the HFA for approximately four and one-half years, from 1971 until 1976. He was one of the first staff members to realize that something was awry at the agency. Kaulakis, in conjunction with his supervisor, Harris Osborne, later reported their misgivings and the allegations eventually reached the Governor's office and were referred to the Attorney General. Kaulakis's testimony concerning project priorities follows:

- Q. Did you ever receive any input from any other party, including your immediate supervisor or someone else, with regard to prioritizing projects assigned to you?
- A. Oh, yeah, some were hot, some were known as hot potato; hey, man you got to handle this one right now, you got to do something on it, the guy wants action.

Q. Okay.

A. Do it.

Q. Did you ever receive that kind of indication from your immediate supervisor, Mr. Osborne?

A. Sure.

Q. Did Osborne, as a matter of act, confide in you from time to time?

A. Oh, yes, yes.

Q. Did he confide in you with regard to pressures that were brought to bear on him one way or the other?

A. Yes.

Q. What kinds of pressures did Osborne have on him, with specific regard to projects now, that he confided in you?

A. Most of it was either processing or approving or prematurely submitting projects to the agency that weren't good, weren't viable, didn't make any sense, weren't economically feasible or whatever.

Q. Okay.

A. We were told at times to put together a Form 10 that works, period.

Q. So that it could be presented to the agency board?

A. Exactly.

Q. Who told, in most of those cases, who gave Osborne that directive?

A. It would be Bill Johnston.

* * *

Q. Did Mr. Horgan have any input with Mr. Johnston in ways other than having lunch with him, to your knowledge?

A. Constant flurry of telephone calls when things are hopping or whatever. But --

Q. And would the telephone secretary tell the director --

A. Yes.

Q. -- of operations and you that --

A. That's how I got most of my information, because Dan Horgan would call up screaming, "where the hell is Bill Johnston? I'm sorry, he's not here at the moment. You tell him to give my office a call as soon as he gets back in the office. If he doesn't call by 6 at night, I'll be at his house at 8 in the morning." This would all go through the telephone operator.

Q. Were there times Horgan would call on the telephone and be followed, that conversation --

A. Visibly agitated.

Q. -- by directives from Johnston?

A. Oh, yes. It was clockwork. The secretary would come in and tell my boss, "Hey, Dan Horgan just called Bill Johnston and, boy, is he mad." And then sure enough, half an hour later Harris Osborne would get called into Bill Johnston's office, Harris Osborne would come right back into my office and go, "Okay, you better do something about this."

JOHNSTON'S CASH TRANSACTIONS

The \$1,000 Bill

Anthony Giannetti of Montclair, formerly an administrative assistant at the HFA, had been a senior project manager for five years and a management representative for a number of years. On December 21, 1977, he and other agency employees had a special reason for knowing that Johnston was meeting in the privacy of his office with Canino and Raphael, the promoters of the Overlook and Parkview Towers' projects in West New York. The reason was that Canino and Raphael had driven to the agency office in a green Rolls Royce and, in an arrogant display of their influence, had parked the vehicle in an area reserved for the Community Affairs Commissioner, the ex officio chairman of the agency. As Giannetti testified at the SCI, the arrival of the colorful luxury car at the HFA entrance attracted the attention of a number of employees, himself included, who left their posts to inspect the vehicle. After Johnston's meeting ended, and Canino and Raphael had driven away, the director summoned Giannetti to his office. Since Johnston was scheduled to leave that

day for a holiday trip to Hawaii, he asked Giannetti to drive him and his wife to Newark Airport. Johnston first asked Giannetti to convert a new \$1,000 bill into tens and twenties prior to embarking on the drive to the airport. Giannetti testified, under a grant of immunity from prosecution, about this transaction with Johnston:

Q. Did there come a time during Mr. Johnston's tenure at the agency and during your tenure at the agency when Mr. Johnston asked you to do a particular favor with regard to cashing a certain denomination of currency for him?

A. Yes.

Q. All right. Tell Commissioner Patterson, in your own words, about that event.

A. Well, I cannot give you the exact dates, but I can tell you approximately what happened at the time.

Shortly after the Parkview project, which was initially a market unsubsidized job and was readily converted, to the surprise of all people in the agency, to a subsidized Section 8 job, shortly after that, I believe it was during a holiday, near -- prior to a holiday area -- I can't remember which one -- Alvin Raphael and Jim Canino came to the agency and they parked in the Commissioner's spot, which is at the entrance of the building, with a green Rolls Royce, which struck the fancy of everybody in the agency and everybody came out to look at the Rolls Royce. Well, I was one of them because the office which was right near the Commissioner's spot, and they pulled in that spot.

They went in and we chatted with -- about the car and so forth, nice to have money and all that baloney and we went back to our respective positions. Approximately, about a half an hour later, maybe three-quarters of an hour later, I was called by Joe Chieppa out of my office and that the boss wanted to see me. So I started to approach toward the main entrance and to the left of the entrance was the Johnston's office, was a conference room, then his office, and Dottie Adams says, "Bill wants to see you." And I went in and he closed the door.

And prior to that, as I was walking in, Canino and Raphael were walking out and they got in their car and left. And Bill talked to me for a few minutes, I don't know, something about agency business. I can't remember exactly what it was.

He said, "By the way, kid, would you do me a favor?" I said, "Sure. What do you want?"

He said, "Will you go to the bank and cash this for me?"

So I saw nothing wrong with it. He reached in his pocket, pulled out his billfold, and he pulled out a bill and he handed it to me. It was a thousand-dollar bill.

Q. When he took out his billfold, did he open it up?

A. Yes. You pull the flap open, that's the way it was. He put his hand in and took out a bill. I was standing very close to him and I noticed that he kind of -- because they were brand-new bills. He handed me a brand-new bill.

Q. Okay. Now, he handed a thousand-dollar bill. Were there bills remaining in the billfold?

A. Yes.

Q. Okay. Could you or could you not see the denominations of the bills remaining in the billfold?

A. I couldn't, but I knew there was more than -- there were several, let's put it that way. And I noticed that he got this from one side. That's all I could notice it.

Q. All right. When you say, "several," let's put it that way, do you mean several bills or several thousand-dollar bills?

A. All I can say is that the ones on the left that he took from and he kind of squeezed it and cleaned it and pulled it out, there seemed to be more than, more than three or four. The size of a pack of clean brand-new bills are very difficult, I presume, as to detect as to the number in a pile.

COMMISSIONER PATTERSON: So he took it out in a way that would indicate to you that there was more, that wasn't the only one-thousand-dollar bill that he had?

THE WITNESS: Yes, sir.

COMMISSIONER PATTERSON: I think the record also should show the connection between these two gentlemen and Park Terrace or whatever the name is.

BY MR. SIAVAGE:

Q. You knew Canino and Raphael to be the sponsors of Parkview Towers and Overlook Towers, did you not?

A. I did.

Q. When you say cleaned it and squeezed it, you indicated a motion rubbing your fingers. Was he making sure that there was only one bill that he was giving you?

A. I presume that's what he was doing.

Q. Okay. Now, when he handed you that bill, specifically, as best you can recall, what exactly did he say to you?

A. He said, "Will you cash this for me, kid, and get me tens and twenties?" And I thought that was rather odd and I said, "Okay."

Q. Did you ask him anything?

A. I didn't. I felt it was none of my business.

Q. Then what did you do with the thousand-dollar bill?

A. Well, I left and got in my car and went down to the Yardville Bank, which is a short distance on Quaker Bridge Road, and I went into the bank, and I said, "Would you please cash this bill for me?" And the girl looked at me. She said, "What is your name?" And I told her. She said, "Where are you employed?" I said, "New Jersey Housing Finance Agency."

At that time it didn't dawn on me. And I said, "Would you please give me tens and twenties?" She said, "Tens and twenties?" I said, "Yes." And she smiled and I smiled.

I picked up the pack of bills and I brought them back. On the way back, I said, gee, this gal asked me my name, it was something funny about his thousand-dollar bill. I didn't think it was a phony, but I suspected that there might have been some connotation. But, anyway, I went back and I handed it to Bill and he thanked me and I walked back to my office.

Then I went to Chieppa and I told Joe Chieppa about this. He didn't seem to -- a thousand dollars? You cashed a bill. That's about it. Maybe he apparently -- I don't know if this is so, but Chieppa had to know about it because he was the director and I was just an ordinary project manager.

Q. Well, he knew about it also because you told him; right?

A. That's right, sir.

Q. Okay. Now, after you handed -- by the way, the group of tens and twenties, how thick were they to hold in your hand, a thousand dollars?

A. Well, the girl in the bank put them in a brown envelope, folder and it was about like so because I had to --

Then I took it out of this pocket and I put it in this pocket. And then I was hoping that they were all counted correctly because I didn't count them.

Q. When you indicated the thickness of the bills, were you indicating about an inch thick?

A. I would say thereabout.

Q. Did Mr. Johnston ask you to do another favor for him than that same day?

A. Yes, he did. He said, "By the way, would you pick up my wife at the school around noon?" He said, "We're leaving for a trip."

Q. What was his wife doing at a school?

A. She teaches there. Her name is Carol.

I said, "Sure." Why not? I didn't see anything wrong with that. Around quarter to 12 they told me where the school was someone told me how to get there.

Q. Where was it?

A. It was in the one of the minority sections of Trenton.

Q. You picked her up with an agency car?

A. No, sir, I picked her up in my car.

Q. What did you do then?

A. I drove her back to the office and it was around 12:30 and I know we were running a little late because he said he had to make a plane and Annie Applebaum Merlino threw the bags in the trunk of the car and Bill came out and he sat in the front with me and his wife sat in the back and we drove on to Newark Airport. We were running late, I know, and I was kind of pushing the pedal a little bit to make the plane. I didn't want him to miss his plane. Took him to Newark Airport. I'm not certain, but I think it was United Airlines.

Q. Okay. Did he mention during your trip to the airport where he was going, or before then?

A. Well, it became common knowledge around the agency that he was going to Hawaii. Everybody seemed to know. I don't know how people find out, but that was mentioned about that.

* * *

Q. By the way, you were concerned a little bit about keeping your hands on the tens and twenties that equaled the thousand dollars. What did Johnston do with those tens and twenties when you handed it to him?

A. He took the envelope. I said, "Don't you want to count them?" He said, "No." Just took them and put them in his pocket.

\$3,100 Cash For Hawaii Trip

Additional investigation by the Commission disclosed further cash transactions by Johnston. When he went to Hawaii in December of 1977, he utilized a payment by check from his personal account of \$2,000 as well as an additional payment of cash by him to the travel agency in the amount of about \$3,100. Neither Johnston's accounts nor his wife's accounts evidence a source of this cash to Johnston.

Furthermore, the \$2,000 check and the \$3,100 cash represented the cost only for the Johnston party's roundtrip air fare and hotel accommodations in Hawaii. There is no evidence in Johnston's bank accounts of other expenses incurred, indicating that Johnston must have taken additional cash with him for vacation costs aside from air travel and rooms.

Cash For An Apartment

Finally, for a brief period of time in 1977, Johnston was a co-tenant with Karen Whitacre of the HFA staff at an apartment complex in Plainsboro, N.J. Ms. Whitacre testified that Johnston on several occasions gave her large amounts of cash for the upkeep of this apartment. Her testimony on the issue follows:

Q. We previously asked you some questions about an apartment, I think it was, Princeton Meadows, Hunters Glen, relating to the expenditures of running that apartment?

A. Yes.

Q. You have checked your records with regard to that, also; is that correct?

A. Yes, I have.

Q. Could you detail for us how much money you were provided to set up that apartment?

A. Sure. Okay. Deposits were made into my -- into this checking account, which is a separate one which use before and I haven't used afterwards.

Q. That's also from Yardville?

A. No, this is New Jersey National Bank, separate account. From 10/1/76 to 3/1/77 there was a total of \$3,870.48 deposited into this account, and there was \$500 deposited into my checking account, which is separate, the Yardville National Bank separate checking account, for a total amount of funds given to me for the purpose of running the townhouse, or paying for the townhouse for him was \$4,370.48. From that, I had deposited some of my money into this account because I had written --

Q. The New Jersey National?

A. The New Jersey National account, because I happened to have this checkbook and I made a couple of expenditures, so I deposited money there. There was one deposit of \$137.44, and another deposit of \$63.04 subtracted from the amount that was given me, net amount given to me of \$4,170.

Q. How did you receive that money?

A. Cash.

Q. On what basis? Do you know? On a regular basis like first of the month?

A. Yeah, right.

Q. Was it the first of the month?

A. First of the month or when needed.

Q. Or when needed. You mean if you said the apartment expenses are thus and so, we need so much money, you would get that money in cash?

A. Yes.

Q. And that's from Mr. Johnston. Right?

A. Yes.

Q. Do you know what kind of -- what denomination bills did you usually get?

A. Mostly large bills, fifties or hundreds.

Q. Okay. The \$4,170, do you know how you spent that money?

A. Yeah, I went through the checks and for furniture for the apartment for him was 1000 -- about 1,650. Hunters Glen expenses for the apartment, security, \$1,775; food for him for that period, there was \$245 of checks written; utilities, which would be heat and telephone, \$275; and he bought some clothes and there was some miscellaneous, about \$225 of miscellaneous expenditures.

Q. Do you know what happened to the furniture when the apartment was sublet?

A. Yeah, I took it. He went back home.

- Q. And you still have that?
- A. Well, yeah. It's pretty old.
- Q. Do you know from what source Mr. Johnston was funding the apartment?
- A. No, I don't.
- Q. You don't know if it was from his paycheck or some other source?
- A. I don't.
- Q. Did he ever tell you that a payment would have to wait until payday?
- A. No.
- Q. He paid you on a more prompt basis than that, didn't he?
- A. Yes.
- Q. Did you ever become suspicious of where the money was coming from?
- A. No.
- Q. Do you still have the furniture you mentioned from the Princeton Meadows apartment in your townhouse now?
- A. Yeah.

FAVORITISM TO CANINO AND RAPHAEL

Johnston's Return

A review of agency documents pertaining to projects sponsored by developers James Canino and Alvin Raphael confirms that they received favored treatment in many areas over the years due to contacts with Director Johnston. The relationship between Johnston and Canino and Raphael began at the outset of Johnston's tenure as head of the agency because they were largely responsible for his appointment.

Johnston had worked at the HFA from 1970 until mid-1973, rising from comptroller to deputy executive director. When Johnston left the agency in 1973, he obtained employment with the National Corporation for Housing Partnerships (NCHP) in Washington, D.C. Records of the NCHP disclose that it employed Johnston on June 4, 1973, and terminated him about 60 days later when George M. Brady, National Housing's

president, requested his resignation because Johnston "didn't seem to grasp the seriousness of his job."* After leaving NCHP, Johnston returned to New Jersey and engaged in private consulting work while attempting to obtain other employment. His SCI testimony about his return to the HFA as acting executive director follows:

Q. And there came a time you rejoined New Jersey Housing Finance?

A. That's correct.

Q. How did that come about?

A. I, of course, was aware that there was a gubernatorial election in the fall and that there was a good chance of a change in administrations, and I made my availability known to a friend of mine by the name of Jim Dugan, who was a state senator, and asked him to sponsor me for a position with the State, and from my background I thought I was most suitable for returning to the HFA.

Q. And you had been previously acquainted with Mr. Dugan?

A. I had known Jim slightly. I got to meet Jim through a developer named Alvin Raphael who I had known from my days back with the agency. R-a-p-h-a-e-l, I believe.

Q. Did you apply to the agency or make any other efforts?

A. No. I submitted my resume to Senator Dugan.

Q. And when approximately did you do that?

A. I would guess somewhere around December of '73, would it be?

Q. Were you at sometime notified that you were being considered for the position?

A. Not by anyone at the agency. Senator Dugan led me to believe he would be successful in obtaining an interview for me.

Q. Did you subsequently have an interview?

A. Yes, I did.

*Johnston testified before the SCI that his departure was "a friendly one."

Q. With the board?

A. No; with the Commissioner of Community Affairs.

Q. And who was that at that time?

A. Commissioner Pat Sheehan.

Q. And you were appointed soon after that or --

A. I would say it was maybe a couple of months after the interview, but I'm not quite certain of the time. I think the interview took place shortly after the first of the year. Perhaps February, and I believe I began my employment with the agency in April, towards the end of April, I believe, and prior to taking over I did meet the Attorney General. I had known the two citizens on the board, although I did not meet with them on that occasion.

COMMISSIONER KADEN: May I ask, you say Mr. Raphael introduced you to Senator Dugan. In what capacity? Can you describe the circumstances of that introduction?

THE WITNESS: He asked me to meet Senator Dugan and himself at the Senator's office. I could -- I deduced after a period of time that there was some type of business relationship between the Senator and Raphael..

COMMISSIONER KADEN: Business or professional? Was the Senator introduced to you as his lawyer or state senator, or what?

THE WITNESS: I was introduced to Dugan as the state senator.

COMMISSIONER KADEN: As the state senator.

THE WITNESS: I do know, after that point, and I wouldn't say I knew it at that time, as a matter of fact I'm pretty sure that I didn't, that ultimately Senator Dugan represented some of Raphael's corporations.

COMMISSIONER KADEN: You didn't know at the time whether --

THE WITNESS: What it was. I frankly thought it was a political relationship at the time, sir.

* * *

COMMISSIONER KADEN: Had you ever met Senator Dugan before?

THE WITNESS: Shaking hands with him, but had not known him.

COMMISSIONER KADEN: Can you tell us something about the nature of that conversation that led to you giving that resume?

THE WITNESS: Yeah. Al Raphael was in the room, knowing Bill from his days with FHA, saying he's competent and he's asked me to see what I can do for him; would he call me about perhaps joining them on a private basis in their private enterprises, and after talking with Al, he said to me, "Well, what about going back to the agency?" I said, "That sounds interesting." And then by the time I saw Dugan, I said I was very much interested in being appointed to the directorship of the agency.

COMMISSIONER KADEN: And what was Senator Dugan's response?

THE WITNESS: He said he would make every attempt to do so.

COMMISSIONER KADEN: Even though you had just met him?

THE WITNESS: That's right. It was obviously on the strength of the Raphael relationship.

COMMISSIONER KADEN: Raphael's recommendation?

THE WITNESS: Yes.

Shortly after receiving his appointment as acting executive director, Johnston made it known to his immediate subordinates that projects sponsored by Raphael and Canino were not to be scrutinized closely by agency personnel. This event and other instances of favoritism shown by Johnston to Canino-Raphael projects are described further in this part of the report.

Hands Off Policy

The SCI's investigation confirmed the existence of a general "hands off" policy in connection with certain projects that Johnston insisted on handling himself, primarily if any questions arose. This policy became known throughout the agency as particularly

applicable to the Canino-Raphael Parkview and Overlook projects in West New York. In fact, in late 1977, according to Julia Turner (now a management division chief), Johnston held what she described as a "pep talk" with management staffers. In attendance, besides herself, she told the SCI, were Larry White, Bob Slade, Beverly Williams, Aundra Cook and Steve Holmes. She recalled that Johnston instructed these employees not to be concerned about problems at Parkview and Overlook and that he would not entertain any questions about his edict. Turner's recollections were confirmed by others who participated in that meeting. Slade said the staff session was called after Turner had submitted a memo about problems at Parkview and that Johnston had declared that whatever Canino and Raphael did at their projects would be up to the executive director to worry about. Slade also remembered that Johnston's instructions, while infuriating to the staffers, came as no surprise. Holmes recalled that Johnston appeared perturbed about Parkview and Overlook problems at the time he announced they were to be handled only by him. Williams also confirmed Turner's report but said her memory of the Johnston instructions were vague since she was a new employee at the time and also had no assignments involving the Canino-Raphael projects.

Robert Groer, who was chief of research and development during the period when the hands off policy was imposed on the staff, described an incident affected by this policy in his testimony at the SCI. He told the Commission that Deputy Director Richard Kadish and Research Director Gustav Escher sent him to the Parkview project to assist in an analysis of its prospects for additional subsidies. When he returned and reported he had found irregularities in the project's records, Kadish, who was about to leave the agency, told him to document his findings. Escher, however, told him he should not write any memos about his inspection and to forget what he had learned. Groer, who wrote a brief memo nonetheless, told the SCI what he uncovered when he checked Parkview's records:

- A. ...I looked at their current budget at the time and I compared it to what we had projected before it became a Section 8 job. That is when I applied for Section 8 funds for this particular project. The job had already gone through most of its construction period, so that the form -- Section 8 form 10 was pretty close to what the job should have actually been.

This is about a year later or a little over a year later. I checked the certain figures here in contrast to what we had projected at the time. I found that the payroll, to give you an example, the payroll for maintenance staff and things such as that was about \$156,000 -- 700 -- 157 higher than what was projected less than two years before. The

management fee was \$48,000 higher. What is significant about this was at least the management fee, not only the amount, but in this case they were receiving a four per cent management fee where all other jobs were receiving, all other Section 8 jobs were to receive three per cent.

This was a thirty-three per cent increase above what other jobs of a similar type, of a similar subsidy type, were to be receiving. Repairs were higher. So what I found there was that in less than a two-year period, this was an increase of eighty per cent, which was quite substantial from what maintenance and operation cost and what was actually projected at the time.

One would suppose that during that period of time, there would have been the utilities that would have been miscalculated or misprojected. Instead, we found the utilities were pretty close to what they had set for them, I believe overall.

- Q. Are you saying then that the items that had gone over were really not subject to inflation?
- A. They were. Salaries do go up, but not to the extent -- if anything was up faster in your jobs, would it be utilities or where the projection is off in a larger section, would it be utilities or the maintenance and operation? Generally, it would be utilities as to the unpredictability, as far as OPEC or anybody else is charged for power. In this particular case, the figures were significantly higher in the other area, rather than in the utility area.

I had written a memo, and I had so indicated and felt it would be hard to get these extra funds, because somewhere along the line because our initial figures were too low, or these figures were basically too high. I sent this -- I hand delivered this memo to the three persons mentioned there. I didn't let my secretary take it. I brought it to Escher's section and Kadish's section and Okenica, and a few days after, I received a memo back from Mr. Escher, and what was surprising was the first memo that I had ever gotten back from him, and he said it was bad. It is written on here in his own handwriting. He sent me back the original. Generally, he would send somebody back a copy.

Groer testified that Kadish and O'Kenica never responded to his memo:

Q. Did either Miss Okenica or Mr. Kadish respond to that memo?

A. No. I never got any response and I personally did not -- after Mr. Escher had indicated not to go any further, I did not pursue it. I did not pursue it because Mr. Kadish was leaving.

* * *

A. ...prior to Gus telling me not to go any further, I questioned other people on the staff. As chief of research, I had access -- I had a right to speak to other people to find out basic information. I went to Larry White, who was director, and asked why the higher figures and why was there a four per cent management fee when all the jobs of this type was going to be a three per cent fee. His answer was, "That decision was made up front." So I didn't pursue that further.

Q. Up front meaning?

A. Executive director section. I went to Mike DeLouise to see how much the garage cost, whether they were paying what I would consider leased interest in amortization, and they were paying less than what it cost. After speaking to Larry White and to Mike DeLouise and speaking to Gus Escher and he said, "Don't pursue it any further," I didn't go to Katie Okenica. I didn't pursue it any further. I had done what I was supposed to do. He didn't like the memo and he didn't want me to pursue it any further.

Subsidy Funds Direct to Parkview

The Canino-Raphael Parkview Towers was the first project bonded by the HFA under a federal rent subsidy system known as the Section 8 program. This 1974 act provided for direct federal subsidy of rents paid by eligible tenants under a certain gross income limitation.

Treasurer Clifford Goldman reported to the Commission that because the bonding of this project in 1976 was the first of its kind to be committed by the HFA, several meetings were held with HUD officials regarding the manner in which the project would be financed and monitored by the agency. These conversations resulted in the agency binding itself in a bond covenant that required it to deduct these Section 8 subsidy payments prior to releasing them to the project, as follows:

The Agency covenants that, from all Federal subsidy payments received by the Agency in respect of each Project from time to time, it will deduct an amount equal to Mortgage Repayments then due in respect of such Project and will deposit such amount in the Agency Trust Fund.

Adherence to this covenant, of course, would assure that Parkview Towers would not go into arrears on its stipulated mortgage payments.

With respect to this project, however, Raymond Howell, the comptroller of the agency, was personally advised by Johnston in late 1976 not to deduct the federal subsidy payments -- as required by the agency's own contract with HUD -- before forwarding funds to Parkview Towers. This action resulted in there being forwarded directly to the project eight payments of about \$240,000 each -- all in excess of what Parkview Towers should have received -- over a 20-month period. Howell further said Johnston did not volunteer any explanation for this directive and that he did not question Johnston about it. Howell also said that no other individual at the agency, including bond counsel, was notified of Johnston's action. The aforementioned proscription within the bond covenant, of course, was violated by this directive, which amounted to an illegal payment of approximately \$1.9 million to Parkview Towers' sponsors.

In addition to the fact that Parkview Towers was receiving an extra \$240,000 per month in excess of what it should have received, the project's operators were at the same time falling into arrears on their required mortgage payments to the agency. The reason for the arrearages, which only later became apparent, was an intercompany transfer--or skimming--of approximately \$1.8 million, nearly the same amount as the federal subsidy moneys improperly forwarded to the project.

This forwarding of subsidy cash continued until about June, 1978, when the HFA sent its last subsidy check to Parkview Towers. In August, 1978, Parkview Towers finally paid its mortgage arrearages, which totalled approximately \$1.8 million, by selling a portion of their sponsors' tax shelter to two individuals from New York.

Parkview's \$1.8 Million "Loan" to Parkview-Controlled Excel

Under HFA requirements for determining the feasibility of a project, operating expenses are considered as a debit that must be paid off by project rents over and above required payments of mortgage debt service and principal in order to keep the project solvent. Obviously, therefore, if a project pays or otherwise shifts monies to individuals or entities not connected with the operation of the project, the feasibility formula is violated to the extent of the amount of the money transfer. In early 1976 the Parkview Towers project began transferring monies, with an initial advance of \$72,815.45, to a corporation known as Excel Properties, an entity controlled by Parkview sponsors Canino and Raphael. By July, 1978, after several such "insider loans" had been made, the total amount owed to Parkview Towers by its own Excel Properties was about \$1.8 million. This debt did not include any interest because no interest was ever charged.

Gustav Escher, former assistant executive director of the HFA, reported to the SCI that the HFA had no knowledge of these transfers until the project's accountant, Kalish, Rubinroit & Co., wrote a letter to Director Johnston, dated January 4, 1979, requesting advice on the disposition of the \$1.8 million borrowed without interest from Parkview Towers by Excel Properties. Escher further said that the HFA's comptroller, Raymond Howell, responded to this request in a letter advising the accounting firm to handle the matter in whatever fashion it deemed appropriate. As a result of Howell's response, Johnston was able to write a memo on March 9 to agency board members quoting Howell's letter to the accountants to the effect that "the agency's position as to such loans is that it is a matter between the partners and should be resolved therein." Escher also reported to the Commission that Johnston had erred when he advised a television news reporter that the HFA had first become aware of the transfers as early as August of 1978.

The SCI's examination of agency correspondence disclosed that Johnston was apprised of this matter as early as June of 1977, while the non-interest "loan" transfers were still underway. This reference to Excel Properties' debt to Parkview was contained in a letter to the director from the project sponsors outlining a proposal for making certain monthly payments of "equity return" by Parkview to the sponsors. The significant paragraph in this letter was:

"These monies will immediately be returned to Parkview Towers thus reducing Excel Properties Corp's indebtedness substantially. These funds will only be distributed so as to reduce the indebtedness." (Emphasis added).

Although Escher reported to the SCI that the agency had no policy on such intercompany transfers at the time the \$1.8 million loan was made by Parkview, this impropriety could not have continued without Johnston's implicit permission in June of 1977. Furthermore, the existence or non-existence of a formal policy to prevent what amounted to diversion of operating expenses should not have been the reason for the failure of the agency to act.

Exception To HFA Policy On Bank Check Approval

The HFA had for sometime a policy that all bank checks written by a project in excess of \$500 must be approved by the agency since such funds are, in effect, HFA monies. Julia Turner, then the project representative, reported to the Commission that early in her work with Parkview Towers, she wrote a letter to its owners requesting compliance with this check-approval process, which they were ignoring. She received a response from the Canino-Raphael management stating their refusal to comply with such a rule. This response was carbon-copied to Director Johnston. Turner further reported to the SCI that, to her knowledge, the policy continued to be ignored by Canino-Raphael, even though Johnston had knowledge of their noncompliance. Her own attempts to force the sponsors of the project to obey the rule were inhibited by the fact that she was present in December of 1977, when Johnston told his management staff that they were not to "worry about problems" that pertained to the Canino-Raphael projects, Parkview and Overlook. Turner said she had become aware that Canino and Raphael had a "direct line" to Johnston and therefore discontinued her efforts to force them to comply.

Falsification Of Fuel Bills

On June 25, 1974, Raphael sent Johnston a lengthy letter requesting a 2 percent increase to 6 percent in the management fee for the Canino-Raphael Overlook Terrace project in West New York.

In that letter, Raphael disclosed that their 1972-73 return on equity had been made possible only by increasing the parking fees charged by the Raphael-Canino Overlook Terrace Management Corp. This subterfuge allowed them to generate profits that otherwise would not have existed.

William Clark, the HFA management director, and Johnston, the agency's acting executive director, then proceeded to arrange with the Canino-Raphael sponsorship to increase the project's equity return by also falsifying overall project expenses, including fuel costs. Johnston's and Clark's knowledge of the true circumstances is reflected in a covering memo and a June 27, 1973, draft letter. These papers emphasized the fact that an increase in the management fee over this project's already inflated 4 per cent contractual limitation would necessitate a politically controversial rent hike for tenants. Clark stated in his memo to Johnston:

"I talked to Canino about the budget for Loverlook (sic) Terrace. I know that the increase on the Management fee would raise hell with the rent increase situation particularly when Mayor DeFino tries again to play the savior to his constituents.

I suggested he add the addition to fuel costs instead to keep the total budget the same. The fuel cost could take it, and if it becomes less, the money would be there. We can talk further about the Management Agreement later and iron that out then, instead of directly with the rent increase..."

By this means, these top-level agency employees structured a scheme to base a rent increase on something other than the proposed increase in the Canino-Raphael management fee. Instead, they directly proposed an exaggerated increase over actual fuel costs to Overlook Terrace's combined owner-manager team, a falsification they felt would make the rent hike more palatable.

On June 28, 1974, management representative Anthony Giannetti sent a letter, closely modeled after Clark's June 27 draft letter, to James Canino, president of the Overlook Terrace Corp. In this letter Giannetti cited rising fuel costs as the reason for requiring and approving a \$10.50 per room rent increase. The letter was also signed as "approved" by Johnston.

Turnabout on Orange Senior Citizens

On May 3, 1977, Region 9 of the United Auto Workers (UAW) Housing Corporation submitted a site inspection request for the Orange Senior Citizens project at Washington Street and Thomas Boulevard in the Essex County city of Orange. Based particularly on site and construction problems posed by Wigwam Brook, which runs through the property, but also on the small size of the site and the height of the proposed 14-story (130-unit) building, Robert Lee of HFA technical services recommended rejection of the project in a July 1, 1977, handwritten note to his superior, George Feddish. On July 15 Feddish sent Operations Director Joseph Chieppa a memo also recommending rejection, stressing that Wigwam Brook problems made the site unusable. On September 14 project manager Vincent Pedicini wrote the sponsoring UAW group a letter saying the site was rejected, explaining the reasons, and offering to consider alternate sites in Orange for the construction of such needed housing.

However, on March 9, 1978, James Canino, as a partner of Alvin Raphael in Excel Properties Corp., filed a new application in the form of an inspection request for the identical site. The locale again was inspected on May 1 by Lee along with Dennis Scardilli of the Operations Division and Canino and his development team.

This time Lee sent a more favorable inspection report directly to Director Johnston with a carbon copy to Chieppa. That report, dated the same day the inspection was performed, only briefly noted the previous rejection and then went on to recommend approval contingent upon covering Wigwam Brook, asking the U.S. Housing and Urban Development agency (HUD) whether an environmental impact statement is required, and obtaining approval of the Department of Environmental Protection (DEP) on resolving the difficulties with the brook. Lee also expressed concern, despite his recommendation for approval, of the size and layout of apartments but said this issue was an operations responsibility.

On May 8, Lee clarified his concern about the apartments in a memo to Chieppa questioning the imbalance of 44 "efficiency" apartments out of a total of 133, or 34 percent. He also stated that his other concerns would be resolved because he had given the sponsor the agency's Minimum Design Standards. Chieppa wrote this response on the memo: "5/12/78 to: Bob Lee - see no problem based on inhouse studies Joe." He circled and underlined the 34 percent figure.

Scardilli sent a site approval letter to Canino on May 9, making approval contingent on Technical Services' approval. Eight days later, on May 17, Lee sent Chieppa a memo saying he now could approve the site subject to DEP issuance of a permit for enclosing the brook and with a limitation of abnormal costs to \$200,000. Yet he did not mention his previous objections to the small size of the plot, even though Excel's proposal called for no fewer units than the original UAW proposal.

The Management Division's site inspection was conducted more than a month after Scardilli's site approval letter was mailed. On June 28, Julia Turner, the agency's Management Division project representative, reported the results of her inspection on that same day to Lawrence White, Director of Management. Based on available facilities and the need for senior citizen housing in Orange, Turner recommended approval but expressed concern about a high concentration of senior citizen housing in one area of the city.

On August 13, 1978, Joseph Bravata, Canino's project planner, advised HFA that only one firm -- a concrete, steel, soil testing lab -- had submitted a proposal for soil boring. Excel immediately hired that firm, which completed its assignment. Robert Lee approved this exception to an HFA requirement that three bids must be received -- but on August 31 nonetheless advised Excel the agency required three competitive proposals for securing site surveys.

Although the second application for this project was filed by Excel the previous March, HFA was notified on August 28, 1978, that a new sponsoring entity, Orange Senior Citizens Housing Corp., had been created and that it consisted of Roy Miller as general partner and Theodore and Nanette Ross as limited partners -- with Canino's and Raphael's own A.J. Tenwood Construction Co. as their general contractor. An undated submission in the file lists Miller and the Rosses as limited partners with Canino as president and Raphael as secretary-treasurer in the Orange Senior Citizens Housing Corp.

Scardilli advised Leon Klotz, then the senior project manager on September 6, 1978, that he had appraised the fair market value of the site at \$175,000. Even though the 1977 UAW application had indicated purchase price of only \$70,000, the Orange Senior Citizens Housing Corp. paid the Housing Authority of Orange \$105,000 on September 21 although their initial application had indicated a purchase price of \$133,000. Despite these fluctuating property cost figures, the HFA finally approved and "closed" the project on October 30.

Most projects take from two to three years for successful processing from initial site inspection through closing. Robert Groer, an agency project manager, told the Commission that it was unusual for a project to go from site approval to closing in a mere six months, as had this project:

Q. And who were the people connected with
A.J. Tenwood?

A. To my understanding, it was Mr. Raphael and
Mr. Canino.

* * *

Q. Did you know anything that was interesting about
the history of Orange Senior Citizens?

A. Yeah. From the records, it appeared as though
that site was turned down previously for another
sponsor. I am sort of familiar with this be-
cause one year or less than that I lived in
Orange, New Jersey, and I knew of that parti-
cular area. I knew the site had some water
running through it. That's separate and
apart. I knew that site was submitted by
one other sponsor and the site was turned
down.

Q. Has that been built by A.J. Tenwood?

A. Yes. Right after the turning down -- I don't
know right after -- the site was turned down
for, I believe it was UAW, United Auto
Workers union. It was submitted sometime
thereafter by this other sponsor, and the
site was approved and the project moved
rather rapidly. An example, the site was
approved around 5/78. That would be May,
'78. It closed in November or the end of
October bond issue. The site could have

been in before the approval. That's extremely rapid movement.

Q. Did you participate in any of the processing of that project?

A. No, I did not.

Q. Were you aware at the time of those events, that this project was proceeding faster than others in the agency?

A. Projects are numbered as they come into this office. This is Project 907 that came in right after 906 came in right after 906 and right before -- right before 908. You could tell sequentially as to when things came in. It doesn't mean a day before -- it is given a number, and generally it is in the order in which they came in. When you see higher numbers, you can tell about when they came in relative to other projects. A project with a lower number --

Q. Is there anything about the number of Orange Senior Citizens?

A. It is a high number. It is 907, which at that time it meant it came in somewhat before, only months before the actual bond issue.

This project was approved in time to be included in the HFA's October, 1978, bond issue. Had it not been rushed to completion, it would have had to wait for agency funding until the next bond issue in October, 1979, a full year later.

Sharon Kinkead's Activities

Sharon Kinkead was first employed by the HFA in 1974 as Johnston's secretary and later promoted to a management representative position. It was reported to the Commission that Kinkead was Alvin Raphael's girlfriend prior to her employment at the agency and that Raphael sent her to Johnston for employment. When Kinkead was promoted, she was assigned to monitor the Canino-Raphael Parkview Towers project.

While functioning as a management representative, Kinkead continued her association with Raphael. He gave her expensive

gifts, including a fur coat. In addition, Kinkead's house was mortgaged in an unusual manner: Canino's and Raphael's jointly owned A.J. Tenwood Construction Company purchased insurance for Parkview subcontractors from the George Protter Agency, whose principal, Protter, inflated fees to subcontractors, cashing checks for the difference between actual fees and the inflated fees. Two of these checks were drawn to George Co., in the amounts of \$25,516 and \$25,587. George Co. used these funds to provide the mortgage on Sharon Kinkead's house. This was the only financial transaction of George Co. and it appears that the corporation was set up for this specific purpose.

Kinkead was the management representative at Parkview during the period in which this Canino-Raphael project "loaned" \$1.8 million to the Canino-Raphael Excel Properties company -- but she did not report this money transfer. She left the agency in November, 1978.

INFLUENCE PEDDLING - PART 2

INTRODUCTION

In January, 1975, John J. Regan, then the secretary-director of the New Jersey Real Estate Commission, wrote a memo to Governor Byrne concerning reports he had heard about favoritism and possible corruption within the HFA. This memo was augmented by similar reports from agency employees to various highly placed officials in the Byrne administration. These allegations were referred to the Division of Criminal Justice, which conducted an investigation. Because that investigation relates to the subject matter of this SCI report, it is recounted at length in Part 3 of this section.

An allegation of influence peddling by Jack Stein of Kendall Park was a primary subject of the 1975 inquiry, which also involved Joseph Silvestri, a loan consultant on HFA projects through his company, Concept Building Industries, Inc., of Keyport, and Daniel J. Horgan, who was assistant commissioner of the Department of Community Affairs (DCA) at the time.

In probing this matter, the SCI interviewed and took testimony from numerous witnesses, subpoenaed hundreds of documents and subjected to in-depth accounting analyses all relevant financial transactions. Files also were obtained from the HFA, the Attorney General's Office and the Department of Community Affairs. These documents included Director Johnston's appointments and office diary, and a series of message slips listing telephone calls to Horgan while he was an assistant commissioner of the department to which HFA was attached.

THE STEIN-SILVESTRI CO-CONSULTANCY

Silvestri, who had been a successful loan consultant in conjunction with HFA projects, testified at the SCI, that he suffered setbacks after Executive Director John Renna was replaced by Johnston in an acting capacity. Silvestri said he soon realized he could expect little success in the future at the agency. During the Winter of 1974-75, however, one of his clients, J. Evan Hallas, an Ocean City developer, indicated that Stein had approached him with an offer of assistance on a project known as Cold Springs. Soon afterward Stein and Silvestri began a "co-consultancy" arrangement on Silvestri's projects pending at the agency. Silvestri gave the Commission a list of projects during the consideration of which he paid various sums of money to Stein.

Silvestri testified before the Commission that most of these payments were for mortgage commitments by the HFA. Agency witnesses testified that such commitments by the HFA to provide mortgage funds

were of no particular moment to a sponsor since many other agency approvals were required subsequent to mortgage commitments. However, projects promoted by Silvestri and Stein were somewhat different. During the recession of the mid-70s, certain housing developers in the state began to incur financial problems and the HFA began utilizing a portion of its statute which, it was perceived at the time, allowed it to provide mortgage funds to housing projects which were either completed or in some stage of construction. These projects were commonly known as "bail-outs." This term referred to the "take out" by the HFA of banks which had loaned construction mortgage monies on such projects. For a troubled sponsor, an agency mortgage commitment in these circumstances took on more importance, and for a bank which had loaned the money to the failing project, an agency commitment was therefore unusually significant.

In fact, Silvestri testified he negotiated with certain banks, whose construction loans had become imperiled, agreements that these banks would pay sizeable fees in return for HFA mortgage commitments. Although HFA personnel involved in the various processes felt that something was awry with these projects, most were of the opinion that as long as a project could be killed prior to final closing by the agency, little damage would be done.

Why He Paid Stein

Silvestri's testimony with regard to the reasons for making payments to Stein follows:

Q. Did you have an agreement with a sponsor on any project that you would be paid \$10,000 for an H.F.A. commitment?

A. I had a written agreement with Evan Hallas on Powder Mill Springs, which is the Mays Landing project, and I'm not sure if I had a written agreement on Cumberland Green, which is in Millville, or whether or not the bank, the Bank of New Jersey, told me that they would go along with the same sort of agreement. But I did collect on both occasions \$10,000 once I had the commitment in hand.

Q. And what was the value of that commitment to the bank?

A. Well, that a value was set because the state went out and did an appraisal and the commitments had specific numbers. So if -- you know, and I have to tell you, I knew that the bank was having difficulty with their examiners, as many banks in 1974 were having, '75, whether

or not their real estate has specific values; and if nothing else, getting a commitment for a certain amount of money could really establish that value, plus the fact that the commitments were kind of geared to an actual closing if the banks would be willing to buy a lot of bonds. So in lieu of owning a tax-free project, the bank would own a lot of tax-free bonds.

Q. So in it was a bank bail-out?

A. That's where the bail-out came.

Q. With regard to C-194, a check in the amount of [\$2500] was paid to Stein in April with regard to Powder Mill Springs; is that correct?

With respect to C-194, what was that for?

A. When Jack Stein first became associated with me, I became aware very quickly that he was broke and at the time Concept was pretty flush. We made him an early payment of \$2500. Now, I'm not sure whether or not we had the commitment as of that date. I don't have the commitment dates on this, on this ledger.

Q. You received a commitment on 2/20/75 and notification to the sponsor was dated 3/6/75, three weeks before you gave Stein that \$2500?

A. Okay.

* * *

Q. Is it quite clear Stein was getting a part of the payment from the bank that you got for the commitments?

A. Yes, he would have been entitled to 5000, frankly.

Q. Could you have gotten the commitment without Stein?

A. That's a question that we have tossed around. By "we," I mean my partner and I. We don't know. We have to assume Stein got it.

Q. You certainly were convinced of that fact in '75 when you gave Stein the check?

A. Absolutely. I wasn't going to fight with him then.

Q. With regard to Laura's Glen, the commitment by H.F.A. came on 2/25/75 and notification went to the sponsor on 4/4/75. Stein got a thousand dollars from you on 4/7/75?

A. Right.

Q. Is it safe to say that the same conditions obtained in that case?

A. Yes.

Q. In other words, Stein got a portion of the monies that you were receiving --

A. Right.

Q. -- as a result of the commitments?

A. Yes.

Q. Additionally, you got a check on 4/18/75 in the amount of \$8250 from the sponsor of Laura's Glen and paid Stein \$1500 on 4/21/75 for his efforts on that project?

A. Right.

Q. Was that also connected to the commitment?

A. Yes.

Q. Is that the second payment? Okay. Additionally, with regard to Cumberland Green, the H.F.A. gave that project a commitment on 1/23/76 and you gave Stein \$5000 on 1/30/76?

A. Right. We got to assume it was the same condition there, too.

Q. In other words, Stein was getting paid for a commitment?

A. Right.

Q. Okay. By the way, with most of these projects, were they in the agency for some time prior to getting a commitment?

A. Yes, quite awhile.

* * *

I believe my first, first commitments were Powder Mill Springs, Laura's Glen and Sandy Ridge. Now, Sandy Ridge I gave Stein a check on, but then the sponsor, the sponsor, who became, was really the mortgage company, reneged. They decided there were too many contingencies and I had to just credit the money against other jobs.

Q. Did Sandy Ridge go by another name?

A. I think it was originally Country Gardens.

Q. Did you say you gave Stein money on that project?

A. Yeah, I gave him a check on that one.

Q. Is that because it also received a commitment?

A. Right.

Q. And then it evaporated?

A. That's what has thrown my mind out on this thing, that I gave him money, and generally gave him money after collecting money.

Q. Right.

A. But on Sandy Ridge, Country Gardens, whatever you want to call it, that one we goofed on because we did not get a check. U.S. Realty -- no, New Jersey Realty was the company responsible. They were the ones who claimed they would pay a certain amount of money on the commitments, but did not. They did not accept their commitments, period.

Q. All right. So that now we have said that you have paid Stein for commitments on Country Gardens, Laura's Glen, Powder Mill Springs and Cumberland Green. Is that correct?

A. Right.

Q. And you paid him for the release of --

A. Part of the retainage on Middle Road.

Q. -- part of the retainage on Middle Road Village. Correct?

A. Right.

Q. You also gave him monies on Franklin Square, did you not?

A. Yes.

Q. And I think that totals about --

A. 10, 15, \$20,000.

Q. \$20,000. Do you recall what that was for?

A. For commitments, for a great deal of work. Now, on that job Jack Stein did a great deal of work. Jack Stein negotiated letters from Bill Johnston actually indicating that that job was number one in the agency. He kept it on top of the list.

With regard to the initial stages of the co-consultancy, Silvestri told the Commission how it developed and why it became a potent influence at the HFA:

Q. How did you come to meet Mr. Stein?

A. I had a client by the name of Evan Hallas, who had many projects in difficulty that had been financed through various banks and lending institutions, but mostly from the Bank of New Jersey in Camden, and I met with Mr. Hallas, as I remember it, from a meeting arranged by the bank, to discuss trying to finance his projects through either the 223F program that the federal government had initiated or having the N.J.H.F.A. finance them as a bail-out, which was the common name they had been given because the jobs had been started by funds other than State funds. And I filed that job with the N.J.H.F.A. and had it inspected by their technical staff and had pushed or prompted for a commitment, which I had not received.

Sometime later Mr. Hallas contacted me and said, "There was a man here to see me by the name of Jack Stein who was sent down by the agency." By "agency," I mean N.J.H.F.A. "He's an older man with a very loud voice, and he sounds like he knows what he's doing and he would like to do the rest of our projects instead of you."

Q. This is Mr. Hallas speaking now?

A. This is Mr. Hallas speaking.

And I called Bill Johnston at the agency and asked him what he was doing sending someone down to one of my clients, and I'd like to point out it was not a friendly call. I was very angry when I called. And Mr. Johnston said that I should call Mr. Stein direct and find out for myself what was going on, and he gave me Mr. Stein's phone number.

Q. Did you get the impression that Mr. Johnston was expecting your call on this subject?

A. Yes.

Q. Was there a delay in providing the phone number? Did he have it handy?

A. No, no delay. The phone call did not take more than five minutes. Probably three minutes.

Q. He said, just call Jack Stein and --

A. Right, call Jack Stein and he'll tell you what's going on.

Q. But he gave you the actual phone number?

A. He gave me the phone number. I had not heard of Jack Stein except earlier that day when I talked to Mr. Hallas.

THE CHAIRMAN: Where was his office?

THE WITNESS: Stein was a salesman for a real estate company, right now the name escapes me, although it's a big company, and the office was on Marlboro Road, which is not too far from my offices, on Route 79 in a small shopping center in Marlboro. No more than six miles from my office.

Q. Did you subsequently call Stein?

- A. Yes, I called Stein that afternoon and I met with him that afternoon at his office and we had a discussion as to what he thought he was doing, you know, with my client and what I had been doing, and we had quite a discussion about financing, tax shelters, et cetera, and we just parted. I was -- I suppose you want me to continue the story?
- Q. Did he have extensive background in commercial real estate transactions?
- A. I don't know. He claimed he did. But, you know, I don't know of any project that he sold or put together.
- Q. Did you -- that meeting broke up. Did you meet at a later time?
- A. We met a few days later, prompted by a phone call from Jack, and we met in the coffee shop next to his office again.

THE CHAIRMAN: Getting back to the first meeting, how did Stein get into these two with you?

THE WITNESS: All right. Stein, Stein at the first meeting did not have any plan to get into anything with me. He discussed with me different ways of financing, of different values on a project, my rendition, and he told me he was a land man; he had not done any processing through any federal or government, or state government agencies, and he was taking this crack at it.

He did tell me an interesting thing at that time. He was very friendly with a Dan Horgan, and he felt because of that friendship he would be a candidate to be a housing consultant.

THE CHAIRMAN: Okay. When did you next communicate with him or he with you?

THE WITNESS: Jack Stein contacted me a few days later and I met -- want me to continue?

THE CHAIRMAN: Sure.

THE WITNESS: I met with him and at that meeting he told me he had investigated my situation at the N.J.H.F.A. and that I would not get a commitment for Powder Mill Springs or any other job; that I was on Bill Johnston's unwanted list, and he had a proposition for me. I would become a co-sponsor, consultant, what have you with him, and split fees, that he would front the projects and get the commitments and do the processing at the agency. I would do the paperwork and do whatever I was expert at, but he would front the projects at the agency.

The Door Opener

Silvestri described what duties he performed during the Stein-Silvestri relationship and how Stein opened doors at the HFA:

THE CHAIRMAN: What did Stein do and how was he helpful? Was he helpful? And what do you know about his activities?

THE WITNESS: Stein was, the proof of the pudding was Stein got me commitments. He immediately got me commitments for jobs I had in the agency.

* * *

THE CHAIRMAN: What did you do in regard to H.F.A.?

THE WITNESS: I made the technical meetings. I had made meetings that had to do with blueprints, and change orders, and design, to a point. My background was building. I can read blueprints. I know enough about it.

THE CHAIRMAN: The finance details, the business details, he took care of?

THE WITNESS: No, he did not. I did. I also know enough about that end of it. Stein was definitely the front man.

COMMISSIONER PATTERSON: He was the door opener?

THE WITNESS: That's all, strictly the door opener.

* * *

THE CHAIRMAN: I see. Well, now, what did Stein lend to this relationship with you? He had no expertise, he didn't provide the forms, he didn't fill out the forms, he didn't have the information to fill out the forms, the expertise. Is that correct?

THE WITNESS: That's right.

THE CHAIRMAN: What did he do?

THE WITNESS: He was a very good talker and he was very capable of picking up checks. That's what he did. He was a door opener. As Mr. Patterson mentioned, that's what he was good at. He kept us on the top of the list at the agency.

Because of the implications of this testimony by Silvestri, and other evidence that special interest pressures were influencing the agency's operation, the Commission undertook an examination of each of the projects for which Silvestri's corporate records showed payments by him to Stein.

The following project-by-project review begins, for the purpose of establishing the origins of the influence peddling network that made the Stein-Silvestri combine so effective, with a project that was not a Silvestri loan consultant responsibility. The only connection that Silvestri had to this project, Cold Springs in Lower Township, Cape May County, was that it was sponsored by the same client, J. Evan Hallas, for whom Silvestri had been promoting another project at the HFA. However, Stein's initial work for Hallas on Cold Springs, a financially troubled complex, indicated that he had valuable connections at the HFA. This first impression of Stein's influence almost immediately led to the Stein-Silvestri co-consultancy. The success of this combine was founded on Stein's pipeline to the HFA that kept Cold Springs a live "bail-out" issue for so long despite its apparent ineligibility for inclusion in the agency's program.

COLD SPRINGS APARTMENTS

The SCI's scrutiny of the processing of Cold Springs in 1974-75 revealed that it was nurtured by Stein's longtime friendship with Daniel Horgan at the DCA, by the efforts of Alexander Feinberg, a Camden County lawyer who was counsel to developer Evan Hallas, to seek favorable treatment through Horgan, and by Horgan's contacts with Director Johnston. These implications of unusual pressure for agency actions made those involved with Cold Springs a prime target of the Attorney General's 1975 investigation. The SCI's inquiry shows that the Stein connection at the HFA helped to promote active agency consideration of Cold Springs as a prospective bail-out for almost a year despite its admittedly substandard site and structural conditions. Although Cold Springs ultimately failed at the HFA, its processing history reveals the key to the later success with bail-outs of the Stein-Silvestri combine.

The HFA's files disclose that there was an almost immediate contradictory reaction to Cold Springs after developer Hallas submitted a site inspection request on November 2, 1974, with a cover letter from his longtime counselor, Feinberg. A project manager was assigned -- first Michael A. Kaulakis, followed quickly by a replacement, Gary Anastasia. On December 5, 1974, Anastasia submitted an inspection report declaring his approval -- although he later recalled at the SCI that the agency's technical service personnel "had some concern over the foundations or something to that effect." However on December 24, Robert H. Lee, assistant technical services director and chief architect for the agency at the time, sent a memo to his superior, George D. Feddish, recommending disapproval because of poor workmanship and questions about subsurface soil, and on December 26, Feddish recommended to Johnston that the project be rejected because of a lack of professionalism in its construction.

The Feddish memo or a copy of it was sent to Horgan by Johnston, with a handwritten note by Johnston that confirmed the close involvement in December, 1974, of Horgan, Feinberg and Stein in the Cold Springs' processing. The note stated:

"Dan, In light of the attached, I had to advise Alex and Jack we couldn't touch this. Sorry!
Bill"

Stein's Impact Demonstrated

It should be emphasized that the Commission's concern about this project rests not with its ultimate failure at the agency, of course, but with its illustration of the origins of a particular pressure group that attempted to work its will at the agency for certain projects regardless of their feasibility. Indeed, the ramifications of such pressure on the agency were demonstrated by the fact that Cold Springs remained under active processing by the HFA for many months after Johnston's apologetic note to Horgan.

Testimony at the SCI and subpoenaed records of telephone calls and meetings indicate the persistence with which Cold Springs was promoted for HFA consideration in late 1974 in the face of accumulating adverse reaction of agency personnel to it. It should be noted at this point that the Attorney General's 1975 investigation resulted in the following statement by a State Police officer in his report on an interview with Horgan:

"Another comment made by Horgan in connection with persons involved in this investigation is that Alex Feinberg came to see Horgan some time

ago, seeking help for J. Evan Hallas, who was involved at that time on the Cold Springs Apartment project. Sometime later, Horgan called Feinberg and recommended that he use the services of Jack Stein on that project." (Emphasis added).

Horgan's Reaction

During his SCI testimony, Horgan was asked about this interview and the excerpt (above) from the investigator's report. Horgan indicated he had no recollection of it but said he could not deny its accuracy:

Q. Did you know Stein to be working as a loan consultant while you were at D.C.A.?

A. I knew him to be helping Silvestri, yes.

Q. On June 12th, 1975, you were interviewed by the attorney general's office with respect to an investigation they were conducting at the time of the New Jersey Housing Finance Agency and a copy of the report of that interview has been marked Exhibit C-210 by us. I'm going to read from the fifth paragraph of that report and ask you whether you recall those events today the same as you did -- well, the same as a Detective Feldher said that you did then.

"Another comment made by Horgan in connection with persons involved in this investigation is that attorney Alex Feinberg came to see Horgan sometime ago seeking help for J. Evan Hallas who was involved at the time on Cold Springs apartment project. Sometime later Horgan called Feinberg and recommended that he use the services of Jack Stein on that project." Do you recall making that statement to Feldher?

A. No, I don't.

Q. Does that comport with your recollection today of those events five years ago?

A. It doesn't, but I'm not trying to deny that the report is accurate.

Recollection Vague

Feinberg also was questioned by the Commission about the State Police interview-report that Horgan said he had recommended Stein to him. However, Feinberg protested that he could not remember Horgan doing that. His testimony on this incident:

Q. Is it possible that Mr. Horgan may have suggested to you that Mr. Stein was a good loan consultant?

A. I don't remember that all.

Q. And is it your answer that you don't remember or that that could not have happened?

A. I don't see how it could have happened because I don't know what I would have to do with Stein. Stein -- as I understand, my recollection goes back to the fact that the thing between Stein's -- between Stein and Silvestri. Those were the -- because all I remember is Concept Builders, and all of sudden Stein's name popped in, and I thought they were partners. I don't know.

Q. Well, let me see if I can reconstruct a scenario that at least would make sense.

A. Yeah.

Q. You were having a problem with the project. You call Horgan. You come to Trenton to meet Horgan and at that meeting, or over the telephone, it's suggested to you by Horgan that Stein is a good loan consultant and may be able to help you with the project.

A. Yes. I wasn't the one that retained Stein, so I just can't remember that at all.

Q. All right.

A. I really -- I don't mean to give you any bad answers, but I don't want to give you any wrong answers.

Q. Okay.

A. Or make up any answers.

Q. All right.

Meetings, Telephone Calls

Although the recollections of the witnesses involved in the Commission's scrutiny of the Cold Springs project were vague, Horgan's telephone message slips and Johnston's office diary attested to the personal contacts during the 1974 period of Feinberg's interest in the project and the agency's activities in connection with it. Feinberg, who also testified at the SCI that almost all of his contacts with Horgan were about Cold Springs, telephoned Horgan on May 6 and 7, June 27 and July 29; on October 9 and 12, prior to Hallas' request for a site inspection, and on November 12, ten days after the Hallas' request and two days prior to HFA's receipt of Hallas' \$250 inspection fee. Feinberg again called Horgan on December 11. The day after this call, Stein met with Johnston and then called Horgan the next day. A few days after Johnston sent to Horgan the Feddish memo adverse to Cold Springs with the acting director's handwritten note of regret, Feinberg again telephoned Horgan, on December 31.

Feinberg was asked by the SCI about these frequent calls to Horgan relative to Cold Springs:

- Q. Okay. The reason I asked that is I have got what's marked as exhibit C-72, which I'm about to show you, which is a packet of phone messages from Mr. Daniel Horgan at the New Jersey Department of Community Affairs and we have pulled all of the phone messages from Mr. Alexander Feinberg, the first one chronologically being May 6th, 1974.
- A. Then if that's so, that's when I talked to him. I didn't know it was that far back.
- Q. Okay. It's your testimony, though, that that first call had to be on Cold Springs?
- A. That's the only time I talked to him about Cold Springs.

* * *

- Q. All right. There's another area that you may have talked to Mr. Horgan?
- A. I might have talked to him on the merit of things because he was very active in the Democratic Party as well as I was. But my recollection is that basically my conversations with him were strictly on this Cold Springs thing and there could be some other casual conversation, yes.

Q. Okay. I want to make it clear what you're testimony is on the reasons you may have talked to Mr. Horgan. You seem to be adding a reason in addition to Cold Springs, now.

A. No. I don't mean to.

* * *

Q. All right. To be fair to you, why don't you describe the areas that you talked to Mr. Horgan about?

A. Well, I don't remember actually the actual conversations with Mr. Horgan, and the only thing that stands out in my mind about that was I would like to have a fair hearing before the New Jersey Housing Finance Agency and have my day in court because I wasn't -- I just couldn't even get him to sit down and discuss it with me.

* * *

Q. I just counted the number of messages in this packet and there's 21 from the period May '74 to May '76 and your testimony is that your belief is that all these calls had to do with the Cold Springs project?

A. My recollection is that.

Q. Okay. And it also appears, I guess, that if the first call had to do with Cold Springs and that was in May of '74, some six months prior to the submission of the site report; is that correct?

A. Could be. I don't -- that I don't -- repeat that question. I don't follow that question.

Q. The question is: You testified before that you felt that a short period of time of about, I guess, a couple of months had preceded the November site inspection report submission under your letterhead?

A. When was that date?

- Q. That was November of 1974 and this call is in May of 1974?
- A. Could have been. Could have stretched over a longer period of time Mr. Siavage than I can recall.

* * *

- Q. Well, maybe you should answer this question: Why did you call Mr. Horgan in the first place to get a fair hearing, as you suggest, at the Agency?
- A. Because Mr. Hallas told me that he was not getting to first base with these -- they were -- I wouldn't say chopping them up, but you know what I'm talking about.
- Q. Yes, but why Mr. Horgan as opposed to Mr. Johnston or Mr. Chieppa?
- A. This is when he was in the Department of Community Affairs. I didn't know Mr. Johnston. I didn't know any of these people.
- Q. And you feel that you may have been referred to Mr. Horgan by --
- A. Somebody. I don't know. I don't remember that because I didn't know Horgan before this personally except as I explained to you before, if I casually met him at some political meeting, which I do not recall.

Why Feinberg Contacted Horgan

Feinberg was asked to explain more fully why he telephoned Horgan so often rather than Johnston relative to the Cold Springs project:

- Q. All right. Did you again, subsequent to talking to Mr. Horgan, talk to Mr. Johnston about the project?
- A. I may have talked to Mr. Johnston on one or two occasions. I don't remember.
- Q. Just one or two?
- A. To my knowledge.

Q. Okay. So it appears, then, compared with the number of calls to Mr. Horgan, that you continued to deal with Mr. Horgan as opposed to Mr. Johnston?

A. I didn't know Mr. Johnston that well.

Q. You didn't know Mr. Horgan before you started that project?

A. I didn't know him that well either, but for some reason or another he put me perfectly at ease and then I had -- I don't know, just -- I just can't explain that, frankly.

Q. Did Mr. Horgan suggest to you that he was intimately involved with the H.F.A., partially involved or uninvolved with the work of the H.F.A.?

A. He just said that he knew Mr. Johnston very well and was a part of their department.

Yes, he did say.

Q. Do you recall receiving communication from Mr. Johnston sometime in December of 1974 that the project was --

A. Yes.

Q. -- too risky to become involved in?

A. I have some correspondence here from him. I'm trying to figure it out what it was. When was that, sir?

Q. December of '74.

A. Let me see. I don't seem to have it in here.

Q. Okay. Let me see if I can refresh your recollection.

A. Okay. Might have, but I don't see it in here, anyhow.

Q. I'm showing you what's been marked exhibit C-75 for the purpose of identification, which is a memo from George Feddish who you described before?

A. Yeah, yeah.

Q. To William Johnston, dated December 26th, 1974?

A. Right. Right. Yeah.

Q. Which reads --

A. I see what it says.

Q. The pertinent part says, "Attached is a memo from Robert Lee dated December 24, '74. I recommend rejection of this proposal..."

A. Yeah, I saw -- I don't see it in here. Let me look.

Q. All right. It's all right if you don't have it yourself.

A. I may not have that.

Q. What is the handwritten note at the bottom of that memo?

A. "In light of the attached I had to advise Alex and Jack we couldn't touch this. Sorry, Bill."

Q. Who's that addressed to, that handwritten note?

A. To Dan. "In light of the attached I had to advise..."

Yes, I think he probably told me and Jack, whoever the hell -- I guess Jack is Stein, I suppose. He couldn't touch this, okay. That's exactly right.

Q. Did you discuss the fact of their inability to touch it with Stein?

A. Well, I didn't see this.

Q. Right.

A. I didn't hear that expression, "touch it." That wasn't brought to my attention.

Q. Okay.

A. And I didn't discuss anything with Stein, to my knowledge, after that. I didn't look at him as being the answer to my problem at all or to my client's problem.

Q. Did you discuss the fact of your notification from Johnston as to their inability to go forward with the project with Mr. Horgan?

A. No, I don't recall talking to him about it.

Q. Okay.

A. I don't recall it. Now, may have been but I don't remember.

Q. The phone messages suggest that you called Mr. Horgan on 12/31/74.

A. Could be. Could be.

Q. Pursuant to your testimony, that was about Cold Springs?

A. Yeah.

Q. But I don't imagine you recall whether that was in response to receiving --

A. I have no idea. I swear I don't -- I said that again. I have no idea.

Cold Springs Remained Active

Despite Johnston's expression of regret -- on December 26, 1974 -- that the agency "couldn't touch this" -- continued pressure for HFA processing of the Cold Springs project extended well into 1975.

Harris Osborne, who was the agency's operations director until he quit later in the year, notified Feinberg that the site "cannot be approved" in a letter dated January 16, 1975. This letter indicates copies to Hallas, Stein and Silvestri's Concept Building Industries (with Concept Building Industries crossed out). However, Hallas had written a letter to Johnston requesting a conference with appropriate HFA personnel and a soil engineering firm to discuss this problem on January 13, three days before Osborne's letter of rejection.

The meeting Hallas requested was held on January 29, 1975. Lee scheduled the meeting, informing Hallas by letter on January 23. Although Lee had felt for some time that the project could not be financed, he contended this attitude was based on his "technical" knowledge. He explained his role in setting up a so-called "fair hearing" process:

Q. On the 24th of December you thought this project could reach Agency standards then?

A. No.

Q. You didn't think that?

A. I said this to further discuss what could be presented to us that we could analyze. This meeting doesn't suggest, number one, that I said I thought it could be dealt with technically because I wouldn't have had the meeting. I went on record saying, in my technical opinion, it could not be built subject to other information.

Q. Okay. You never thought that the project could get bonded?

A. No, sir.

Q. Why did you have that meeting?

A. Because the sponsor has a right to appeal my decision. They came in saying, "We got all these good facts we would like to give you." As technician and architect, I said, "Fine, come on in. Give them to me."

Q. This was a fair hearing so to speak?

A. I believe so.

Feddish reported the results of this meeting to Johnston in his January 30 memo. Lee sent a summary to Hallas, indicating that, although the HFA had agreed to soil testing, the agency was not by this action promising any reconsideration of the project.

Johnston had forwarded Hallas' January 13, 1975, request for a conference to George Feddish with the notation "please arrange promptly" and sent a copy of Lee's letter arranging the meeting to Richard Kadish, the deputy executive director, with "please sit on this and chair the meeting" handwritten on it. Feinberg called

Horgan again on January 23, the same date as Lee's letter. On the 27th, Osborne sent project manager Anastasia a note directing him to attend the meeting. Anastasia testified about his recollection of the meeting:

Q. I'm going to show you a memo from Harris Osborne to yourself dated 1/27/75 which has been marked C-109 for identification telling you to attend a meeting that's going to be held on the 29th.

And he's telling you to go to a meeting on the 29th of January; is he not?

A. I don't see there's a date here.

Q. Perhaps, then if I show you Exhibit C-110, which is a letter from Robert Lee to Evan Hallas concerning Cold Spring Apartments memorializing the meeting of the 29th and ask you to read that, you may remember that meeting on the 29th.

By the way, that memorialization suggests that you attend that meeting?

A. Yes.

Q. You recall that meeting now?

A. I have a vague recollection of the meeting, yes.

Q. Tell Commissioner Lane what your recollection about the meeting, why it was held, everything you remember about it?

A. I recall that Mr. Hallas requested the meeting for the reasons set forth in this letter. He wanted to appeal our rejection and retain his own firm to do their own analysis of the defects that we picked up.

Q. Who is Mr. Hallas?

A. He's the developer of the project.

- Q. Okay. He was, in effect, appealing the opinion of the Agency?
- A. Our rejection, yes.
- Q. Okay. Do you know what Technical Services' opinion was after that meeting? Had it changed any?
- A. Not that I recall. I really don't have much recollection beyond this.
- Q. All right. Would it be that that meeting perhaps took place to assuage (Hallas') concern about the opinion of the Agency?
- A. I don't know whether it was to assuage his concern. It was sort of standard procedure for us to hold conferences on appeals of site rejections.
- Q. All right. Did your opinion change in most cases after you had those conferences or not?
- A. It varies depending on whether or not we are satisfied with whatever new evidence they can produce to overcome our concerns.
- Q. How many times can you recall in your experience as a Project Manager, Lee or somebody in Technical Services taking a position similar to the one they took on this project that was later ameliorated by a conference with the sponsor?
- A. Technical Services' rejections, I don't recall many at all.

CHAIRMAN LANE: I would think in a month's time it would be pretty hard to repair what Technical Services finds to be workmanship far below standard, wouldn't it?

THE WITNESS: I don't think it was -- he was talking about repairing it in that time. This is the period of time between our letter, a month elapsed since we called the meeting, and he was going to explain to us at the meeting what steps he had planned to take in the future to correct the problem.

BY MR. STAVAGE:

Q. -- I see. So, did he tell you how he was going to change from below standard workmanship to standard workmanship at that meeting?

A. He indicated to us, from what I recall, that he would have his own analysis done at his expense and submit it to us as to how he would propose to correct these problems.

Q. Considering some of the technical deficiencies, it wouldn't have been very easy to correct them; is that fair to say?

A. That's fair to say from what I read here.

Q. Part of the building were sinking.

A. Yes.

Q. The balconies were almost falling off?

A. From what I recall, yes.

Q. The walls were cracking, right?

A. I didn't inspect the actual, physical structures, but from this memo, yes.

Q. Okay.

A. Quite a few defects.

Q. So, is it fair to say you walked out of this meeting on the 29th of January without much faith that the defects that were noted by Lee were going to be corrected?

A. That's correct. I felt that way.

CHAIRMAN LANE: Almost impossible to correct if a building is sinking.

THE WITNESS: My impression at the time, I don't recall specifically, but obviously, be that the cost of correcting the extent of this work would prohibit feasibility.

Feddish's memo reporting the results of the January 29 meeting is marked "copy to Dan Horgan - 2/4/75 - dya" -- "dya" being the initials of Johnston's secretary at the time. Lee's February 5, 1975, letter to Hallas that also summarized the meeting is marked "copy to Asst. Comm. D. Horgan - 2/7/75 - dya". Lee approved the scope of soil testing at the Cold Springs site by letter of February 21, 1975, although he considered the absence of prior tests a serious flaw.

In view of Lee's letter-approval, copied to Horgan, he was asked at the SCI to recall his earlier denunciation of the Cold Springs project:

- Q. Okay. I'm going to show you what's been marked exhibit C-107, actually an attachment to exhibit C-107, from Robert H. Lee, yourself, to Mr. Feddish, dated December 24th, 1974, approximately 19 days after Mr. Anastasia looks at the site, and in the attachment to 107 essentially reports a site inspection that you made from a technical perspective; is that not the case?
- A. That is the case.
- Q. Okay. And just review that document and then, if you would, in answer to my question summarize what your general feeling was from a technical perspective on Cold Springs at that time?
- A. My recommendation, of course, is based upon my review of specific facts here tabulated that the project be disapproved on technical and workmanship grounds.
- Q. Now, was that because you felt that regardless of what could be done to the project from a construction standpoint, it could never be made approvable from an Agency standpoint?
- A. Well, I list some, by number, 12 precise reasons why I was disapproving it. Of course, the obvious thing is there was no original sub-soil investigations, which means that we could not affirm the foundation nor the structural stability of the project, so on that basis, of course, as an architect, I disapproved it.
- Q. Because you couldn't guarantee it would not sink into the ground?

- A. I cannot guarantee what it was sitting upon, and without technical subsoil information, I cannot affirm that, and I felt that the Agency should not be involved in that type of project.

* * *

- Q. Okay. With respect to exhibit C-110, after the meeting was -- well, your letter concerning the meeting says that, "Mr. Hallas asked permission to have site engineers make an in-depth evaluation of the total project taking on-site subsoil tests to determine the structural stability of the project already constructed," and Mr. Lee and Mr. Feddish above that, reiterated the Agency's concern as to the lack of professionalism of all parties concerned, including the sponsor, the bidder and architect, which permit the project to proceed without initial subsurface investigation. That's pretty strong language, is it not?

- A. It's strong, but it's technically precise.

- Q. This concern as to the lack of professionalism there is your advice?

- A. No project that the Agency would fund would proceed without some technical assurance of the foundation system upon which it sets.

Horgan Alerted

The fact of Horgan's interest in the Cold Springs project in conjunction with Feinberg--and Stein--has been fully established by documentation of the agency itself. These documents included Johnston's memo notation to Horgan in December, 1974, and copies of other Cold Springs' correspondence by agency personnel in February, 1975. Because Horgan first denied that he had seen such documentation, he was referred to the private hearing exhibits and specifically asked if he recalled being alerted about the project's status at the HFA:

- A. It does refresh my recollection that I received copies of more baloney than most people got, and that is usually the way I treated it. But I don't have any recollection of this.

THE CHAIRMAN: Well, just take your time and read through those and then you will be better able to answer the questions in the affirmative or the negative.

(There is a brief pause.)

A. It would be my guess -- is there a question?

THE CHAIRMAN: No, not yet.

Q. No, I asked you to examine them. I wondered whether that refreshed your recollection first about receiving copies of H.F.A. memoranda. I think you answered that question.

A. Yeah, I would guess that that stuff came across my desk. My guess would be that -- and I had someone sitting in front of me and I called Johnston, said, "What the hell is going on? Why don't we get this?" That this stuff was sent to me as a consequence of that and I was able to pass it on to somebody else.

Q. Who would be the somebody else that you would pass it on to?

A. Whoever would be the appropriate person in this.

Q. Well, for instance, let's take in the Cold Spring.

A. The name there that I recognize clearly is Jack Stein. I'm not sure I recognize another one.

Q. So you would give Stein a copy of the memorandum to give him an idea how it was going at the agency?

A. Guessing. I don't remember regularly sharing that stuff. I might have shown it to somebody. I also know Alex Feinberg. I don't know anyone else.

Site Engineers, Inc., which had conducted the site tests, filed a report on April 23 and a supplemental report on May 19. Prior to these reports, Feinberg called Horgan on March 11 and March 14. Stein met with Johnston on April 7 and May 14. The next day, May 15, Feinberg called Horgan twice, leaving the message "important".

On May 22, Feinberg called Horgan again.

Unusual Commitment Report

On May 28, Gary Anastasia filed a Commitment Analysis Report on Cold Springs, making no recommendations in his review of the project. Anastasia testified about the difference between the normal procedure for commitment reports and his Commitment "Analysis" Report:

Q. When the Board is asked to commit mortgage funds, how does the staff communicate with the Board with regard to the specific project as to staff's opinion on that specific project?

A. Well, before a commitment is issued, the Operations Division prepares a report for the Board to review.

Q. What's the name of that report?

A. Commitment report.

Q. I show you what's been marked Exhibit C-111 for purposes of identification which purports to be a copy of a Commitment Analysis report on Cold Springs Apartments dated May 28, '75 and an attachment. Is that the kind of report that we're talking about?

A. Yes, it is.

Q. What happened between January 29 of '75 and May of '75 with respect to those serious technical deficiencies that caused the production of that analysis report?

CHAIRMAN LANE: Is that the date of this report, May?

MR. SIAVAGE: Yes, it is.

THE WITNESS: Well, according to this report they submitted additional proof that the project could go ahead.

BY MR. SIAVAGE:

Q. And the additional proof is attached thereto; isn't it? Subsequent findings and recommendations are outlined, right?

CHAIRMAN LANE: I take it by this time the building has been jacked up?

BY MR. SIAVAGE:

Q. Mr. Anastasia has referred to the final paragraph of that report which says -- well, let me read the whole technical consideration section. It says, "The Cold Spring Apartments development was inspected by the Technical Services Division, the Agency, on December 18, '74 and because of several technical deficiencies were noted, it is recommended that the project be not approved. See attached memo, which is the memo referred to before. Upon appeal of this rejection on a meeting conducted January 29, '75, it was agreed that the owner/developer would submit an in-depth foundation and subsoil analysis for review by Technical Services Division. Their subsequent findings and recommendations are outlined in the attached memorandum." The "they", I take it, is Site Engineers, Inc.?

A. Yes.

Q. This attachment --

A. This doesn't appear to follow. This appears to go to something from us, and this is --

Q. Well, why don't you see if you can interpret the May 19 letter from Loigman and Site Engineers.

CHAIRMAN LANE: Maybe you better read it into the record.

THE WITNESS: Dated May 19, 1975 from Site Engineers, Inc. "Gentlemen, as an outcome of our May 13, 1975 meeting and subsequent discussion with Mr. George Feddish, I am submitting this letter to supplement my report

of April 23, 1975. The following is an explicit summary of my opinions and conclusions regarding the foundation systems for the Cold Spring Apartment.

"One: Buildings; two through six, nine and ten - the foundation systems are adequate to support the structures without soil failure or detrimental settlement.

"Two: Building one - the northeast corner of the building has settled, further detrimental settlement is possible at this cornering. The foundations for remainder of the building are adequate to support the structure without soil failure or detrimental settlement.

"Three: Building seven - foundations are adequate to support the structure without soil failure. Negligible settlement has been observed, but soil failure for detrimental settlement to the building will not occur. Signed by E. Loigman, Professional Engineer."

BY MR. SIAVAGE:

Q. So, some of the buildings are going to stand on the soil that they're on and one or two may not stand. That's effectively what he's saying.

A. Yes.

CHAIRMAN LANE: And this is the opinion of some outside person who was hired and submitted a report on behalf of the project owner?

THE WITNESS: Developer, yes, sir.

BY MR. SIAVAGE:

Q. Now, you are absolutely right. It appears that the way the documents are attached, this letter comes between -- I have just determined, a memo dated May 29, '75 from Feddish to Johnston which concludes, "Because of the above and notwithstanding contents of consultant letter I cannot recommend this project to the Agency." You are copied to that with Chieppa.

A. Uh huh.

CHAIRMAN LANE: Is that before or after this outside fellow submitted that report you just read?

MR. SIAVAGE: It is after that report and the day after the preparation of the analysis report to which it is attached.

BY MR. SIAVAGE:

Q. Can you explain that?

A. The only thing I could think of is that there was an additional report subsequent to this, you know, I don't have any recollection.

Q. Okay.

A. If there were additional reports was submitted by Technical Services approving or whatever.

Q. You are not really making a recommendation in that commitment report, are you?

A. No.

Q. Matter of fact, the title of that is Commitment "Analysis" Report; is it not?

A. Yes, it is.

Q. Is that usual title of those reports?

A. No, it isn't.

Q. What's the usual --

A. Commitment Report.

Q. Who do you think would have asked you to make out that Commitment Analysis Report?

A. Harris Osborne, probably.

Q. Why do you think he might have done that?

A. Because he probably felt that if they ameliorated these conditions, it could go to the Board for commitment, and he wanted us to get together

whatever information we could up to this point. I assume. I don't really know what the reason would be.

I don't recall doing any other Commitment Analysis, analyses reports. I may have. I don't even recall that this was a Commitment Analysis Report. To my knowledge, I don't even recall that this was ever committed.

Q. No. As a matter of fact, our information is that it was never committed, but that doesn't solve the question of why you -- have you ever prepared a report like that on any other project, that you can recall?

A. Not that I recall, no.

Q. And you think it was because Osborne asked you to kind of --

A. Get the facts and the information together. This could have possibly been a discussion item for the Board pending satisfaction to Technical Services that the problem would be corrected.

Q. All right. And the day after that Feddish is taking the position to Johnston that he can't recommend the project? That is the day after you write that analysis report; is that right?

A. Yes.

Q. And you were copied into that memo to Johnston from Feddish?

A. Uh huh.

Q. Do you recall whether you agreed with it or disagreed with it?

A. I would obviously agree with anything that Technical Services found. I mean, I'm in no position to evaluate their end of it. If they gave me a memo rejecting it, that would be my opinion, and it should not be funded.

Q. Would I be wrong if I construed your analysis report as a strident effort to not to take a position on the project?

A. On my behalf?

Q. Yes.

A. I really don't recall what my motives were at the time for preparing this.

Q. All you remember is that it was probably Osborne who told you to prepare it?

A. Yeah.

Q. It may have been because it would be a consideration for the Board's agenda?

A. That's, you know, all I can remember on it.

Q. What would the Board be considering whether to override the staff's recommendation that the project not be committed?

A. The only thing I could think of, they would be considering this as a possibility of a future commitment if those problems could be overcome.

Q. You mean the sinking problems?

A. Yeah. I mean, if Technical Services was somehow satisfied and all the other criteria had been met, we may have considered recommending it for commitment.

Q. It seems to me that again, the tail may be wagging the dog, the Technical Services is still against this project, yet it may be that the Board wants to consider the project as a future project if the opinion of the Technical Services ever changes. I mean, that's what your previous answer was.

A. Yeah, that's the only thing I can think of for preparation of this report. I really don't recall why this report was done. I don't even know if it went to the Board.

Q. Did Osborne ever tell you that this project had to be agendized or someone was very interested in agendizing this project?

A. Not that I recall on this one, no.

On June 2, 1975, Stein called Horgan. The next day, Feinberg called Horgan, leaving the message "important." On June 4, Johnston called Horgan and sent him a copy of the Site Engineers April 23, report. Also on June 4 the project was listed on the HFA board's agenda as a "discussion item." No action resulted except that an appeal hearing was scheduled.

The Appeal Hearing

Horgan and Johnston met again on June 25. On June 30 Johnston met with Feinberg and Hallas at 1 P.M. and called Horgan at 3:25 P.M. Johnston met with Horgan on July 25, 1975. Also on July 25, Feinberg wrote Johnston requesting that he reconsider Cold Springs and to allow the development team to make a presentation to the agency. Horgan and Johnston met again on August 5.

On August 12, Feinberg met with Johnston at 11 A.M. and a hearing on Cold Springs was held at 1 P.M. with Johnston functioning as hearing officer. Feinberg, who was vague about the details of almost all his discussions with Johnston, testified at the SCI:

Q. At any rate, if I can come back, now, to early 1975, you continually tried to get what might be described as a fair hearing from the Agency; is that fair to say?

A. Wanted them to reconsider it and wanted them to listen to me. I had these expert engineers that I wanted to bring in, which I did. I was given that opportunity, and then I was given a hearing and still turned down and that was the end of it as far as I was concerned.

Q. During this time period, is that when you met with Mr. Johnston with regard to the project? You said, you testified before, that you met with Mr. Johnston on approximately two occasions concerning the project?

A. I don't think I met with him, no.

Q. All right.

A. I don't think so.

- Q. Let me see if I can again refresh your recollection.
- A. Maybe you can. I was there on one or two occasions.
- Q. I show you what's been marked exhibit C-73 for the purposes of identification, which is Mr. Johnston's 1975 appointment book.
- A. Okay.
- Q. And at one o'clock on June 30th, 1975.
- A. Well, that could be. That could be.
- Q. There is a listing for Alex Feinberg, Cherry Hill?
- A. We could have come and talked to him, yes. I wouldn't deny it.
- Q. Was that on Cold Springs do you recall?
- A. On Cold Springs only. That's the only project I handled for Mr. Hallas, as I told you, actively. I said I did some work in Powder Mill, but not with the Agency.
- Q. Okay. Do you recall what this conversation in June concerned?
- A. I haven't the slightest idea except maybe about Cold Springs again. Maybe pleading for reconsideration, which would be a natural thing for me.
- Q. On the 12th of August, 1975, there was a hearing at the Agency, I believe you testified?
- A. Correct.
- Q. Do you recall having a conversation with Mr. Johnston prior to the institution of those proceedings?
- A. No. The only thing I did was make the formal appeal and we received notice when the hearing would take place and to bring our witnesses.

- Q. And what happened on the day of the 12th of August, if you recall?
- A. We had the hearing. Here. I have it here. I can tell you right now. I refreshed my memory by reading this. Mr. Johnston presided. He was designated -- I was advised he was designated as the hearing officer for the Agency instead of the Agency en bloc and the -- this transcript reflects who was present.
- Q. Do you recall what time the hearing started, whether it was in the afternoon or in the morning?
- A. I think it was in the morning. I'm not sure I don't know.

MR. SIAVAGE: Would you mark that.

- A. (Continuing) I really don't know. May have been the afternoon or morning. I don't have any recollection.

(Photocopy of a handwritten document is received and marked C-76.)

- Q. Mr. Feinberg, I'm showing you what's now been marked exhibit C-76, which I will represent to you as a photostatic copy of Mr. Johnston's notes of that August 12, 1975 hearing and it's dated -- there's also a time on it and it says one p.m. I wonder if that refreshes your recollection as to when that hearing began?
- A. No, it still doesn't refresh -- in other words, you would be led to believe -- we didn't have any -- I don't remember having a private discussion with him that day.
- Q. Okay.
- A. I don't remember that at all.
- Q. All right. The reason I'm asking, again, in a further attempt to refresh your recollection, again showing you C-73, there's an appointment marked for Feinberg at 11 a.m. that day?

A. That could have been. We might have gotten there earlier. Yeah, could have been.

Q. Okay.

A. Let's see. Where is this on here? Oh, I see. Yes. Seems to me I thought the hearing was in the morning. I don't know. It's unusual. They don't put in the time starting in this transcript.

Q. Now, you say it could be that you had a private meeting with Mr. Johnston prior?

A. I really don't remember, Mr. Siavage. I just don't know. I wouldn't say a yes or no.

Q. We have established that there was one meeting on the -- in June of 1975 with Mr. Johnston and you said there were two occasions upon which you talked to him about the project. Where would the other one have been, if you recall?

A. Well, this must have been the one you're talking about, now.

Q. Okay. Do you recall what you said to Mr. Johnston and what he said to you?

A. No. I can only assume I was pleading for reconsideration as any lawyer would for his client.

Q. Was Mr. Stein present with you that day?

A. Not to my knowledge. He may have been in the offices, but I don't think -- I don't recall his being there when I talked to Johnston.

Q. Were you then aware or did you ever become aware of the a relationship between Mr. Stein and Mr. Horgan?

A. No. That I don't know about.

* * *

Q. What was the result of the hearing of August 12, 1975?

A. Well, he made his -- he made his report October the 3rd, 1975 in which we were turned down. He recommended we be turned down and that was it.

Q. Did you try to take an appeal from that hearing?

A. I don't think so. I don't remember doing that.

Q. Okay.

A. That would have to go to the Appellate Division, and I'm sure we -- and I have no records of knowing anything like that.

Q. In other words, you felt that after October the 3rd, 1975 that was it?

A. That was the end of the ball game.

Q. All right.

A. And, incidentally, I may add, I was never paid a fee for my services, and I will tell you what I did do to verify that. I looked through my own records, and my bookkeeper looked, and I saw certain payments made by Hallas for other work on other things and other matters, but I found nothing as far as Cold Springs was concerned, so I took the liberty and called him. I didn't want to do this because I didn't want to talk to him before I came here, and I wanted to be able to answer this question assuming, as any lawyer would, that I would be asked this. I said, "Evan, I have one question to ask you: Did you or did you not pay me a fee?"

He said, "I did not."

Q. Okay.

A. I think he also added the words that I didn't bill him, either, for this.

Q. Did you ever discuss it with Mr. Hallas taking a percentage of the project if it was approved?

A. No, never. Not ever.

Q. Did Mr. -- what was the results of your conversations with Mr. Horgan about obtaining this fair hearing? What did he suggest to you?

A. He suggested that he would talk to Johnston to be sure that I was treated fairly. I remember saying to him very specifically, "I don't want anything that I'm not entitled to. I just want to have fair treatment." This is my stock statement, and I say it all the time on talking to people like that.

Q. All right. Subsequent to the time when you had the discussion with Horgan, what was the next activity with regard to the agency to try to get the project going?

A. This is why I'm a little lost because of the time factor except the best I can recall, Mr. Siavage, is that we had this discussion and there was a decision made by the Department turning us down, and I was advised that we have a right to an appeal, and we took an appeal, a formal appeal by letter, and then I was advised that Mr. Johnston was to be the hearing officer.

When I said "appeal," I meant an appeal to the entire Agency, and I even talked to whom I knew as a builder, who had -- I never represented him personally except maybe here and there, a man by the name of Harold Sarshik who was a member of the Agency, and he said you have a right of appeal and so forth and so on, and I discussed it with him, and I said, "Okay. I'm going to take an appeal," and I assume I was going to get an appeal before the entire Agency to hear our case, and I brought in the experts, the site engineers, all the people that -- I brought Stein. I got Stein in there on the rentals and whoever else we had there. I think this transcript will show it.

Q. That was dated August 12th, 1975?

A. Yes. Let me see the date on this. Yes. Here it is, right here. August 12th, 1975. I have it right here. And then I find when I got there, there was going to be Mr. Johnston was supposed to be the hearing officer. The hearing officer, and he heard the thing as the transcript describes and then the next thing you know I have his report which is dated October the 3rd, 1975, directed to Commissioner Patricia Q. Sheehan, Chairman.

Q. During the period December, 1974 to August, 1975, those nine months prior to the --

A. Yeah.

Q. -- fair hearing, what was happening with respect to the project?

A. Well, that I don't know because I wasn't that active in it.

Q. Okay. You were continuing to call Mr. Horgan about it, I believe?

A. Well, maybe I made calls there, but I don't remember why, frankly, because I don't remember what we did, frankly, other than those meetings with the New Jersey Housing Finance Agency and then, of course, the engineering work and the inspections and tests that were being made by engineers which took some time.

Feinberg called Horgan on September 18, 19 and 23. On September 26, Horgan and Johnston had another meeting. One week later, on October 3, 1975, Johnston submitted his Recommended Report and Decision against Cold Spring Apartments to DCA Commissioner Patricia Sheehan. He recommended denial of the application based on the Attorney General's Formal Opinion #14, dated June 23, 1975, which provided that HFA not accept applications for refinancing (bail-outs) and that the development team must demonstrate that the project cannot be built without agency funding to HFA's satisfaction.*

On October 8, 1975, Hallas sent Stein a copy of Johnston's Recommended Report and Decision, telling Stein in a cover letter that it contained the HFA's "reasons and decision of not granting a mortgage." But pressure for a reversal of Johnston's action

*On August 4, 1975, Stein telephoned Horgan regarding the Assembly's approval of a bill to permit the bailouts proscribed by the Attorney General's June opinion. (This bill, A-3623, was not enacted into law until January, 1976).

(no indication of what the agency board did immediately after receiving Johnston's report was found in the Cold Springs file at the SCI) continued well into 1976.

In March, 1976, the agency board adopted a resolution noting that Feinberg had requested the right to appeal Johnston's rejection of Cold Springs directly to the board, that a deputy attorney general had advised the board it was unnecessary to comply with that request, and that after "polling" the board members, the agency had adopted a resolution rejecting Feinberg's request and requesting the deputy attorney general to notify the sponsor of his right to appeal from the agency's action direct to Superior Court appellate division. Attached to a copy of this resolution in the HFA files analyzed by the SCI was Johnston's certification of this board action, dated January 17, 1978.

Feinberg again called Horgan on May 6, 1976. Counsel for the Commission questioned him as to the purpose of this call and his interaction with Mr. Horgan:

- Q. There is a telephone call from you to Mr. Horgan in May of 1976, some seven or eight months subsequent to the denial of the project by the H.F.A. Did that call relate to Cold Springs.
- A. I don't know. I don't recall. I doubt it because we had -- I had abandoned anything at all as far as Cold Springs was concerned after that turn down.
- Q. Did you ever have occasion to call Mr. Horgan at his home?
- A. Yes.
- Q. How many times had you called him at home?
- A. I don't have any idea. After having gotten to know him, I talked to him, yes.
- Q. Okay.
- A. If about nothing else but the Agency.
- Q. Nothing else but H.F.A. and the Cold Springs project?
- A. No, because I had no other projects. I represented nobody else as far as the New Jersey Housing Finance Agency is concerned.
- Q. Did you feel that you were better off talking to Mr. Horgan than Mr. Johnston because Mr. Horgan gave you the opinion that he was superior to Mr. Johnston?

A. Well, I don't know. I just -- I can't answer that question because I don't know. I just felt more comfortable talking to Horgan then because I didn't know Johnston.

Q. Regardless of whether he gave you that opinion, was it your opinion that Horgan was superior to Johnston?

A. I suppose you would assume that. I don't really know that, how I thought at that time, but looking back, I -- he was the Deputy Commissioner to Miss Sheehan, so obviously --

Q. Did Mr. Horgan give you the opinion in any one of these 21 phone calls that he was becoming upset or felt that you were a nuisance talking to him about Cold Springs?

A. No.

Q. Always felt, made you feel relaxed in talking about --

A. Always very personable. Very personable person.

Q. He never said to you, "Listen, talk to H.F.A., that's their problem"?

Always talked to you about it?

A. Always listened to my complaints.

Q. At the end of these conversations, did he suggest that he was going to talk to Mr. Johnston about the matters which you were talking to him about?

A. He said that he would see to -- not see to it, he would be certain that I would get a fair hearing and fair consideration.

Q. Did Mr. Horgan suggest to you that he was being kept apprised of the progress through the Agency of this project?

A. I don't recall that.

POWDER MILL SPRINGS

Prior to the Stein-Silvestri co-consultancy, Powder Mill Springs in Mays Landing, Atlantic County, had a low priority at the HFA. As early as June, 1974, Silvestri had requested a site inspection and paid the \$250 inspection fee. Late the following month, George Feddish, then HFA's director of technical services, received a memo from Robert Lee of his staff recommending approval only if various construction deficiencies could be corrected. The project developer, Hallas, was being prodded by the agency for additional data in October and a site appraisal request was pressed by Silvestri in November, 1974. The project's prospects appeared particularly bleak on January 8, 1975, when Lee notified Michael Kaulakis, the Powder Mill project manager, that Technical Services Division's review activities would cease unless new plans were submitted because the construction deficiencies noted seven months previously had not been corrected. The project's low stature at the HFA at this point was noted by Kaulakis in his testimony before the SCI:

Q. Powder Mill Springs. Was that assigned to you?

A. Yes. And that was, that was treated with -- nobody wanted to get into that when it first came into the agency and I saw it as a good deal and I was the one that was putting it together.

Q. Okay.

A. But it eventually died.

Q. Who was the loan consultant on that one?

A. Joe Silvestri.

Q. Were you given any directive during the processing of that project that it was hot?

A. No. That was one exception to the rule. Everytime I said something about that project, somebody would say to me, "Oh, forget it. Hey, do this instead." So it just died.

But Powder Mill Springs remained a live issue at the agency. Indeed, a long period of pressure ensued in its behalf by the Stein-Silvestri co-consultancy. According to Johnston's appointment book, the acting executive director met with Stein on February 6, 1975. He telephoned Horgan, on February 10, 19 and 21. Four days later, on February 25, the agency board approved a mortgage commitment for Powder Mill Springs. Johnston sent Hallas a letter on March 6 noting the board's action.

About two weeks later on March 21, Stein received his first co-consultancy check from Silvestri, in the amount of \$2,500. Two more checks for this project from Silvestri to Stein followed, for \$3,000 on July 10 and for \$2,500 on July 28. In between the re-mission of the latter checks, on July 23, Hallas wrote Johnston a letter indicating that he expected to be ready for a closing within nine weeks.

Mortgage Commitment Payments Explained

During executive session questioning of Silvestri, the Commission sought more specific reasons for Silvestri's payments to Stein in return for the Powder Mill mortgage commitment. Silvestri's testimony:

Q. Now I would like to come back to specific projects, and we were speaking of bail-outs, specifically.

A. Right.

Q. Did you have an agreement with a sponsor on any project that you would be paid \$10,000 for an H.F.A. commitment?

A. I had a written agreement with Evan Hallas on Powder Mill Springs, which is the Mays Landing project, and I'm not sure if I had a written agreement on Cumberland Green, which is in Millville, or whether or not the bank, the Bank of New Jersey, told me that they would go along with the same sort of agreement. But I did collect on both occasions \$10,000 once I had the commitment in hand.

Q. And what was the value of that commitment to the bank?

A. Well, that a value was set because the state went out and did an appraisal and the commitments had specific numbers. So if -- you know, and I have to tell you, I knew that the bank was having difficulty with their examiners, as many banks in 1974 were having, '75, whether or not their real estate has specific values; and if nothing else, getting a commitment for a certain amount of money would really establish that value, plus the fact that the commitments were kind of geared to an actual closing if the banks would be willing to buy a lot of bonds. So in lieu of owning a tax-free project, the bank would own a lot of tax-free bonds.

Q. So in it was bank bail-out?

A. That's where the bail-out came.

Q. With regard to C-194, a check in the amount of \$2500 was paid to Stein in April with regard to Powder Mill Springs; is that correct?

With respect to C-194, what was that for?

A. When Jack Stein first became associated with me, I became aware very quickly that he was broke and at the time Concept was pretty flush. We made him an early payment of \$2500. Now, I'm not sure whether or not we had the commitment as of that date. I don't have the commitment dates on this, on this ledger.

Q. You received a commitment on 2/25/75 and notification to the sponsor was dated 3/6/75, three weeks before you gave Stein that \$2500?

A. Okay.

Q. Does that refresh your recollection?

A. Then I probably had gotten paid by the bank by then.

Q. Is it quite clear Stein was getting a part of the payment from the bank that you got for the commitments?

A. Yes, he would have been entitled to 5000, frankly.

Q. Could you have gotten the commitment without Stein?

A. That's a question that we have tossed around. By "we," I mean my partner and I. We don't know. We have to assume Stein got it.

Q. You certainly were convinced of that fact in '75 when you gave Stein the check?

A. Absolutely. I wasn't going to fight with him then.

Although Powder Mill Springs did advance to the extent of a "technical closing," according to a June 11, 1976, memo from project manager Kaulakis to Deputy Director Richard L. Kadish, its status at the HFA was markedly uncertain. Despite the agency's mortgage commitment in February, 1975, the project file indicates little or no processing activity until September 10, 1975, when Kaulakis sent a memo to the operations division about its apparent low priority. This memo stated that Powder Mill Springs "has been floundering in the agency for 1 1/2 years due to an attitude of indifference on HFA's part and noncompliance by the sponsor in regard to technical submissions." Yet a month later Silvestri wrote Joseph Chieppa, then the operations director, that "we are ready to close" on Powder Mill Springs. Another complaint from Kaulakis about the project's status came to his superior on December 23, 1975. On March 4, 1976, more than a year after the mortgage commitment, Ashley Goodman of Silvestri's Concept Building Industries, Inc., wrote a letter to Kaulakis saying the HFA's Kadish had indicated new project funds should be forthcoming and that a "dry closing" could be considered. Handwritten (writer unidentified) at the bottom of this letter was the order: "Schedule for Dry Closing." But on March 18, 1976, Robert Lee of HFA's technical services division indicated a dry closing would be premature, saying in a memo to Chieppa that construction deficiencies had not yet been resolved. The technical closing took place subsequently, according to Kaulakis' June 11 memo, but that is the final document in the project file inspected by SCI agents. No further HFA activity apparently ensued and the developer, Hallas, subsequently sold the project to pay off the overdue bank loans it had generated.

LAURA'S GLEN

The history of Laura's Glen in Pennsville, Salem County, as a proposed HFA bail-out project also exemplifies Stein's influence at the agency with respect to Silvestri's loan consultant projects after he became Silvestri's co-consultant. Prior to that co-consultancy, Laura's Glen, after experiencing some limited processing gains since its site inspection request was filed on July 19, 1974, foundered to the point that Silvestri requested and obtained on the following December 26 its withdrawal from agency consideration for a mortgage commitment. The project's problems at this point were of a local origin unrelated to its processing status at HFA. However, after Stein joined Silvestri, processing of the project was reactivated. Three months after Silvestri's withdrawal letter it won an HFA mortgage commitment on March 20, 1975 -- for which service Silvestri paid Stein a total of \$3,000.

During its revived processing in February and March, 1975, the same pattern of contacts relative to Stein-Silvestri projects was continued by Johnston, Stein and Horgan. During the week just

prior to the Laura's Glen commitment, Johnston made two telephone calls to Horgan, followed the next day by another meeting with Stein and then another call to Horgan.

The HFA by resolution of its governing board on March 20, 1975, granted a mortgage commitment on Laura's Glen -- by a 3-1 vote with Treasurer Clifford Goldman the dissenter. Formal notice of this action was not issued to the sponsor, Underwood Mortgage & Title Co. of Irvington, until April 4. This letter of notice from Johnston (who erroneously recorded the date of the commitment decision as February 25, 1975) observed that the commitment was being made subject to sponsor qualification, an accord on rents, and a correction of "technical and architectural deficiencies" recorded the previous August 26. In addition, Johnston's letter stated that the approved mortgage commitment for this partially constructed project was not to exceed \$2,880,000 or 90 per cent of the total project cost, which had been put at \$3,200,000 by a certified appraiser.

More Commitment Payments

Three days after Johnston's letter to Underwood Mortgage, Silvestri made his first Laura's Glen payment to Stein, a check for \$1,000 on April 7. On that same day, Stein met with Johnston. On April 9, Johnston called Horgan. The April 7 payment and two others for Stein's "door opener" commitment efforts were noted in Silvestri's Concept Building company ledgers and described to the SCI by Silvestri in executive session testimony:

- Q. With regard to Laura's Glen, the commitment by H.F.A. came on [3-20-75] and notification went to the sponsor on 4/4/75. Stein got a thousand dollars from you on 4/7/75?
- A. Right.
- Q. Is it safe to say that the same conditions obtained in that case?
- A. Yes.
- Q. In other words, Stein got a portion of the monies that you were receiving --
- A. Right.
- Q. -- as a result of the commitments?
- A. Yes.

Q. Additionally, you got a check on 4/18/75 in the amount of \$8250 from the sponsor of Laura's Glen and paid Stein \$1500 on 4/21/75 for his efforts on that project?

A. Right.

Q. Was that also connected to the commitment?

A. Yes.

Q. In other words, Stein was getting paid for a commitment?

A. Right.

Q. Okay. By the way, with most of these projects, were they in the agency for some time prior to getting a commitment?

A. Yes, quite awhile.

* * *

Q. The next is a check, dated 5/8/75, in the amount of \$500, to Jack Stein, signed by yourself, drawn on the same corporation?

A. Right.

During the period in which Stein was receiving his Laura's Glen commitment payments from Silvestri, he made telephone calls to Horgan twice. After Silvestri's April 21 payment of \$1,500, Stein called Horgan on April 22. Just prior to Silvestri's May 8 payment of \$500, Stein called Horgan on May 5 and May 7. Silvestri called Horgan three times on May 7.

A depiction of Stein's influence at HFA relative to his friendship with Horgan was made during testimony before the Commission by Michael Kaulakis, who was the first project manager at Laura's Glen, for a brief period prior to the assignment of another manager. Kaulakis, who subsequently left HFA after Johnston began imposing restrictions on his work, recalled the Stein-Silvestri situation:

Q. Do you know how your state of mind with regard to Silvestri's significance was changed, what happened at the agency in the way to change things that you just described?

A. Well, eventually what we heard was that his new partner, Jack Stein, was a close associate or friend or more than a friend, a personal friend, of Dan Horgan's.

Q. All right. So Silvestri became a person of significance and a person to deal carefully with essentially because of the association with Stein?

A. That's correct.

Despite the successful commitment work by Stein, for which Silvestri had paid him a total of \$3,000, Laura's Glen never reached an HFA closing. However, its demise did not become a matter of record until March 30, 1978, when the agency's board rescinded the mortgage commitment authorized in 1975.

WALDORF GARDENS

Stein's work for Silvestri on Waldorf Gardens, a proposed rehabilitation project in Vineland, Cumberland County, resulted in Silvestri paying him \$1,250 -- \$500 on May 22, 1975, and \$750 on May 29, 1975, according to the records of Concept Building Industries, Inc.

Although this project never received final HFA approval, it became a matter of urgency at the HFA as one of Acting Director Johnston's "go projects" before and for many months after Silvestri's payments to Stein. A site appraisal was ordered on April 23, 1975, by Operations Director Osborne in a memo requesting that the assignment be given "top priority." As late as August 5, 1975, despite numerous recorded structural deficiencies at Waldorf Gardens, Gary Anastasia, the project manager for HFA, sent a memo to Robert H. Lee, then the assistant director to HFA's technical services, stating: "I have been advised by the Executive Director's office that the above-captioned proposal is a must for the agenda of the next agency meeting."

The designation of Waldorf Gardens as a "must" item for swift processing was made despite an adverse building and site inspection. As early as February 27, 1975, Lee had recommended approval of the project only if its interior was "completely" gutted. His report noted certain advantages of the project but these were offset by findings that all windows would have to be replaced because they were substandard, that new fixtures and plumbing would be required for all bath rooms, that all kitchen cabinets would have to be replaced, and that the number of dwelling units would have to be reduced from the existing 108 to 90. Lee's critique was made after Osborne had sent Silvestri a letter -- on February 4, 1975 -- granting conditional site approval subject to the technical services review.

A "Go" Project

The project manager's August 5 memo, which also requested Lee to advise as to "a review of schematics and cost estimate" for Waldorf Gardens, and its status as a "go" project, was discussed with Anastasia during his testimony at the SCI:

- Q. I show you what's been marked Exhibit C-113 for purposes of identification dated August 5, 1975 which is a memorandum from you to Robert H. Lee, and I'd like you to read that to Commissioner Lane.
- A. "I have been advised by the Executive Director's office that the above-captioned proposal is a must for the agenda of the next Agency meeting. Please advise as to when review of schematics and cost estimate can be scheduled and cost agreement can be anticipated so that I might be --"
- Q. Now, you are telling Lee that you've been advised by somebody that would this fit into our concept of a "go-project"?
- A. Yes, it would.
- Q. Okay. And apparently, it wasn't Johnston, but it was in Johnston's office, right?
- A. Could have been Johnston's office or it could have come through either, I guess, it was Harris Osborne at that time, to me. Maybe he told me that was Johnston's office.
- Q. And it would have been more impressive to Lee for him to know that it passed through the Executive Director's office?
- A. I would assume so.
- Q. You recall whoever told you that this was a must for the Agency agenda told you or they say to you --
- A. I don't recall, no, why they told me that, no.

Q. Now, the second thing you are saying in this memo is, and I quote, "Please advise us to when a review of the schematics and cost estimate can be scheduled and cost agreement can be anticipated so that I may update my Form 10 projection for commitment purposes."

Are you asking Lee to give you some rather basic information?

A. I'm asking him to schedule a review of the drawings and set up a cost meeting with the contractor and then tell me when these various meetings are going to take place and when I can get the final cost, so I can plug that into my Form 10.

Q. So, at this moment when you are being told to put [it] on the agenda you don't know how much the cost is?

A. No.

On August 11, Lee replied to Anastasia in a memo to Joseph Chieppa, who soon would succeed Osborne as the agency's operations director. This memo complained that documents submitted by the project architect were incomplete and had to be returned. The memo also noted that, despite the operations division's request to submit the proposal to the next HFA board meeting, "the scope of this project cannot be determined unless a complete schematic submission has been accomplished." Anastasia was asked at the SCI about Lee's response:

Q. And what does that mean? Is Lee throwing a wrench in the works?

A. Lee is saying that he's not satisfied with the architectural drawings and they have to be resubmitted.

Q. Well, how many times you've been told or directed by the Executive Director's office to get something ready in addition to Maplewood, Old Oak Estates and The Mansions?

A. I don't recall any other instance of being instructed to prepare something for a commitment. The others were, I was instructed that it was, you know, a priority project and we concentrate on processing it. I don't recall any other since of being told to prepare something for the Board review.

Q. And this doesn't stand out in your mind, even though it is the only time?

A. I don't really recall it.

Chairman Lane asked him for more details:

THE WITNESS: This is the one that I can recall I was specifically instructed to prepare a project for commitment. Other projects we were kind of instructed to fast track the processing.

CHAIRMAN LANE: Okay. But, this had more than just a normal "go" situation? This is a little farther advanced, this is "go-go"?

THE WITNESS: Apparently it was, yes.

Anastasia next was shown a copy of the minutes of the HFA board meeting for September 3, 1975, the agenda of which included Waldorf Gardens. SCI counsel asked Anastasia to discuss a reference to the project in the meeting minutes:

Q. What does that notation say?

A. Mr. Johnston presented this rehab project to the members advising that there are a few details with respect to the project to be resolved. It was decided to table this project until the next meeting.

Q. Is that what you would have presented?

A. My description would have been more detailed as to the conditions.

Q. Do you recall discussing with Johnston or with a member of the Executive Director's office or with Lee or with your supervisor at the time who was who, by the way, Osborne?

A. I guess it was Osborne.

Q. Anything about this project between August 5, '75 and the Board meeting of September the 3rd, '75?

A. I don't have any specific recollections from that time.

Q. Nevertheless, it made it to the agenda?

A. Apparently, it did.

Q. But, it wasn't in the shape to commit a mortgage; is that right?

A. From those memos I -- all the conditions for a commitment were not in place, although I don't know, you know, what conditions we normally would put on a project were required for each bail-out.

* * *

Q. Do you recall what happened with this project after it was tabled at the September meeting?

A. I don't recall specifically what happened. I don't believe it got a commitment either. It may have gone to the following meeting and then been rejected I don't know what happened to it.

Q. Do you recall ever refusing a suggestion by Osborne or any other one of your supervisors that you get a project ready to be agendized on the basis of the fact that you thought the project should not be agendized?

A. Not out and out refusing, no. I'm sure I argued vehemently, but I don't recall specifically refusing absolutely to do it.

Questions About Co-Consultancy

No official action was ever taken on Waldorf Gardens by the agency board after the project was tabled on September 3. However, Stein's HFA dealings had for a considerable time been under investigation by the Attorney General's office. The September 3 board meeting also generated curiosity about the Stein-Silvestri combine. Apparently in reply to a request for a written explanation Silvestri wrote Chieppa on September 9: "This comes to advise you that Mr. Jack Stein will on many occasions be the co-consultant on our HFA projects...Mr. Stein also has our permission to inquire about or assist in any of the projects that Concept Building Industries, Inc., is processing through your agency." This letter also listed five projects, including Waldorf Gardens, for which Silvestri said Stein was a co-consultant "at this writing." However, Chieppa wrote Silvestri on September 11 that:

"...the Agency Board has requested that we obtain additional information, specifically with regard to the following areas:

- "1. An outline of the duties to be performed by Mr. Stein as they relate to your organization.
- "2. Submission of any contractual arrangements you have with Mr. Stein.
- "3. A statement as to how loan consulting fees are to be apportioned between Mr. Stein and yourself.

"Please be assured that this request in no way is intended to reflect on the qualifications of Mr. Stein, but since the role of Co-Consultant is not defined, they are requiring clarification..."

Silvestri, who had testified previously that the HFA had known of his relationship with Stein since February, 1975, was asked again about this situation:

THE CHAIRMAN: Now, did you discuss with anybody at H.F.A. besides Mr. Osborne this proposal and this relationship with Stein during the two and a half years you had this relationship?

THE WITNESS: Yes, yes. I explained it, both verbally and in a letter, to Joe Chieppa, C-h-i-e-p-p-a.

THE CHAIRMAN: At that time he was somewhere in the hierarchy of H.F.A.?

THE WITNESS: He was in the hierarchy, and after the State Police investigation I was questioned by Joe as to my relationship and what a co-consultant was, and I explained it to him in a letter and I have given your investigator a copy of that letter today.

THE CHAIRMAN: And was he concerned at the description you gave --

THE WITNESS: Not really

THE CHAIRMAN: -- of Stein and his relationship?

THE WITNESS: Not really, and I did not discuss my financial relationship with him. He was only concerned that he be covered with a letter. He insisted on a letter which I sent in.

THE CHAIRMAN: I don't understand. He was covered with a letter?

THE WITNESS: A letter explaining that Jack Stein was entitled to look at and negotiate for the projects I had filed.

THE CHAIRMAN: Did you tell him Stein had come to you and said "You are not getting somewhere and I can get you somewhere"?

THE WITNESS: No.

At another point, after Silvestri had explained how he had been interrogated by the Attorney General's representatives in connection with Stein, the Chieppa letter was brought up again by Commission counsel:

Q. Okay. You were later shortly thereafter asked for an explanation of Jack Stein's status by Mr. Chieppa amongst other people at the H.F.A., were you not?

A. Right. I did that by letter. I answered by letter.

Q. Did they mention to you that that request for an explanation of Stein's status had anything to do with the attorney general's investigation?

A. No. I assumed it, but it was not explained.

On May 22, the day Stein got the \$500 check for work on Waldorf Gardens, he telephoned Horgan. On June 2, after receiving Silvestri's May 29 check for \$750, Stein again called Horgan. Unlike most of Silvestri's payments to Stein for obtaining mortgage commitments, no such event took place for Waldorf Gardens. However, in this case Silvestri's compensation to Stein for Waldorf Gardens work followed certain favorable activities at the agency in the project's behalf, including the April 23 directive from Osborne that an appraisal for the project be made and that it be given "top priority."

CUMBERLAND GREEN

The HFA has generally required municipalities in which its projects are located to guarantee local tax abatement as a condition for project approvals. An abatement agreement, providing for a series of uniform payments in lieu of taxes throughout the life span of an HFA mortgage, assures local tax stability. This factor not only protects both the agency and project sponsors but also is an added attraction to investors in HFA project bonds.

The Stein-Silvestri co-consultancy in 1975-76 obtained one of the few deviations from this tax abatement policy, for a bail-out project known as Cumberland Green in Millville, Cumberland County. After repeatedly rejecting this project, the HFA suddenly reversed itself and fast-tracked the project to a mortgage commitment. The approved proposal contained a unique "in lieu of tax abatement" provision. Within a week of HFA's action, Silvestri's Concept Building Industries, Inc., paid Stein \$5,000. Silvestri in his testimony specified the purpose of that payment:

Q. Is that the second payment? Okay. Additionally, with regard to Cumberland Green, the H.F.A. gave that project a commitment on 1/23/76 and you gave Stein \$5000 on 1/30/76?

A. Right. We got to assume it was the same condition there, too.

Q. In other words, Stein was getting paid for a commitment?

A. Right.

Prior to the Stein-Silvestri combine, as early as October, 1974, the HFA had rejected the Cumberland Green project because its inquiries at the Millville city tax assessor's office "have convinced us that there is no likelihood of tax abatement being obtained on behalf of your development." On February 7, 1975, Silvestri's Concept Building company applied for an HFA site inspection. When Director Johnston was notified by his operations director of this application, he sent the memo back with the notation: "Same situation - reject." On February 19, Operations Director Osborne rejected the project again. On June 16, Concept Building notified HFA that Millville would be willing to assess the project on a "stipulated basis" -- but that alternative proposal also failed. This time Director Johnston wrote back, on June 24, referring to a previous HFA policy statement that "in the absence of tax abatement, the agency would decline participation."

August Turnabout

Events in August of 1975 turned out to be pivotal for Cumberland Green. Joseph Chieppa had become HFA's new operations director. On August 4 he appointed a project manager for Cumberland Green, an indication itself of a more favorable agency attitude toward the project. Chieppa and Leon Klotz, the new project manager, joined Robert Lee of technical services in a site inspection and Lee submitted a favorable report from the standpoint of his division's observations of the Cumberland Green locale. Since Klotz was to play a leading role in the tax abatement turnabout during August and September of 1975, he was questioned about the issue at the SCI:

Q. With regard to minimal requirements for Agency projects, does the Agency require tax abatement from municipalities?

A. I don't believe that the law says that a tax abatement is required, but the Agency wants one.

Q. Why does the Agency want one?

A. To protect the inflated tax schedule in subsequent years of mortgage.

Q. Why don't you extrapolate a little bit to that answer?

A. Well, if we entered into a project without tax abatement, what is to stop the municipality or community from reevaluating that project and, therefore, doubling, tripling the taxes.

Q. Making it unfeasible, in effect?

A. Absolutely. After the fact after the mortgage with tax abatement, we know it is always geared to the income of the project and it protects the Agency.

* * *

Q. Now, you say the Agency wants such a thing. How often does the Agency commit projects without having it?

A. In my almost six years at the Agency, very seldom.

Q. Well, do you have present knowledge of any project that was committed by the Agency without a tax abatement?

A. Oh, I believe before I got there there might have been one or two.

Q. All right. Do you have knowledge of any others other than those one or two that may have happened for the time you got there?

A. In my work experience, I don't believe any of mine went without tax abatement. I don't believe.

Q. And you don't have understanding of anybody else's do you?

A. No, I don't.

Q. Okay. So, our experience at the Agency with regard to either the projects you've worked on, personally or ones where you've gained knowledge to work with other Project Managers, you don't know of any project that has been committed by the Agency without the requirements of the tax abatement? Is that fair?

A. That's fair.*

During all of August, as the outlook brightened for Cumberland Green, Stein called Horgan seven times and Johnston six times. In addition, Johnston's appointment book listed three appointments with Horgan. On August 28, Klotz sent a letter to Silvestri requesting written confirmation of Stein's role as a consultant on Silvestri's project, a request that was similar to Chieppa's request to Silvestri in late August or early September in connection with the Stein-Silvestri Waldorf Gardens project. Klotz asked Silvestri to respond by September 2, the day prior to a scheduled HFA board meeting. Klotz, however, could not recall the specific circumstances that prompted his query to Silvestri, according to his testimony before the Commission:

Q. I show you a copy of a letter dated August 28, 1975, about three weeks after you got the project assigned to you. It has been marked Exhibit C-103 for the purposes of identification, and it is to Mr. Silvestri, Re: Cumberland Green from Leon Klotz.

That's short, why don't you read it for Commissioner Lane.

*The HFA has committed at least 10 projects without a local tax abatement but only a few had been committed without such a requirement at this time period.

A. "As per our conversation of today, I am requesting a financial statement for Mr. Martin Ettore, the builder sponsor of Cumberland Green Project. I would also like in writing that this project is a venture with Concept Building Industries and Jack Stein is the consultant. It is necessary that I have this information by Tuesday, September 2, 1975. Thank you for your immediate attention to this matter."

CHAIRMAN LANE: Who signed that?

THE WITNESS: I signed that. That's correct.

BY MR. SIAVAGE:

Q. Does that refresh your recollection on whether you met Mr. Stein with regard to this project?

A. You say met, physically met, okay. No, I don't remember meeting him, okay? But, there must have been some paper work with his name on it.

Q. Okay. Sometime between August 4 and the date of that letter, which was what?

A. August 28, 1975.

Q. You became aware of Mr. Stein's presence with regard to Cumberland Green; is that correct?

A. That's correct.

Q. How did you become aware of it?

A. Well, I say there must have been some documentation or something.

Q. I don't remember.

A. No, you are going back almost five years on me.

Q. Okay. Well, how many times had you during your experience at the Agency, requested the status of somebody who was holding themselves out to be a loan consultant or something else? Was that a usual occurrence?

A. Around the time of this.

Q. That was the only time?

A. Yeah.

Q. But, you don't remember what occasioned that letter?

A. No, you probably have documentation in there.

Q. No, as a matter of fact we don't.

Do you recall discussing that matter with Mr. Silvestri, as you say, in your letter that you discussed it with him?

A. I probably did before I wrote the letter.

Q. Why would you be concerned about Stein's status?

A. No, we have contracts which we enter into third-party contracts, the Agency's not a part of it, but someone's name is not on that contract, as far as I'm concerned, they're not part of that status.

Now, unless Mr. Stein or somebody said there was some documentation came through or we're including Mr. Stein, and he wasn't part of that document, then I would question it, yes.

* * *

Q. Did anybody tell you in early August 1975 that the attorney general's office was investigating Mr. Stein and his relationship with the Agency?

A. No.

Q. And I assume, therefore, that that couldn't have been the reason that you requested his status with Mr. Silvestri?

A. No, it wasn't.

Q. Did you know about that investigation at that time?

A. No, I don't.

Klotz's correspondence and other records on Cumberland Green show a confusing mixture of activities and dates in September, 1975. On September 4, he sent a memo to Richard Kadish, the former deputy attorney general assigned to HFA who became the agency's deputy director in August, 1974. This memo stated: "Please initiate the three-way police check for the principals of the Cumberland Green project." An attachment to this memo listed the Cumberland Green promoters, including Silvestri as consultant and Stein as co-consultant. On this memo is inked the notation: "J. Chieppa FYI." The project files, however, also contain a handwritten note from Joseph Chieppa, dated October 27, to "Leon," telling him to get a letter from the developer "as to who his entire development team is" and adding: "Let's police check." The files also show that two almost identical letters were sent to Silvestri by Klotz, on September 10 and 11, stating that the agency "has inspected the Cumberland Green project and is granting conditional site approval," subject to six conditions -- the sixth being: "That a special tax reserve in lieu of tax abatement be established by the sponsor." However, Klotz's site inspection report, which includes a comment that the special tax reserve in lieu of tax abatement "will be \$250,000," is dated September 22. On September 11, Silvestri wrote Johnston that the Cumberland Green developers "were disappointed and perplexed that action on the above captioned property was tabled for reasons that escape us." This letter, in which Silvestri notes that the directors of HFA's operations and technical service divisions have inspected the project and find no objections to "recommending acceptance," also states: "Two hundred twenty-five thousand dollars of the proceeds of the mortgage will be held in escrow by the 'agency' as insurance and assurance of any unusual increase in taxes, energy costs, etc." On September 19, Klotz again asked Silvestri to explain the relationship between Stein and Concept Building Industries. Silvestri submitted on September 22 a detailed response to the second inquiry about Stein. Despite Klotz's repeated correspondence about Stein's status in connection with Cumberland Green, he persisted in his testimony at the SCI in maintaining that he had little or no knowledge of Stein's activities during that period:

Q. I show you what's been marked Exhibit C-104 for the purposes of identification which purports to be a letter that you just referred to dated September 22, 1974 from Silvestri to yourself explaining, amongst other things, Mr. Stein's role.

What does he say with regard to Mr. Stein's role?

A. In response to our relationship with Jack Stein, his duties are as follows: (a) to make any Agency meetings other than technical to keep us posted; (b) to keep us posted on the results of these meetings. The agreement between Jack Stein and Concept is a verbal understanding and his fees have been billed as to effect and not to exceed 50 percent of the consultant fees.

Q. Did that letter satisfy you?

A. Apparently it did. This is a written record that he was, in fact, a co-loan consultant.

* * *

CHAIRMAN LANE: What did you understand Stein's qualifications to act in that capacity to be?

THE WITNESS: What do you mean, Judge?

CHAIRMAN LANE: Was he qualified to be in this business?

THE WITNESS: Oh, I don't think that was a judgment for me to make.

CHAIRMAN LANE: Well, did you know anything about his qualifications?

THE WITNESS: No, I didn't. I didn't know anything about his background.

CHAIRMAN LANE: So, as far as you know, he came out of the blue.

THE WITNESS: Yes, sir.

CHAIRMAN LANE: Anybody ever, to your knowledge, ever question his background, his qualifications?

THE WITNESS: I have no knowledge of that.

Klotz conceded in his SCI testimony that the June 24 letter from Johnston (stating that without a tax abatement the HFA would not "participate" in the Cumberland Green project) was in the project file that he received when he became the project manager. Nonetheless, he could not recollect how the reserve fund alternative to tax abatement evolved:

Q. Do you recall discussing with Mr. Chieppa the issue of a tax abatement?

A. No, I don't.

Q. All right. Do you recall discussing it with the project sponsors or the loan consultant on Cumberland Green, the issue of a tax abatement?

A. No, I don't either.

Q. Okay. Let's see if we can refresh your recollection. I show you a copy of another memorandum which has been marked C-100 for the purpose of identification which is a memorandum from you to Chieppa suggesting to him --

A. I remember this.

Q. Let me finish the question. -- suggesting to him that in lieu of a tax abatement, and I'm reading from the second paragraph now, it will establish a \$250,000 reserve to offset any financial deficiencies that the project may incur. And then in the third paragraph, the taxes as established by the municipality will be 133,000 annually; however, if the Agency's tax abatement regulations were in effect, the annual tax would be 52,000, or a difference of \$80,000 a year.

Okay. So, in effect, the feasibility of that project would be enhanced with the tax abatement to the tune of about \$80,000 a year; is that correct?

A. That's correct. I remember this now.

Q. But, you are telling Chieppa in this memo that since they can't get the tax abatement, the \$250,000 reserve is in place thereof?

A. No, that was a suggestion. I don't believe that this was a final judgment. I think this was the intent of how we could alleviate the tax abatement at the time.

Q. Who suggested it?

A. That might have come from the development team.

Q. Mr. Silvestri?

A. That's possible, yes.

A Paper Trail?

Klotz finally admitted that the idea of a \$250,000 reserve fund in lieu of a tax abatement had been "discussed" prior to his inclusion of the proposition in his letters to Silvestri and his favorable site inspection report. The Commission questioned him closely about this alternative to a long established HFA policy because it suspected that a "paper trail" had been made with respect to the agency's reversal on the abatement issue:

Q. Let me see if I can get at it this way. It would be a common occurrence at the Agency for you to first discuss this verbally with Mr. Chieppa; is that right?

A. I would, under the circumstances of what it is, I would say so, yes.

Q. And then probably at the end of that discussion, Chieppa would say to you, well, Leon, why don't you put that in the form of a memo to me; is that right?

A. That would be logical, yes.

Q. So, you knew that it was approved at the time you wrote the memo, most likely, and you were just making a paper trail by writing a memo, right?

A. When you say approved, no.

Q. Well, by Chieppa?

A. Considered, I wouldn't use the word approve at that point, but considered.

Q. You had no idea whatsoever as to what the outlook was on this plan?

A. I think the inclination was to go along with it, but again --

CHAIRMAN LANE: Inclination would be that you and the knowledge would be that you were, as a result of this conversation, were now going to recommend it?

THE WITNESS: That's correct.

BY MR. SIAVAGE:

Q. You remember discussing it with anybody else in addition to Mr. Chieppa, Mr. Klotz?

A. No, no.

Q. Is it common for Mr. Chieppa to have conferences with you, and then tell you to write a memo suggesting something to him, is it not?

A. Oh, I believe that might be common anywhere, not along the Agency that if something --

CHAIRMAN LANE: We're talking about your situation.

THE WITNESS: If something is discussed and they want it, hey, put it in writing.

BY MR. SIAVAGE:

Q. I'm not saying it is unusual elsewhere, I'm saying it is common at the HFA?

A. I would say so.

Contacts With Horgan

During September, as the move progressed to bypass the tax abatement procedure in connection with Cumberland Green, the pattern of telephone calls to Horgan continued. Stein called Horgan seven times and Johnston four times. Johnston's appointment book also showed two meetings with Horgan. In the meantime, the project was being readied for action by the HFA board. On January 23, 1976, the agency's governing body adopted a resolution authorizing a \$4,625,000 mortgage commitment for Cumberland Green, including the "reserve fund" alternative to a tax abatement. Seven days later Silvestri gave Stein \$5,000 in payment for the board's action. Stein deposited this check on February 2, at the same time cashing a check for \$1,200. His calls to Horgan continued, on February 5, 9 and 10.

From that point on, however, the Cumberland Green project began to fade. By the following January 3, 1977, Klotz complained he was unable to get a progress report relative to conditions listed for the mortgage commitment that HFA had approved the previous January. During the summer of 1977 Stein became ill and died on August 17. On September 7, 1977, Martin Ettore of Lindenwold, the prime mover of the Cumberland Green project from its outset, was advised that the mortgage commitment had expired. On October 20, 1977, Klotz advised Concept Building Industries that the HFA intended to rescind its mortgage commitment. The files show an undated report by Klotz at this point recommending that the commitment be cancelled because of the project's failure to obey the conditions upon which it was based. Ettore's brother-in-law, Senator Joseph Maressa, wrote to Johnston on November 2 requesting that HFA proceed to a mortgage closing on Cumberland Green "immediately." Johnston responded on November 21 that that decision was solely up to the agency's board and would be discussed at its next meeting. However, not until November, 1979, did HFA's governing body finally rescind its Cumberland Green commitment.

MIDDLE ROAD VILLAGE

Apart from paying Jack Stein for generating HFA mortgage commitments, Silvestri also gave Stein in April, 1975, a check for \$2,000 specifically for obtaining the release of so-called "retainage" on Middle Road Village, a project then under construction in Hazlet Township in Monmouth County.

(Retainage refers to the HFA's practice of withholding 10 per cent of payments due a general contractor until construction is 50 per cent completed, after which no further retention is made if work progresses satisfactorily. Under this procedure, the agency winds up with a reserve of about 5 per cent as a project nears completion. This reserve, which is eventually released upon ratification of all final costs, augments required contractual performance bonds in protecting both agency and sponsor from default while a project is being built.)

In the case of Middle Road Village, the owner-builder, James Nuckel (CIB International), sought the release of retainage prior to ratification of all final costs because of severe cash flow problems aggravated by demands for payments by subcontractors and the refusal of some to continue working. As with the HFA's reversal of policy on tax abatement for Cumberland Green, the agency initially rejected Nuckel's requested retainage reduction and then reversed itself and released the funds.

In addition to the influence peddling at the HFA that Silvestri's corporate books and records attest to, the ebb and flow of events relative to Middle Road retainage provide a critical view of the

erratic operations of the agency during the period under review in this report.

Harris Osborne, who was the HFA's operations director, discussed the Middle Road Village retainage problem during his SCI testimony about Stein's influence at the agency during the co-consultancy with Silvestri:

Q. Well, was Mr. Stein one of these favored people that you referred to?

A. Yes.

* * *

THE CHAIRMAN: How often was Stein in and out of the agency? Quite frequently or --

THE WITNESS: Well, there is one instance that really comes to my mind. We had a staff meeting. Larry White, who was then the Director of Management, was very displeased with the management's efforts of a given developer and wanted to hold a check on him for another project that had nothing to do with the one that was -- the check was requested for a given project, but because of his management of yet another project, they held the check and there was no way he was going to be given that check. It was the consensus of everybody at the staff meeting that he shouldn't receive that check.

When Mr. Stein's services as a consultant were engaged, the check was released.

Is that favored treatment or isn't it? I don't know.

Q. Do you know what project that was?

A. The name slips my mind. It might have been one of Jimmy Nuckel. Maybe Little Ferry or one of them.

Q. Middle Road Village? Is that --

A. That sounds about like right. The developer, I think, was a James Nuckel, was it?

Q. Were these events so unusual in the agency that they would indicate that something was out of the usual order of procedure?

A. Of course.

However, as the job was nearing completion, Nuckel's and CIB's financial problems mushroomed at Middle Road Village. This state of affairs should not have surprised key people at the HFA, according to a former agency employee, Michael Kaulakis of Twin Peaks, Calif. The project manager at Middle Road Village during its processing, Kaulakis described the project as "terrible" during questioning at the Commission:

A. --- the inside opinion of Middle Road Village was that it was, that it was a terrible project that was slowly getting worse and it was being jammed down the New Jersey Housing Finance Agency's throat, and that it was being done to bail out a private developer who had lost his shirt on it, got caught in high interest rates or got caught in rising lumber prices or something and it was half built and the other half was sitting there rotting in the sun or rain. And I went down and looked at it a couple of times, once with Harris, once by myself because I was in the neighborhood. And we were, in essence, the New Jersey Housing Finance Agency was, in essence, bailing out a private developer who was ready to go bankrupt unless we did something, and it was being -- and it was being pushed by I don't know who.

Q. You don't know who the pressure was on that?

A. No, but it was through Joe Silvestri.

Nuckel's financial problems reached such a point in February, 1975, that the discussion about releasing retainage money at the HFA focused on the possibility that Middle Road Village might fail. CIB International questioned the agency's retention of funds from payments due it (as well as the agency's refusal to accommodate the builder's change order claims) in a letter to the agency on February 17. Stephan O'Driscoll, the general project superintendent working at the time under Technical Services Director George Feddish, sent two letters back to CIB. On February 23, he reaffirmed the agency's objections to the release of any retainage while saying the problem would be reviewed at a meeting at the HFA on March 3. On February 25, according to agency files, he wrote another letter stating flatly that "your request to reduce the retainage below the present level of 5 per cent is rejected" -- and would be "reconsidered" only after the project was completed to the satisfaction of the HFA. On the 26th, Feddish sent a memo to Director Johnston reporting that "we are receiving verbal complaints from subcontractors" about being owed \$285,000, that "the electrical and plumbing subcontractors

have walked off the job" and that agency accountants should "ascertain the actual status of payments to the subcontractors."

Also on February 25, Richard Kadish, then the agency's deputy director, wrote a memo "to the file" regarding the complaint of one subcontractor. In this memo he said he told CIB that the required payment "is coming from the retainage and some change orders." The memo, which contradicted the posture of Feddish's division on the retainage issue, also noted the meeting scheduled for March 3.

The discussion at that meeting was summarized by Philip Kowalski, who was Feddish's senior architect, in letters sent out March 11 to certain participants including CIB and Silvestri's Concept Building Industries company. SCI counsel reviewed with Feddish the contradictions in Kowalski's report of the meeting.

Q. What does the first paragraph say with regard to the issue that we have been talking about, the paragraph labelled number one?

A. "The contractor stated that the five percentage retainage being withheld by the agency and the moneys due him for change orders has resulted in total moneys due him in the neighborhood of \$620,000. A detailed discussion of the outstanding change order requests contained in the list of 18 items submitted by the general contractor showed that this contention could not be substantiated. The agency stated that the five percent retainage would not be released until cost certification that had been submitted to the general contractor and verified by the agency."

Q. So you were saying that you wanted to see that you had a building in place and that the subs had been paid before you released that protection of the five percent retainage. Is that fair to say?

A. Yes. That's what I recollect.

Q. Take a look at Page 2 of that and read number 5.

A. It's last item. "Mr. Feddish said he would recommend to the executive director that the reduction of the five percent retainage should be made on behalf of the general contractor."

Q. Is that inconsistent with Paragraph 1?

A. Yes, it is. One contradicts the other.

The Commission sought to clarify the accumulating contradictions about releasing Middle Road retainage. These contradictions, according to testimony and HFA files, included:

-- The conditional rejection by Feddish's subordinate on February 24 and 25.

-- Kadish indicating retainage would be released in his February 25 memo to the file.

-- The conflicting yes-and-no paragraphs in Kowalski's summary of the March 3 meeting.

-- An internal memo by the agency's chief auditor on March 11 indicating that, since the Nuckel-CIB financial problems at their Jasontown project had been resolved to the agency's satisfaction, the HFA therefore should now "release dollars presently being withheld as retention" at Middle Road Village.

Retainage Issue Resolved

It appeared during the February-March period that Johnston and Kadish were playing a more active role with respect to the retainage issue. Feddish testified that he would have sought his superiors' approval -- either Johnston's or Kadish's -- before his Technical Services division reversed its course on such an issue. Kadish testified at the SCI that he would never have authorized the release of the retainage without Johnston's approval.

Feddish recalled that only three projects out of more than 100 construction jobs had ever gained his approval for a release or reduction of retainage. He also testified at the SCI about the agency's final resolution of the problem:

Q. ...Now, to your knowledge, was any retainage released to Middle Road Village?

A. Ultimately, yes.

Q. And did Mr. Johnston discuss that matter with you?

A. Yes, he did. I'm pretty sure he did.

Q. Do you remember when that discussion took place?

A. I don't particularly remember. I don't know if that's recorded in the files.

- Q. Okay. That's right, it's not recorded in the files. That's why I'm asking you. Can you remember what the substance of the conversation was?
- A. There was a -- the auditors did go out and look at the job and they came back with a strong recommendation, because of the general contractor got himself into a real deep hole, apparently, and he had actually paid out a great sum of money over and above what had been forwarded to him by the Housing Finance Agency, and, as I recollect, our auditors said, hey, this guy's getting, not getting, he didn't say going into bankruptcy, but he's really in trouble and apparently he's paid out more than we gave him, so he's not holding the money back and using it to finance a trip to Bermuda or something like that, and he should be helped and the retainage should be reduced. And we sat and we discussed that and, since the general contractor had, in fact, or was going to, in fact, spend for the construction cost of the project moneys greatly beyond what we were going to give him, and the ones who were suffering at that particular point in time were the subcontractors, the general contractor, of course, was suffering with cost overruns but that was his headache, it was decided to reduce the retainage, which was -- the job, I think, was around 96 percent done or something like that.

Stein's Influence

Loan consultant Silvestri was convinced that resolution of the Middle Road retainage issue had required the intervention of some one more influential at the HFA than he was, namely Stein. He described the situation during SCI testimony:

- Q. Did Jack Stein give you any specific assistance on this project at any time?
- A. Yes, he did.

With the State Agency, like any other government agency, or even banks, there is retainage on projects. The builder builds and is usually faced with five percent retainage. You make your monthly draw-downs, and if you've done, for instance, a hundred thousand dollars

worth of work and the agency or lenders agree with you, they will give you 95. They'll hold their five percent retainage.

The job took a couple of years to build, and in the interim I had met with Jack Stein. The builder called me and said, "Can you reduce the retainage?" And I said, "Yes, I can. I'll try and get it done." And I called the agency and could not get it done, and I said to Jack Stein, "Would you go down the agency and get them to reduce retainage? He's completely finished, just waiting for a closing." Because that project was a 236 and 236 did not go to prior bond sales. They used to do construction mortgage with note sales and package a group of them and sell bonds for permanent finances. They changed that. You have the closing up front. You sell the total bonds up front.

They were just waiting for a bond sale and the builder is sitting there waiting for his five percent retainage. Jack said, if you pay me \$2,000 I'll arrange the whole thing. I'll get it changed. I paid him the \$2,000, got a copy of the check, and he was able to do it. Jack Stein had a lot of power, there is no question about it. Because that's something you could only do with a lot of background and know what the heck you were talking about.

* * *

- Q. Had you found out from other people at the agency that they were not going to release that retainage?
- A. Yes, I had called George Feddish, F-e-d-d-i-s-h, who -- and George at that time was in charge of that and he's definitely in charge of it now. He's in charge of technical and legal.
- Q. Was there any reason for the refusal at that time?

- A. You know, he was like, that's the super favor. For them to reduce retainage for anyone is the ultimate thing you could do at the State Agency, because it's like getting them to change their rule. The rule is five percent till closing. It's a matter then at the point of being able to sit down and having a hard negotiation and saying, you know, it's unjust, it's your fault the man is not closing. Why should he not pay his bills? And they refused to do it for me, but they did not refuse to do it for Jack Stein.

Silvestri told the Commission that Stein's influence at the HFA was demonstrated, in part, by "the fact that he got the retainage released on Middle Road, which really surprised me." He was asked about payments "for specific acts performed in your behalf by Jack Stein."

- Q. Specifically, was the \$2000 evidenced by a check dated 4/1/75 to Stein for the release of retainage on Middle Road Village?

A. You know, without, without my book and what have you, if you could show me I'll tell you.

Q. Sure. I'll show you Exhibit C-194.

A. Right. Okay. Middle Road, yes.

Q. And I asked you whether that was for the release of retainage. Was it?

A. Yes.

The HFA on March 26, 1975, authorized payment of CIB requisitions, including a reduction of retainage from 5 per cent to 1 per cent.

During the period when Middle Road Village retainage was a contentious problem at the HFA, the same pattern of telephone conversations and/or meetings with Assistant Commissioner Horgan was repeated that occurred on other Silvestri projects for which Stein was co-consultant. Stein met with Johnston on February 6. Johnston called Horgan on February 10, 11, 19, 21, and 26, and twice on March 13. On March 14, Johnston again met with Stein, at 9:45 A.M., and then called Horgan at 11:40. Stein called Horgan on March 24, two days before the retainage was officially released. On April 1, a week after the agency acted, Silvestri wrote Stein the check for \$2,000. On April 15, Stein cashed the \$2,000 check, depositing \$1,000 into his account and receiving \$1,000 in cash. He called Horgan that same day.

COUNTRY GARDENS

Silvestri's corporate records show that Stein received three checks totalling \$4,000 for his promotion of Country Gardens, a project in Upper Penns Neck, Salem County.

Silvestri filed a site inspection request, as the first requirement for HFA consideration is called, on April 22, 1974, on behalf of New Jersey Realty (Richard Spence), the sponsor. In response to Harris Osborne's April 29 memo instructing him to conduct the inspection, project manager Kaulakis filed an undated site inspection report recommending conditional approval subject to technical services inspection and approval. However, on June 11, Robert Lee filed the technical services site inspection report, recommending the project not be approved. Lee based his disapproval on a dozen flaws, including the use of aluminum wiring, plastic plumbing and plumbing fixtures failing to meet minimum agency standards, failure of gas heaters to conform with state and local requirements, lack of firewalls, and other evidence of poor construction. On June 14 Osborne demanded "good hard reasons" from Technical Services Director George Feddish for a rejection that seemed to him to leave no room for discussion of possible corrections by the sponsor. Nonetheless, Lee on September 26, 1974, advised project manager Kaulakis that Country Gardens continued to violate the state multiple dwelling law for the same reasons stated in his site inspection report. Kaulakis, however, prepared a report on December 13 recommending a mortgage commitment.

Although the agency granted a mortgage commitment for County Gardens on March 20, 1975, there is no mention of the commitment or of any notification to the sponsor in the project file. A month after the commitment, agency architect Philip Kowalski reported that extensive corrective work would be necessary to enable Country Gardens to meet minimal HFA standards. This memo resulted in a meeting on May 13 to review the project's architectural and structural deficiencies. The participants in the meeting included Silvestri, Stein, the sponsor's representative Spence, who was senior vice president of New Jersey Realty Co., and agency employees Kaulakis, Kowalski and Leon Klotz. Kowalski approved the sponsor's proposal to correct deficiencies, subject to exceptions involving electrical fixtures, entry doors and test borings, by letter of June 24, 1975.

On July 31, 1975, Kaulakis sent a letter to Silvestri inquiring whether the project was being withdrawn from processing. Getting no response, Kaulakis sent a similar letter on September 29 to Spence. On October 3, Spence confirmed the project's withdrawal from the agency.

Pressure By Banks

Klotz testified that his own involvement in the site inspection was limited to observation for training purposes. He told the SCI he had felt, despite his limited experience at the time, that a mortgage commitment authorization for a project that did not meet minimal design standards was not inconsistent with the pressures being imposed on the agency by the banks holding construction loans on failing projects such as Country Gardens. His testimony follows:

Q. I'm going to show you one more exhibit with regard to this project, and that's an April 30, 1975 memorandum for Kowalski, who is the Agency architect, to Feddish, and he's saying that preliminary technical records covering inspection of the above-referenced project -- that is Country (Gardens) -- and that memo is three pages long and includes 24 items and was also the basis of the May 15, 1975 meeting.

A. Okay.

Q. But, the commitment had been granted about two months before. Is that unusual, as far as the Agency having their ducts in a row when they grant the commitment?

A. I think it is unusual, but not completely unreasonable.

Q. Well, why is it not unreasonable?

A. I believe when we were working with these "bail-outs" I think that there might have been some pressure from the lending institutions to get some sort of commitment from the Agency that someone would undertake this. I don't know whether that initiated the, shall I say, quick actions of the Board.

Q. So, the financial atmosphere at the time was a reason for the Board to --

A. Yeah, that's it.

Q. -- finance?

A. That's the way I sort of sensed it; yes.

CHAIRMAN LANE: You mean that the financial institutions that were originally committed to this wanted to unload it onto the Agency; is that what you are saying?

THE WITNESS: Well, that's not a fair term, Commissioner. I think that they were looking to have some sort of commitment that there will be some take out on this.

CHAIRMAN LANE: Which would relieve them of the responsibility?

THE WITNESS: Yes.

CHAIRMAN LANE: Well, then you don't like the term "unloading" you don't think that's "unloading"?

THE WITNESS: No, I don't like that term, no.

CHAIRMAN LANE: Moving it from their responsibility to the Agency's responsibility, you like that better?

THE WITNESS: Yeah, I think that probably was the intent.

BY MR. SIAVAGE:

Q. By the way, this memorandum from Kowalski marked Exhibit C-96 concludes with the paragraph, "The manifested deficiencies in the construction listed above, and the general poor workmanship evident throughout the project indicate that extensive constructive work will be required to bring this project up to minimal Agency design standards and to satisfy the Department of Community Affairs, Bureau of Housing, inspection code requirements."

They are some pretty serious deficiencies subsequent to a commitment, aren't they?

A. I would say yes.

* * *

CHAIRMAN LANE: Well, the obvious question was why the commitment with all these deficiencies so evident?

THE WITNESS: I can't answer that, sir.

CHAIRMAN LANE: And the deficiencies that you recited there as matter of record, were in evidence two and three months after the commitment.

MR. SIAVAGE: Yes, sir.

CHAIRMAN LANE: That's surprising. But, you don't know of any explanation of that?

THE WITNESS: No, I don't.

CHAIRMAN LANE: The lending institution that had the prior commitment must have been delighted with the taking over of the commitment. They must have been leaping with joy.

THE WITNESS: I would assume that, yes. That's an assumption on my part, you know.

CHAIRMAN LANE: And assumption of mine which seems to have a reasonable basis.

THE WITNESS: They had a construction loan out, and I assume they were looking for permanent take-out at the time, and I would assume that they were pleased, yes.

CHAIRMAN LANE: But, nobody knows why? You don't know why?

THE WITNESS: No, I can't answer those things.

CHAIRMAN LANE: With all these deficiencies that are self-evident --

THE WITNESS: No.

CHAIRMAN LANE: All right. Go ahead.

THE WITNESS: But, I also stated earlier that we would have to meet with our design standards with, and I think that May 15 memo specifically states that we would have to meet those standards.

BY MR. SIAVAGE:

Q. You are trying to do it, it is just that you are trying to do it after the Agency has promised

they're going to give the sponsor the money?

A. Basically, the way it sits now.

Chief Architect's Critique

Kowalski, now the chief architect at the agency, was extremely critical of the project. He recalled his reaction to Country Gardens in April of 1975, in his testimony at the SCI:

Q. All right. Before we describe those fatal deficiencies, would you relate to the Commission what your definition of a fatal deficiency is?

A. A deficiency that would cause so much destruction or reconstruction as to make it impossible or unfeasible for the agency to finance it normally. It would take abnormal amounts of construction funds to correct the deficiencies.

Q. In other words, it was something that was really incurable within the project as far as the agency would be concerned?

A. It could be corrected, but at such a great expense that the feasibility probably would be impossible.

Q. All right. And then with specific regard to this project, in conjunction with that definition, are there examples of fatal deficiencies which include, for instance, aluminum wiring that was unacceptable to the agency at the time?

A. That was one of them that I considered to be fatal. There were some portions of the project, of course, that were not completed. There was aluminum wiring installed and they could pull that and replace it. However, a large part of that project was already occupied. To change the wiring in those buildings would be a very expensive procedure.

THE CHAIRMAN: Excuse me. But, you know, where is that wiring installed? You know, I have no idea.

THE WITNESS: The wiring is, of course, concealed within the construction inside the walls.

THE CHAIRMAN: In the walls?

THE WITNESS: Yes.

THE CHAIRMAN: How many stories in this construction that was already completed?

THE WITNESS: These were low-rise, two-story wood-frame buildings.

THE CHAIRMAN: You're saying you would have to pull the wiring from the partitions or the upright walls; is that correct?

THE WITNESS: That's correct.

THE CHAIRMAN: All through the project?

THE WITNESS: Yes.

THE CHAIRMAN: And replace with other wiring?

THE WITNESS: With copper wiring.

THE CHAIRMAN: That sounds like a tremendous project, is it?

THE WITNESS: It certainly is, especially when the apartments are already occupied.

BY MR. SIAVAGE:

Q. That is, is it not, why you considered it to be one of the fatal flaws?

A. That's correct.

Q. Was another one something to do with the plumbing it?

A. This was a slab-on-grade construction. Most of the plumbing was buried beneath the slab. Most of this plumbing was polyvinylchloride pipe. We do not accept polyvinyl for undergrounding for any project. In fact, in the building itself we don't accept plastic pipe. It has to be at least steel pipe or cast-iron pipe. For that we would have to break up the existing concrete floors, dig up the pipe, replace it with cast iron.

THE CHAIRMAN: The first floor was what?

THE WITNESS: First floor was wood with concrete slab with carpet installed.

THE CHAIRMAN: Every apartment the floor would have to be broken into or broken away and going down and replace that piping?

THE WITNESS: That's correct.

THE CHAIRMAN: That sounds expensive.

THE WITNESS: Yes, it is, very expensive, even in the partially-completed buildings that would be expensive. It would be prohibitive in the buildings that were occupied.

BY MR. SIAVAGE:

Q. And in addition to the wiring and the plumbing, did this project also have a flat roof?

A. Yes, it did.

Q. And was a flat roof acceptable to the agency at the time?

A. No, it was not.

Q. And why not?

A. Well, for two reasons. First of all, flat wood-frame roofs are terrible maintenance problems. We have one project like that. As a result of the problems we had with that, we had a policy decision not to accept flat wood-frame roofs again.

In addition to that, even with a flat roof, which has a drain, the Country Gardens roofs had no drains at all. They had no roof drains installed.

THE CHAIRMAN: I take it this must be a bail-out project. Was it?

BY MR. SIAVAGE:

Q. This is what would commonly be known as a bail-out project; is that correct?

A. Yes.

THE CHAIRMAN: Your department wouldn't have allowed anything like this to be erected if you had input from the outset; is that correct?

THE WITNESS: That's our function. We don't accept that kind of --

Q. Not only that, based on your report that you did, was it your recommendation that, because of these flaws and other flaws, that the agency should not become involved in financing what was now in place?

A. That was my recommendation in my report, yes.

Inspection After Commitment

The Commission questioned Kowalski about the advisability of granting a mortgage commitment prior to a site inspection:

Q. Okay. I would like to refer you to the last page. Before we get to that, do you recognize this document as what's commonly known as a Mortgage commitment resolution from the agency?

A. This is what is prepared when we first initiate a processing of a project. It goes before the board of directors and they, in essence, assure the builder that his project is being processed by the agency, and if all the requirements are met, that a mortgage will be granted.

Q. You're not suggesting that a mortgage commitment is, for instance, the first step in the agency processing, are you?

A. It's the first step that the board of directors takes.

Q. Okay.

A. Before that the agency usually inspects the project and the sponsor and his financing, et cetera, to find out whether or not we want to entertain the project at all. This is more or less a recommendation to the board of directors that the project would be feasible for processing.

Q. Because, practically, speaking, you wouldn't want your board committing mortgage funds to a project that you knew it wasn't going to do, would you?

A. That's correct.

Q. If you return to the first exhibit I showed, C-96, your inspection report, it is dated, is it not, April 30th, 1975?

A. That's correct.

Q. Does that mean that you inspected this project about 40 days after the agency committed mortgage funds?

A. Well, the actual inspection took place on April the 25th, five days before I wrote my report. But in months, that's generally correct.

* * *

Q. Based on your experience at the agency, is it usual or unusual to do a site inspection subsequent to a mortgage commitment?

A. I have to think about that. I think site inspections are done subsequent to a commitment as well as before, the reason being someone may raise a question and we would send our own people out to either verify or to report on whatever the problems seem to be. I think we have done site inspections after a commitment as well as before.

THE CHAIRMAN: Now, that interests me. What if the resolution, the commitment, there had been no questions raised. There would be never any site inspection by your department?

THE WITNESS: No, there's always a site inspection.

THE CHAIRMAN: But normally it would go before such a resolution, wouldn't it?

THE WITNESS: Properly, in the normal course of events, the project is inspected.

THE CHAIRMAN: If it didn't go before, what would justify, what would be the foundation for the resolution committing the funds? What would they act on?

THE WITNESS: I really can't answer that --

THE CHAIRMAN: Nothing?

THE WITNESS: -- but it has happened.

THE CHAIRMAN: All right.

BY MR. SIAVAGE:

Q. Let's come to this specific case and I'll ask you this question: It appears, does it not, from the documents that the agency has committed mortgage funds to a project upon which its technical division, in the person of you, feels it's fatally flawed. Is that not correct?

A. The way it sounds to me is that the project received a commitment and someone said, did anybody take a look at this project? Or maybe somebody mentioned that this project, you know, may have some problems, and at that time they decided that before they go any further with this, you better send somebody down that knows what they're looking at to see if this project has any problems. And I thought that, as a result of our inspection, they had suspended processing on that project and I'm surprised to see that at a date in 1978 that that project is not suspended but now, you know, back in action again.

Q. Well, we'll come to your surprise subsequent to your inspection report. I'd like to stay with your surprise prior to your inspection report for a moment and ask you whether, if you were running the H.F.A., you would commit mortgage funds to project that you hadn't seen yet.

A. No.

Inspector Didn't Know About Commitment

Kowalski told the SCI that he did not know a mortgage commitment had been granted when he inspected the project, or even later when a meeting with the sponsor was held:

- Q. Okay. Did you know, by the way, that the agency had committed mortgage funds to this project when you went out to do your inspection in 1975?
- A. No, as a matter of fact, I did not.
- Q. When was the first time you heard that the funds had been committed when you did the inspection?
- A. I think the first time was when I examined these documents right here and found that they had actually presented this project to the board of directors before we made our site inspection.
- Q. And the first time that you did that was in an interview with a special agent of the Commission; is that correct?
- A. That's correct.
- Q. I'm going to show you what's been marked Exhibit C-57 for the purposes of identification, which pertains to the same project and it's a memo from Mr. Kaulakis to Mr. Osborne. That, I believe, is the operations division. Is that correct?
- A. That's correct.
- Q. Dated May 15th, 1975, confirming a meeting that had been held on May 13th, 1975, which meeting was attended by Joseph Silvestri; Ernie Silvestri; Richard Spence, senior vice-president of New Jersey Realty Company; Jack Stein; Philip Kowalski; Leon Klotz and the writer. I would like you to review that memorandum for a moment, then I'll ask you a couple of questions on it.
- A. All right.
- Q. Now, Mr. Kaulakis is reporting on a meeting that took place approximately a month and a half after your site inspection report and about three and a half months after the commitment of funds; is that correct?
- A. That's correct.

Q. And in substance, what was the purpose and substance of that meeting?

A. Well, the sponsors came in to find out what they would have to do to render the project acceptable to the agency. Mr. Spence was the seemed to be the -- I thought he was the builder. He seemed to lead the meeting. When I read Mr. Kaulakis' memo, I was surprised to find that Mr. Spence was a realtor, because it seemed to me that everytime we made a statement required a correction of a construction deficiency, it was Mr. Spence who believed that that would be no problem and that he could go right ahead and do that, what else did we want to do. At the conclusion of the meeting he promised that all of our problems would be resolved, that all that construction would take place. And I think the purpose of Mr. Kaulakis' memo here is that he realizes that, in order to do that, the monies involved is liable to render that project infeasible and he's calling another meeting to discuss that factor with some of the other people in the agency.

Q. All right. Did you think that this meeting was an exercise in futility when you went into it?

A. I did.

Q. Okay. Was that because you had a good idea of how fatal these flaws were that you had seen about a couple of months before that?

A. Yes. As a matter of fact, when Mr. Spence showed absolutely no concern regarding some of the deficiencies, I started to question his knowledge as a builder, because any builder would realize what we were talking about.

Q. Do you have an opinion on his knowledge as a builder?

A. I don't think he is a knowledgeable person as a builder, no.

Q. Do you remember who told you that you were going to go to this meeting, Mr. Kowalski?

A. NO.

Q. Okay. Do you remember your reaction when you were told to go to the meeting?

A. My, my reaction was that it seemed strange for those people to come all the way up here to hear us tell them what we already had indicated to them. If they wanted to hear it from us directly, that was fine, we would meet with them and discuss those deficiencies.

Kowalski also was unaware that processing of Country Gardens continued after staff criticism of its feasibility.

Q. Okay. Do you recall, with regard to this project or other projects in general, Mr. Feddish's reactions where his technical division thought that the project was infeasible, but he was told to go ahead with site inspection reports and other processing, if you understand?

A. I'm not sure I do. Mr. Feddish was a very pragmatic, technical person. If he felt, or if his staff felt, that the project was deficient, he backed us up a hundred percent. He was a very strong member of our agency's administrative team. I was surprised to find, as we just did, that the project started up again because I was sure that Mr. Feddish had convinced the administrative people that that project was an absolute boondoggle or, you know, it was bad. It was just a deficient project.

Q. What administrative people would he be convincing?

A. I would say, Mr. Kadish, Mr. Escher, and Mr. Johnston.

Q. Okay. Did Mr. Feddish ever relate to you that there were times when he felt the project was not up to snuff, so to speak, technically, where he was told to continue processing the project?

A. No, Mr. Feddish never indicated that to us at all --

Q. Okay.

More Commitment Payments

About 2 1/2 months after the mortgage commitment was granted Stein received three checks from Silvestri in connection with Country Gardens -- \$1,000 on June 4, \$1,000 on June 6, and \$2,000 on June 24. Silvestri explained these payments in his testimony at the SCI:

A. I believe my first, first commitments were Powder Mill Springs, Laura's Glen and Sandy Ridge. Now, Sandy Ridge I gave Stein a check on, but then the sponsor, the sponsor, who became, was really the mortgage company, reneged. They decided there were too many contingencies and I had to just credit the money against other jobs.

Q. Did Sandy Ridge go by another name?

A. Yeah. I don't really remember it, though.

Q. Country Gardens?

A. I think it was originally Country Gardens.

Q. Did you say you gave Stein money on that project?

A. Yeah, I gave him a check on that one.

Q. Is that because it also received a commitment?

A. Right.

Q. And then it evaporated?

A. That's what has thrown my mind out on this thing, that I gave him money, and generally gave him money after collecting money.

Q. Right.

A. But on Sandy Ridge, Country Gardens, whatever you want to call it, that one we goofed on because we did not get a check. U.S. Realty -- no, New Jersey Realty was the company responsible. They were the ones who claimed they would pay a certain amount of money on the commitments, but did not. They did not accept their commitments, period.

Stein called Horgan during the morning of May 14, the day after the meeting on Country Gardens' structural deficiencies. He met with Johnston in the afternoon of May 14. Stein called Horgan on June 24, 1975, the day he received his third payment from Silvestri.

FRANKLIN SQUARE

The Franklin Square senior citizens project in Gloucester Township, Camden County, brought Jack Stein five checks from Joseph Silvestri totally \$20,000 -- the most money Silvestri paid Stein for any single project. Silvestri and his Concept Building Industries filed the site inspection request for this project on April 24, 1975. Unlike Silvestri's projects prior to the Stein-Silvestri co-consultancy, this application resulted in immediate action. On April 28, Harris Osborne forwarded the request to Johnston, who added to the application a note saying: "Joe Chieppa see me on this." Although the project's outlook at first appeared bleak, its prospects became suddenly favorable later on.

On May 13 Osborne assigned Leon Klotz of his Operations Division to inspect the project with a Technical Services representative. The inspection was conducted on May 28 by Klotz and Robert Lee. On June 5, Lee reported his observations to Technical Services Director George Feddish, concluding that the project could not be approved because it failed to meet agency standards. The partially completed two-story building, Lee reported, had exposed exterior stairs, was without elevators and had two-story "walk-ups" contrary to HFA requirements for senior citizens. Klotz forwarded his own site inspection report to Chieppa on June 11. Klotz recommended no further processing because of the stairs. Chieppa returned the memo with the notation "6/20/75 to: Leon No 2 story walks (walkups) for SC (Senior Citizens) Joe" handwritten at the bottom.

On June 25, Acting Director Johnston advised Silvestri the site would not be approved in light of the agency's "current standard of not processing any two-story walk-up project for the elderly." Klotz asked Chieppa whether there had been any change in this policy by memo of August 15. Chieppa's handwritten note on this memo stated: "No change." Klotz again reported on the status of Franklin Square to Chieppa on October 30. He noted that the site had been inspected and rejected, that there was no municipal resolution of need, no local tax abatement provision and no identification of development team members other than loan consultant Silvestri.

On November 10, 1975, Klotz forwarded a copy of a revised report to Al Fredenburg, a Management Division project representative, requesting that he inspect the site and report back. Fredenburg found the project unsuitable for senior citizens because of its stairs, its numerous two bedroom units and the isolation of its buildings both from each other and from community services and shopping. Fredenburg

also said that buildings would have to be gutted and "some creative thinking will have to be done to make it acceptable for seniors." Nonetheless it soon got more favorable attention.

Outside Pressures

Johnston directed a handwritten note on Fredenburg's memo to Chiappa, saying: "Joe C. - I want to do something with this - WLJ." Feddish, apparently responding to a request for information, sent Chiappa a memo on December 10 indicating he had little data on Franklin Square except the unfavorable site inspection report and commenting: "My file indicate that this proposal was rejected on June 25, 1975. I assume it is being resurrected."

Klotz told the SCI this project was pursued primarily as a result of outside pressures:

Q. But, let me put it to you this way: Do you know of any specific instance where the recommendation was severe enough -- to use your word -- and it wasn't followed?

A. Are you saying where the technical people said we should not do a job and we did it anyhow?

Q. Yes.

A. Of a severe nature?

Q. Yes.

A. Well, I don't know what you call a severe nature. That's the problem. I know one job --

Q. I'm using your word. That's why I phrased it that way.

A. -- where the technical people didn't make a recommendation and it was overridden by, I think, input from HUD and input from the Agency, itself, and input and pressures from the community to do the job.

Q. That was that one?

A. I think that was Franklin Square.

Q. All right. I don't want to get off the subject now.

- A. And I think the reason there was the fact that I think the restrictions were no elderly in more than one story unless they were elevator buildings, but the pressure in the community was such they said they needed it, and I think an exception was made there.

On December 3, Frank G. McFadden, vice president of The Bank of New Jersey, sent Johnston a letter indicating Martin S. Ettore would be the "builder-sponsor" of Franklin Square. The sponsoring entity was Hillstat Associates, in which Ettore was the general partner. Silvestri as Concept Building Industries remained the loan consultant.

Agency Comptroller Raymond Howell informed Deputy Director Kadish that The Bank of New Jersey had committed itself to purchase \$5,050,000 in HFA bonds to finance Franklin Square. Three days later Feddish reported to Johnston on the deficiencies he observed at the project. He said the "exceedingly small" living rooms could not be enlarged and he generally questioned the quality of workmanship, including the absence of basic construction practices. He said these and other unknown factors in the construction of the complex made it difficult to estimate rehabilitation costs. He said major repairs that would have to be considered involved roofing, siding and plumbing as well as corrective work to eliminate building code violations.

Also on January 9, Howell told Kadish he had reviewed Ettore's financial data and found the sponsor acceptable for both Cumberland Green and Franklin Square.

Commitment Granted

On January 23, 1976, despite the evidence of structural and social inadequacies that had accumulated, the project was granted an HFA mortgage commitment.

Director Johnston forwarded the Franklin Square application for Section 8 housing assistance subsidy payments to Patricia Hampton, director of the HUD's Camden office, on February 4, 1976. On March 18, Gus Escher wrote Hampton that Franklin Square was a priority project. He requested an expeditious review of the Section 8 application. Throughout all of 1976, Johnston wrote a number of letters to Hampton promoting Franklin Square.

On March 26, Silvestri gave Stein a check for \$5,000 for his work on Franklin Square. Silvestri described Stein's efforts on behalf of the Franklin Square project in testimony at the SCI:

Q. You also gave him monies on Franklin Square, did you not?

A. Yes.

Q. And I think that totals about --

A. 10, 15 \$20,000.

Q. \$20,000. Do you recall what that was for?

A. For commitments, for a great deal of work. Now, on that job Jack Stein did a great deal of work. Jack Stein negotiated letters from Bill Johnston actually indicating that that job was number one in the agency. He kept it on top of the list.

Now, Jack Stein actually, in my mind, worked on two projects. The fact he got the retainage released on Middle Road, which really surprised me, and Franklin Square where he really did have an inside track with Bill Johnston because the letters came back directly signed by Bill Johnston, wasn't any doubt in my mind that he was handling that end.

* * *

Q. Was it unusual that Johnston would be signing correspondence?

A. Unusual for me. All right? I don't think -- executive director, that's his job, get the housing out.

Q. Right.

A. If you have got a job that your management division and your technical services have approved, and your agency has decided to push, in my opinion, you should be pushing.

Q. Okay.

A. But Bill Johnston did what he had to do. It was there.

* * *

On March 29, 1976, Johnston called Horgan. Also on the 29th, Stein deposited Silvestri's March 26 check at his bank and cashed a check for \$2,000. He telephoned Horgan on March 31 and April 1.

On April 15 Frank McFadden of The Bank of New Jersey sent Silvestri a letter advising him about the January 23 commitment as well as about other concerns of the bank relating to the flow of communications between the HFA and the bank and the Section 8 application. On April 27 Stein received another \$5,000 check from Silvestri, deposited it and cashed a personal check for \$1,250. Stein called Horgan that day and on the 29th. On April 30, Stein cashed another personal check for \$1,150.

On May 28, Klotz requested Silvestri to complete certain HUD-required forms -- a Previous Participation Certificate, an Equal Opportunity Form, Assurance of Compliance forms and an Affirmative Fair Housing Marketing Plan. Hampton advised Johnston on June 7, 1976, that its site failed to meet HUD neighborhood criteria for senior housing. The next day Lee advised Klotz that Technical Services was suspending its review of project plans due to HUD's rejection.

Klotz asked Chieppa whether all processing should now be suspended but Chieppa advised him not unless at Johnston's direction. Stein received a third check for \$1,000 from Silvestri in connection with Franklin Square on June 16.

On July 15 Chieppa sent Johnston a memo asking what should be done about HUD's request for a letter stipulating that Franklin Square had priority over certain Haddon Heights and Cherry Hill housing projects. Johnston's handwritten comment was: "Draft letter No priority for any available funds now or next allocation." Chieppa on July 21 forwarded a letter for Johnston's signature to inform Silvestri that HFA could not establish a Section 8 subsidy priority for Franklin Square. Johnston wrote "Do Not Send" across the text. By memo of July 22, Chieppa asked Johnston what the agency posture was on resolving problems with HUD. A week later Escher resubmitted the Section 8 set-aside application for Franklin Square saying it reflected an HFA understanding that HUD and the sponsor had resolved their differences. On August 4 Johnston again wrote Hampton about Franklin Square. In this letter, he stated: "Insofar as the jurisdiction (Camden HUD office) had funds for only the first 3 said priorities (projects in the Camden area), Franklin Square is a first priority for future HFA set-asides."

On September 8 Stein received two more checks from Silvestri, for \$4,000 and for \$5,000. Stein deposited both checks on September 9 and on that same day wrote a check for \$4,000 to Daniel W. Horgan and Sons.

On October 14, Ettore sent invitations to Johnston and Chieppa to an "Open House Preview" of Franklin Square. Johnston responded on October 18 that the agency would not authorize groundbreaking until after the funding bonds were sold and that this probably would take place within 30 days. Ettore responded on October 20, stating he could not understand the October 18 letter since The Bank of New Jersey had a standing offer to purchase the funding bonds at par. On December 9 Johnston advised Hampton at HUD that Franklin Square remained a top priority project.

On March 18, 1977, Klotz advised Silvestri that he should complete a site appraisal request and submit the \$500 fee. Both were received on March 21 and Klotz asked Chieppa to have the appraisal completed as soon as possible since the project was tentatively scheduled for the next bond sale. On April 1 Johnston indicated that the agency expected to include the project in its next bond issue if HUD expeditiously processed the expected number of its so-called "units" funding. He added that Franklin Square was the agency's first priority in the Camden area.

Mayor John Shorter of Gloucester Township wrote Commissioner Sheehan, Governor Byrne, and President Carter on March 28 complaining about the HFA's inattention to Franklin Square and asking consideration for the project. The commissioner responded on April 18, saying the agency was trying to speed processing but that all regulations must first be complied with.

On May 2 Klotz sent Silvestri a letter accepting a land valuation in the amount of \$3,100,000, which general partner Ettore signified as acceptable. On May 11 Congressman James J. Florio inquired about Mayor Shorter's letter, followed by a letter from Ronald Sahli of the law firm of Maressa and Wade on May 23 asking when the subsidies would begin. Johnston responded to Florio on May 24, blaming the Camden HUD office for delaying the project. The next day Chieppa sent Silvestri a letter demanding documentation for a closing on the project but warning that it would not be bonded if the necessary documents were too slow in coming.

Johnston responded to Sahli on June 28, stating Franklin Square was the number one priority project in South Jersey but adding he could not estimate when HUD would approve it. The HUD approval letter was issued July 15, 1977.

Horgan's Activities

Horgan in his testimony at the SCI described some of his activities on behalf of the Franklin Square project in 1977:

Q. All right. What did you do in connection with Franklin Square between May of '77 and August of '77?

A. I did a variety of things. First, I went and examined the site, looked at the building, then I looked at the working drawings, et cetera; went to see Bill Johnston to determine what was the difficulty with the project. I saw him several times, I would guess. Went to a closing at the bank between the builders and the bankers. Did a variety of things.

Jack's health, I should tell you, was failing at that time and it's hard to say whether Jack brought me in on it because he thought it would be good for me or because he thought he was in trouble. He had a severe circulation problem.

Q. And for those services performed between May or June of '77 and August of '77 you met with Silvestri to recoup your fees, your participation?

A. Yes, sir.

Q. And you were recouping both Mr. Stein's portion of that fee and your own, I would imagine?

A. That's correct.

The Bank Incident

In August of 1977, Silvestri and his partner, Ashley Goodman, met with Horgan at The Bank of New Jersey office in connection with some legal problems involving Franklin Square that the bank's counsel had raised. Silvestri said Horgan threatened to "pull their commitments" as a result of this meeting and that an argument ensued. He said the incident, which preceded Stein's death in that same month, also demonstrated that Horgan was taking over the ailing Stein's business. Silvestri recalled the meeting at the bank:

Q. Did Stein ever give you the impression that he was sharing any of his monies with anyone else?

A. Stein never gave me that impression until August 12th, 1977, when he came to my office and flat out declared that he was a partner with -- that's not true. That's not true because we had a meeting, we had a meeting -- we. Again, my partner and I had a meeting at the Bank of New Jersey and Dan Horgan came to that meeting.

He was there when we got there. The state had sent an attorney to the project, the N.J.H.F.A. had sent an attorney to the Bank of New Jersey, and it was concerning Franklin Square and they, the state, was ready to close it. The bank's attorney had to have more explained to him. They at that point would have owed us more money, a large payment, like \$50,000. I'll just give you a number, it could be off. It could be \$35,000. But it was a big, big amount of money.

Dan Horgan at that point declared himself, because Jack Stein was in the hospital. He had had a heart attack prior to dying so I've got to assume it was the end of July. And because the bank's attorney was not willing to say, okay, everything is in order, give the boys a check, they've done a fine job, and he wanted to put it off for some technical reason, Horgan took Ashley Goodman, my partner, and I outside and said to us, "I'm going to pull their commitments." I threatened to punch in the mouth because the bank had already given us money. Ashley was going to out and out kill him, which was a strange situation. We had an out-an-out argument.

At that point Dan Horgan had obviously taken over the business. Jack Stein never said to us prior to that time I'm giving Horgan a penny of the money. After that argument and Horgan came -- Stein came to see me. He said, "Yes, Horgan's my partner, 50/50 in everything."

Horgan also gave his version of that August, 1977, meeting at the bank. He contended Silvestri made a statement that he, Horgan, had said he would "kill" the project. But Horgan characterized that statement as "absurd". Following is Horgan's testimony on the meeting at the bank:

- Q. Did you, with respect to Franklin Square, in a statement to Mr. Silvestri suggest that you were going to pull the commitment if you didn't get your money?
- A. No, but that, there was an interesting scene and dialogue over that. We were standing out by the elevators and I don't know what the heck I could have said that would have put that in his mind, but he immediately became infuriated. I probably said something like, "What are we knocking ourselves out for? These people are not treating us squarely," or something like that. He immediately

became excited and agitated. And then it got more confusing because his partner, Ashley Goodman, came by there and Silvestri said, "Horgan says he's going to kill this project," which is, of course is absurd. It was absurd for a variety of reasons, but it's absurd. And I kept maintaining that. But if Silvestri had, it would be fair to characterize his conduct as emotional at that point. Then the other fellow's conduct was really bizarre and it took me some time to settle them down.

Q. Nevertheless, you didn't make that statement?

A. No, of course not. There would be no point in making that statement.

In September, 1977, Johnston advised Thomas Verdon of HUD's Camden office that the agency had no objection to transferring the Franklin Square "set-asides" to the Gloucester Township Housing Authority if the HFA did not permanently finance the project by June 14, 1978. On October 7, Johnston similarly advised Robert Peduzzi the law firm of Finley, Kumble, Wagner, Heine and Underburg that the agency would not object to a transfer of the Section 8 set-aside contract if a proposed new sponsor, Franklin Square Associates, qualified to replace Hillstat Associates. This re-assignment was made on October 7, 1977, with Martin Ettore as general partner of Franklin Square Associates.

Project Fades Despite Second Commitment

On October 27, 1977, the HFA board approved a mortgage commitment for the project under the sponsorship of Franklin Square Associates.

On January 3, 1978, Chieppa suggested in a memo to Kadish that a dry closing be held if the project was to be included in the upcoming bond sale. On February 22 Councilman Nick Frabosh of the Gloucester Housing Authority requested a progress report.

However, agency progress on Franklin Square diminished. From May, 1978, through August, 1979, a pattern of correspondence appears in the project files showing Feddish, Lee and Chieppa expressing concern over the lack of construction progress, and Martin Ettore revising schedules, promising they'll be met and then failing to meet them.

On August 6, 1979, Kathleen Okenica of HFA sent a memo to Deputy Attorney General Michael Goldman asking whether processing should be stopped on Franklin Square since Daniel Horgan had received a fee in connection with it. Although he had left DCA before receiving the fee, he had been the DCA's assistant commissioner when the Franklin Square deal was negotiated.

On November 13, 1979, The Bank of New Jersey sent a letter to Bruce G. Coe, the new HFA executive director, enclosing a copy of a resolution adopted by the Gloucester Township Housing Authority. The resolution expressed the intent and desire of the authority to act as the sponsoring agency for a municipal bond financing of Franklin Square. The bank's letter asked the agency to withdraw from the project. The HFA board did not withdraw. The Franklin Square mortgage commitment has now expired and no sponsor has made any effort to resurrect the project.

OTHER AREAS OF INFLUENCE

The LHS Entity

The Daniel Horgan-Jack Stein relationship and its impact at the HFA also evidenced itself in areas other than the projects which have been previously discussed. Subsequent to the Summer of 1975, two projects began to be formulated in the city of Newark. The first was known as Grace Renewal and the second as Nevada Street. Both were converted from nonprofit groups into limited dividend partnerships. Both limited dividend partnerships were controlled by an entity known as LHS, Inc. LHS stands for the surname initials of (Arthur) Lerner, (Daniel) Horgan and (Jack) Stein, who died in August, 1977. Stein's widow, Marilyn, later reported to the Commission that the LHS entity was set up by him shortly after Horgan's departure from DCA. Kadish after he left the HFA also became connected with LHS in some manner. With regard to the continuing influence of the individuals involved in LHS at the agency, Robert Groer, a senior project manager, testified:

- Q. Do you know if apart from Mr. Lerner and Horgan, Mr. Kadish now represents any organization which had a continuing application in the agency?
- A. I do see Mr. Kadish in the office now at various closings, representing various clients. How long those applications were in -- I am not that certain. I am not involved that directly with those specific projects. We recently had closings in the office and Mr. Kadish was in the office representing various clients.
- Q. Did Mr. Kadish ever indicate to you what kind of benefit you would receive if you had brought, saying you left H.F. A., if you brought a project for them for processing?

- A. Meeting separate and apart from that particular one, we were discussing in his office, I recall he was in the office one day and he was going out to the parking lot. That's at 3535 Quaker Bridge Road office. I went out after him and we were talking and I said that I may at some given point when I left the office want to get involved in housing development on my own. He thought it was a good idea, potentially very lucrative, and that if I had anything, that I could bring it to him and I would realize twenty-five per cent. I wasn't clear as to what that twenty-five per cent meant. We went into it in a little more detail.

Specifically, he indicated that if I had a project that I could bring to him, even though it wasn't to its full conclusion, that because of his expertise and his efforts and perhaps my efforts and his partners', that I could realize twenty-five per cent of the proceeds from the job. He would realize twenty-five per cent and his other partners, other two partners, would realize twenty-five each. It would be a 25/25/25/25 split. I was sort of surprised at that. I thought if I put something together I would realize the lion's share. We asked why not more percentage for the person who brought it together and he indicated that they had enough influence to get the project through the office. That's the way it would be if I brought it to them. If I brought them a project that would go through HUD, the percentages would be different. I would realize a greater percentage because of lesser influence situation.

- Q. And can you fix a date for that conversation?
- A. That had to be in the summer of around '78. I remember I went out without my jacket. It was around the spring, summer of '78.
- Q. Were we talking about the same partners, Kadish, Lerner and Horgan?
- A. Yes.
- Q. Was that made clear?
- A. It was my understanding that it was the same.

Horgan and Bati-Metal

One instance of Horgan's exertion of influence involved Bati-Metal Systems, Inc., which had pioneered with an innovative process to construct foundations by pouring concrete into pre-set forms. Agency personnel reported to the Commission that just as the Grace project was being closed at the agency, a requirement that the Bati-Metal system be utilized in its construction was typed into the contract. Director Johnston's appointment diary shows him meeting with Horgan and Lerner to discuss the Bati-Metal system on October 16, 1975. Thereafter, in his testimony before the SCI, Horgan admitted to receiving a consulting fee from Bati-Metal for consulting work done after his departure from DCA. He further testified, however, that he had some input with regard to the Bati-Metal company and HFA employees while he was still the DCA's assistant commissioner. Horgan's testimony about this input follows:

Q. Do you know an individual by the name of Jack Slavitt, S-l-a-v-i-t-t?

A. Yes, I do.

Q. How do you know Mr. Slavitt?

A. Mr. Slavitt had an invention or a piece of equipment called Bati-Metal. It was a system to build foundations, pour concrete into forms, pre-set forms, and he would rap almost romantically about having NBC over with a camera and they would lay one floor today and another floor tomorrow, in 70 days you would have a 20-story building. And it was a good -- I thought it was a good system. It made sense to me. I understand it's used throughout Europe. He made a compelling case for it. I checked with H.F.A. and determined that George Feddish had approved the system.

...I believe, in 1972; said it was a good system. But the builders, for one reason or another, were not using it and, in my judgment, they weren't using it because it was new and different. Jack and I agreed to represent Mr. Slavitt and, in fact, did, in trying to get the people at H.F.A. to say more than, yes, it's acceptable, but. And apparently there was a whole series of incidents in which people were saying, yeah, it's all right, but you don't want to do that, telling that to builders. So we agreed to represent Bati-Metal.

Q. Do you recall when?

A. Yeah, it was shortly after I returned from Ohio. I was enthusiastic about it.

Q. Did you know Slavitt before that?

A. He had come to the Department of Community Affairs.

Q. In what connection.

A. In connection with this system.

Q. There's no question that you met Slavitt in connection with the Bati-Metal system?

A. There is not.

Q. Did you talk to him about anything other than Bati-Metal?

A. No. I might have, but I don't recall talking to him about anything else.

Q. How often would you say you talked to him about Bati-Metal?

A. He liked to talk about it. Four, five -- while I was at the Department of Community Affairs? Maybe four or five times. He sold me. I don't know if we ever sold anybody else.

MR. SIAVAGE: Will you mark this, John.

(Packet of Department of Community Affairs memos marked Exhibit C-230.)

BY MR. SIAVAGE:

Q. 230, which has just been marked, is a packet of New Jersey Department of Community Affairs While-You-Were-Out phone messages. Strike that. Actually, phone messages. I'm not sure if they are While-You-Were-Out phone messages. That packet I have just, by my count that I have just done, numbers 33 phone messages for the period of time 8/1/75 through 4/30/76. They're all from Mr. Slavitt, they're all for Mr. Horgan.

~~Would it be your testimony that all 33 phone messages, if, in fact, you ever had a conversation subsequent to those messages, related to the Bati-Metal system?~~

MR. HAYDEN: Well, in all fairness, Mr. Siavage, the phone messages related to the fact a call was made seeking Mr. Horgan. The 30 phone messages could very well relate to five or six calls. So to be precise, what the phone messages related to is what the message which is one the content of the document itself. As to what the subsequent conversations were -- I'm not trying to be picayune. I think the question might create a misleading inference on the record.

- A. Let me say, I testified earlier, my first answer I gave -- Counsel keeps telling me stop guessing. My desire to answer these questions as best I can. I try to give you an answer rather than say I don't recall or I don't know.

My first response was when you said did he ever call I said, oh, he talked about it as often as he could, my answer was he called four or five times. Well, the truth of the matter is that's the problem I'm working with here with five years' difference. I have to stand on my answer, but I'm sure he called a lot. Everybody called a lot. I'm a guy that takes phone calls and I return them.

Q. You return every phone call?

- A. I usually return. Everyone that's got a line through it. If there's a line through it, it means I returned it.

MR. SIAVAGE: Okay. Do you want to count the lines when you're going through it, Mr. Hayden.

MR. HAYDEN: Thirty-two messages with lines through them, according to my count.

(Witness conferring with counsel.)

BY MR. SIAVAGE:

- Q. Which evidences nothing more than you returned the call. You don't remember whether you had a conversation. Right?
- A. I undoubtedly had many conversations with him.

Q. Okay. All --

A. All on --

Q. All on Bati-Metal?

A. The very same subject. Not only on Bati-Metal, but that somebody, I think notably Bob Lee was the guy he was mad at, would say, "It's a good system. Why do you want to get involved with it?"

Q. Did you call Bob Lee about it?

A. No.

Q. How about Johnston?

A. Yes.

Q. What did you say to Bill?

A. "For Heaven's sake, it's a good system. How can you have your staff say so and go around and knock it?"

Q. What did he say?

A. I don't know.

Q. Did he say he would check?

A. Yeah.

Q. Did he perceive that he worked for you?

A. No. As a matter of fact, he, he perceived he was superior to me.

HORGAN'S RESPONSE

Due to the pervasive role played by Daniel Horgan in the influence peddling scheme generated by the Jack Stein relationship, the Commission questioned Horgan at length about his meetings with Director Johnston during 1974 and 1975:

Q. All right. Describe your interface, if any, then, with the H.F.A. in conjunction with your position as an assistant commissioner.

A. There was none prescribed and none which was regularly entered into.

Q. Okay. As a matter of fact, then, you had very little interface with the Housing Finance Agency?

A. That's correct.

THE CHAIRMAN: Are you speaking as a assistant commissioner or otherwise?

MR. SIAVAGE: As an assistant commissioner.

Q. But to satisfy Judge Lane's inquiry, did you have any other kind of interface with them outside of your functioning as an assistant commissioner?

A. It is here that that role ombudsman, I described that role in that I attempted, because of my political background and political nature, to resolve problems that came up in many of the agencies.

Q. Okay. And I think you testified previously that you would get involved in, to use your term, quote, fair hearings with the agency, end quote?

A. That's correct.

Q. On problems some of the developers may have had?

A. That's correct.

Q. They would contact you and you would set up meetings with the then executive director, Mr. Johnston?

A. Yes.

Q. On how many occasions would you see Mr. Johnston, let's say, on whatever kind of basis you want to use in your answer; monthly, weekly?

A. Certainly the only regular basis was the monthly -- if the Commissioner held a meeting, monthly staff meeting.

Q. That was attended by whom?

A. By the assistant commissioner, the department heads, by the heads of the separate agencies, the H.F.A. being one, the Mortgage Finance Agency being another.

Q. All right. Would you call Mr. Johnston on occasion at the agency?

A. I would, indeed.

Q. Okay. What would you talk about when you telephoned him at the agency?

A. Most generally, about someone who presented a problem, came to me looking for a fair hearing.

Q. And in that connection did you discuss specific projects with Mr. Johnston?

A. I would discuss the project, the name of the project, and the name of the person who felt he was not being treated fairly or handled fairly.

Q. Were there also occasions upon which you would meet with Mr. Johnston in his office on the same subject matter?

A. No, I never went to his office.

Q. Okay. Would he come to D.C.A. to meet you to discuss matters relative to the agency?

A. He came frequently to meet and discuss the matters with the Commissioner. I say "frequently." He came. He came when the Commissioner told him to come, I guess, is the right answer, and he came to the Commissioner's staff meetings. It was not unusual for him to stick his head in the door and very often come in.

Q. If his diary noted meetings with Dan Horgan, can you explain --

A. No, it would surprise me --

Q. -- what they would be?

A. -- if there were meetings with Dan Horgan while I held public office.

MR. SIAVAGE: Will you mark both of these, John.

(Diaries marked Exhibits 228 and 229.)

Q. I'm going to show you Mr. Johnston's diaries for the year 1974 and 1975; Exhibit C-228 is 1974, Exhibit C-229 is 1975. There are, with respect to each exhibit, some paper-clipped pages, and there are notations with respect to meetings with Dan Horgan either at your office or some with notation about the location of the meeting, and, of course, they each have dates relevant to them. Now, you don't have to look at each one of them. I wondered, though, if you would look at both of them as long as you want to and see if that refreshes your recollection about meetings with Mr. Johnston on a -- well, I won't characterize how often.

THE CHAIRMAN: There's a clip to the page of each meeting?

MR. SIAVAGE: Yes, sir.

(There is a brief pause.)

A. Well, here a meeting is scheduled and apparently broken, you know, with a line through it.

Q. I'm not going to ascribe a number to them, anyway, sir.

A. Well, I don't think it's inconsistent with my recollection.

If we count the paper clips, there appear to be less -- there appear to me, at least, to be less than a dozen, perhaps a dozen, and I don't think that's inconsistent with -- I'll be delighted to count them.

Q. That's referring to Exhibit C-228 now, 1974?

A. Yes, I guess. Whatever it is.

MR. HAYDEN: Mr. Siavage, at one point in time did you suggest that some of the paper clips may not have pertained to a Horgan-Johnston meeting?

MR. SIAVAGE: Okay, I did, Mr. Hayden, and I'm not going to mention a number of meetings unless Mr. Horgan wants to go through them and count.

Q. At any rate, I think your recollection is now refreshed. There were times when Mr. Johnston would meet you at your office?

MR. HAYDEN: Listen to the question.

A. Yes, sir.

Q. Would you like to complete --

A. There are ten here.

THE CHAIRMAN: Well, let's get this squared away. Any of those ten meetings or thirteen meetings in the next year, were they recordings of the meetings that the Commissioner called monthly or were they different dates or different meetings?

THE WITNESS: I can't tell that, Judge. I really don't know.

MR. HAYDEN: It's Johnston's diary, too.

THE WITNESS: I know. You know, I can't respond to that. I'm sure we can check that. In one place I know --

MR. HAYDEN: In fairness, Judge, respectfully, this witness is not competent to testify as to Johnston's diary. This is Johnston's diary and you can certainly use it to refresh him obviously, but in terms of what Johnston's notations may mean, you know, to ask the witness under oath to really interpret it might be a little unfair.

THE CHAIRMAN: Well, I agree. We would agree with that, certainly.

MR. SIAVAGE: Yes.

Q. Let's come back then. I think you said subsequent to examining them that you met with Johnston a couple of times in the Newark office of H.F.A.?

A. Uh-huh

Q. And --

A. May I say that I couldn't tell you whether I did that during my tenure as an assistant commissioner. I mean, we're going back six, five, four, two years ago, and I pride myself on a good memory, but I am a little hazy here. But I do remember being at the Newark office.

Q. Okay. And do you remember also meeting with Johnston in your office at D.C.A.?

A. Yes, sir.

Q. On approximately how many occasions did you meet with him, based on your independent recollection?

A. About once a month.

Q. Okay. That is aside from these meetings with Commissioner Sheehan?

A. Yes.

Q. Just you and Johnston?

A. Probably, yes.

Q. What would you talk about on those occasions?

A. Baseball, the kids, Hudson County politics. He enjoyed talking politics. Everything under the sun. But clearly we did not discuss what was going on in his agency.

Q. You did not?

A. Nor did he discuss what was going on at Community Affairs.

Q. Even if you had a pending fair hearing at the time?

A. No, those were done usually right in front of the person who came to me with the complaint.

Q. You didn't call Johnston and set some of those up?

A. They were called immediately. It had no value, Mr. Siavage, if I, it had no political value if I do not demonstrate to the person who was, felt put upon, that it had no value at all unless I was able to do it right in front of him.

Q. But some of those things dragged out, did they not?

A. Yes, and I'd call more than one time.

Q. And during the period of time for which they dragged out would you talk to Johnston about it in your office at D.C.A.?

A. Not unless there was someone there who I was attempting to rub down.

Q. Okay. You wouldn't say to Johnston, "how's this matter going?" or "How's that matter going?"

A. No.

THE CHAIRMAN: What do you mean "rub down"? Impress or --

THE WITNESS: Impress, yes, sir.

BY MR. SIAVAGE:

Q. How many times do you recall --

THE WITNESS: Assuage may be a better word.

THE CHAIRMAN: What?

THE WITNESS: Assuage may be a better work. Calm them down.

BY MR. SIAVAGE:

Q. Do you recall how many times you were put in the position of having to assuage someone by calling Johnston about a project?

A. That would be really tough to recall a number there. Probably more for the U.A.W. than anyone else.

Back To Cold Springs

Thereafter, Horgan's recollection as to dealings with Johnston on specific projects while he was assistant DCA commissioner was refreshed by an examination of his dealings on the Cold Springs project:

Q. Okay. Do you recall a project by the name of Cold Springs, having to assuage anybody with regard to that?

A. I do not recall Cold Springs, no.

Q. Did you ever receive copies of H.F.A. memoranda on projects that you were trying to assuage someone on?

A. I don't believe so, no.

Q. Okay.

THE CHAIRMAN: Well, you were trying to help these people that came to you with complaints, you were trying to help them with their problems?

THE WITNESS: Yes, sir.

THE CHAIRMAN: And calling the agency or Mr. Johnston in that connection?

THE WITNESS: Yes, sir. I did that throughout Community Affairs and the other agencies on a regular basis. I'm sure my name appears in other people's diaries that way.

BY MR. SIAVAGE:

Q. I show you what's been marked Exhibit C-221 for the purposes of identification, which is a packet of four documents, New Jersey Housing Finance Agency memoranda, all regarding the subject known as Cold Spring Apartments, Number 649. The first is from George Feddish to William Johnston, second by the same writer to the same recipients. The date of the first is December 26, '74, the date of the second is 1/30/75. The third is a letter to Mr. Hallas from the agency, dated February 5th, 1975, re Cold Springs, and the fourth, again, is a letter to Hallas from Lee of the agency relating to Cold Springs. The first document has a note to a Dan from Bill Johnston. It says, "In light of the

attached I had to advise Alex and Jack we couldn't touch this. Sorry." The second --

THE CHAIRMAN: I think you ought to let them go over it first.

MR. SIAVAGE: Just one more thing, Judge.

Q. The second through the fourth documents all have copied Dan Horgan with "D.Y.A." as secretary's initials written on them. I wonder if you can recognize those or whether that refreshes your recollection about receiving a copy of --

A. It does refresh my recollection that I received copies of more baloney than most people got, and that is usually the way I treated it. But I don't have any recollection of this.

THE CHAIRMAN: Well, just take your time and read through those and then you will be better able to answer the questions in the affirmative or the negative.

(There is a brief pause.)

A. It would be my guess -- is there a question?

THE CHAIRMAN: No, not yet.

Q. No, I asked you to examine them. I wondered whether that refreshed your recollection first about receiving copies of H.F.A. memoranda. I think you answered that question.

A. Yeah, I would guess that that stuff came across my desk. My guess would be that -- and I had someone sitting in front of me and I called Johnston, said, "What the hell is going on? Why don't we get this?" That this stuff was sent to me as a consequence of that and I was able to pass it on to somebody else.

Q. Who would be the somebody else that you would pass it on to?

A. Whoever would be the appropriate person in this.

Q. Well, for instance, let's take in the Cold Spring.

- A. The name there that I recognize clearly is Jack Stein. I'm not sure I recognize another one.
- Q. So you would give Stein a copy of the memorandum to give him an idea how it was going at the agency?
- A. Guessing. I don't remember regularly sharing that stuff. I might have shown it to somebody. I also know Alex Feinberg. I don't know anyone else.

Horgan & Sons

In order to probe the financial connection between Horgan and Stein, the Commission began this examination by inquiring into the operations of an entity known as Daniel Horgan & Sons, which received monies related to the housing business. Horgan continued his testimony:

- Q. Did Daniel Horgan & Sons ever become involved in the housing business?
- A. Only to the extent that my staff helped me when we were moving towards completing the housing projects in Newark.
- Q. All right. Did you receive fees payable to Dan Horgan & Sons, Inc., for the housing business?
- A. Yes, sir.
- Q. I'm going to ask you to take a look at Exhibit C-11, previously marked, which is a typed sheet reconstructed from a schedule of deposits prepared by Len Fishman, August, 1979, which was submitted by Mr. Fishman, who worked with you at that time. I'm going to ask you to take a look at the receipts beginning on 11/8/1976 and tell me which ones related to the housing business as opposed to the public relations business, if you can.

MR. HAYDEN: Mr. Siavage, at this time I'm going to direct my client to answer no questions pertaining to the records of Daniel W. Horgan & Sons because of the fact that the records of Daniel W. Horgan & Sons have been subpoenaed by a Federal grand jury and he has been advised

by letter by an Assistant United States Attorney that he is a subject and a possible target, and he has been so advised as of September of 1979, and it's on my advise that I'm going to direct him not to answer any questions about those records.

MR. SIAVAGE: Mr. Chairman, just for the purpose of procedure, if Mr. Horgan would assert that privilege, the record would be perfected.

THE CHAIRMAN: Yes. You ever heard your attorney make that statement. Are you in full agreement with it?

THE WITNESS: Yes, sir, I am.

THE CHAIRMAN: And you intend to abide by his advice on that?

THE WITNESS: Yes, sir.

MR. SIAVAGE: I would ask this question just to make sure, Chairman, of the parameters of this examination: I would ask first Mr. Hayden and then his client to abide by that advice whether his statement as to Daniel Horgan & Sons receipts specifies every receipt regardless of its source into Daniel Horgan & Sons.

MR. HAYDEN: Gentlemen, by virtue of the fact there's a subpoena for these records by a Federal grand jury, that's my advice, it pertains to all records.

BY MR. SIAVAGE:

Q. I assume you're adopting that position, Mr. Horgan?

A. Yes.

Q. Okay.

Financial Analysis

The Commission's financial analysis disclosed that, prior to Daniel Horgan's departure from DCA, after Jack Stein received checks from Silvestri he would either cash them and deposit about half the

proceeds into his bank account and receive the other half in currency, or he would deposit a check and immediately cash a check. Further, immediately after Horgan's departure from DCA, Stein would deposit the Silvestri checks and then write checks for a portion of the proceeds to Horgan. Finally, Horgan's account evidenced round-number check or cash deposits on days other than state paydays and deposits far in excess of his payroll check on state paydays, sometimes shortly after Stein received and cashed Silvestri checks. Horgan's account showed about 18 such off-payday deposits during the period December 1974 through May 1976. Horgan was questioned first about funds received subsequent to his departure from DCA and later about cash deposits while he was an Assistant Commissioner:

BY MR. SIAVAGE:

Q. Exhibit C-219 is another check from Jack Stein in September of 1976 to Daniel Horgan & Sons in the amount of \$4000. I wonder if you can tell us what that check is?

(The witness confers with counsel.)

A. I really don't know.

Q. Okay. Exhibit C-220 is a check, dated June 17th, 1976, from Jack Stein, payable to Dan Horgan personally in the amount of \$500. That's a few weeks after you left the department.

A. I would think that would be a loan.

Q. Okay. That's a loan?

A. Yeah.

Q. What was that loan for?

A. Probably to buy groceries.

Q. Unsecured?

A. Yes.

Q. No note; is that correct?

A. That's my guess. Oh, yeah, no note.

Q. Did you ask Jack for that money; do you recall?

A. Probably, yeah.

Q. Take a look at the deposit ticket that's attached to that same exhibit into your account. It discloses that you deposited a thousand dollars in cash, that check and another check for \$200. Do you know where you got the thousand in cash?

A. Probably from my brother. My brother and I swapped a great --

Q. What's your brother's name?

A. -- deal of money back and forth.

Q. What's your brother's name?

A. Gerald. He's deceased.

Q. What was he doing at that time?

A. He worked on the piers in, in North Jersey.

Q. You didn't receive that cash from Stein, did you?

A. No. No. I was very cautious of who I received cash from.

Q. Well, do you recall receiving the cash from your brother?

A. No, my brother and I swapped money back and forth a great deal. While he worked on the piers, he earned in excess of \$50,000 a year.

Q. Did you give him any money since May of 1976?

A. My brother?

Q. Yes.

A. As I say to you, we swapped money back and forth.

Q. So I assume you did?

A. Yes.

Q. Where did you get that money?

A. From my earnings.

Q. Would you give it to him in check or cash?

A. I usually gave it to him in check.

Q. In check?

A. Yes.

Q. Do you have those cancelled checks?

A. I think you have all my records.

Q. So we should have checks to Gerald.
Do you have any idea what the amount
was, total amount?

A. No. They would run -- a thousand dollars
would not be an unusual amount of money.

(Witness conferring with counsel.)

Q. Do you know what the status, the balance
at present is, between you and your brother,
in other words, who owes who money?

A. My brother's deceased, but I'm always -- I'm
certain he was ahead of the game. Or I was
ahead of the game. Excuse me. I meant that
just the opposite of the way it sounded.
I'm sure he gave me more than I got from
him.

Q. Mr. Horgan, during the break, we have received
your records and it was disclosed to me that
you have one check dated December 8, 1976, in
the amount of \$180 written to your brother.
Do you recall any others, or does that seem
right?

(The witness confers with counsel.)

A. I write check for as much as \$1500.

Q. To your brother?

A. To my brother, yes.

(Witness conferring with counsel.)

- Q. We only have your records up to June of '77. Would those other checks be subsequent to June of '77?
- A. Yeah, but there should be some in there. But I don't have the records in front of me.
- Q. How many loans did Jack Stein give you?
- A. I believe, just the one, the one in December of '76.
- Q. The one in December of '76?
- A. Uh-huh.
- Q. How about the one in --
- A. On the \$500, as I say to you, that was undoubtedly a loan.
- Q. In June of '76. Okay. Would the 4000 in September, '76, have been a loan, too, possibly? You said you didn't know what that was.
- A. It's around settling it. I don't remember.
- Q. You didn't have any other job while you worked at D.C.A., did you?
- A. No, I did not.
- Q. Did you ever have occasion to make deposits of several hundred dollars into your checking account on days other than when you were cashing your state check?
- A. I might have, either, again, by borrowing money that I needed or by getting an insurance, you know a reimbursement for some kind of payment.
- Q. Who would you have borrowed those funds from?
- A. Usually my brother.
- Q. Do you remember how many occasions you borrowed monies from your brother?
- A. It was a routine thing with us.
- Q. And what would the amounts be?
- A. They would vary from \$50 up to several thousand.

Q. Up to several thousand?

A. Yes.

Q. And how would he give you that? In what form would he give you those monies?

A. Very often in cash. If it was done in person, it would be almost invariably in cash.

THE CHAIRMAN: Well, the several thousand wouldn't be in cash, would it?

THE WITNESS: He gave me 1500 in cash, I remember, once, yes.

THE CHAIRMAN: I assume from your answer the several thousand was at one time. Are you talking about an aggregate or one loan?

THE WITNESS: No, I'm talking about one. My brother and I didn't think of it as loans. There were only the two of us and --

THE CHAIRMAN: Are you talking about his giving you on one occasion as much as 5,6, \$7000?

THE WITNESS: No, nothing like that. No, I meant maybe 2.

BY MR. SIAVAGE:

Q. You said it would be in cash if it was in person. How else would he give you the loan?

A. If he mailed it to me, he'd mail me a check.

Q. He would mail you a check. What was the usual amount of money that he'd give you?

A. \$500.

Q. I think you answered this before, but you didn't receive any money from Jack Stein prior to the loan that we have established in June of '76, did you?

A. That's correct.

Q. What would you do with these monies that your brother would give you?

A. Deposit them in my account.

Q. All of it?

A. Oh, yes.

Q. I'm going to show you a series of exhibits, all evidencing deposits into the account of Dorothy Horgan, which, by the way, was the account you used for your family. Right?

A. That's correct.

Q. On days that I will represent to you are days in between state paydays during the time you were at D.C.A. in varying amounts, and they are Exhibit C-224, which is a copy of a deposit ticket, dated June 21, 1975, in the amount of \$300; C-222, which is a copy of a deposit ticket, dated March 14th, 1975, in the amount of \$500; C-223, a copy of a deposit ticket, dated February 14th, 1975, in the amount of \$300; C-225, which is a copy of a bank statement and I am speaking of an item on that bank statement, a deposit of \$500 on May 21st, 1975; C-226, which is a copy of a bank statement, again I'm speaking of a deposit of \$300 on -- well, this is June 19th, 1975, so that's subsequent to your departure; and, again C-227, which again is a copy of a bank statement evidencing a deposit on March 14th in the amount of \$500, a circled deposit. Would it be your testimony that all of those, those six items would be cash proceeds from a loan from your brother?

A. Probably.

MR. HAYDEN: If you remember.

THE WITNESS: I don't know. Probably.

MR. HAYDEN: Then if you don't remember, tell him you don't remember.

(The witness confers with counsel.)

A. It's probably my brother, but I don't remember.

Q. What else could they have been from?

A. I can't imagine what else they could be from.

Q. Okay. By the way, just to correct the record,

I said that, with respect to Exhibit C-226, which deposit I was referring to as June 19th, 1975, was beyond the date of your departure, but your departure was in '76, so that item again I am adding to the list of the other six. It's in June -- July of 1975. June of 1975. June 19th, 1975. Okay.

MR. HAYDEN: Mr. Siavage --

(The witness confers with counsel.)

MR. HAYDEN: In connection with the deposits you have referred, has it been your investigation has indicated that these are cash deposits as opposed to check deposits?

MR. SIAVAGE: If I represented that, I have just been advised that I'm incorrect; that those are only deposits into the account and I'm not specifying, characterizing them as cash or checks at the present time.

MR. HAYDEN: As a matter of fact, in fairness to the witness, didn't we have a prior deposit slip wherein one -- it was a cash deposit was circled in some way? It's the one with the five-hundred-dollar check and --

MR. SIAVAGE: We may have; we may have. And I would assume that you would suggest that that was a cash deposit?

MR. HAYDEN: Yes. 6/17/76, you referred the witness to a five-hundred-dollar check. You asked him about a two-hundred-dollar check and you asked about a thousand-dollar cash deposit where there was a circle under it.

MR. SIAVAGE: Right.

MR. HAYDEN: In fairness to the witness, certainly none of the other deposits you referred to have a similar marking which was previously indicated a cash deposit.

MR. SIAVAGE: Right.

MR. HAYDEN: So would it be fair to say at the present time, as far as your records can reflect, and, of course, we are going way back, we would have no way of knowing whether these were, in fact, cash deposits or check deposits?

MR. SIAVAGE: That's right.

THE CHAIRMAN: With the one exception of the \$1000.

MR. HAYDEN: On its face, that was cash.

BY MR. SIAVAGE:

Q. Let me ask you this, Mr. Horgan: Do you remember receiving cash in these amounts from anybody during this time?

A. No.

Q. If your brother had loaned you this money in which you said that would be the only source that you could imagine you got this money from --

A. It would not be unusual for Jack to lend me some money.

Q. Okay. It may have been Jack that was lending you some of this money?

A. It may have been. I'm inclined to doubt it. Or it may have been someone else.

Q. Okay. Well, if it was Jack, would he give you the money in check or cash?

A. A check, I would think.

Q. A check. Okay. Do you recall him giving you checks other than the check in June of 1976 and the others that followed?

A. I don't recall the check in June, '76. I see it, but I don't recall it.

Q. Do you recall checks --

A. I remember he wrote me a check at a baseball game for \$150.

Q. Okay. That would have been prior to June?

A. I couldn't tell you when it was.

Q. Do you remember whether it was early in the season or not?

A. I think we won that day.

Q. Okay. Do you recall any other checks other than

that 150 from Jack that perhaps would have corresponded to these deposits that we have gone over?

A. No, I don't.

Q. How about from anyone else other than your brother?

A. Oh, I borrowed money from a lot of people. I had been on bad times for some five or six years.

Q. Okay. Who else would you have borrowed these monies from possibly?

A. I really couldn't remember right off the top of my head.

Q. Okay. The only one you can remember is your brother and Jack Stein on one and perhaps more than one occasion?

A. Yes, maybe.

INFLUENCE PEDDLING - PART 3

THE ATTORNEY GENERAL'S INVESTIGATION

Introductions

When the SCI began probing the relationship involving Daniel Horgan, Jack Stein and Joseph Silvestri in connection with its HFA inquiry, many witnesses reported to the Commission the existence of a previous investigation into that same relationship by the Division of Criminal Justice of the Attorney General's Office in 1975. The Commission therefore requested and received the relevant file from the Division as well as further documentation from the files of former administration officials who had input into the Division's probe. After an initial review of these documents, the Commission determined that they were not only pertinent to its own overall agency investigation but also indicative that this trio's unsavory relationship as it is being exposed now by the SCI could have been uncovered in 1975. Further, these files and related documents show that Assistant DCA Commissioner Horgan, a target of the 1975 investigation, had at least an indirect affect on its outcome. Hence, because that previous investigation is important to the SCI's own report and recommendations, the Commission recounts it in the section which follows.

The Investigation's Early Stages

In early January, 1975, Governor Byrne referred certain reports and allegations of favoritism and/or corruption in the HFA to the then Attorney General William F. Hyland and he assigned the data to the Division of Criminal Justice for investigation.

The Division's investigation into the allegations was begun by its Organized Crime and Special Prosecutions Section under direction of a Deputy Attorney General with State Police assistance. At the same time, however, certain key interviews were conducted by Division Director Matthew Boylan and Deputy Director Elias Abelson. By mid-January, 1975, the Special Prosecutions Section had received reports that a number of agency personnel had information relating to the allegations and would be willing to speak candidly with the investigators. To this end, representatives of this Section interviewed Harris Osborne, then director of Operations for the HFA, on several occasions. On May 22, 1975, Osborne reported his concerns about Jack Stein and HFA Director Johnston and suggested that the agency's "bail out" projects should be a prime probe target. Additionally, Division Director Boylan's memo summarizing that May 22 interview with Osborne contains the following paragraph:

Mr. Osborne stated that he could hand up Mr. Horgan the Deputy Commissioner of the Department of Community Affairs because of Horgan's close relationship to the consultant

Jack Stein. The theory on which Mr. Osborne proceeded is that Horgan through his influence with Johnston apparently made Stein into a top notch influence peddler. There seems little doubt that Stein has jumped to the head of the class because of Horgan's influence with Johnston. We know of no economic return to Horgan for his assistance to Stein although Stein admitted to Osborne that Horgan and Stein's relationship goes back many years...

The investigators quickly attempted to corroborate the information provided by Osborne. On June 5, representatives of the Special Section interviewed Silvestri at the office of his Concept Building Industries, Inc., in Keyport. Silvestri provided details about projects being worked on by him and Stein, his initial meeting with Stein, and his understanding of the significance of the relationship. A report of one of the investigating officers contains the following sentence:

"In fact, Silvestri stated that he felt Stein was merely 'influence peddling' and those words were the exact words used by Silvestri."

Additionally, in the June interview, Silvestri gave the investigators a series of checks written to Stein on his Concept Building Industries account at the Livingston branch of the First National State Bank of New Jersey. These checks, for amounts ranging from \$500 to \$2,500, are the same checks that were involved in the Commission's own HFA investigation. The checks given to the Special Prosecutions Section by Silvestri totaled \$8,750.

On June 6, 1975, the same Section investigators interviewed Jack Stein at his office in Marlboro. Stein admitted receiving fees from Silvestri exceeding \$8,000 over a two-month period but attributed them to his expertise. He denied exerting any undue influence at the HFA through his friendship with Horgan. He admitted knowing Horgan and also visiting him on various occasions at the Department of Community Affairs. He also said he knew Johnston and visited him at the HFA several times. Stein was not asked what he did with the money he got from Silvestri.

On June 12, the investigators interviewed Horgan at his DCA office. Horgan admitted sending Stein to developer J. Evan Hallas in connection with the Cold Springs project in Cape May. He said he called attorney Alex Feinberg, Hallas' counsel, and recommended that he utilize Stein's services at Cold Springs. Horgan admitted also that, "pursuant to his duties" at DCA, he often arranged for people to meet one another and made phone calls on behalf of people to get things done in the various departments under auspices of DCA. Horgan was not asked whether he ever received any money from Stein.

On June 13, the investigators interviewed Johnston at the HFA in the presence of Deputy Executive Director Richard Kadish. Asked specifically about his dealings with Stein, Johnston contended they were extremely limited. He admitted to meeting Stein about eight months before and, apparently, exhibited his diary to the investigators which showed an initial meeting with Stein on August 29, 1974. (The diary actually notes, however, that Johnston had first met Stein on June 14, 1974, and that Johnston had met Stein on at least 10 separate occasions between that date and the June 13, 1975, interview with the Attorney General's representatives.) The Johnston interview was the last investigative undertaking of any relevance by the Special Prosecutions Section.

Decisions as to the Outcome

On June 11, 1975, Division Deputy Director Abelson briefed Special Assistant Robert Martinez and Treasurer Clifford A. Goldman on the investigative findings up to that date. The issue of Johnston's termination was discussed at that time because of the apparent favoritism being shown to Stein and others. A July 14, 1975, memo came from Attorney General Hyland to Boylan which stated that it was the opinion of Martinez, Goldman and Sheehan, those closest to the situation, that Johnston should be retained as long as no criminality was uncovered. Abelson, after reading this memo, wrote a confidential memo to Boylan which stated in part:

I have seen the Attorney General's memorandum of July 14 to you and do not understand the conclusion now apparently reached by Goldman and Martinez to retain Johnston as Acting Executive Director. This was decidedly not the impression I got as to the course of action which would be taken when I attended the meeting in June.

Part of the problem here is the inability to sort out all the cross currents and characters in such a way as to develop categories of good guys and bad guys. We have a mix of sharp business practices, aggressive salesmanship and bureaucratic practices, which tend to confuse our evaluations of the various transactions.

If any criminality is to be found it will probably be in the area of the loan consultants' activities, vis-a-vis their clients, rather than the agency. I suspect that any payoffs will be somewhat subtle, in the form of job promises or quid pro quo type of business favors.

This matter requires more work. However, if Martinez and Goldman are properly represented in the Attorney General's memorandum, I am not sure who will be able to help our probe.

Martinez had no recollection of the June 13 meeting. Goldman reported to the SCI that he did seriously consider Johnston's termination but felt ultimately that it would be unfair since the facts were inconclusive. Similarly, Sheehan stated to this Commission that she supported Johnston and equated a finding of no criminality with a "clean bill of health," which paved the way for Johnston's eventual permanent status as the chief officer of the HFA.

On July 30, 1975, Division Director Boylan advised representatives of the Special Prosecutions Section that the investigation was to be reassigned to the Corruption Investigation Bureau, a new federally funded unit in the Division of Criminal Justice. Boylan augmented his reasons for the reassignment with the statement that the Corruption Investigation Bureau possessed accounting expertise which the investigation required.

On August 14, 1975, Martinez, who as special assistant to the Attorney General had been functioning as his representative on the HFA Board and had also been monitoring the investigation, reported to Director Boylan as follows:

Attorney General Hyland has asked me to report to you the results of a recent meeting he had with Commissioner Sheehan.

Both political and non-political pressures are mounting to resolve the issue of Johnston's permanent appointment as Executive Director of HFA. We must soon enter a very difficult bond market and have been told that the fact that Johnston has been serving in an acting capacity since March of 1974 as well as rumors of the uncertainty of his situation may well effect our ability to market our bonds.

When questioned by the SCI about this meeting, former Commissioner Sheehan stated that her views on Mr. Johnston's status were augmented by discussions with Assistant Commissioner Horgan (who was espousing the appointment of Johnston as permanent executive director). Mrs. Sheehan further reported to the Commission that the political pressures discussed in Martinez's memo were coming from Hudson County and other areas.

The investigation was assigned to a deputy attorney general in the Corruption Investigation Bureau. He wrote a recapitulation report on August 21. Thereafter, on September 4, a meeting was held between representatives of both the Special Prosecutions Section and the Corruption Investigation Bureau in order to familiarize the new investigators with the details of the inquiry. Also discussed at this meeting was the possibility of informing the governing members of the HFA on the investigative findings to date since no criminality had been discovered. No further investigative avenues were explored subsequent to this meeting and the accounting analysis which Boylan had in mind on the date of the reassignment never ensued.

After several requests for an update on the status of the investigation, Boylan reported on November 11, 1975, that no criminality had been found and that the results of the investigation should be reviewed with the HFA board.

Although there is no memorialization of any briefing session with agency board, former board member Harold Sarshik reported to the Commission that he recalled a very general discussion on the matter when he was the HFA vice chairman sometime during late 1975. Former Special Assistant Martinez reported to the Commission that it was the Board's determination at this briefing session that a letter be written by him to Acting Executive Director Johnston which would include the allegations discovered by the inquiry. Thereafter, according to Martinez, Johnston's response would be considered in the overall determination of whether he would be made permanent Executive Director. It should be noted that there is no official documentation anywhere in all the files examined by the Commission, including the HFA board minutes, relative to this meeting, the details of the briefing or its eventual outcome. Sarshik additionally told the SCI that, although he remembers the briefing session, he specifically does not recall the final plan of a letter exchange or that he had ever seen either the letter written by Martinez at the behest of the board or the response to it by Johnston. Additionally, Henry Shaheen, also a board member at the time, does not recall either attending such a meeting or being briefed in any fashion whatsoever about the existence or progress of the investigation.

Martinez's letter to Johnston was dated January 15, 1976. Although it categorized six separate areas of concern, it made no specific mention of Stein. The only questionable Stein matter discussed in the letter was the Middle Road Village retainage issue. However, instead of asking Johnston why the retainage had been inappropriately released, the letter queried as to why it had been inappropriately withheld. Johnston responded to Martinez's letter on February 13, 1976, and, with regard to the general issue of favoritism toward loan consultants, stated in part:

Nevertheless, the Executive Director must have the right to discuss any and all issues with any consultant concerning any application filed with the Agency. Moreover, the Executive Director must have the right and authority to sustain, reverse, or modify any of the Division Directors' decisions.

Ultimately, the responsibility of the day to day operation of the Agency lies with the Executive Director. Accordingly, the Director must have the authority to operate as his conscience dictates.

Subsequent to the receipt of this letter, Special Assistant Martinez commented in a February 20, 1976, memo to Attorney General Hyland:

Mr. Johnston has in my view adequately explained the factual incidents, supporting the conclusion of Criminal Justice that no evidence of criminality has been developed. In doing so, he has also painted a fairly clear picture of himself as an Agency executive. A point by point analysis of the issues I raise and his response may be summarized by saying that in each instance where I have raised a possibility of more stringent procedures or documentation, he has stressed the need for staff discretion and the practicalities of the situations. His response reveals the man in summary: A good operating officer, candid, honest, and somewhat aggressive, lacking only some of the sensitivity to integrity issues which we would hope that anyone responsible for such a large quasi public enterprise would have.

Martinez also recommended to Hyland that Johnston's "status be resolved" and the Attorney General responded in a memo to Martinez stating he did not disagree with the indicated course of action and that Martinez could vote so in his behalf at the appropriate HFA board meeting.

When the SCI undertook its HFA investigation, the original checks delivered by Silvestri to the Special Prosecutions Section in June of 1975 were still in its possession.

Impact on the Agency

Both during and after the Attorney General's investigation, the fact of the inquiry became a well-known issue at the HFA. Harris Osborne reported to the SCI that he was summoned to a conversation with Director Johnston and he realized from the tenor of that talk that his

continuing employment would be very difficult at the HFA due to the Attorney General's inquiry. He resigned shortly after Johnston spoke to him. Michael Kaulakis told the Commission that he was stripped of any realistic responsibility and was assigned to analyze "ridiculous projects". Kaulakis tried to cope with harassment for several months at the HFA, but he finally departed in the Fall of 1976.

A review by the SCI of memoranda and other correspondence of the agency in the Fall of 1975 indicated a particular and acute sensitivity to the Stein-Silvestri co-consultancy and, in fact, to any work whatsoever being done by Jack Stein at the agency. Many staff personnel, including Joseph Chieppa and Gary Anastasia, began to ask Stein the exact nature of his relationship with Silvestri. Silvestri, additionally, made no further payments to Stein for any project except Franklin Square subsequent to the Summer of 1975. The Attorney General's Division of Law pronounced that certain "bail outs" were illegal for the agency process. If anything, most HFA staffers and, indeed, one or more members of the board had an understanding that Johnston had been given a "clean bill of health" by the Attorney General's investigation. The result, then, was that Director Johnston became entrenched in the agency's administrative framework and his power even more formidable than in the Summer of 1975.

SECTION IV

AGENCY ATMOSPHERE

INTRODUCTION

Having examined the actions of Director Johnston and the many deviations from administrative practices and statutory requirements his conduct caused, the Commission probed further into the conditions at the agency that abetted such activity. The few agency employees who questioned Johnston's behavior quit their jobs under pressure, usually after discovering that their protests were unavailing. The reasons for the compliance of other personnel with Johnston's orders can be attributed primarily to a general atmosphere at the agency of laxity with regard to ethical principles, insensitivity toward generally accepted concepts of integrity and fear of losing their jobs. The Commission sought to document various incidents of questionable behavior that reflected this atmosphere of permissiveness. Interrogation of witnesses by the SCI demonstrated that the adverse internal climate at the agency had been developing almost since its inception and that, while it was dominant during Johnston's administration, certain of the instances which are reported below took place even after Johnston's departure.

POLITICAL HIRING

Horgan's Testimony

One condition which existed at the HFA was the subservience of many employees to political pressures. Johnston's own submission to the power of Daniel Horgan and other politicians infected already politically attuned employees to the point that most quickly understood the political origins of the project priorities they helped to establish. At least part of this reaction was due to the non-civil service status of agency employees that made the HFA a repository for political hiring before and during Johnston's era.

Horgan in his testimony before the Commission described the political climate as follows:

Q. Were you ever consulted on the selection of any H.F.A. employees?

A. No, with the exception of the fact that I did recommend several employees to the executive director. Some he hired, some he didn't.

Q. Okay. Who were some of these people?

A. One of them was my mother-in-law.

Q. And her name?

A. Her name is Josephine Driscoll. She's deceased.

Q. Anyone else?

A. Another is Charles Boyle, B-o-y-l-e. Another one, Slade, S-l-a-d-e, first name may be Charles. I'm not sure.

Q. Were these people hired?

A. These four were hired, yes. There may be others. I'm not sure.

(Whereupon, the witness confers with counsel.)

A. (Continuing) In the matter of Mrs. Driscoll, who is my mother-in-law, she was a woman advanced in age, who had worked for many years as a switchboard operator, who had worked all her life, but mostly for the telephone company, a switchboard operator, and she worked for a trucking company and in, apparently, a very rough, vulgar environment. And I was aware of that and heard the stories, and I asked Bill Johnston if he would hire her, and he did, indeed, hire her for about \$7500 a year. She worked in the Newark office of H.F.A. and she answered the telephone, and it was probably the happiest period, at least in work experience, of her life.

Q. How about, did you know Mr. Boyle well?

A. Boyle was -- well, I got to know him well. He was somebody else's contact. Someone called me and said, "Can we get this guy a job?" and the H.F.A. was a good place to send someone for a job because there is no civil service. That's one of the reasons my mother-in-law was sent there. You didn't have the civil service to worry about.

Q. Who asked you to place Mr. Boyle?

A. James Dugan from Bayonne.

Q. How about with respect to Mr. Papadem?

A. He -- Father John Reilly from my parish at home, he apparently had worked at the agency for a long time under a Republican administration and then, when Governor Cahill lost the election, he left fearing that he was going to lose his job. And then he was working someplace and that job blew up, and my pastor first approached me. And the guy was a great critic of mine when I was a public official in South Brunswick.

But, at any rate, he had a half-dozen kids and he came to the office, and frankly, started crying and, so I asked Johnston if he would hire him and he was hired.

Q. How about Mr. Slade; is that a Mr. Slade?

A. He came from -- yes. His name may be Charles, but I'm not sure.

Q. I take it you didn't know him that well?

A. I didn't know him at all. He came from Bernard Hartnett, the Hudson County Democratic Chairman. That was not unusual. I mean, we tried to give people jobs all over, especially in the early days of the administration.

Q. Were there any people you proposed that did not succeed at --

A. Oh, yes.

Q. -- gaining employment at H.F.A.?

A. Most of them. We've -- you know we got a lot of these, especially since I had been executive director of the party and everybody thought they had a claim, and, so, sure.

You know, I remember the names of people who got jobs. It's hard to remember, but there were -- you know, we would send gorillas over for jobs, people who were completely unqualified, and some county chairman or elected official would send them in to see me, and they, they always wanted big jobs. They didn't want a job like, like Boyle took a job at \$10,000, I think. He had four kids. I mean, he was desperate. He'd take anything. The people that didn't get jobs were usually the people that wanted to be assistant. They wanted my job or Johnston's job.

Q. What form would your communications with Mr. Johnston take in recommending these employees?

A. Telephone.

Q. Telephone calls?

A. Uh-huh.

Q. And then what would you next do to advance their applications?

A. That's it.

Q. Their applications would be arriving shortly or had arrived?

A. Oh, I'd try to get them dates or something with somebody. You know, I'd tell the guy to call Johnston, his secretary would probably give them -- I'm guessing now. I don't know.

Q. But usually you would contact Johnston by telephone?

A. Yeah.

Q. When did these placements take place? You said early in your tenure?

A. Yeah, more often early than late, because, you know, there was a change of command.

The testimony of Michael Kaulakis, a former HFA project manager, also concerned the political circumstances of agency employment and the fact that neither Republicans nor Democrats were solely responsible for such politicizing. He told how he obtained his job in 1971:

A. The chronology is kind of sketchy, but I believe I came down to Trenton for an appointment, was over at the legislature and met Mr. Deutsch.

Q. And you went to the agency and talked to Mr. Renna?

A. That's correct.

Q. How long did that conversation take?

A. Oh, about five minutes.

Q. What did you do after that?

A. I went back over to the legislature because I had to get a ride back to Northern New Jersey with Mrs. Kisseberth and I ran into Gene Deutsch and Gene asked me how it went, and I told Gene that I didn't feel that I was -- I didn't feel that I was given enough time to sell myself, as simple as that; that I had had a five-minute conversation with the executive director and there were people buzzing in and out and I didn't have a chance to show him a resume or talk to him or tell him what my background was or whatever.

Q. Did Deutsch do anything as a result of you saying that to him?

A. He called John Renna up.

Q. Were you present when he made the telephone call?

A. No.

Q. Okay. Did he come back after he made the telephone call?

A. Yes.

Q. What did he tell you?

A. He told me to go back over there.

Q. Did you go back over there?

A. Yes.

Q. Did you see Renna?

A. Yes.

Q. Did Renna say anything about the telephone call from Deutsch?

A. He said something to the effect that, that there was no need for me to go back to Gene Deutsch because, in essence, I had been accepted for the job.

Q. He hired you?

A. Yes.

Q. Did he hire you the first time you were there?

A. No, it was kind of like, "We'll call you."

Q. Okay. Did you know Deutsch to have any political or other kind of connection with Mr. Renna?

A. Yeah, I knew they were both from North Jersey and that Gene was a friend of John's.

Q. Did Renna create any impression in your mind in any way that Mr. Deutsch was helpful in getting you the job at the H.F.A.?

A. Of course.

Q. Okay. How did he do that?

A. It was all involved in me going over and seeing John and then going back to the legislature and then having Gene make a telephone call, because, you know, Gene said, "Well, I'll call him right now," find-out-what-the-story-was kind of thing. Then he took over me going back over again, John looking at me and going, "Well, you had the job." Well, things like that don't happen. You don't go in for a five-minute interview and get a job, no matter where you are. You go back for one or two interviews or you ask for a resume or you go, send you down to talk to somebody else, you know, the guy you're going to be working for, whatever.

Q. Would it be unfair to say you got your job politically?

A. No.

Kaulakis also testified about others who were employed at the agency as a result of political influence:

Q. Would it be unfair to say a large percentage of the people at the agency, to your knowledge, got their jobs politically?

A. Yes. No, that wouldn't be unfair to say.

Q. How do you know that?

A. Because, because eventually, in ordinary discussions over lunch or over coffee or whatever, it -- you find out how people got their job and who is their friend or their patron or whatever.

THE CHAIRMAN: So eventually, after these discussions you, became convinced that a great many people that worked for the agency were there as a result of political influence?

THE WITNESS: Yes.

THE CHAIRMAN: Or political help?

THE WITNESS: Yes.

BY MR. SIAVAGE:

- Q. How many people would you say you ran across during your stay at the agency who were there without political help?
- A. Well, if you take -- if you disregard the secretaries, although probably 50 percent of them are there because they either came from another state agency when this one opened up or they came with somebody, if you take away the secretaries, I dare say, maybe about 20 to 20 -- maybe 20 to 30 percent of them did not. Most of them were technical people, like engineers. You don't -- you hire an engineer on the basis of what he knows or where he graduated from, not who he knows. If you need an engineer, you need an engineer.
- Q. Okay. Without naming names, were there any persons that you can recall during your stay at the agency whose background was completely at odds with what their job was at the agency?

A. Sure.

THE CHAIRMAN: You mean that they hadn't had background in that field to point towards that?

MR. SIAVAGE: Yes.

A. Me.

Q. What did you do before you went to the agency?

A. I went to college. I have a marketing degree.

Q. Anybody else without naming names?

A. Oh, yeah.

Q. Give us the job they held before they came to the agency and the job when they came.

A. Project manager. I can speak most knowledgeably about my peers. One project manager worked for the Department of Transportation on a surveying crew. One guy came in and his previous employment had been he had owned a liquor store, but he worked out real good anyway.

THE CHAIRMAN: As a project manager?

THE WITNESS: Yes, that's correct.

A. I'm trying to think. One guy came from New York. You know that defunct Urban Development League?

Q. UDC?

A. Or whatever it is that went down the tubes because it was incompetent? We got one of their guys.

Another guy, lord only knows. He was a legislative aide to somebody, I think.

CRIMINAL AND NEAR-CRIMINAL CASES

Federal, State Actions

The U.S. Attorney's Office for New Jersey and the State Division of Criminal Justice have obtained as a result of separate but coordinated investigations various Federal and State grand jury indictments involving alleged criminal wrongdoing by individuals doing business with the HFA. One target of such indictments, at both the Federal and State levels, was George Protter, an insurance agent, who allegedly diverted HFA funds by inflating premium invoices for certain insurance policies required by the HFA. In addition, the SCI's investigation led to the referral of a criminal matter to the Attorney General's office involving an HFA vehicle coordinator, Ralph Tomasulo of Trenton, who had accepted kickbacks from various auto dealers for steering agency purchases to them. These kickbacks, commonly known as "bird dog" fees, were paid to Tomasulo for influencing the purchases of cars for the agency from a certain dealer in the Spring and Summer of 1980. After this matter was referred to the Division of Criminal Justice, Tomasulo was indicted by the State Grand Jury. He pled guilty to the indictment on September 24, 1980. He was sentenced to a year's probation, fined \$1,000 and ordered to make restitution of \$8,000.

Personal Insurance "Loans"

Anthony Giannetti, formerly an administrative assistant at the HFA, admitted to the SCI that he accepted unsecured personal "loans", which have not been repaid as of this date, from Protter while the latter was servicing certain insurance needs of the agency. In addition, Protter paid for Giannetti's personal insurance between 1973 and 1978.

Giannetti's testimony about Protter's loans to him and Protter's payment of personal insurance premiums follows:

Q. Okay. The first thing of value which you received from Mr. Protter was, was it not, a particular amount of money?

A. A loan of \$500.

Q. All right. When Mr. Protter loaned -- what year was it when Mr. Protter loaned you that money?

A. That's since 1974. In about '74.

Q. All right. Did you meet --

A. The latter part of --

Q. Did you meet with Mr. Protter prior to being loaned that money?

A. No, I did not.

Q. Tell me what occasion it was that Mr. Protter loaned you that money.

A. Well, Mr. Protter came into the agency and became consultant to the agency on all insurance matters, and he -- I was directed by the director to give him all the manuals and show him all the files and so forth. That's about all I ever did for this guy.

He became very friendly, but he was quite a inquisitive sort of person, but, in my opinion, a compassionate sort of guy. He found out -- I don't know how he found out -- of my troubles up in Cape Cod and how I came to the agency and so forth. And he said, "If you ever need anything, I'll help you. I mean, whatever I can do."

Q. All right. Now you described your troubles in Cape Cod. Is it fair to say that at this particular point in time your personal financial picture was a bleak one?

A. Very bleak.

Q. Okay, Did Mr. Protter know that your personal financial picture was bleak?

A. Well, the word was around the agency that certain people were having problems and he became very friendly with me. He took to me. I don't know why. And when he loaned me the \$500, I made it very clear to him, I said, "George, I can't do have much for you because I'm not" -- he said, "Don't worry about it."

- Q. You met Mr. Protter and he became friendly with you. What was the first event upon which you discussed with him a five-hundred-dollar loan?
- A. Well, it was a problem about my insurance being canceled and he knew -- somewhere he got wind of that. I was really up against it. He says, "Do you need any money?" I said, "yes."
- Q. Okay. What did you say to him first with specific regard to the \$500?
- A. He said, "Do you need any money?" I said, "Yes."
He said, "How much do you need?" I said, "I don't know exactly how much I need. I need about 4, about \$400." He said, Well, "I'll lend you 5."
- Q. All right. He didn't just walk up to your desk and say, "Do you need any money?" to you?
- A. Well, as I say, he did because he heard from other people in the agency that -- he took an interest in me. I don't know why.
- Q. Okay. But on that day there was no --
- A. Yes.
- Q. -- previous conversation? He came up to your desk and asked you if you wanted \$500?
- A. That's right. Then he said to me, "Next time you're down the office, come on down, I'll give you a check." I said, "Well, all right." So I went down to his office.
- Q. How long, how much time elapsed between the office conversation and your visit to his office?
- A. About two weeks later I had to be in the area. I was doing a project inspection of a project in Oakhurst and his office is in Ocean, which is next. He said, "Next time you're down, call me and we'll go to lunch," and I did and we went to lunch.
- I said, "George, now you know this is a loan?" He said, "Yes." So he was going to give me a personal check and I said, "No, make it strictly business. I want it all business." He said, "Fine." Then he hands me the check. I looked at the check and he said -- I said, "This is a loan, I want to indicate it as such." And he said, "Okay," so he --

Q. Did he take the check back and write "loan" on it?

A. Yes, he did, sir.

Q. Okay. He didn't have that on it when he gave it to you initially, though, did he?

A. I don't know. I don't think so.

Q. It was you that told him to make it a loan?

A. Absolutely.

Q. Okay.

A. And I made it clear to him that I was never, could ever nor would I ever do anything for him. He made -- I made it very clear to him. We understood each other.

Q. All right. Subsequent to that occasion in 1974, did there come another time when Mr. Protter gave you some money?

A. The following year.

Q. And --

A. Around the same time of the year, around November, December.

Q. Okay. Where did you first discuss that transfer?

A. I was in Ocean. This is when he took on my insurance when I told him I couldn't pay for my insurance.

Q. Okay. Had he taken on your insurance before you got this \$500 from him?

A. No. The first time I believe the house policy was canceled and he took that on, yeah. He knew it was canceled for nonpayment, cancellation.

Q. In 1975?

A. '74.

Q. '74. Okay. So between the time you got the \$500 on the first occasion and the time when you got the second \$500, Mr. Protter began to pay for a portion of your personal insurance; is that right?

A. That's right, sir.

Q. Okay. Tell us about how you told him that your insurance had been cancelled or how he found out that your insurance had been cancelled?

A. Well, Joe Chieppa, I think Joe mentioned to him because Joe told me to go to speak to him about it. I don't know what Joe said to him because I wasn't present, but when I went to Joe, I thought Joe would handle it for me because Joe was an ordinary, just a senior project manager, he also was an insurance broker. He said he was very inactive, didn't have that much contact, that he had gone to Geico and for me to go to Protter.

Q. Mr. Chieppa was the one after your insurance was cancelled that advised you to go to Mr. Protter to get additional insurance or new insurance. Correct?

A. Yes.

Q. Okay. When he advised you to do that, did he say anything about the fact that Protter would pay for that insurance?

A. No. He said he knew I couldn't pay for it because he knew what my position was better than anybody and he said that Protter could, you know, carry you and you could pay him gradually, you know, in small amounts, which happened. I mean, when I went to Protter, he understood it, that I couldn't pay.

Q. All right. So that --

A. If I borrowed money from the guy, how could I pay for my insurance? I made it very clear to him at that time. But I said, "George, I'll pay you for this." He said, "I'll put it on the books."

Q. Well, it was a fact that you borrowed money from him, but did Mr. Chieppa know that you borrowed money from him?

A. Yes, he did.

Q. Well, tell us about that. When did Mr. Chieppa find out?

A. I think George told him. He knew I borrowed money from him.

Q. George Protter told Chieppa that you borrowed money?

A. I'm sure because they were very friendly also.

Q. You just, strictly speaking, assumed that though?

A. If George -- yes, I would assume it.

Q. All right. Coming back to Chieppa advising you to go to Protter, are you assuming or do you know that Chieppa was also saying to you that Protter would pay for that insurance or make some kind of arrangement with you as far as the payment?

A. Chieppa knowing well what my circumstances were, I believe that he knew Protter would, would go along with, on a bank basis of that type.

Q. All right. Did Chieppa know that your insurance had been cancelled for nonpayment?

A. Oh yes.

Q. When Chieppa told you to go to Protter, what did you do next? Did you call him or ask him to meet with you or what?

A. No, I waited awhile, it was a couple of days, three or four or five days later, and I don't know whether Protter came into the office, George Protter came into the office or not, but I approached him on the subject. And he said, "Oh, I don't take insurance." He said, "I don't do any -- I do only industrial, heavy stuff." And he said, "Well, in your circumstances, that you got a problem, I'll see if I can't place it for you."

Q. Okay. That was his specific statement to you?

A. Yes. And then about three weeks later he notified me that it was placed. I don't know what the procedures of placing. When you go to an insurance guy, I go and just buy insurance. I don't know how they place it or what they do.

Q. Right. Did he mention anything about paying for the insurance to you?

A. He said, "I know you haven't got the dough now, Tony. But when you get it, pay me." That's what he told me.

Q. All right. And did you pay him?

A. No, sir. On two or three occasions I offered to give him small denominations. He said, "Look, when you get on your feet, pay me."

Q. Okay. And what insurance coverage was that? Was that the insurance coverage on your house or on your car?

A. On my house and on our cars.

Q. All of your liability insurance?

A. Everything.

Q. Okay. Do you know what the value, how much coverage that was?

A. The insurance was about 12 or \$1400.

Q. The face amount of the policy was 12 to \$1400?

A. No, that was a total bill for the period. I think it was about \$400 a year \$300 a year.

Q. When you say, "the period," I assume that Mr. Protter paid for your insurance in years subsequent to 1974?

A. Yes.

Q. Did he pay for it in 1975?

A. '75 and '76.

Q. Okay.

A. In '77 I was getting cancellations from Hartford and I kept calling him back. When I finally located George, I said, "George, what is this? I'm getting cancellations." He said, "Oh, there's a mistake. Send it back to me. I'll straighten it out."

Finally we got a little bit disturbed about the whole thing. At that time Prudential, who is my insurance, life insurance company, had started to take on insurance and I went to my agent and he said, "We can insure it." I called Protter up and said cancel the whole thing and he said okay.

Q. So he paid for it in '74, '75, '76 and part of '77?

A. '77, thereabout.

Q. Okay. The total amounts he paid at your behest was approximately 12 to \$1400?

A. 14, in that vicinity.

Q. Okay. Now I want to come back to the second occasion upon which Mr. Protter gave you \$500. You said that you were at the shore at his offices?

A. I was making inspection and he called --

Q. At what project were you making a inspection?

A. At Poplar Village, senior citizens.

Q. And did you stop over after your inspection to his offices?

A. No, he called the Newark office. The Newark office told me he wanted to see me. They told him I was in Poplar Village. I called George from Poplar Village. He said, "Why don't you come over and have lunch with me?"

Q. Did you?

A. I did.

Q. At lunch did you discuss --

A. We went to a diner, and he said, "How are things going, Tony?" I told him things are all right.

He said, "Listen, if you need any help now's the time to get it."

Protter wasn't this big at that time. He wasn't doing that much with us. He didn't have the portfolio that he had at later years.

Q. He later got a portfolio of much greater volume than he had at that time is that correct?

A. At one time he had 80 percent of the insurance because he was the lowest bidder all the time. This is what confounded all of us.

Q. You don't know how he was able to do that, do you?

A. No, sir.

Q. Let's come back to this conversation. He said to you in the diner, "If you need any money, now is the time to get it"?

A. No. He said, "If you need any money" -- it was around again Thanksgiving, Christmas. Apparently he must have been talking to somebody at the agency who was -- who gave him some information.

Q. Okay.

A. And he said, "Look, kid, I'll help you out. When you get on your feet, you pay me." I said, "All right, George. I need \$500 more." He said, "You got it."

Q. What did he do to effectuate giving you that amount of money?

A. No, we went back to the office. We went back to the office. He said, "Here, here's a check."

Q. He wrote out a check again?

A. On his company.

Q. Was it marked "loan"?

A. The second check he didn't mark a loan.

Q. Okay.

A. But I didn't pay much mind to it. I didn't think there was anything wrong with it because it was a company check and it didn't appear to me, I didn't see anything wrong with it.

Q. Why didn't you ask him to mark this one "loan" if you were so concerned the first time?

A. Because everything I did with him was on a loan basis, even the premiums, the payments.

Q. Between the insurance and the initial loan you had now run up your account to the point where you both understood that it was --

A. Definitely.

Q. -- a running account?

Okay. Did Protter ever ask you at any time during your capacity, during your tenure at the agency to perform any act in your capacity as an H.F.A. employee that was a departure from normal agency policy?

A. Never.

Q. Okay, Did you ever offer to do anything for Mr. Protter --

A. Never.

Q. -- with respect to your capacity as an H.F.A. employee?

A. Absolutely never.

Q. Did Mr. Protter ever mention to you that he had given loans or paid insurance for any other H.F.A. employee?

A. No, he didn't.

Q. Okay.

A. In fact, he was pretty tightlipped about whatever went on.

Q. Did you come to know by any other means that he had similar relationships with any other H.F.A. employee?

A. No, I didn't.

Q. Have you ever paid these loans back?

A. Have I?

Q. Yes.

A. I have attempted to pay him 50, a hundred. He said, "No, hold on" -- here's what he said. He said, "Hold on till you get on your feet. I have no bookkeeping methods for such." You know, he would sell a policy to project and get a check for 50,000, 30,000, whatever it was. For him, he said he couldn't bookkeep \$50, a hundred dollars. I don't know whether he wanted me to pay him or pay his company. Rest assured, when I was about to pay him, I would have paid his company.

Q. And so that the total amount of moneys is approximately 22 to \$2400 and it remains outstanding today?

A. Exactly, around somewheres around there. I don't know.

Although Giannetti could not recall or pinpoint any reason on Protter's part for transferring funds to him, Protter himself clarified that issue. Subsequent to Giannetti's testimony, Protter reported to the SCI that the money was transferred to Giannetti in return for his help in introducing Protter to Canino and Raphael. In fact, an examination of HFA records discloses that Giannetti was assigned at various times to one or another of the Canino-Raphael projects in West New York.

Bribe Offers, Failure to Report Same

A number of HFA employees reported to the Commission during its investigation that offers of gifts, emoluments and direct bribes were a way of life at the HFA. Beyond the specific offer by James Canino of a bribe, Steven Hecker told the SCI that "if every bribe or an inference of bribery was reported to the executive director, the traffic in and out of his office would be extremely heavy."

George Feddish, former director of Technical Services, stated that during a meeting of his staff with regard to construction deficiencies at a project, again when the agency was under one of Johnston's predecessors, a "fistful of bills" was stuck in his hand. Feddish's testimony on this matter is as follows:

Q. Were you offered any money by the developers in that project?

A. Yes, Mr. Conforte.

Q. And could you describe where this was and what took place at that time?

A. This is during the processing stage we were reviewing drawing on the job and with the architect, as I recollect.

CHAIRMAN LANE: Fix a time.

THE WITNESS: I'd say around four months before the job started construction. I really don't remember. I think it was around the summer of '68.

I excused myself to go to the men's room. He says, I'll go with you. We went together. We were talking in the hall and he handed me a big, fat roll of dollars,

or money with a big rubber band around it. I remember the rubber band.

I just threw it back at him and ran back into the office and was quite disturbed. That was the end of that. He didn't say anything to me and I didn't say anything to him.

BY MR. TOSTI:

Q. Did you have any idea how much money he had?

A. No, I've always been wondering. I haven't the foggiest idea. I saw around four inches in diameter, enough to choke a horse, just like in the movies.

COMMISSIONER KADEN: You didn't say anything to him and he didn't say anything to you?

THE WITNESS: No, it never happened before, really. I didn't know what to say, do. It was uncalled for.

COMMISSIONER KADEN: And he never said anything about it afterwards?

THE WITNESS: Never said anything either, and I never said anything either.

BY MR. TOSTI:

Q. And where did this take place?

A. In this building, I think we were on the sixth floor.

Q. You mean 28 West State Street, Trenton?

A. Yes, but there was no witnessess or, you know, me and him walking down the hall.

COMMISSIONER KADEN: Was there a particular issue under discussion at that time?

THE WITNESS: No. That was the funny part. We were reviewing the drawings, pushing the job as fast as we could, it was the only real job we had. We were more interested in the job than he was, you know, we didn't have any money and we got a portion of the total

project cost, so we had some interest in getting the job done. Maybe even more than he did because we needed the money more than he did.

Q. Is there anyone within the Agency to whom you know you mentioned this?

A. I don't know, no. I don't think I ever did, to be honest. This is 1968 when the Agency was maybe, three months old, and I really didn't know what the Agency was really all about, or who was who, or, you know, I don't think I mentioned it to anybody. I was embarrassed, if anything.

Q. Did you become concerned that that might have been -- well, I'll withdraw that.

A. I tell you this: I would never go alone with the guy. I always had somebody with me.

Q. After that?

A. After that I would not walk anywhere with him, walked on the street with him.

Q. Did that present a problem for dealing with a particular contractor, knowing that he was inclined to pay a bribe if he thought it could help him?

A. Well, let me say this: I came out of New York. I told everyone I was going to New Jersey and everybody told me that New Jersey was crooked. So, when that happened, I guess I really wasn't that surprised that it had happened. I figured, gee, this might be a regular occurrence in New Jersey. That was the first and only time anything like that ever happened to me in my 12 years in Housing Finance Agency.

Q. Did Conforte and Eisele successfully blind the project?

A. Yes, I think they took a loss on it. I kind of recollect the certification indicating they took a loss on the construction end of it.

Q. At the time, though, in your position you were in a position to assist Mr. Conforte?

A. Oh, sure.

Q. If you were so inclined?

A. Sure.

Q. Did the Agency ever confront the problem of dealing with such a contractor in theoretical terms, like, what was the procedure if such an event occurred?

CHAIRMAN LANE: You mean was there a discussion and some sort of a decision made as to attempted bribes if it happens. Is that what the question is?

MR. TOSTI: If such an incident occurred, would the Agency take a certain stance with regard to that contractor doing business with the Agency.

THE WITNESS: That was never discussed in the Agency. Up in, I think, just maybe the beginning of this year memos came out from the DAG's office where anything like that happened where there was no witnesses or anything, report it anyway. That was the first time anybody ever talked about procedures or anything.

BY MR. TOSTI:

Q. Did it occur to you to report that incident?

A. I don't know what occurred to me at that time. I was 30 years old and new in the state and, you know, I really didn't -- now, of course, I would have reported it knowing what the Agency is all about. I didn't even know you had an Attorney General on the board at that time. I was just focusing on engineering construction, not thinking of the Agency as an overall business structure.

I didn't know what to do, didn't know anybody and there was only three people in the Agency.

Subsequent to this testimony by Mr. Feddish, the Commission questioned Mr. Conforte about the incident and he denied that it ever took place.

Testimony by Thomas Tomaszewski of Trenton, a former agency employee, on an offer of a bribe is equally enlightening:

Q. Are you familiar with an individual by the name of Joe Remedio?

A. Yes. Mr. Remedio was the president of the contracting company, Remedio Contractors. They have quite a few names.

Q. Did Remedio visit the site often?

A. Yes, I would say once or twice a week.

Q. Were there a lot of change orders on the site?

A. Quite a bit before I got there and there was quite a bit after I arrived also.

Q. When was the first requested approval of a change order put to you after you arrived on the site?

A. I can't recall.

Q. Was it fairly soon?

A. I would say so, yeah.

Q. Did you review the previous change orders before you took over the job?

A. When I had a chance to. Basically it was for piles and stuff that was in the ground that already was covered up.

Q. Did you have a chance to talk to Mr. Remedio on occasion when he was on the site?

A. Yes.

Q. Did he ever offer you a bribe?

A. Yes.

Q. Tell the Commissioner about that.

A. I was offered -- in a motel room down at the shore, and he says, "If you overlook certain things, there will be an envelope sitting in a motel room and I will give you the motel room" -- and I laughed it off.

Q. What things did he want you to overlook?

A. Basically, the construction of the project. It was in a very poor state and I refused to release any monies. I was overridden by my superiors, but I refused to release it.

Q. Did you refuse to release for instance the first check on the construction as soon as you got on the job?

A. I couldn't recall unless I saw the records.

Q. Okay. At one point you were at the point of refusing to release certain construction monies and that's what occasioned Remedio's offer?

A. I would say.

Q. How much money was going to be in the envelope?

A. I never discussed it with him or he never discussed it with me.

Q. Did he indicate in any way to you that any other personnel in the HFA had been approached with such an offer?

A. No, he didn't.

Subsequent to this testimony by Tomaszewski, the Commission contacted Remedio's New Jersey attorney since Remedio now resides in the State of Florida. The attorney reported to the Commission that Remedio would decline to either give testimony or discuss the matter with the Commission.

The Commission was and is particularly concerned that no HFA employee reported offers of bribes to superiors or to any other appropriate party. Indeed, Kathleen Okenica, an agency attorney who was interviewed by the SCI, produced at the Commission's office a file of letters returning various gifts and other emoluments offered over the years but about which she had told no one at the agency. She discussed the receipt of these offers and the reason for not reporting them in her testimony:

Q. During your tenure at H.F.A., have you received any gifts from people doing business with the agency?

A. Yes.

Q. Did you ever keep any of these gifts?

A. No.

Q. What response did you make when you received the, and please detail each one that you can remember.

A. Would you ask me a specific question?

Q. Okay. At one time did you receive gift certificates from Bloomingdale's?

A. Yes.

Q. And from whom did you receive these?

A. Martin Schwartz.

Q. Does he do business with the agency?

A. Yes.

Q. With whom?

A. Jack Parker.

THE CHAIRMAN: When did you receive them?

THE WITNESS: This past Christmas.

Q. Christmas, 1978?

A. Yes.

Q. What is Mr. Schwartz' position with Jack Parker? Who is Jack Parker?

A. He is vice-president of Jack Parker Construction Company.

Q. And could you give us some details on how that took place?

A. How what took place?

Q. Your receiving of \$300 in gift certificates.

A. I opened the mailbox and there it was.

Q. Is there anything you connected that to?

A. I didn't understand the question.

Q. Were you expecting it?

A. No.

Q. Had there been any previous encounters with Mr. Schwartz that could have led to this receipt of these gift certificates?

THE CHAIRMAN: At that time what had been the history of Schwartz & Parker Construction Company in dealing with your agency?

THE WITNESS: They have done a number of developments with the agency.

THE CHAIRMAN: Over a period of two or three or four years.

THE WITNESS: As long as I have been there.

THE CHAIRMAN: Were they in and out of the agency quite frequently?

THE WITNESS: Yes.

THE CHAIRMAN: How long had you known Mr. Schwartz?

THE WITNESS: Several years.

THE CHAIRMAN: Had he ever before given you a present of any kind or attempted to?

THE WITNESS: No.

BY MR. TOSTI:

Q. Was there any previous meeting with Mr. Schwartz that you related the receipt of this gift to?

A. What are you referring to? I get the feeling that you want me to say something.

Q. You are talking Christmas of 1978.

A. Yes.

Q. Why don't I show you copies of some documents? One is marked C-18 and it is a copy of a receipt for certified mail, on the same page, a December 26th, 1978, note "Dear Marty," and ask if you can identify this.

A. Yes.

Q. Can you also identify a document marked C-19?

THE CHAIRMAN: What is it?

THE WITNESS: It is my letter to Mr. Schwartz returning the gift certificates.

Q. C-19, copy of three Bloomingdale gift certificates. Do you recognize that?

A. Yes.

Q. Those are copies of certificates you received?

A. Yes they are.

Q. When you received these gifts, were these an indication of some kind of prior social relationship or did you think it was something else?

A. I don't know what you want me to say. As far as I am concerned, there was no indication that this gift had any connection at all with my professional capacity. There was never any suggestion made that I should do anything or say anything or not do anything.

THE CHAIRMAN: At the time that you received this gift or attempted gift, had you been dealing with Mr. Schwartz in your official capacity at the agency or with Parker?

THE WITNESS: Oh, yeah, sure.

THE CHAIRMAN: And how often and for how long a period of time?

THE WITNESS: As long as I have been there. It's seasonal. It varies. Sometimes they are in once a week and sometimes I don't see them for months.

THE CHAIRMAN: And the Christmas we are talking about, were there any matters pending that Schwartz was interested in or Parker Construction was interested in?

THE WITNESS: There must have been. They have business on going constantly. What I am saying to you is that I was not specifically aware of any particular thing at the time, because I don't associate this with anything that was going on at the time at the office.

THE CHAIRMAN: There was no indication of Schwartz or anything else that this pertained to anything at all that pertained to your agency?

THE WITNESS: Not at all.

BY MR. TOSTI:

Q. There were no discussions along those lines either prior or shortly prior or shortly after the receipt of those?

A. As a matter of fact, there was the reverse. When he received this letter, he called and apologized and he said he misunderstood and he hoped that I understood that he did not intend to influence my conduct in one way or another.

Q. But in your capacity at that time, special assistant to the executive director, you would be in a position to, perhaps, help Parker Associates in the negotiation of a contract?

A. I am not so sure that is true. There are a number of checks and balances in controls that are such that a single individual short of say the executive director, who has ultimate authority -- someone who is in a staff position doesn't really have -- doesn't have power; that is, totally uncontrolled that

it is unreviewed by some other level or division.

THE CHAIRMAN: On the other hand, you must have had some say in the position -- in the decision making and any of these things?

THE WITNESS: I'm not saying I had not. I am saying --

THE CHAIRMAN: You had no absolute power to influence?

THE WITNESS: Yeah.

Q. Was there a previous social relationship with Mr. Schwartz?

A. I wouldn't say it was a relationship.

Q. Could you describe it?

A. You mean you want me to say that I had dinner with him once? Yes, I had dinner with him once.

Q. I was also interested in the circumstances of that dinner.

A. Are you talking about the Council State Housing Agency? Is that what you want to talk about?

Q. Did you attend one?

THE CHAIRMAN: All he wants is whatever H.F.A. information you have.

A. The Council of State Housing Agency had their annual conference in December of last year in Boston. Mr. Schwartz is a member of the council. He attended the conference. He had extended an open invitation to the agency staff for dinner. I was the only person that accepted.

Q. Did you receive any Christmas gifts in December, 1977?

A. I am not very good on the dates. If you had my letters, it would help.

Q. I do have your letters. I have a copy of a document, dated December 21st, 1977, also marked Exhibit C-20, which appears to be a note from you and I will ask if you can identify that.

A. Yes.

Q. Can you describe -- what is that, first of all?

A. It is a letter that I wrote to Sanford Schneider returning a gift he sent to me in December of 1977.

Q. Does that note bring back what events took place leading up to your writing of that note?

A. Yes. He sent me a gift.

Q. What was that?

A. It was an indenture, a handwritten -- as I recall, it was a mortgage. It was dated the eighteen-fifties or sixties, I believe.

Q. Do you have any idea of the value of what you received.

A. None at all.

THE CHAIRMAN: A reproduction of an antique gift, an old deed?

THE WITNESS: It was not a reproduction, but I have no idea of what it was worth.

Q. And who is Sanford Schneider?

A. Sanford Schneider is an attorney for Maplewood Senior Citizens and he also is a partner in Maplewood and up until recently, he was representing Neptune Senior Citizens, which is a project that is pending in the agency now.

THE CHAIRMAN: And again, he has been dealing with the agency for some period of time while you had been there?

THE WITNESS: Yes.

THE CHAIRMAN: Throughout your employment there?

THE WITNESS: Yes.

THE CHAIRMAN: And he was in and out with his principals on several occasions?

THE WITNESS: Yes.

THE CHAIRMAN: Sometimes every week, sometimes a lapse of months and so forth?

THE WITNESS: Yes.

Q. Was there any particular agency business with which you connected receipt of that gift?

A. No.

Q. Did you perceive there to be any relationship?

A. He never suggested to me to do anything or not to do anything. The same thing occurred. He called and apologized and said he hoped I did not misunderstand.

Q. Did you also receive a bracelet from Mr. Frederici in December of 1977?

A. If you show me the letter, I can tell you the date.

Q. I have another letter dated December 27th, 1977, from yourself on New Jersey Housing Finance Agency stationery. It is marked Exhibit C-21, and ask if you can identify that.

A. Yes.

Q. What occasioned your sending that letter?

A. I received a gold bracelet in the mail from Fred Federici.

Q. And could you set a value of the bracelet that you received, approximately?

A. No, I couldn't. It was 14-karat gold, but that's the best I could do.

Q. Could you describe the bracelet?

A. It looked like one of these (indicating). I would say it was probably worth about \$20.

Q. Were you able to make any connection between any pending agency business and the receipt of that gift?

A. None whatsoever.

THE CHAIRMAN: Federici was in and out of the agency for all the time that you had been employed there?

THE WITNESS: Yes.

Q. What was his position in dealing with the agency?

A. He is the owner of Forest Hill House, and he is also in the business of being a loan consultant and he represents various nonprofit sponsors.

Q. Were you the only one who received a Christmas gift from Mr. Federici at that time?

A. It is my understanding that I was not.

Q. What is your understanding of the others who received gifts?

A. I had understood that he had sent radios to several people at the agency, several men.

Q. Did you understand that those were kept also, retained by the individuals who received them.

A. I am only aware of one instance and in that instance the radio was returned, and then Fred Federici sent it back again.

Q. And did Mr. Federici finally prevail, to your knowledge?

A. It was a standoff.

Q. Where is the radio?

A. The radio is now officially dedicated as the property of the Housing Finance Agency. It is in the agency.

Q. And in the person's office to whom it was given?

A. Yes.

Q. Were you aware of any items of jewelry being given out in December of 1977 by Mr. Federici?

A. No, I wasn't.

Q. You are only aware of one radio coming in?

A. I had heard that there were others, but this is really all I know. I don't know. That was in the nature of rumor. I don't know for a fact about any others.

Q. In 1977 at Christmastime you were staff assistant attorney?

A. Yes.

Q. At that time, did anyone approach you from the agency and say, I have received an unsolicited gift and what should I do?

A. Yes. Gary Anastasia did.

Q. What was the gift he had received?

A. A radio.

Q. Okay. We are talking about the same radio. What advice did you give him?

A. I told him to send it back.

Q. He followed it?

A. Yes.

Q. When the radio came back, it was kept?

A. Yeah, sort of.

Q. The radio was kept, isn't that true?

THE CHAIRMAN: Well, the radio remains in the office is that correct?

THE WITNESS: It was kept because it was easier to leave it there than to continue to fight about returning it. I want you to understand that Gary was not interested in the radio, and in fact, hasn't used it, as far as I know.

Q. Did that event, given that there was somewhat of a battle of wills on that gift --

A. That is a little strong.

Q. Maybe it is a little strong.

In that the gift was sent back and forth, did that event within the agency result in some kind of formulation of policy as to gifts?

A. Not that I am aware of. I seriously doubt that very many people knew about it. I only knew about it because Gary had chosen to ask me about it.

Q. From your position as staff attorney, did you take any action to bring this to the attention of anyone else as a possible starting point for moving towards --

A. Mr. Johnston was aware of the radios.

Q. You were aware of one radio, but Mr. Johnston was aware of several radios?

A. All I remember is an isolated thing. I remember that this was no secret in the office.

Q. But you also remember no action being taken toward formulating a policy that maybe this should not occur and we should advise everybody within the agency how to treat these kinds of events?

A. I don't recall any such thing.

Q. Did you ever discuss it with Mr. Johnston?

A. Which, the bracelet?

Q. The radios, the bracelets, any of these items.

A. As I recall, we had one general conversation on the subject of gifts and I made it clear to him what I thought the appropriate posture should be with regard to employees and what they should do when these things happened.

THE CHAIRMAN: Have you fixed a time for that?

THE WITNESS: I couldn't possibly.

Q. Can you give us the substance of that conversation?

A. It was very brief. It must have been precipitated by one of these instances and I suspect it was probably the radios. We discussed it very briefly. I told him that I thought that all the employees should return all of the gifts. As a matter of fact, that is not even fair. We were discussing gifts in general and what should happen, and as I recall, he said, "Does it matter what the dollar amount of the gift is?" I said, "No, it doesn't." We were generally discussing what ought to be done. It was in the nature of an attorney advising a client. That type of a conversation.

Q. Was that ever addressed again?

A. Did I ever discuss it with Bill Johnston again?

Q. Beyond that.

A. No.

Q. Was there ever a resolution as far as a memo going around the office formalizing any policy or even starting a policy?

A. Not that I recall.

Q. Were you aware of a policy formulated by the governor that state employees were not to accept gifts of whatever value?

A. When we talked about this before, you asked me if I remember seeing a memorandum going around. No, I don't remember that, but obviously I knew that state employees weren't supposed to receive gifts, because I didn't.

Q. At least your opinion was not shared throughout the agency? Is that fair to say?

A. It was not discussed. I don't know what anybody else thought. I discussed it with people who came to me up in conversation.

Q. Did you think there was a need for circulating a memo that no people at the agency should accept gifts no matter how small?

A. Yeah, I did.

Q. Did you, in your position as staff attorney, express that to anyone above you?

A. I remember talking about it to Gary Anastasia when he came to talk to me about his radio.

Q. And what is his position?

A. Chief of operations.

Q. Would he be at a parallel level?

A. With me at the time?

Q. Yes.

A. Yes.

Q. How about with anyone above you?

A. I don't recall. I never made my attitudes about this mysterious. Everybody knew how I felt about it.

Q. And how did that occur? How did everybody know what your attitude was?

A. Oh, come on. I was working there for years. People have conversations.

Q. But your answer is that you never specifically had a conversation suggesting a need for circulating a memo that state employees shouldn't receive gifts?

A. I did not suggest to Bill Johnston that a memorandum should go around, because I was not in a position to suggest that type of thing to him. He told me what to do. I didn't suggest what he should do.

COMMISSIONER PATTERSON: Since you have taken your new position, has such a memo been set up?

THE WITNESS: I had a discussion with Bruce Coe about promulgating some sort of a code for the Housing Finance Agency. I spoke to Mr. Siavage about it. He was going to send me some things and I haven't received anything yet.

COMMISSIONER PATTERSON: It is in the works?

THE WITNESS: I have spoken to my law clerk about it and I asked him to call here to get whatever it was that he was going to send. It is sort of in the works.

Martin Schwartz, the individual who offered \$300 in gift certificates from Bloomingdales, testified under a grant of immunity by the SCI on the reason for the offer to Okenica and on gifts of liquor delivered during the holidays to project construction sites:

Q. Did you have occasion also in December of 1978 to send three gift certificates in the amount of \$300 to an individual by the name of Kate Okenica in the New Jersey Housing Finance Agency?

A. Yes, I did.

Q. Why did you do that?

A. I did it because I felt that Miss Okenica did my daughter and myself a great personal favor.

Q. What was that personal favor?

A. Previously to that time my daughter, I think she was starting her junior year up in Tufts, had been vacillating between a career in land planning and urban renewal and/or becoming an attorney. My wife and I tried to persuade her to become an attorney because I don't think much of the land planning and urban renewal for now or even in the future. It was very difficult to persuade her to our way of thinking. During this whole time I had been introduced to Miss Okenica down at the agency and I was impressed by the fact that she was becoming the chief legal officer as an attorney and I would talk to her many times about her career, about how she liked it and how she found it and I came upon the idea of when my daughter came in on her next vacation, to bring her down to the agency and see if Miss Okenica would speak to her.

Q. You mean when she came from Boston?

A. From Boston. I don't know exactly what happened or how it came about, but I took my daughter down to the agency while I was down on other business and Miss Okenica sat with her for about an hour, an hour and a half, discussing her career in law. Very shortly after that my daughter called us up and said she decided she would take the law boards, which thrilled me to no end and it was around the holiday season and I felt so good about it; I went in and bought three gift certificates and sent them down to Miss Okenica and she promptly sent them back.

Q. Where did you go in?

A. Bloomingdale's.

- Q. What form of money did you use to purchase them?
- A. Cash.
- Q. And was it Jack Parker cash or Martin Schwartz cash?
- A. Martin Schwartz personal cash.
- Q. If she had accepted it, would you have considered it a business expense of Jack Parker, Inc.?
- A. No way.
- Q. When you were up in Boston at that housing partnership meeting did you have dinner with Miss Okenica?
- A. Yes, I did.
- Q. And the gift certificates had nothing to do with that dinner, did they?
- A. No.
- Q. Do you know of any reason why if you know, why Miss Okenica would fail to recollect that she had this session with your daughter at the agency?
- A. I cannot answer that.
- Q. Have you either on behalf of yourself or on behalf of Jack Parker, Inc. or on behalf of a related corporation of Jack Parker, Inc. given any bottle of liquor, gift, or anything else of value to the HFA?
- A. It is standard practice in our organization that the holiday season depending upon the volume of personnel on our job, we would bring down a case or a case and a half of liquor to the super's trailer extensively for the foremen. What happens to that, I don't know. There was one other time on our Rahway job during the course of construction that our job office and the HFA office was broken into. Whatever was taken was taken but the HFA inspector claimed he had a computer and a camera, 35 millimeter camera that was stolen out of his desk. I think after about three or

four months we got permission from the agency to replace his computer and his camera. We went out and we purchased, my job super purchased the camera and computer and turned it over to the inspector.

COMMISSIONER PATTERSON: I gather from your answer, prior to this last answer, when you said that it would have been the policy of Parker to bring down to the job site some liquor and give it to the superintendent on the job for distribution to foremen, I think you said foremen but you really didn't -- I got the feeling that you have a feeling that some of that liquor may have gone to HFA people?

THE WITNESS: Mr. Patterson, I cannot tell you where that went. I do not distribute it. The bottles are counted out by the number of foremen and subforemen. Usually a foreman gets two bottles, a subforemen gets one for a labor foreman and that's the way it is earmarked and purchased for the construction sites. For me to say to you that I know exactly where every bottle went, I don't.

After this testimony by Schwartz, the Commission again asked Ms. Okenica the reason for the \$300 gift offer since Schwartz's reason was different from that first supplied by Ms. Okenica. She did remember talking to Schwartz's daughter about her career but stated that to the best of her knowledge that discussion took place in the summer months after the Boston conference and the gift offer.

POST-EMPLOYMENT CONFLICTS OF INTEREST

Escher's Testimony

Several high-ranking HFA personnel have gone directly from agency jobs to employment in the subsidized housing field generally and some have accepted employment with entities doing business with the HFA. For instance, John Renna, former executive director, became

a loan consultant immediately upon his departure. Gustav Escher, a former assistant executive director of the agency, who presently plans to function as housing loan consultant, gave revealing testimony on the issue:

- Q. With respect to your reaction on the issue that was posed before by Commissioner Patterson, that is, what should be the circumstance with regard to the pronouncement, if you will, of any ethics code which might relate to the H.F.A., and post-employment restrictions, if you understand my question to this point, what would be your suggestion to this Commission in the recommendation phase of our investigation with respect to that specific issue and if you will, why?
- A. This is a little off the top of my head. I hadn't thought about this. I don't have -- let me say, I am extremely sensitive to the issue. It is a first-class problem in all government affairs. The Federal government apparently has dealt with some blanket one-year restrictions and a bunch of really super people, who I have worked with for years on the Federal level have left for that. That I am not sure is the most reasonable approach. On the other hand, there is a real public trust and it is very easy for people in government to abuse it. If they make up their mind they are going to leave in six months, then they create an awful lot of friends by making very poor public decisions. This is a real problem. I think the standard that I am willing to submit to -- I haven't thought about this a lot, but on the surface, I will tell you I don't think that standard is that unreasonable. I think if you can say that people who have direct or substantial involvement in one category or one phase of the business or in a certain set of issues as a public official, they really should be barred, and I don't know -- that should be indefinite, I suspect.

COMMISSIONER PATTERSON: What is an example of that? I don't mean to tie it into any factual things.

THE WITNESS: An example would be the individual who was solely responsible for selecting the printer to print the annual report of the department of something or another. That individual should be barred from working for printing companies.

COMMISSIONER PATTERSON: Forever?

THE WITNESS: Forever and certainly the printing companies that he selected while at his job.

COMMISSIONER PATTERSON: Let's go back to the Housing Finance Agency.

THE WITNESS: Forever is a long word. Off the top of my head, forever, yeah.

COMMISSIONER PATTERSON: On the subject of off the top of your head, one of the other things that you were advised the last time you were here and is still true that at the completion of this session if there is something you want to add to the record after thinking about it a little bit more -- in other words, specifically when you go home, tomorrow or the next day you come up with some better ideas as to how you think the conflict of interest laws should be changed or recommended, we would be interested in receiving them.

THE WITNESS: Okay.

COMMISSIONER PATTERSON: Let me go back to the three parts or maybe more than that that I see. If you, as an employee of H.F.A. had been working on a project and now you left H.F.A., do you think there is a period of time after which you ought to be allowed to work on that particular project, assuming the project had been there, but hadn't gone anywhere in years or should you be forever prohibited from working on that project, because it was a project that you had worked on while you were in, in this case, working for H.F.A.?

THE WITNESS: Well, I think a long period of time -- I don't know whether that is a year or two or forever.

COMMISSIONER PATTERSON: Was it five years?

THE WITNESS: I don't know what the standard would be. Some length of time.

COMMISSIONER PATTERSON: Some length of time?

THE WITNESS: That's right, and the length of time would relate to the ability for the public official to structure something that would be privately lucrative or beneficial. That's the linkage you want to break. If it is a day, it is a day. If it is ten years. You want to disallow a public official -- I mean two years later the actors would change, the values created would change, and then it would be virtually a whole new set of issues.

COMMISSIONER PATTERSON: Let's go to the second type of project, a project which was at the H.F.A., in this particular case, and you know nothing about it. Should you be allowed, in your opinion, to work on that particular project the day after you left H.F.A.?

THE WITNESS: I would think so, yes.

COMMISSIONER PATTERSON: Have you broken the chain under the first example?

THE WITNESS: I think the argument is that the chain was never there to be broken, because if I had no knowledge about that project, had no direct or indirect relationship to it, I could not set up a relationship that could be broken.

COMMISSIONER PATTERSON: Given two people, one who has never been employed by H.F.A. and was working on his first project before H.F.A and the other person is someone who just left H.F.A., which one is in the most advantageous position in terms of providing

services to a client and in terms of getting a project forward?

THE WITNESS: All of the things being equal, the one who was at H.F.A.

COMMISSIONER PATTERSON: That's the problem?

THE WITNESS: I don't perceive that to be a problem. Why is that a problem? People who do trial work all the time, they are going to get the jobs that people need trial lawyers for. I don't mean to -- let me just say, I didn't perceive that as a problem in the sense of a favoritism. The someone who has worked at the Housing Finance Agency and understands the process seems to me, as an H.F.A. director, I would encourage those people going out working on the outside and bringing in new work, because you are going to get a proposal to the agency.

COMMISSIONER PATTERSON: It may not be a problem to you and, of course, I have asked your opinion, so I take it as that. It has been a problem, for instance, to the Federal government in which in many cases said, "If you work for the SEC, you can't turn around and work for somebody from the SEC."

THE WITNESS: On any project?

COMMISSIONER PATTERSON: On anything. I am not arguing that that is good or bad. I am pointing out that people perceive it to be a problem.

THE WITNESS: I understand.

COMMISSIONER PATTERSON: Whether it is a problem in your mind or not is something completely different. The third type of potential conflict, and I am sure you would give the same answer you did if it was not a project that had ever been before H.F.A., you as an ex-employee, you feel you would handle that project the instant you resign from the H.F.A.?

THE WITNESS: I would respond the same way to both.

COMMISSIONER PATTERSON: Going back to the individual conflict, the position conflict, I guess is the way I would describe it, I understood you to say that a particular person in a particular top position where they were working for H.F.A., in this case, had as much power as any individual in H.F.A. could have, which I assume the executive director, that that person shouldn't be allowed to resign as executive director and come back the next day as a consultant. Did I understand you correctly to say that?

You didn't say it about the executive director, but to indicate that if you were the person in the governmental job that made the decision to go ahead on something, that you ought not be allowed to turn around the next day and having quit the agency, represent someone before the agency.

THE WITNESS: The day before you had governmentally given the approval to go ahead?

COMMISSIONER PATTERSON: New work.

THE WITNESS: Absolutely. I think everybody ought to be able to do new work.

COMMISSIONER PATTERSON: No matter what their position prior to leaving the government had been?

THE WITNESS: Well, I mean, I hadn't thought it through. My knee jerk reaction would be that they would be entitled to do that.

COMMISSIONER PATTERSON: The question is not so much whether they are entitled to do it. The question is whether it is in the public interest. I am trying to get away from what is legal and what is illegal, what is the law, what is not the law. What is in the best interest of the public?

THE WITNESS: Well, if it is new work, or for that matter, work that -- as an executive director, they have control over everything theoretically. If it is new work, I don't see how the public interest is served by disallowing that purpose from working the next day. From the appearance point of view, which is important in conflict issues, you may want to require some hiatus of six months just to let the dust settle and let new people get installed in their office and establish their own management style.

COMMISSIONER PATTERSON: For everybody?

THE WITNESS: For key people like that.

COMMISSIONER PATTERSON: Who would you define as being key people in H.F.A.? Again, I am not interested in individual names, but jobs.

THE WITNESS: I would say job descriptionswise, key people would be the executive director and the assistant executive director for this kind of analogy that we are going through.

COMMISSIONER PATTERSON: But you were assistant executive director.

THE WITNESS: That's right. I didn't have a firm opinion when I walked in here. You may be convincing me that a six-month is what I should consider.

Kadish's Post-HFA Employment

Richard Kadish was the deputy attorney general assigned to the HFA from 1971 to 1974, when he became deputy executive director under Johnston. Kadish, who remained at the agency until February, 1978, when he became employed by Capital Realty Investment, Inc. (CRI), was also questioned by the SCI.

Upon leaving the agency, Kadish sought a ruling from the Executive Commission on Ethical Standards, representing himself as a practicing attorney with plans to join CRI and possibly later to affiliate himself with LHS, Inc. The Ethical Standards Commission

found no conflict existed so long as he did not work on any matter with which he had been substantially involved while at the HFA. After hearing from Kadish, his attorney, Steven B. Hoskins, and from Johnston, the Ethical Standards Commission ruled that no conflict would arise if Kadish worked on conversions on the ground that conversions were separate and distinct from mortgage closings. This ruling was augmented by the Ethical Standards Commission's acceptance of Kadish's proposal that, for a period of one year from the date of his termination at HFA, he would not work for CRI on any application to the HFA for a conversion to limited dividend status, or for a syndication of any project on which an agency mortgage closing was held or in which he had a substantial involvement while he was an agency employee. This decision did not address either Kadish's expertise in the HFA's overall area of conversions or the fact that he had formulated much of the agency's policy on conversions while he worked there.

George Feddish, technical services director, told the SCI about conversion policies at the agency while Kadish was its deputy director and about Kadish's expertise in this field:

- A. When I was -- right after I was made one of the assistant executive directors in the Spring of '78. That was one of my assignments to get involved in the conversion activities, basically because nobody in the agency was too familiar with what the heck the conversions were all about.

They were handled prior to my involvement by Mr. Kadish. Nobody knew much about conversions.

- Q. As a matter of fact, was one of the tasks given to you when you got involved in conversions the development of a written document, which could be considered conversion guideline?

A. Yes.

- Q. Did you talk to Mr. Kadish in the formulation of these guidelines?

A. Sure.

- Q. Did he give you any of the eighteen listed guidelines?

A. No. We talked in general about syndications, but, of course, none of the syndicators wanted any guidelines at all. Once we drafted them up, we sent them out and I think maybe one or two returned comments, but they weren't good comments, so we ignored them.

Q. Was one of the purposes of the formulation of these guidelines, in effect, to clean up the activity of the agency with regard to conversions?

A. I don't know if clean-up the act -- it was handled by one person. That was really the problem. I don't think the board knew much about it and I don't think the executive director knew much about it. It was handled by one person and that was the basic mistake. That had to be straightened out. There was so much money created by these conversions that it was common sense that you had to come up with rules and regulations. Millions of dollars and you had to regulate it. Common sense, it had to be regulated.

Q. Because of the monies involved, conflicts arise?

A. I thought letting a loan consultant getting proceeds, I didn't believe in that at all. They should get nominal amounts. A couple of thousand bucks makes sense, but not tens of thousands of dollars.

Kadish's Testimony

In June, 1978, about five months after his departure from the agency, Kadish received \$6,000 from Planners Associates - a firm controlled by an HFA project sponsor, Arthur Lerner. Almost all of the firm's income at that time was derived from agency projects. (Lerner was the sponsor of the Grace Renewal and Nevada Street projects in Newark). Kadish testified as follows:

THE CHAIRMAN: What was your connection with the Grace project?

THE WITNESS: I helped close it on behalf of the agency.

Q. And subsequent to that, did you take on any function for that project either as attorney or consultant or anything else?

A. No.

Q. Did you ever take on any consultant or attorney relationship with the entity known as LHS?

MR. BERGSTEIN: Just a minute. Any relationship -- you mean if he was a lawyer with respect to them?

MR. SIAVAGE: Yes

A. I indicated to you previously I represent Arthur Lerner with respect to -- I just represented him.

Q. Have you ever received any money from LHS?

(Witness confers with counsel off the record.)

A. I don't know whether LHS paid me funds.

Q. Are you familiar with an entity known as Planners Associates?

A. Yes.

Q. Is that also an entity of which Mr. Lerner is a principal of.

A. Yes.

Q. Have you ever received any money from Planners Associates?

A. I will answer in the same way. I am not sure whether Planners paid me any funds.

Q. Is the reason you are not sure is because you may have received money from one or the other and you can't remember which it was?

A. That is correct.

Q. One of those two entities?

A. Correct.

Q. What was that money for?

A. I represented whichever that entity was in real estate transactions.

Q. When?

A. From around either July, August, September of '78 for a period of about eight or nine months.

Kadish and LHS Projects

Before leaving the HFA, Kadish did substantial work in the agency's processing of the Grace, Maplewood and Nevada housing projects, in each of which Lerner, as a partner in LHS, had and still has an interest. In October, 1977, Kadish arranged to have funds advanced to Grace and Nevada covering approximately \$308,500 of land costs, even though deferred payment arrangements regarding these costs were already in place. Checks prepared at the September closings and payable to the Newark Housing Authority for land costs were not forwarded to that authority until January, 1978. The check for the Nevada project site was forwarded to the Newark Housing Authority by Kadish on January 23, just before he left the agency. Kadish, acting as closing attorney for HFA, also permitted deferment of approximately \$720,000 of fees and charges due HFA at the Grace and Nevada closings. Nevada and Grace made these payments in March and April, 1978. The premature land cost advance and the deferment of certain fees and charges helped to eliminate potential cash flow problems prior to the receipt of syndication proceeds. Kadish also approved a unique two-project equity escrow account in which funds received directly or indirectly from the limited partners of Grace and Nevada were lumped together and disbursed on an as needed basis to the construction accounts of these two projects. That this was the only instance in which such an equity account coupling had occurred was confirmed by HFA Comptroller Raymond Howell in his testimony before the Commission:

Q. Why was one escrow account set up for two separate projects?

A. We went up in the securities because the securities were being split between two and it was just -- it was the easiest way to get it accomplished. We didn't have any idea what the split was and our concern was to cover the two projects.

Q. Did the records and the accounts, as far as you are aware, ever segregate the monies pledged towards each particular project.

A. I don't believe so.

Q. Is that the only time that has happened in H.F.A.?

A. The only time we ever had --

- Q. Let me restate it. This is the only time an equity escrow was established and it was established for two projects, not one?
- A. That's correct.
- Q. And as far as you know, no differentiation as to what equity was being supplied towards which project?
- A. That's correct.
- Q. Besides Dick Kadish, did you discuss this particular equity escrow account with anybody at the agency?
- A. I may have. I don't recall. I know it was discussed with Dick. I am sure I discussed it with Stan Maziarz who was my chief fiscal officer at that time.
- Q. Whose idea was it?
- A. You mean the account?
- Q. The actual account.
- A. I don't think it was anyone's idea. It was how were we going to account for these securities and this cash that was going to come in. The thought being, we will put it in one bank account. I didn't want to maintain the securities in the office in any way. We felt this was the best way to do it.

The Case of Larry White

The SCI also looked into the post-employment activities of Lawrence White, director of the management division. He began to function in a private capacity before he was actually or formally terminated, according to agency records. White submitted his resignation on February 20, 1979, effective March 30. His time records at the agency show that he worked through March 9, was on sick leave through March 31, and officially left the agency as of May 1. After his termination date, he officially went to work for CIB International, an HFA housing sponsor, although SCI testimony suggests he did work for CIB before he left the agency.

Two tenants of a CIB project testified before the Commission that White represented himself to them as CIB's general manager while he was still employed by the HFA.

One was Dolores Petrillo, who first met White on March 1, 1979:

Q. Did you ever have anybody representing CIB present themselves at your apartment to look at the subject of your complaints?

A. No one has ever come to look. The only person that come up to see me was about the complaint about my son and that was Larry White.

MR. SIAVAGE: Would you mark this, please.

(Whereupon, a copy of the 1974 Annual Report of the New Jersey Housing Finance Agency is received and marked Exhibit C-1)

Q. Mrs. Petrillo, I am showing you a document which has pictures of individuals in it.

A. I need my glasses.

Q. Take a look at those five pictures and tell me whether you recognize any of the individuals depicted in those pictures.

A. Well, this guy.

Q. Let the record note the witness is pointing to a picture on the far right of Page 5. Who is that, Mrs. Petrillo?

A. It looks like Larry White. He has lost a lot of weight and his hair is white.

Q. By the way, again for the record, I have just shown the witness what has been marked Exhibit C-1, which purports to be a copy of the 1974 annual report of the New Jersey Housing Finance Agency, and again with respect to the record, the names of the individuals depicted on Pages 4 and 5 have been blocked out by the Commission.

When was the first time you met the individual that you just pointed out?

A. When we were moving in, he asked us to move the truck away from the walkway because the rental agent at that time was under there. He asked us to move the truck up further because we were blocking the walkway.

Q. In March of '79?

A. Yes.

Q. March 1st of '79?

A. March 1st.

Q. What occasioned his presence on the premises while you were moving in, if you know?

A. I imagine he was talking to the rental agent at that time, you know, because the rental agency at that time -- it isn't there any more -- it was right underneath me.

Q. Did he appear to have any position with respect to the project or the apartments?

A. He told me he was the manager.

Q. He told you --

A. The general manager. That was the term. I asked him who he was.

Q. You are moving into the apartment, the truck apparently was mispositioned and somebody told you to move the truck, and you said, "Who are you?"

A. Yes. I asked who he was.

Q. And that person was Larry White, and he said, "I am the manager"?

A. The general manager.

Q. That was March 1st, 1979?

A. March 1st.

Q. When was the first time you saw Mr. White subsequent to March 1st?

A. That was the first time I saw him. I haven't seen him before that.

Q. Did you see him after that?

A. Yes. He come up to my apartment and I would say maybe in April -- and my son had a run-in with the superintendent.

Q. And you discussed it with Mr. White?

A. Yes.

Q. What did he hold himself out as being?

A. General manager. I complained the superintendent was drunk, and he said he would never hire a drunk and he had the charge of hiring and getting the staff together there.

Q. Is Mr. White, as far as you know, still the manager of the apartment?

A. As far as I know, he was up my apartment, I would say, maybe two months ago. They are building condominiums in the back and I told you I didn't recognize him. He got thin and lost weight and pure white, and he asked me for suggestions. They are building the condominiums. He asked me of what walls to knock down and this and that, just my opinion.

Q. He still appeared to be the manager of CIB at that time?

A. I didn't ask, but I took it for granted, at that time, when he asked me for suggestions about the condominiums.

Another tenant, Gary Montefusco, said he dealt with White primarily by telephone:

Q. Did you ever become aware or meet an individual by the name of Lawrence White?

A. Yes, I became aware of Lawrence White.

Q. And did you know who Mr. White was before you met him face-to-face?

A. The first time I talked to him was on the phone.

Q. Do you recall when that was?

A. That was in February of '78. 1979.

Q. How do you know that?

A. I have the phone bill.

Q. If you would, you have been requested to bring those phone bills, if you could produce them now, we would appreciate it.

A. Yes.

MR. SIAVAGE: Would you mark these, please.

(Whereupon, photostatic copies of New Jersey Bell Telephone bills for Hoffer Flow Controls, Inc., dated November 28th, 1978, December 28th, 1978, and February 28th, 1979, are received and marked Exhibit C-6.)

Q. Mr. Montefusco, I am now looking at what appears to be the photostatic copies of New Jersey Bell Telephone bills for Hoffer Flow Controls, Inc., dated November 28th, 1978, December 28th, 1978, and February 28th, 1979. I assume that Hoffer Flow Controls was your place of employment at that time?

A. Yes.

Q. And you made these calls from work?

A. From work, yes.

Q. You called C.I.B. again on December 20th. Did you speak to the female on this occasion?

A. This occasion I talked to Larry White.

Q. How do you know you were talking to Larry White?

A. He identified himself as Larry White. The way it went -- let's see. A girl answered the phone and she goes, "I will let you talk to Mr. Larry White. He is the manager of McGuire Grove."

Q. She said, "He is the manager of McGuire Grove"?

A. That's the way she identified him. When he got on the line, I said, "I understand you are the manager of McGuire Grove." He said, "Yes. I am the general manager of all Mr. Nuckel's property."

Q. And you talked to him, I assume --

A. About the draft in the hallway.

Q. Had you ever met White face to face at that point?

A. No.

Q. And you called C.I.B. again from work on the 30th of January; is that correct?

A. Yes.

Q. Now, between the time, December 20th, 1978, and January 30th, 1979, did you speak with him?

A. No.

Q. Did you speak to White on January 30th, 1979?

A. Yes.

Q. And was it about the same problems with the apartment?

A. Yes. About the door missing on the crawl space and the water down there and the missing insulation.

Q. Did he advise you at all about his status with C.I.B. on this call, January 30th, 1979? Did he identify himself as a manager or was it understood by both parties?

A. It was understood. He knew who I was because I was always calling. We had a lot of trouble with the complex.

Q. Did you notify anybody else about the problems with the complex; for instance, a municipal inspector?

A. After I didn't get satisfaction from Mr. White, and he agreed with me the door should have been on there, at that time I didn't know the insulation was missing and I could see the mud and water down there, and he agreed that there should be a door on there and he said to prevent vermin from getting under the buildings, he said that there should be a door there.

Q. White told you this?

A. Yes. He said that would also prevent the draft. I thought there was insulation because at the doorway there was a few strips. Then I don't believe the door was put on and I called them. That's why it was January 30th. I gave him over a month. It wasn't put on and I had gone down there and found the insulation missing. January 30th I told him about the missing insulation and he said that somebody must have screwed up and he would find out what happened.

Q. Did he find out? Do you know?

A. He knew what was going on, as far as I am concerned. He has been down to the complex a few times and he works for Mr. Nuckel and Mr. Nuckel's son, Don, was the contractor, so he had to have been aware of what took place at the complex.

Q. Did anybody at C.I.B. ever say to you that Mr. White was at another location when you tried to reach him?

A. No.

Q. Did you ever recall anyone, either at C.I.B. or White himself, for that matter, ever suggesting that White had another job or employment in addition to being the general manager of C.I.B.?

A. No.

Q. Did you ever meet White face to face?

A. Once.

Q. When did you meet him?

A. It was probably the October I left.

Q. And that being October, 1979?

A. Right.

Q. What was the occasion upon which you remember him?

A. I was talking to the superintendent at the superintendent's apartment, and I was standing there with another tenant, Joan Carroll, and Mr. White walked in and he was talking to Bob Sullivan and he said, "Bob, the checks -- I don't have the checks today. I will bring them tomorrow because Mr. Nuckel's didn't sign them." That's what he said.

Q. Now, did he introduce himself to you or vice-versa?

A. No. And I don't think he knew who I was, and I am glad that Bob didn't introduce me because by this time, Mr. White doesn't like me. He saw me standing there and more or less said hello.

Q. I am showing you what has been marked Exhibit C-1, which I will identify later. I will ask you to look at the five pictures on Page 4 and 5.

A. This must be him.

Q. The witness is indicating a picture on the far right on Page 5.

When you say, "This must be him," what do you mean by that?

A. It must be Larry White.

Q. Why do you say that?

A. His hair color fits. He was a little heavy when I saw him. His face was -- it all fits.

Q. If I asked you if that was the same man in the office that day, would you be able to positively identify him as the same man?

A. Well, this one here, he looks a little younger.

Q. You are not positive that that picture is Larry White?

A. I am pretty sure it is him.

Q. Is there any doubt in your mind that the man you saw in the office in October of 1979 was the man you were talking to on the phone several months prior thereto?

A. I am positive that that was the same man. I could tell by his voice. I had a lot of conversations with him on the phone.

Q. You didn't think it was a different Larry White?

A. No, no. That was definitely the same person. He was described to me anyway before I had met him. That's why when I walked in, I knew who he was because I had asked people what he looked like. Dolores had described him to me because she had seen him somewhere around April or March.

White's Response

White denied all of this testimony. He insisted at the SCI that he did not even speak to CIB about a job until March:

Q. By whom are you employed?

A. Currently employed by C.I.B. International.

Q. And how long have you been employed by C.I.B. International?

A. Since April 1st of 1979.

Q. And by whom were you employed prior to April 1st, 1979?

A. The New Jersey Housing Finance Agency.

Q. And how long had you been employed by the New Jersey Housing Finance Agency prior to April 1st, 1979?

A. I had two periods of employment with the agency, one for five years ending in '79, which would make it '74 I started. I believe it was around July of '74 I started with them. Then '68 through '71.

Q. And I assume the second departure from the H.F.A. was the day before April 1st, 1979, or March 30th, 1979?

A. I actually cleaned out my desk February 1st of '79, although I had some vacation at other times due, so I remained on the payroll after that.

Q. Cleaned out your desk February 1st, 1979?

A. Or January 31st, I forget which.

Q. You said you had other time available. What was that?

A. Vacation time and some other things coming and an agreement on the amount of time I would get because of the way I left was worked out with the executive director.

Q. I am not sure I understand that. You had a two month period of time between February 1st --

A. I was paid for that entire time period. He asked for my resignation. He gave me two months pay, over two months. Actually I was paid part of the time I was working with C.I.B.

Q. You were paid part of the time?

A. I was paid April while I was -- I was still under -- being paid by H.F.A. the first month I was with C.I.B.

Q. The first month we are speaking of was what?

A. April, 1979.

Q. From your prior answer, I would assume that the two months that you were referring to were the months of February, 1979, and March, 1979, your resignation being effective March 30th. Are you saying that March 30th, 1979, you were still paid by H.F.A.?

A. Yes.

Q. And that is the month of April, 1979?

A. Yes.

Q. Then it is fair to say you were being paid three months by the H.F.A., February, 1979, through, I guess, the end of April?

A. Yes.

Q. When was the first day you went to work for C.I.B.?

A. April 1st. If that's a Monday -- the first working day of April, whatever it was.

Q. When did you first negotiate with Mr. Nuckel to become an employee of C.I.B. International?

- A. I met with him sometime in March.
I don't know the exact date.
- Q. You met with him sometime in March
of 1979?
- A. Yes.
- Q. Do you recall where that was?
- A. Yes.
- Q. Where was it?
- A. The McGuire Grove development in
Middletown.
- Q. How did this meeting come about?
- A. I had heard from somebody, and I don't
know who offhand, that he was looking
for somebody to head up -- work at
his organization with a management
background.
- Q. And you were unemployed at that time?
- A. I was unemployed at that time.
- Q. So you called him?
- A. I called him. At that time I did
not know he was involved with McGuire
Grove. He told me he was. That was
about a mile from my house and he would
be there within a few days and suggested
we meet there at the construction trailer.
- Q. And, in fact, you did meet him there?
- A. Yes.
- Q. You agreed to become employed April 1st?
- A. I gave him my resume. It was a couple --
it was a week later or maybe a little longer
before everything was worked out. That was the
first meeting I had with him. We didn't agree
the first day.

- Q. What was your position for C.I.B. when you finally became employed by them?
- A. My title is director of management, but do a lot of other things, too, in addition to managing the properties he owns, getting more involved in some development properties and that kind of thing.
- Q. Is it impossible for you to have received a phone call in December of 1978 at the headquarters of C.I.B. International in Little Ferry?
- A. Yes, it is.
- Q. Is it also impossible for you to have held yourself as a director of management for C.I.B. in December of 1978?
- A. Yes, it is.
- Q. Never talked to any tenants of the McGuire Grove Apartment complex prior to April of 1979?
- A. I have read that allegation in the newspaper and it is totally false.
- Q. And is it a further falsity that you were on the site of the McGuire Grove Apartment at any time prior to this interview sometime in March of 1979?
- A. Well, before Mr. Nuckel bought it, when Mr. McGuire still owned the property before I bought my house, I happened to have rented a house from Marty McGuire on that site, but this was twenty years ago, and Mr. Nuckel had nothing to do with the site at that time.
- Q. We are not talking about twenty years ago. We are talking about January or February of 1979.

- A. I hadn't -- from the time we moved out of the house twenty years ago, I hadn't been on the site until I met with Mr. Nuckel in March.
- Q. It was impossible for you to have told anybody on that site that you were the manager of C.I.B.?
- A. That's right.
- Q. You have never spoken to a Mr. Montefusco of McGuire Apartments with regard to problems with those apartments, and I will strike "never" and ask whether you spoke to him regarding the McGuire Apartments and problems during December of 1978?
- A. No.
- Q. Do you understand that question?
- A. Yes, I do.
- Q. You never spoke to him. Did you ever speak to him at a later time?
- A. I know I spoke to him after I joined C.I.B. Whether it was April or May or sometime, he called me.
- Q. And I would imagine that you never spoke, either face-to-face or over the telephone, with any other tenant of those apartments prior to April of 19 --
- A. That's correct.
- Q. Did you ever speak to any municipal inspector regarding the McGuire Apartment Complex on behalf of C.I.B., either a building inspector or health inspector?
- A. Prior to April 1st?
- Q. No. At any time.
- A. Oh, yes, I have.

Q. And all of that would have been subsequent to April 1st?

A. Yes.

GIFTS: LIQUOR, LUNCHESES, TRIPS AND GAMES

During Director Johnston's tenure, the HFA had no Code of Ethics and no policy against the receipt of gifts or lunches by employees, offers of free travel or vacations, tickets to sporting events and other forms of gratuities from contractors and others associated with proposed or pending projects at the agency. This absence of any criteria for staff behavior under such circumstances led at the very least to confusion on the part of employees as to what activity, if any, might be prohibited. Left to their own opinions as to where to draw the line, employees either accepted or refused emoluments at various levels of value from lunches and bottles of liquor on the one hand to a fur coat and cash on the other. The acceptance of the former, however, created an atmosphere conducive to accepting the more valuable offers.

Absence of Standards

Architect Philip Kowalski testified at the SCI about the absence of standards for personal and professional conduct at the HFA.

Q. During your employment with H.F.A. did you ever receive free meals, such as lunches or dinners, from those engaged with business with H.F.A.?

A. Yes, occasionally, that's true.

Q. How did those things come about?

First, let me ask you this: Does H.F.A. have a policy, a specific policy, on that kind of situation?

A. No, they don't. Some people have a personal policy, but there is no agency policy.

Assistant Director Kathleen Okenica indicated Johnston was aware of gifts being received:

Q. Were you the only one who received a Christmas gift from Mr. Federici at that time?

A. It is my understanding that I was not.

Q. What is your understanding of the others who received gifts?

A. I had understood that he had sent radios to several people at the agency, several men.

Q. Did you understand that those were kept also, retained by the individuals who received them?

A. I am only aware of one instance and in that instance, the radio was returned, and then Fred Federici sent it back again.

Q. And did Mr. Federici finally prevail, to your knowledge?

A. It was a standoff.

Q. Where is the radio?

A. The radio is now officially dedicated as the property of the Housing Finance Agency. It is in the agency.

Q. And in the person's office to whom it was given?

A. Yes.

Q. When the radio came back, it was kept?

A. Yeah, sort of.

Q. The radio was kept, isn't that true?

THE CHAIRMAN: Well, the radio remains in the office; is that correct?

THE WITNESS: It was kept because it was easier to leave it there than to continue to fight about returning it. I want you to understand that Gary was not interested in the radio and, in fact, hasn't used it, as far as I know.

Q. Did that event, given that there was somewhat of a battle of wills on that gift --

A. That is a little strong.

Q. Maybe it is a little strong.

In that the gift was sent back and forth, did that event within the agency result in some kind of formulation of policy as to gifts?

A. Not that I am aware of. I seriously doubt that very many people knew about it. I only knew about it because Gary had chosen to ask me about it.

Q. From your position as staff attorney, did you take any action to bring this to the attention of anyone else as a possible starting point for moving towards --

A. Mr. Johnston was aware of the radios.

Q. You were aware of one radio, but Mr. Johnston was aware of several radios?

A. All I remember is an isolated thing. I remember that this was no secret in the office.

Q. But you also remember no action being taken toward formulating a policy that maybe this should not occur and we should advise everybody within the agency how to treat these kinds of events?

A. I don't recall any such thing.

Although Okenica and Johnston discussed the matter, no formal policy resulted, she testified:

Q. Did you ever discuss it with Mr. Johnson?

A. Which, the bracelet?

Q. The radios, the bracelets, any of these items.

A. As I recall, we had one general conversation on the subject of gifts and I made it clear to him what I thought the appropriate posture should be with regard to employees and what they should do when these things happened.

THE CHAIRMAN: Have you fixed a time for that?

THE WITNESS: I couldn't possibly.

Q. Can you give us the substance of that conversation?

A. It was very brief. It must have been precipitated by one of these instances and I suspect it was probably the radios. We discussed it very briefly. I told him that I thought that all the employees should return all of the gifts. As a matter of fact, that is not even fair. We were discussing gifts in general and what should happen, and as I recall, he said, "Does it matter what the dollar amount of the gift is?" I said, "No, it doesn't." We were generally discussing what ought to be done. It was in the nature of an attorney advising a client. That type of a conversation.

Q. Was that ever addressed again?

A. Did I ever discuss it with Bill Johnston again?

Q. Beyond that.

A. No.

Q. Was there ever a resolution as far as a memo going around the office formalizing any policy or even stating a policy?

A. Not that I recall.

Wine and Liquor

Gifts of wine and liquor were offered to agency employees, some of whom accepted them. Henry Vaccaro, president of Henry V. Vaccaro Corp., a contractor on HFA projects, gave HFA employees Christmas gifts of wine and other alcoholic beverages and baskets of fruit. Vaccaro provided the SCI with lists of persons receiving such gifts from his company. The HFA's project representative George Billingham accepted a bottle of liquor in 1978 and again in 1979. General project representative Robert Ellis accepted a bottle of liquor in 1978 but refused in 1979. Johnston's name and home address were also on Vaccaro's list, with the notation "[fruit] basket of wine."

Okenica told the Commission that Vaccaro also sent a case of wine to the agency during the Christmas season in 1978:

Q. Were you aware of cases of liquor or wine coming into the agency and being handed out at holiday time?

A. On two occasions.

Q. Could you detail those, please?

A. Last Christmas Henry Vaccaro sent in a few bottles of wine and delivered them to Charlie Hall and asked him to distribute them, which I assume he did.

Q. He does business with the agency?

A. Yes.

Q. What is he?

A. He is a contractor on Monmouth Council in Asbury Park and Lawrence Plaza in Lawrence Township.

Q. You said several bottles. Are we talking about five, ten, fifty?

A. If I had to guess, I would say, maybe a dozen.

Q. Were they for designated individuals or just the agency in general?

A. Not that I am aware of.

Q. They were handed out, in fact, weren't they?

A. I guess so.

Some employees who were offered liquor refused as a personal matter. The HRH Construction Co. sent 24 bottles of liquor to George Feddish when he was director of technical services. Feddish returned the gifts, according to his testimony about the incident:

Q. During the course of your tenure at the Agency and you were there 12 years, did you ever receive any, besides what you testified to, offers of gifts, money, trips or other items of value?

A. Gifts around Christmastime.

Q. Could you tell me were they offers or actual gifts?

A. Give you an example, last Christmas sent to my house were 24 bottles of liquor from a contractor. My son took it. Of course, being a kid. I had one of my staff members return the whole thing. It was painful, it was all good liquor, but I had it brought back to H.R.H. Construction on the job.

Q. Was that a joint venture with somebody?

A. That was a joint venture with Alba.

Q. Did you send it back?

A. I had it sent back through my field guy, Harry Schnell bring it back to the guy. I did that purposely.

Q. Did you ever have a conversation with anybody at the contractor about it?

A. I called him up, says, thanks for the thought, but don't do it again. I appreciate it.

Q. Did the Agency have a policy on receipt of gifts or going out to lunch?

A. Formal policy? Going out to lunches?

Q. Yes.

A. No.

Q. Was that ever raised as a subject that deserves a policy by any of the top staff?

A. Not to my recollection, no, but something like receiving 24 bottles of liquor, you don't have to ask. You send that back. That was gross.

Q. Was some record of receipt of that 24 bottles of liquor made by you or reported to somebody just to protect yourself?

A. No, I didn't. I returned it ostentatiously to one of my field guys. I didn't think it was necessary. These guys, general contractors, will do that kind of thing, really just some of them in that particular instance just to be nice. That was my personal viewpoint and I sent it back say, listen, that's very nice, I appreciate the thought, but don't do it again. The guy took it back and there was nothing else said.

I mean, I didn't even think of turning it over to the Attorney General's office or anything like that. I think that would be foolish from the taxpayers' point of view.

Loan Consultant Silvestri offered "baskets of cheer" to Feddish, his assistant Michael DeLouise and to senior project representative Robert Groer, all of whom refused to accept the gifts. Groer's testimony follows:

A. I think there was one occasion where a consultant had to drop off plans at my house or something of that nature, and at the same time brought a very small basket of a few bottles of whiskey, some dips that were in a little wicker basket of some sort. I returned this, too. I did not accept that. Let's put it that way.

Q. Who was the consultant?

A. Mr. Silvestri.

Q. The first name?

A. Joseph. It was a very friendly thing, and he gracefully took it back.

Q. Were you aware of others in the agency receiving such incidental items that we have just gone over, gift certificates, baskets of cheer?

A. When I received the first one, I was surprised, because that was the first thing I received as a state employee.

Q. That is the Riverview Towers?

A. I asked George Feddish and Mike DeLouise at the time, and I think they had received one, too, and I think they told me to do the same thing, return it. That was something that we were not going to keep. As to other people receiving gifts, you know, you hear people getting -- that they may have received -- that people have given bottles of whiskey, but I am not conversant with anybody else receiving any other gifts.

Q. Had you worked on a project with Mr. Silvestri prior to having that basket of cheer delivered?

A. I closed his first project.

Q. Do you know if Mr. Silvestri was giving these baskets of cheer to other people in the agency?

- A. He mentioned he was going to give some other people, but I wasn't very concerned whether he did or did not. We had a very good working relationship.

Charles Hall, who was the HFA's affirmative action administrator for five years until retirement in August, 1980, also testified at the SCI about receiving bottles of wine from contractors at Christmas time. He agreed that was a "common practice" prior to the receipt of a memo from the Attorney General's office in November, 1979, stating that acceptance of gifts from anyone doing business with the agency was improper. Hall testified:

Q. Did you receive any bottles of liquor from any other contractor other than Vaccaro?

A. I really can't recollect anyone bringing any liquor.

Q. What kind of Christmas gifts did you get?

A. Let's see, outside the Vaccaro situation that's about it, that I can remember. There were bottles handed once or twice and brought in the office but I really can't remember what a contractor brought in; wasn't no more than one bottle or something like that.

Q. Do you recall being interviewed on the matter of acceptance of bottles of liquor last week by one of the Commission agents?

A. Yes.

Q. Do you remember telling her it was an extremely common practice prior to the memo of A.G.?

A. I think everybody in the agency had that same feeling.

Q. Now, I don't want to be argumentative with you but did your opinion that it was an extremely common practice become your opinion because of something other than the fact that you received a lot of liquor at Christmas time?

A. I don't understand what you mean.

Q. What I mean is this: You have the opinion that it was an extremely common practice for agency employees to receive liquor?

A. Yeah, since I have been there.

Q. And you also say that the only bottle of liquor that you can recall are some bottles of wine from Henry Vaccaro?

A. He sent me wine and designate the names who he want me to give it to and I did it.

Q. My question to you, is this opinion that that event was more common than just Vaccaro, what is that opinion based on?

A. I don't know. I had the impression maybe it's -- that the contractors were more or less giving Christmas presents at Christmas time through the Christmas spirit.

Q. The question is not related to the motivation of the contractor; at this point I would like to stick with the fact at the moment and you have testified that Mr. Vaccaro would put a case of wine in your car, right?

A. Right.

Q. For distribution at the agency?

A. Yeah.

Q. And what names would he tell you to give this wine out to?

A. He had a list of names he submitted. I don't remember.

Q. You would give it --

A. They would come over and go out to the car. He put it in the trunk of the car.

Q. He would put it in the trunk of the car and you would drive to the agency with it?

A. No.

Q. Who would take it?

A. The first year that he did that, he had his truck with two fellows came to the agency. I had my office in the back and they put that wine, they put it in the trunk of my car and I got the list.

Q. And you got the list of the employees who were to receive it?

A. Right.

Q. And you would take it down to the construction site?

A. No, I would call them and they would come to the car.

Q. Was Vaccaro the only contractor who did that?

A. The only one who done it with me.

THE CHAIRMAN: We want to know what basis -- what's the basis for your saying it was a general practice? You must know something that happened that you came up with that impression.

THE WITNESS: I would say that a lot of the inspectors, you know, when you go to an inspector site a contractor at Christmas time would give them a bottle of whiskey. That was happening ever since I was there.

THE CHAIRMAN: What else do you know about the gifts?

THE WITNESS: That's all I really know. I wasn't involved with that, only with Henry Vaccaro.

Q. Did you at any time during your five years at the agency ever receive, ever receive a bottle of wine or liquor from Parker Brothers Builders?

A. I really don't -- I can't remember Parker giving anything to me like that.

Q. I would assume if you only got it from Vaccaro that your answer from any contractor I would mention would be no; is that fair to say?

A. That I know.

Q. And you already said Parker Brothers. How about Alba Construction Company?

A. I don't -- I think last year Alba Construction, one of the fellows brought me in something from Alba, brought me some wine from Alba.

Q. Who would that be from Alba, Rudy Marchese?

A. Yeah.

THE CHAIRMAN: How much wine?

THE WITNESS: I would say three bottles, a three bottle case. Rudy Marchese, a fellow in there give it out to me.

THE CHAIRMAN: Did he give it to others other than you?

THE WITNESS: I am pretty sure he did, yeah. He had his list too I imagine. I was on the list.

Q. What other contractors had a list?

A. I don't know. I am not trying to get out of it, I really can't remember.

Q. How about HRH Construction Company, did they have a list?

A. HRH sent me a basket at the house.

Q. Basket of cheer kind of thing?

A. Yeah.

Q. If I could return to once more with the indulgence of the Chair, the opinion that you had that it was a common practice was that you heard talk of inspectors going to a site and getting a bottle of liquor at Christmas time?

A. The inspectors themselves would say they went and had a party; they gave a bottle of liquor.

Q. The inspectors would tell you this?

A. They would know. It was not a hidden secret situation.

Q. It was a fairly well-known practice that HFA inspectors got a bottle of liquor at Christmas time?

A. Yeah, I can't lie on that. It's true.

Q. What would be the most bottles of liquor at Christmas time that one of these inspectors would receive?

A. I don't know.

Q. What was the most -- do you remember a Christmas where Alba and HRH and Vaccaro gave you liquor on the same Christmas?

A. HRH didn't give me anything this last year. Maybe he sent a basket the previous year. Let me clear up something, which you are a little stunned when I said I didn't get a case of liquor. This year he sent a case of liquor and like four cases of wine. That is after he got this memo and I wrote a letter to him stating

that we had received it from the Attorney General's office; we could not accept it, for him to come back and take it and I wasn't home. So the lady who comes every Friday, she received it, and I sent a memo to the executive director on it and also to Vaccaro and about three months later they came and picked it up.

Q. Is that the first time that Vaccaro sent that much liquor to your house?

A. Vaccaro never sent that much liquor before. He sent the wine and put it in the car. This is the first case of scotch he sent.

Q. Did he ever send anything to your house before?

A. That's the first time.

Q. Returning to my previous question any year like 1977, '76 or '78 where you can recall at Christmas time that you would be receiving liquor from Alba, HRH on the same Christmas?

A. It could have been way back because they had HRH a long time.

Q. Can you recall what was the most liquor you got at any Christmas? When you sat down at New Year's day and looked at the amount of liquor that you received at the agency, would it fill your table?

A. The largest was what Vaccaro sent and I definitely sent it back.

Q. That was five cases?

A. Yeah. You are talking about individual bottles?

Q. Yes.

A. That would be about eight or nine or ten bottles at the most, at the most.

Q. Would HRH and Alba give you one bottle each or more than that?

A. HRH in the past gave the fruit deal situation and I can't remember if it was fruit and a bottle. Way back when they first started, it was a basket deal.

Q. Alba would send you a bottle of liquor, bottle of wine?

A. Rudy Marchese?

Q. Right.

A. Yeah.

Q. And the total number you say that you received that Christmas where you got the most bottles was about eight or nine bottles, I think your answer was from all over the state; do you remember that answer?

A. I must have been including what I got in the package too, because I didn't get anything like that from the other people.

Q. Did you ever get anything other than wine, liquor or baskets of cheer during your five years at the agency prior to this memo now saying that it was inappropriate to accept it.

A. I think Marchese gave us a little radio.

Q. Transistor radio?

A. Yeah, that's about all.

Q. He brought those down to the agency?

A. Yeah, and I went into my office and it was on my desk.

Q. There were several of them?

A. Yeah, I think he gave them to everyone.

Q. Do you know whether most of the people who got those radios kept them?

A. I don't know.

Q. Do you know anybody who gave them back?

A. Not that I know of.

Q. The affirmative regulations were a problem for some contractors, weren't they?

A. Yes.

Q. And you were in a position where a contractor if he could get on your good side, would certainly benefit by that, would he not?

A. He certainly would. I must say this if you don't mind -

Q. Sure.

A. My whole idea and attitude for taking affirmative action position was to make sure that these goals which were small enough that they maintain them. I don't care what they say or what they did.

Aundra Cook, a project representative, told the SCI that offers of gifts were common:

Q. Have you ever heard talk about other management reps being made the same kind of offer?

A. Oh, yeah.

Q. Can you tell us any specific ones?

A. Let's see. Steve, Steve Holmes. Older guy.

Q. Steve Holmes is the fellow you rode around in a car with for a month; is that right?

A. Yes.

Q. He kind of broke you into the job?

A. Yes, sir.

Q. What kind of offers were made to Steve, do you know?

A. Well, people offered to buy you liquor and just try to tell you about things that were coming up, deals, because these people are financial oriented and they know what's happening in government, what's happening in the private sector and things of that nature, and they try to pass on advice and stuff. I think a lot of times it's just to test you to see how susceptible you are.

Free Lunches

HFA personnel routinely accepted lunches from contractors and others doing business with the agency. These affairs ranged from sandwiches in diners to elaborate meals in expensive restaurants. Aundra Cook testified further on this subject:

Q. Okay. By the way, coming back to Monday again, when you went to lunch with Mr. Cicchino, who paid for lunch?

A. Mr. Cicchino did.

Q. Did you go to lunch very often with contractors and sponsors?

A. Not very often, but when they ask and we're talking business, yes, I do go.

Q. Okay. Do they usually pay?

A. Sometimes, yes, they do.

- Q. Okay. And you spent about an hour and 15 minutes at the office and then you went to lunch. Did you go to lunch with Mr. Crevani?
- A. I may have on that day.
- Q. Do you go to lunch often with Mr. Crevani?
- A. No, not often, but when I go up, sometimes we go out to lunch.
- Q. Okay. And you went with his daughter, too?
- A. Yes, sometimes she accompanies us.
- Q. Have you been to LaFinestra before?
- A. LaFinestra?
- Q. This is a large, rather plush restaurant with lobsters floating in the tank. Do you remember that?
- A. I may have, yes.
- Q. Do you recall the restaurant now?
- A. I think so, yes.
- Q. Okay. This gentleman at Academy Contractors, he's never offered you anything?
- A. Mr. Cicchino?
- Q. Yes.
- A. No. Rudy is scared to death.
- Q. I would assume he has never given you anything either?
- A. No, no. Going to lunch, we talk business over lunch, you know, a burger. He don't spring for much. Rudy will buy a burger and some fries.

Q. You went to Burger Bits on the 4th?

A. Yeah.

Q. Which is a little different from LaFinestra?

A. Believe me, these guys don't give away no money.

Q. Under the -- are you familiar with the agency's present code of ethics by the way?

A. Yes, sir.

Q. And under that code of ethics it is permissible for you to go to lunch, is it not?

A. Yes.

Q. And the code of ethics doesn't specify whether it is Burger Bits or LaFinestra; is that correct?

A. No, no. I can't see changing something because someone bought me a lunch. You know, there's no relationship. It's not even material.

Project Manager Leon Klotz also told the SCI he'd been treated to lunch by contractors:

Q. Were you ever offered any gift or --

A. No, sir.

Q. -- item of value?

A. No, sir.

What do you mean by "item of value"?
Let's clarify that statement.

Q. Let's start with anything of value more than a dollar.

A. You mean lunch?

Q. How about lunch?

A. Oh, I've been out to lunch, yes, with people.

Q. How often?

A. Because lunch is more than a dollar.

Q. How often does that occur?

A. I'd say 15, 20 times over a period of five years.

Q. And were they with various individuals or --

A. Yes. One time I had lunch at St. Michael's Monastery up in Union City because I was there doing a site inspection and Father Damian Tully said, "Join us for lunch," and I had lunch with him.

Q. Who are some of the other individuals?

A. Well, I think in most cases it's where we've been locked into meetings and we would break at a meeting and everybody in the meeting would go out and lunch together and usually the contractor would pick up the tab for everybody there.

Q. Okay. Which contractors did you experience this.

A. Once with Pike or once or twice with Pike. Once or twice with Robbins Construction.

The only loan consultants that I know that took me to lunch was Mr. Okin. He is now deceased.

I don't know. It hasn't been too frequent.

Q. You said --

A. Yeah, I know.

Q. -- 15, 20 times over five years?

A. Yeah, I'm guessing. But it could be less than that because it hasn't been frequent.

Again, those who refused such offers did so as a personal matter, according to Klotz:

Q. Are you aware that on occasion people working with consultants, builders, et cetera, that is employees of H.F.A., have allowed these builders, consultants, to pay for such things as lunches, dinners and those items? Are you aware that is going on at H.F.A.?

A. I am aware that when someone is working with an architect or an engineer or even a builder going over figures in the course of a morning and decide to continue on after lunch, then on occasion they will go out to lunch with that individual, yes.

Q. Are you aware that frequently the outside consultant or architect, as the case may be, pays for that lunch?

A. On occasion, I understand that the consultant or whoever the person is would pick up the tab for that particular small lunch.

Q. Or dinner, as the case may be?

A. I am not familiar with dinners. I am only familiar with what goes on from nine to five.

Q. Did you, yourself, participate in any of those kinds of arrangements?

A. As a general statement, no, I have not. I have gone out to lunch with consultants and others, and I make it a practice to pay for my own lunch. This is a personal preference of my own.

- Q. Why do you feel that way?
- A. I feel I can afford to pay for my own lunches and I don't want to feel in any way obligated to them for the gesture of taking me out to lunch. This is my personal way of wanting to conduct my own life.

Trips and Games

Okenica, as a key executive, was as noted a frequent target of gift offers. She told the SCI that she was offered a trip to Las Vegas by general contractor Rudy Orlandini, but she failed to detect any implied quid pro quo in his act:

- Q. You mentioned Orlandini Construction and Mr. Orlandini. Did something ever come up in a conversation with Mr. Orlandini whereby you recognized that there was kind of promise of a gift or a trip to you?
- A. Rudy asked if I wanted to go to Las Vegas with him. I don't know if he was serious or not. I obviously didn't take him up on it, so I don't know how serious he was.
- Q. Do you recall in what connection this was raised?
- A. It was a phone conversation. There was -- there was business conducted at the beginning of the conversation and this was mentioned at the end. What we talked about, I don't remember.

THE CHAIRMAN: And he had a project or he was connected with some project or some business with the agency at the time?

THE WITNESS: He might have, yes. Bella Vista has been around for quite a while and Tyler Park has been around for quite a while. I do not associate this conversation with any particular business at the time.

Q. You wouldn't be talking to Mr. Orlandini if it didn't concern H.F.A. business; is that correct?

A. Correct.

Q. In the course of this conversation, there was mention of a trip to Las Vegas; is that correct?

A. Yes.

Q. Were any details mentioned at all?

A. Well, I took it as a joke and dismissed it as that. I made it clear that I thought it was a joke. He apparently thought better of his remark. That was the end of the subject.

Q. So that if he were serious, with your reaction, you never found out?

A. He was turned off, yes.

Q. Were you concerned that he may have been serious in his offer?

A. I always found it more humorous than anything else.

Q. Why is that?

A. Are you going to make me say it?

Q. Did you understand that this trip was to be made on your own or at your own timetable?

A. It was quite literally a sentence. As I recall, he said, "Why don't we go to Las Vegas sometime?" I said, -- I don't remember what I said. I think I made some kind of a flippant remark. It was obvious when an overture is made to a woman, if she doesn't say, "Oh, gee, when are we going". If he knows she isn't interested in it, he drops the subject.

Another contractor who was having difficulties at the agency reportedly offered Okenica a trip to Florida, she said:

Q. Did you ever receive any other offer of a trip?

A. There was a similar instance on one other occasion which was also -- could have been a passing remark. If I had pursued it, it may have been more. The fact that I didn't pursue it, it was a passing remark.

Q. Who made this remark?

A. Rudy Marchese.

Q. He is connected with what company?

A. Alba Construction Company.

Q. Was this a telephone call?

A. Yes.

THE CHAIRMAN: Can you fix a time, approximately?

THE WITNESS: The best I can do is that it was in the wintertime. The reason I recall that is because we were talking about how bad the weather was and he mentioned going to Florida, but that's the best I can do.

Q. I think you, in an attempt to fix a project that this was connected with, you seemed to --

A. Alba has had projects with the agency on an ongoing basis as long as I have been there.

Q. Do you think, based on the timing, that Villa Victoria was the project that was the subject of the discussion?

A. As I told you before, I don't recall exactly which winter it was. If it was the winter of 1977, then that means that, if I am not mistaken, Villa Victoria just started construction. Maybe my time is wrong. That means it was -- Villa Victoria

closed in 1978. I don't recall. I am having difficulty with the dates.

Q. Okay.

A. In any event, if Villa Victoria closed in 1978 and if we had the conversation in the winter of 1977, that means Villa Victoria was pending at the time, but he had other jobs under construction.

Q. It could have referred to a pending project or an actual job under construction?

A. Sure. Because he has a number of pending projects under the agency.

THE CHAIRMAN: You mean --

MR. TOSTI: The conversation.

THE CHAIRMAN: Prior conversation?

MR. TOSTI: Prior conversations.

A. The same thing applies to Mr. Marchese. I never would have spoken to him except for business. I am sure the phone call had something to do with some business and the remark was made at the end.

Q. Do you recall connecting that conversation with a request to substitute a letter of credit for the agency's bonding requirement?

A. Mr. Marchese had requested that the agency consider waiving the payment and performance of bond requirement and substituting instead a letter of credit. I do not recall the business that we discussed at the beginning of the conversation, so I can't identify for you any more definitely. I did tell you that that was one of the things that he had asked us for at some point, but I can't put the things together.

Q. Did you at one time believe that those two things were connected; the trip to Florida and the request to substitute the letter of credit?

A. You have to remember that all of this is being done from memory. At the time that I spoke to Mr. Siavage, he asked me if I could recall any things that were going on. I tried to remember what was going on. I remember that Mr. Marchese had had some discussions with agency staff about payment and performance bonds, but since I can't remember when the phone conversation was, I can't be more specific. It may have been a conversation about the bonds, but I just don't recall.

In testimony before this Commission, contractor Marchese denied any offer was made:

Q. You never offered anybody an item of value?

A. No, no.

Q. Never offered anybody a trip?

A. Absolutely not.

Q. And that goes for all --

A. All the employees.

An extremely active contractor on HFA projects, B.J. Builders, Inc., also gave agency employees trips and tickets to sports events. It has been reported to the Commission that Joseph Lucarelli, one of three brothers who own the company, took a technical services' field representative, Harry Schnell, to the 1977 World Series. Feddish, was was Schnell's superior, criticized his acceptance of the offer at a meeting of field representatives and supervisors. Although Feddish saw no indication that Schnell's work was compromised, Schnell did override a stop order issued by project representative William Villane against New Communities II -- a project being constructed by B.J. Builders. Villane's stop-work order was based on the inferior quality of the contractor's construction and the materials he was utilizing. Schnell fired Villane two weeks after Villane tried to halt B.J. Builders' job.

Joseph Lucarelli also took Johnston and an employee, Charles Boyle, to the 1978 Super Bowl. The party consisted of Lucarelli, Johnston, Boyle, Charles Marciante of the AFL-CIO, subcontractor James Goodwin and lumber supplier Ira Kent. Boyle, who was not initially included in the party, drove Johnston to the airport and was invited along because an extra ticket was available. Lucarelli paid all of the Johnston's and Boyle's expenses, according to testimony by Boyle's supervisor, Groer:

Q. Did you learn of a trip to the Super Bowl in New Orleans in January of 1978 involving some H.F.A. employees?

A. Yes.

Q. What do you know about that?

A. I believe two employees from the agency went to the Super Bowl in New Orleans.

Q. And how did you learn that?

A. Two employees, I believe Mr. Johnston, executive director, and Mr. Charles Boyle.

Q. Do you know who else went on this trip with them?

A. At the time, people had told me that Mr. Lucarelli and Mr. Marciante.

Q. Who told you?

A. Well, I learned it from actually two places, from persons in the office as well as someone had mentioned it to me outside the office. They had heard about someone from our office going to the Super Bowl.

Q. Isn't it true that Charlie Boyle told you he went?

A. Right.

Q. That is your best source for the information, isn't it?

A. Yes.

Q. Why don't we stick with what you got from him. What did he tell you?

A. He had told me he had gone with Mr. Johnston and these other people to the Super Bowl. He had driven Mr. Johnston down to the airport that day, not knowing the day they were leaving for the Super Bowl, not knowing he was going to the Super Bowl, and apparently there was an opening of some sort and he was asked if he would like to go and he said, "Yes," and he wound up going.

Q. The trip didn't cost him anything, did it?

A. We never discussed cost. It appeared as if everything -- that he was taking the place of a person -- his place had already been paid for.

Q. Was it also his understanding, which was expressed to you, that Mr. Johnston's passage and stay was also as a guest of someone?

A. It was never formally discussed in that particular manner. It was Mr. Boyle's indication to me that on occasion Mr. Johnston would pick up a check and most things were taken care of.

Q. For him rather than by him?

A. Correct.

Q. Did Mr. B.J. Lucarelli and Mr. Marciante have business relations with the agency?

A. At that time, Mr. Lucarelli was a very -- was a builder for many projects in the agency.

Q. Did anyone at the agency in conversation relate to you that there was something improper about this Super Bowl trip?

A. I was Charlie Boyle's immediate supervisor and he was out for a period of two days and he hadn't called, which is unusual for Charles, and I had asked Gus Escher, who was above me, if he had known where Charlie was, and Gus whispered to me, "He went to the Super Bowl."

Q. By the way the conversation was conducted, did you get an impression as to the conduct of Mr. Boyle?

A. What do you mean by the conduct?

Q. His being out of the office at the Super Bowl. Did you gain an impression? Did Mr. Escher tell you who he was with?

A. He said he went with Mr. Johnston to the Super Bowl. The fact that he whispered was sort of strange to me. He said at the time, "Don't say anything, but he went to the Super Bowl."

Q. It was Mr. Escher who was director of research later to become assistant executive director who wanted it kept under wrap, so-to-speak?

A. He didn't want me to advertise it. That's for sure.

Q. That fact indicated to you that there was something, perhaps, improper about the trip?

A. Something questionable, otherwise why would you whisper it to me.

Lucarelli admitted at the SCI that he paid for Boyle's Super Bowl expenses, but insisted Johnston paid his own expenses:

Q. Okay. And Mr. Boyle was an H.F.A. employee at the time?

A. That's right.

Q. Did you pay for the tickets to the Super Bowl for your party? Were they your tickets?

A. No, I did not.

Q. You did not?

A. No.

Q. Did Mr. Johnston pay for his own ticket?

A. I believe he did, yes.

Q. Mr. Boyle pay for his own ticket?

A. Yes, he did.

Q. To be fair to you, I'm going to tell you that the Commission has information that Mr. Boyle was taken to the Super Bowl at the last moment. He drove Mr. Johnston to the airport and you then made a very kind offer to take him to the Super Bowl.

A. That's right.

Q. At your expense?

A. You're a hundred percent right. I remember that.

Q. So you paid for his ticket, the room down there, and air fare and the Super --

A. That was an extra ticket.

Q. How about Mr. Johnston, did you pay for his ticket and the room?

A. No, I did not.

Q. He paid for it?

A. He paid.

Q. Did he reimburse you, do you remember, or did he pay for it directly himself?

A. I really don't remember how it was done.

JOHNSTON'S TESTIMONIAL DINNER

During the testimony of John Driscoll of West Orange, a supplier of concrete bricks to the Grace Renewal project in Newark, the Commission questioned him about a disbursement from the corporate operating account for dinner tickets to a testimonial dinner for Johnston. His testimony on the reason for buying the tickets and the number of the tickets he utilized follows:

BY MR. SIAVAGE:

Q. I'm showing you what's been marked Exhibit C-164 for purposes of identification, which is a check drawn on Multiplex Concrete Company payable to the Friends of Bill Johnston. Do you recognize that check?

COMMISSIONER PATTERSON: How much is the check for?

MR. SIAVAGE: \$120, sir.

THE WITNESS: Yeah.

Q. Tell us about that check. What was it for, how did it come about?

A. Mr. Johnston was executive director of the Housing Finance Agency and they were having a dinner for him up at the Town and Campus in West Orange and we were asked -- I forget whether the prices were \$60 a ticket or whether they were \$40 a ticket, or what the price was.

Q. What was the occasion of that dinner? Why were they having a dinner for Johnston?

A. I really don't know, just to honor Mr. Johnston, from what I understand.

Q. It wasn't because he was leaving or anything like that?

A. Not that I know of.

Q. Who called you from the agency to ask you to contribute.

A. I really think we got called from the agency. I forget who it was, but I don't think I ever really talked to anybody from the agency until within the last year.

Q. Who asked you to buy the tickets?

A. It may have been -- I really don't remember who it was. But, I'm positive we were asked to buy four tickets or buy tickets.

Q. Well, do you recall where you were asked?

A. No, I don't remember.

COMMISSIONER PATTERSON: You were the one that was asked?

THE WITNESS: I'm positive I was the one that was asked; yes, sir.

COMMISSIONER PATTERSON: Anybody else in the company know who might have asked you?

THE WITNESS: I really don't think so.

Q. What did you do with that check after it was written out?

A. Whether we mailed it to the mailing address -- we must have had some kind of a letter or something, maybe we had a letter or something and we mailed it to whoever it was that had requested to see if we wanted to buy tickets.

Q. Did you go to the dinner?

A. Yes.

Q. You, personally?

A. Yes.

Q. Anybody accompany you?

A. I don't know whether Charlie went with me or not. I'm not positive. I know I did go.

Q. Anybody else from the company?

A. That, I don't think so. If there was anybody, there was Charlie, probably.

Q. What did you do with the other two tickets if Charlie went?

A. Probably just threw them away.

Q. How many people were at the dinner?

A. I have no idea, but it was mobbed.

Contractors, Suppliers Bought Tickets

Due to these statements by Driscoll, indicating the possibility of questionable activities by the agency itself, the Commission examined all financial records pertaining to this testimonial dinner for Johnston on September 19, 1978. The records disclosed that 1,019 tickets were purchased for the dinner by a varied group of individuals having business with the agency. The majority of the tickets were purchased, however, by contractors and material suppliers for HFA projects, usually in blocks of 10 tickets each. All of the agency's personnel were invited to the dinner free. A common theme of testimony at the SCI by those who bought blocks of 10 tickets was that the dinner was "just another political affair." Many contractors and material suppliers who did not utilize all of the tickets they purchased indicated they considered the cost of the unused tickets as a contribution to Johnston.

The bill for the dinner was \$24,612.20. After paying all expenses, the dinner account had a balance of \$4,747.76 on November 8, 1978. The State Executive Commission on Ethical Standards on its own motion reviewed the circumstances of the dinner and, although one of its members was outspoken as to his feelings about it, the Executive Standards Commission ruled that there had been no violation of New Jersey's law against conflicts of interest. (Commissioner Robert Falcey, in an interview with an SCI agent, stated that he felt it was improper to hold a dinner for William Johnston and sell tickets to builders and developers doing business with the agency.) After this ruling, which included a requirement that there should be no profit to any participants from the dinner, the amount of \$4,747.76 was contributed to Saint Peter's College in Jersey City. This balance had remained in the dormant dinner account for the period of four months during which the Executive Commission on Ethical Standards was making its decision.

DECEPTION OF THE HFA BOARD ON LAND VALUE

The Waterview housing project for senior citizens in Red Bank was in 1977-79 the subject of both a questionable increase of its land price and an apparent deception of the HFA board. The deception was motivated by a desire of agency personnel who were involved in the land price issue to proscribe any questions by board members relative to it and also by an apparent effort on the part of the employees to cover their tracks in view of the fact that the SCI's investigation of the HFA was underway. There was throughout this episode a confusing mixup of memos, reports and letters, including an absence of dates on certain data, that related to the presentation of the matter to the HFA board on April 27, 1979, when the board authorized a mortgage commitment. To properly relate the testimony of witnesses at the SCI on the land valuation issue requires a brief chronology of certain details, as outlined in this synopsis:

Background

On August 12, 1977, Virginia Ilch of Red Bank agreed to sell property to LQL Associates, the Waterview project sponser, for \$360,000, based on a charge of \$1,500 for each unit of the project's contemplated 240 dwelling units. On January 6, 1978, the agency's Waterview project manager submitted what is known as a "Form 10" specification of estimated development costs and capital requirements. These projections included a land value for the proposed site of \$350,000 for 240 units. (This figure indicates a \$360,000 value less the costs of correcting what are known as "abnormalities" in order to make the site feasible). In December, 1978, a certified appraisor, Alfred London, MAI, fulfilling a contract with the HFA, filed a report in which he established a valuation for the site of \$260,000. On February 21, 1979, the agency staff notified the project sponser it would "recognize for mortgage purposes" a \$360,000 value, or \$100,000 more than the independent appraisal established as the site's true market value. On April 18, 1979, LQL's agreement with HFA's staff endorsement of the \$360,000 valuation was confirmed by the office of its consultant. At this point, certain staff people determined that data to support the \$360,000 figure should be obtained in order to prepare for any adverse reaction by the agency board. The concern about the board's reaction to a land valuation being approved at a figure much higher than the professionally appraised value was heightened by the SCI's inquiry into the overall HFA operation.

The agency board was to consider the Waterview project at its scheduled April 27 meeting. Therefore, an employee by assignment compiled a list of "comparables," described by the staff as an "in house" appraisal, although it was not an appraisal by even the

most minimal standards of the property appraisal profession. This list was undated, leaving a question as to whether it was actually compiled before or after the April 27 board meeting. The comparables were listed in a staff report on the site's evaluation attached to a covering memo dated April 30. (Joseph J. Quinn, a partner in LQL, told the SCI the list of "comparables" was drafted because of the SCI probe and a concern that Waterview was a probe target.) At its meeting on April 27, the agency board, obviously convinced by the assurances of staff officials, authorized the mortgage commitment by a 4-0 vote with Vice Chairman Richard B. Rivardo abstaining. The question of whether the board was misled into this action by the staff was a continuous issue during testimony at the SCI by staff members who were involved in the various Waterview land valuation activities.

The April 30 Memo

Testimony before the Commission focused to a large extent on the April 30 memo supporting the \$360,000 land valuation. It was prepared by Michael Core, who had been employed by the HFA for only nine months and who had no practical appraisal experience. A controversial portion of this three-paragraph memo was its final paragraph, which stated:

After extensive research and close examination of the information at hand, a final valuation of \$1,500 per unit or \$360,000 less any abnormal costs, was given to the subject property as reflective of the actual valuation of the parcel of land. This price was then quoted to the Sponsor and one land valuation acceptance letter went out as a result. This letter is on file signed by the respective land owners. (Emphasis added.)

In his testimony, Gary Anastasia, the HFA's operations chief, conceded that Core's memo was misleading:

Q. Okay, I would like to read the -- well, before I do that, I would like to show you a memorandum to file, dated April 30th, 1979. It's also marked Exhibit C-9 and it's from Michael Core, Re: H.F.A. 883-Waterview. Did you see this memo before?

A. Yes I did. I received a copy of it.

Q. All right. I would like you to read the final paragraph of that memo.

A. This memo is inaccurate, from what I can determine.

Q. In what sense?

A. The land letter -- apparently, the land valuation letter went out before -- I don't know what he's talking about after the extensive research; if he's referring to his report or if he's referring to our going through our past projects in the area.

Q. You agree with me, that that memorandum is misleading?

A. This last paragraph is misleading.

Q. Okay, That's contained in the memorandum. You reviewed that memorandum. Right?

A. Yes, I did.

Q. Did you notice how misleading it was?

A. I didn't notice at the time.

Q. Okay. And that just happens to be coupled with the fact that the document enclosed is undated and unsigned?

A. I don't recall receiving the document with the memo. I recall just receiving a copy of the memo.

Q. You reviewed the undated and unsigned so-called land valuation report?

A. Yes.

Q. Weren't you concerned that, upon review, a board member could get the wrong impression of the chronology of events?

A. I wasn't aware that the board would, you know, would be misled. I don't recall the things being undated and that it could mislead them regarding the chronology. I don't think anything was done deliberately. It was done as an oversight.

Q. You didn't have any part in deliberately --

A. No.

Q. -- concealing when each particular event here took place?

A. No.

Q. You didn't engage in any discussions with anybody that --

A. That we should leave dates off or whatever? No.

Q. Did Michael Core ask you should he sign and date his document?

A. No, not that I recall. No.

Q. He wasn't instructed by anybody not to put a date or signature on that document?

A. I'm surprised that he wasn't. I'm surprised that it's not dated. I don't think anyone told him to date it, you know. I don't know if anyone noticed that it was undated and didn't tell him not to date it. I didn't notice that it was undated.

Novice Appraiser

Core, who also testified at the SCI about the land valuation procedures in connection with the Waterview project, first described his previous limited experience in real estate appraisals:

Q. Have you previously done appraisals of that kind of property?

A. Yes, down in Florida.

Q. What kind of property did you evaluate?

A. Residential property.

Q. Single-family residence? I said similar project. Have you ever done appraisals for similar property?

A. No.

THE CHAIRMAN: And how many appraisals were you involved in in Florida?

THE WITNESS: I did two of them.

THE CHAIRMAN: While you were an under-graduate?

THE WITNESS: Uh-huh. It was for one of my appraisal courses.

THE CHAIRMAN: Was that appraisal used in an actual transaction?

THE WITNESS: No.

THE CHAIRMAN: Just a practice appraisal?

THE WITNESS: Right.

Expert's Lower Appraisal Rejected

Core told the Commission that the \$360,000 figure was agreed upon at a meeting after the sponsor verbally rejected the \$260,000 appraisal.

Q. You received the appraisal from Mr. London in the amount of \$260,000?

A. Right.

Q. Was the sponsor notified of that, that amount?

A. Yes.

Q. How?

A. I think we were having a schematic review and I told him that the appraisal came in for two-hundred-and sixty-thousand dollars, and he said it was ridiculous.

THE CHAIRMAN: Who said?

THE WITNESS: Well, Joe Lucarelli said it. Ernie Silvestri said it. A lot of the other people in the development,

you know. I don't know who said it at that time, but they all voiced their opinion saying it was ridiculous for a piece of property like that to go for only \$260,000. I think it was going for ten-thousand dollar -- no, I mean a thousand dollars per unit, and they thought that was very low.

As a matter of fact, they have the last -- they had got the last permit to build on the bank of that river, so they thought maybe that should have increased the value of the land, plus it was on the river and it would add to the amenities of the site.

THE CHAIRMAN: I suppose the appraiser, London, saw that it was alongside the river, too.

THE WITNESS: Yes. But if you look at his appraisal, all his subject properties were outside of Monmouth County except for Neptune.

THE CHAIRMAN: All his comparable properties?

THE WITNESS: Yeah. His comparable properties were not really comparable. It was one of the reasons why we decided to sit down and talk about whether that was a valid appraisal or not, because the only site he had that was from the Monmouth County area was Neptune.

THE CHAIRMAN: When were these talks held and with whom?

THE WITNESS: Oh, that was with Joe Chieppa, Gary Anastasia, Leon Klotz and myself.

THE CHAIRMAN: And right after this appraisal or when?

THE WITNESS: That was right after we got the appraisal.

THE CHAIRMAN: And what did you decide?

THE WITNESS: Well, we thought that it was kind of low compared to what we were paying other people. It was very low.

The agency is kind of lucky that it makes, it makes pretty good land deals with the sponsors. And, I don't know, some of the sponsors think that we rip them off, but we try to tell them that if it wasn't for our subsidies, they wouldn't even have a project there because usually the land that we get is usually worthless, you know, until our project is built on it. But we thought that it was a very good site. Everybody was bragging about it, that it was one of our better sites for our senior citizens home.

THE CHAIRMAN: Well, then, what took place?

THE WITNESS: So we sat down and we went over the appraisal. We reviewed the appraisal with all of us, and we were -- we discussed that his comparables were not really comparable; that they were out of Monmouth County. And usually when we get an appraisal done by another appraisal -- appraiser, he usually gets comparative -- comparables around the subject site, which this guy didn't. And we then -- also, we thought that he didn't take in consideration that the site was on the water. I think that --

THE CHAIRMAN: Did he say that he didn't take that into consideration?

THE WITNESS: We -- I never talked to the appraiser.

Plus, we thought that he did a file appraisal, meaning he just went into his files, pulled out a bunch of projects. As a matter of fact, all the comparables were our projects, and we thought he just went in his files, took out his data and put it in the appraisal that he gave us.

THE CHAIRMAN: You don't think he even visited the site?

THE WITNESS: Well, he probably sent someone there because he has pictures in there. But I had appraising in school and I know that, when you go to visit a site and you have to use comparables, that you usually use the comparables within that neighborhood.

THE CHAIRMAN: Anybody in the agency get in touch with this fellow London and say we're thinking this and what took place and explain yourself?

THE WITNESS: I think Leon called him up and went over that with him.

THE CHAIRMAN: What makes you think so?

THE WITNESS: I'm not too sure.

The "In-House" Appraisal

When questioned about the reason for the subsequent compilation of a list of comparables -- the "in-house" appraisal -- Core gave conflicting responses:

THE CHAIRMAN: Wait. What we are interested in is, you set this three-hundred-sixty-dollar price and sent out or quoted in a letter of February 21st?

THE WITNESS: Right.

THE CHAIRMAN: What was the occasion for you going to four, or five, or six, or seven projects in May? Why did you do that in May?

THE WITNESS: I don't know. Was it in May?

THE CHAIRMAN: Well, you said so.

THE WITNESS: I said, "maybe."

THE CHAIRMAN: That's what you told us.

THE WITNESS: I said maybe March or May.

I'm not too sure. In between that time.

THE CHAIRMAN: All right. March or May. Why did you do that? You had already set a price \$100,000 over the appraised price.

THE WITNESS: Right. Well, we want to find out for ourselves whether this price was a good price or not.

COMMISSIONER PATTERSON: Well, why did you send out a price that you weren't sure was a good one?

THE WITNESS: Well, we -- let's see. We went over in the office at that meeting whether \$1500 was not --

THE CHAIRMAN: What meeting and when?

THE WITNESS: I don't remember. I know it was a meeting.

THE CHAIRMAN: Was it before that date?

THE WITNESS: Yeah, before we sent out this letter. Before I sent this letter out this could be -- this didn't have to be an official meeting, either. I just go around, I say, "Do you approve of this letter? Should I send it out?" They say, "Yeah, it looks good. Go get someone else's opinion."

We thought -- we thought the price \$1500 per unit that the sponsor was asking was not unreasonable.

THE CHAIRMAN: Right. Okay.

THE WITNESS: We thought that was acceptable.

THE CHAIRMAN: You wrote that letter.

THE WITNESS: Yes.

THE CHAIRMAN: Without an appraisal it was \$100,000 over the one appraisal you had?

THE WITNESS: Yes. Okay.

Tried to Avoid Board Questioning

Core, under further questioning by Chairman Lane, testified that a primary reason to develop supporting material for the \$360,000 land price was to attempt to convince the HFA board that it was valid. Otherwise the board would have questioned it, according to his continued testimony:

THE CHAIRMAN: Just listen to me. Then a month or two or three months later you started to go around to other projects and get an average. Why?

THE WITNESS: Okay. That was for the commitment report.

THE CHAIRMAN: For the what report?

THE WITNESS: Commitment report.

THE CHAIRMAN: Commitment?

THE WITNESS: The mortgage commitment report. Before I wrote the mortgage commitment report there's some -- there's a little section in there that says land value. Now, before I filled that in I had to make sure that the \$360,000 that we were willing to give this guy was valid for -- you know, because when it goes on the mortgage commitment, it's reviewed by all the board members.

THE CHAIRMAN: It wasn't valid at the time of March 23?

THE WITNESS: We thought it was valid.

THE CHAIRMAN: February 21.

THE WITNESS: No, I think it's valid. I still think it's valid. We thought it was back then.

THE CHAIRMAN: Why did you put it in the mortgage commitment form then?

THE WITNESS: Because we had to prove to the board members, or back up our ideas on the value of the land. We had to give them something to convince them that we knew what we were doing when we gave them the \$360,000 and we had to -- well, what it was, we were backing up our own decision to give these guys this much money over the appraised value because we thought the land was worth that much. And we just did it to, I guess, back up what we thought was right.

COMMISSIONER PATTERSON: You don't think it would have been more logical to do the back up first before you wrote the letter?

THE WITNESS: Well, when we were first discussing it, we really didn't foresee the problem of putting in the mortgage, mortgage commitment, because when I was writing the mortgage commitment I just stopped at that section and I asked Gary Anastasia, you know, what should I put on this, because we gave the guy more money than what the land was appraised for. And if the board members saw this, they would, you know, they would look at it and say, you know, "What's this?" They would think there's something going on.

So Gary suggested, and Joe Chieppa suggested, that Leon Klotz and myself go out and do an in-house appraisal, and we visited -- what I did was, I went through all our Form 10's. I picked all the projects that were in Monmouth County. Then we went and we visited the sites. We made our notes and we came up with that little in-house appraisal.

THE CHAIRMAN: Let me ask you this: Isn't it pretty unusual, having made a commitment such as you did for three-sixty on a project on February 21, 1979, isn't it unusual for you and Mr. Klotz to go running around two or three months later and looking at several projects and so forth to justify the figure? Do you do that on every project you handle?

THE WITNESS: No.

THE CHAIRMAN: Well, why did you do it this time?

THE WITNESS: Because we knew that there was going to be a problem.

THE CHAIRMAN: With whom?

THE WITNESS: We knew there was going to be a problem with whoever read the commitment report; mostly with the board of directors.

THE CHAIRMAN: Well, we want to know why this activity two or three months after that commitment. That's what we want to know.

THE WITNESS: Okay. At the time we made the commitment to send this letter we knew through personal experiences that \$1500 per unit was not unreasonable. Now, we deal with this every day. We know.

THE CHAIRMAN: Well, you don't need an appraisal then; you didn't even need the first appraisal, I take it. You don't need any appraisal?

THE WITNESS: No. But we have to have an appraisal done so we know a whereabouts of, you know, what the value is worth. I mean the value of the property is worth.

THE CHAIRMAN: Well, you had it, \$260?

THE WITNESS: Right.

THE CHAIRMAN: \$260,000.

THE WITNESS: And we didn't agree with it.

THE CHAIRMAN: Yes.

THE WITNESS: We thought that that value was wrong and --

THE CHAIRMAN: Why don't you give 1500 to every project?

THE WITNESS: Because not all the sites are that -- not all those sites are as good as the Waterview site. We had --

At this time we knew, or came up with the \$1500 per dwelling unit because we felt that's what the land was worth. Now, the board of directors don't know anything about land value. One's an architect, one's a priest, one's a commissioner and whatever. One's an attorney, and the other one's a treasurer. They don't know anything about land value like we do. Leon's been in here six years, four years, Gary for six years, and Joe's been in here almost ten years, and they know more about the land value than they do. So they came up with the \$1500 per dwelling unit.

What they were concerned about was that, since the board of trustees didn't really know what land value, what the land value was, that they thought it would be good to do a backup appraisal, explaining, you know, what the current market prices are.

SCI was a Factor

Core acknowledged that the existence of the SCI's investigation of HFA at the time had been a factor in the effort to make certain that the agency board did not raise questions about the Waterview land valuation after the staff had approved the \$360,000 figure:

THE CHAIRMAN: "This is why," "This is why." I don't understand "this." "This is why we did it." Why did you do it?

THE WITNESS: We did it for the board members' sake. Right? We knew that you were going to get it after, you know, because we were already under investigation.

THE CHAIRMAN: Well, then, you did, then you were motivated to do this, in part, at least, by the fact the agency was being investigated?

THE WITNESS: See, I can't say yes because that would be partial lie, because we initially did it for the board members' sake because right after this was committed, that's when the S.C.I. confiscated the files, and I just laughed because, you know, I had a feeling that, you know, that was going to cause trouble because we gave somebody more land than what it was appraised for, you know. We did what we thought was right, you know. I don't know, but I did not tell them that I did this which you suggested before, in those words.

Subterfuge Admitted

Core admitted reluctantly that his written submissions were misleading:

- Q. Would you read the last paragraph of the cover memorandum. Could you read that into the record, please?
- A. Okay. "After extensive research and close examination of the information at hand, a final land valuation of \$1500 per unit or \$350,000 less any abnormal costs, was given to the subject property as reflective of the actual valuation of the parcel of land. This price was then quoted to the sponsor in a one land valuation acceptance letter" -- I'm sorry. Wait a minute. "This price was then quoted to the sponsor and one land valuation acceptance letter went out as a result. This letter is on file, signed by the respective landowners."

THE CHAIRMAN: Then it was signed before you examined these several other situations, several other projects?

THE WITNESS: Oh, yeah. Uh-huh. It was sent February 21st, 1979, and it was signed a couple of months after that in my office.

THE CHAIRMAN: That's in April, a couple of months, and your moving around to these other projects was in April or May, or when?

THE WITNESS: I think it was the beginning of May, because it was pretty nice out.

THE CHAIRMAN: What's the date of that memo you just referred to?

THE WITNESS: The memo is April 30th, 1979.

THE CHAIRMAN: And when was the agency meeting?

THE WITNESS: I think that was April 27th so I must have did the site, I must have did site inspections in the beginning of April then. See, I don't know. I'd have to check my own file to find out when I went out. I really don't remember.

Q. Doesn't the memorandum which you read from suggest that the in-house report which you prepared, and it's underneath that memo, was prepared prior to the February 21st, 1979, letter authorizing \$360,000 for the land?

A. Yeah, that's what it says.

Q. Right. And that's not true, is it?

A. No.

Q. And, as a matter of fact, the document that you prepared is really an explanation of the amount already committed as opposed to an appraisal. Is that also true?

A. Go over that again.

Q. Your in-house appraisal is not really an appraisal at all, is it? It was an explanation of what was done in February?

A. Yes. It was a backup. Like I said before, we knew what the land was worth in February.

Q. And in addition to the memorandum, dated April 30th, 1979, your commitment report, dated April 27, 1979, does not suggest the actual sequence of events either does it?

A. I said already this memo was written after I did the commitment report.

THE CHAIRMAN: The question is, look at the commitment report. The question is, does the commitment report truly reflect the actual sequence of events?

THE WITNESS: We talked about these additional sites before we went out. Now, they said do a backup appraisal to justify what we talked about and what sites we talked about in that little meeting we had, and so what I did was I just went to every site plus more that we talked about in the meetings.

BY MR. TOSTI:

Q. But two or three months later?

A. Yeah.

Q. Sometime in April?

A. Yeah. But what the commitment report says is true, because an analysis and review of additional comparables in the immediately vicinity of the site was taken in that meeting orally. We didn't go out and do it.

Q. But given the state of the file with that appraisal, it wasn't clearly set forth that that appraisal, the in-house appraisal was conducted well after the land valuation was set at \$300,000?

A. Uh-huh, true.

Q. Okay. But the memo that's attached to the in-house appraisal would be misleading, to say the least?

A. Yeah, this memo would be misleading.

What it was, see, like I said, I'm not experienced in writing memos at all and what I did was sort of summarize everything from a couple of months later.

Who Decided on Higher Valuation

Core also indicated that the ultimate decision on the land value rested with Assistant Director Chieppa.

COMMISSIONER PATTERSON: I'm trying to find out, you have an appraisal of \$260,000 in December. In February you send a letter out saying that, using the figure of \$360,000. Someone had to make the decision that the letter went out in February 21, '79, would have a figure of \$360,000 in it, in that letter. Who made that decision?

THE WITNESS: The final decision is up to Joe Chieppa.

COMMISSIONER PATTERSON: So Joe Chieppa is the one who gave you permission to write the letter of February 21st, 1979, in which you stated that the land value is \$360,000; is that correct?

THE WITNESS: Yes, it's correct.

THE CHAIRMAN: And this is a binding commitment on the agency, is it not?

THE WITNESS: Yes.

COMMISSIONER PATTERSON: What's Mr. Chieppa's position in the agency?

THE WITNESS: He's the assistant executive in charge of operations and management.

Now, he didn't himself come up with that \$360,000. That was a number that we came up at one of those little meetings we had when --

THE CHAIRMAN: Who's we?

THE WITNESS: I was going to get into that. When Joe Chieppa, Gary Anastasia, and Leon Klotz and myself were in the conference room and we were talking, and we said we agreed that \$1500 per dwelling unit was not an unreasonable amount to ask for. So, multiply \$1500 per dwelling unit, you come up with \$360,000, and that's where that number came from. Joe -- not -- I didn't ask him, but it was understood that it would be \$360,000.

THE CHAIRMAN: So the four of you --

THE WITNESS: Yes.

THE CHAIRMAN: -- made that agreement?

THE WITNESS: Right.

THE CHAIRMAN: Without the second appraisal?

THE WITNESS: Right.

COMMISSIONER PATTERSON: But --

THE WITNESS: And then I mailed this letter out with the 360,000, which value does not include any abnormal site preparation costs, and that is \$12,000 right now.

COMMISSIONER PATTERSON: And Mr. Chieppa knew that you were going to send out that letter and knew that in the letter would be the figure \$360,000?

THE WITNESS: Oh, yes.

Chieppa Tries to Explain

Chieppa in his SCI testimony was reluctant to discuss the circumstances surrounding Waterview land value changes. Initially, Chieppa told why he visited the site and then asked for a list of "comparables:"

Q. Do you know when you went out to look at the property?

A. Off the top of my head, no, but I, you know --

THE CHAIRMAN: What's the date on that letter?

THE WITNESS: This letter is dated February 21st, '79.

THE CHAIRMAN: You went out prior to that?

THE WITNESS: Had to be prior to that, sure. I don't recall the date.

In fact, I go out on Saturdays and Sundays and look at these, and this was a Sunday, I believe, that I went out and looked at this.

I looked at the site. I thought it was a delightful site, as a matter of fact, and my purpose of going out was because they were dissatisfied with the price we had offered them.

When I came back to the office, I looked at the appraisal, and my recollection, I think that the comparabilities were not satisfactory, if I remember. I think the appraiser used a lot of our very own sites for comparability. I forget what the circumstances were, but our discussion, it was concluded that indeed they had grounds for asking for more dollars.

I think the Chief and Core, Michael Core, and Gary Anastasia had most of the discussions, and we discussed it in house, no question about that, and I was convinced that we should do a review of it.

In light of that, I had our staff people kind of do our own in-house comparability, and based on that, and I don't know whatever else because not having the file -- but whatever else, that's part of the things we did to arrive at a different, higher amount, and I might tell you it's not an untypical situation-

- Q. Well, how frequently does it happen?
- A. Doesn't happen at any great frequency. I'd -- but it's happened, I'd dare say, three or four times, in my opinion.

Overriding the Expert

While admitting that listing comparables was not the equivalent of an appraisal, Chieppa felt an appraisal could reasonably be overridden by such a list:

- Q. Were you ever questioned by any of your staff as to what should we do at this point; should we have this second appraisal done or do something else?
- A. Sure. We discussed it.
- Q. And was the result of your discussion the February 21st letter?
- A. No. Prior to that we did a comparability study of our own. We had to back up the letter. We didn't arbitrarily arrive at three hundred sixty thousand.
- Q. Well, did the \$360,000 also represent the amount the sponsors had committed to pay for the property?
- A. I don't know what they committed to pay for the property off the top of my head, but notwithstanding that, we did our in-house study and that's how we came up with the higher figure.

Q. Are you saying that the in-house study was performed prior to the issuance of that letter, February 21st, 1979?

A. I would think so. You know, off the top of my head, I think that would be the natural course of events. If it was done subsequent to that, I'd be a little surprised.

Q. Who did you designate to do the study that you mentioned?

A. I guess to the Chief, and I may have suggested that he use Mike or somebody. I really don't recall specifically, but I would assume the Project Manager would be the one to do it. It would not be a difficult thing to do.

COMMISSIONER PATTERSON: You would have to have some experience to do it?

THE WITNESS: Not really. It's really going out and gathering information.

COMMISSIONER PATTERSON: So that anybody without -- you could bring some reasonable intelligent person in from the street and they could do it?

THE WITNESS: To their own ability, I think so.

COMMISSIONER PATTERSON: To do whatever is necessary to come up with an in-house appraisal?

THE WITNESS: Comparability, I think a reasonably intelligent person can do that with maybe some instruction if they never did it before.

THE CHAIRMAN: He would have to be more intelligent than the appraiser who did the prior appraisal, doesn't he?

THE WITNESS: I don't think it's a question of doing another appraisal. We didn't do that.

THE CHAIRMAN: We understand you didn't do that.

THE WITNESS: If I remember correctly, all we did was look at comparabilities.

THE CHAIRMAN: Why didn't you do another appraisal?

THE WITNESS: Because we felt the information we obtained from comparabilities would be sufficient, number one.

THE CHAIRMAN: To override the appraisal?

THE WITNESS: Oh, sure. I would say that that's really what constitutes value and comparability.

I mean, an M.A.I. can come out with a very fancy appraisal, but the fact of the matter is if he doesn't include in that appraisal good information, the fanciness of the appraisal isn't worth the paper it's written on.

THE CHAIRMAN: Do you have this appraiser come in and asked why he used the comparables he did and so forth?

THE WITNESS: I'm saying I didn't have any discussion with them. I would think that some of our staff people might have.

THE CHAIRMAN: You're guessing. You don't know?

THE WITNESS: I don't know for sure.

COMMISSIONER PATTERSON: What kind of amazes me is that the amount came out to be exactly what your judgment was back in February.

THE CHAIRMAN: And it came out to be exactly that which the sponsors were asking for.

THE WITNESS: That it came out with what the sponsors wanted is not surprising at all. I don't find that to be a problem, and, you know, I don't think twice about that, that it came out the same as the appraisal. I wasn't aware of that, quite frankly. This is a revelation to me that our report came out to be precisely three sixty, but I don't find that --

THE CHAIRMAN: And you don't think when Mr. Core did that report that he knew of that three sixty figure that had been already set out in the letter to the sponsors?

THE WITNESS: He would have to, if these dates are correct.

COMMISSIONER PATTERSON: Do you think that's a good way to run a business?

THE WITNESS: I think if you trust the people that you have, yeah. I have no problem with that.

Chieppa Surprised

When confronted with the sequential letters and memos, Chieppa reacted with surprise:

THE WITNESS: It's kind of strange to me that we would send a letter out at a higher amount and not have the back-up. I would really -- that kind of surprises me, quite frankly.

- Q. Okay. Would you also agree that the fact that a transmittal letter dated April 18th, 1979, accepting a three-hundred-sixty-thousand-dollar land valuation must have preceded the April 30th memorandum and land valuation report?
- A. I must tell you that I'm a little surprised that why as a practice, I would -- I don't see why we would send out this particular letter without having the back-up. I mean, I don't see how I can send a company a letter and say the three-sixty is acceptable just one, two,

three, without some back-up. I don't know just how that happened. I would have to refer to the file or have some discussion, but this just doesn't seem that we would do that. Whatever the circumstances discloses here, it's strange to me that this letter would precede that.

Q. Do these documents that we have shown you here today refresh your recollection that, in fact, there was no back-up in the file at the time that February 21, 1979 letter was sent?

A. No, it doesn't. I find that hard to believe.

Concedes Meeting About Memo

Chieppa first claimed that he was unaware of the misleading contents of Core's April 30 memo but then recalled a meeting about it:

Q. Okay. With reference to the memorandum dated April 30th, 1979, I'd like you to read the last, it's marked C-9. I'd like to ask you to read the last paragraph.

Do you recall you reviewed this? You previously testified that you reviewed this.

A. I said I probably reviewed it, yes.

Q. I'd like you to read the final Paragraph. You can read it out loud.

A. "After extensive research and close examination of the information at hand, a final land valuation of \$360,000 less any abnormal costs was given to the subject property as reflective of the actual valuation of the parcel of land. This price was then quoted to the sponsor and one land valuation acceptance letter went out as a result. This letter is on file signed by the respective landowners."

Q. Were you concerned at the time you reviewed that, that that paragraph was misleading?

A. No. I -- quite frankly, anything more than one paragraph I usually don't read too carefully. It's just too much. I assume that it was, you know, kind of a routine situation. I never gave it too much thought.

Q. Okay. Would you agree with me, now, having read it, that the last paragraph is misleading?

A. Could be, yes. You know, I would be curious to review that with our staff people, as a matter of fact.

Q. You don't recall any discussion -- let me rephrase that.

Do you recall any discussions with your staff people that something should be done to spruce up the Waterview file in case any questions are asked as to how --

A. Yes.

Q. -- the land --

A. I think we had that kind of discussion.

Q. Who participated in it?

A. In the discussion? Probably me and Gary Anastasia. I don't know who else.

Q. And as a result of that discussion did you instruct anybody to do something?

A. Yeah. I think as a result we did the comparability.

Q. So, now, you're pretty sure, are you not, that the comparability was --

A. It's beginning to develop, yeah.

Q. I don't understand.

A. I say, I think it's beginning to develop that the comparability could have been subsequent to February 1st. I think that's what we're talking about; is that not so?

THE CHAIRMAN: Can't we almost say that it's beginning to develop and be very firmly established?

Defends "Comparables"

Chieppa subsequently defended the comparables' list, saying he himself felt qualified to set values without an appraisal and that appraisals served merely as a guide to an evaluation:

COMMISSIONER PATTERSON: I just can't, for the life of me, understand why your in-house appraisal, using what you chose as being comparable, is better than the appraisal provided to you by a gentleman, or an organization, anyway, that was experienced in making such appraisals.

THE WITNESS: Well, I don't subscribe, necessarily, to the fact that, you know, they are always right.

COMMISSIONER PATTERSON: Well, I guess I'm wondering whether you ascribe to the principle that if you don't like it, you get another one, and eventually you will get the right one.

THE WITNESS: No, I don't think that's -- I don't think that's what we do. I think this is a matter -- it was really a collective judgment, consensus. We felt, as I said before, a thousand dollars, \$1100 a unit for that site was low. We really felt that. I still feel that.

THE CHAIRMAN: You didn't need the first appraisal at all.

THE WITNESS: The fact of the matter is, as far as I'm concerned, I would not be uncomfortable if I went personally to look at a piece of property and made a judgment, judgment on it. Unfortunately, it doesn't work that way, but I have no qualms about going out and give opinions at this --

THE CHAIRMAN: But it didn't happen --

THE WITNESS: Didn't happen that way.

COMMISSIONER PATTERSON: Then I go back to what Judge Lane suggested before: why have the appraisal in the first place?

THE WITNESS: It serves as a guide. It's a matter of policy that the appraisals are not the last word. Our appraisals that we get are for our purposes, for our benefit, just in case if there's somebody other than myself. Most of the people have a lot of confidence in my judgment as far as the land acquisitions, and I think our track record speaks for itself, and the appraisals are a matter of policy and the appraisals that we get do not necessarily establish the value that we pay for land. If you look through our records, you will find that our appraisals come out in excess of what the owners wanted or what they have options for, and I make a lot of judgments.

Admits Arbitrary Valuation

Chieppa finally admitted the \$360,000 value had been set arbitrarily in February and indicated that the list of comparables was ordered in part because the HFA was under investigation:

Q. Is it possible that you had no back-up whatsoever when you increased the land valuation by a hundred thousand dollars in February, and at the time, at some-time later, instructed Mr. Core to

support the rise in land valuation by going out and doing this list of comparables?

A. Yes, and that's what I want to make a statement about, and you can either hear me now or later. I think it would enlighten you a little bit if I made that.

Q. Well, that could be responsive to the question.

A. Okay. It just comes to my mind, the fact of the matter is, my own personal opinion, we never abused it, to my knowledge. The Executive Director or Director has arbitrary power to do this without even background. Just the thought of that comes to my --

Q. Excuse me --

THE CHAIRMAN: Go ahead. Finish up.

A. (Continuing.) You see, even if we had no back-up, as a matter of policy we can do that, and I can tell you, in all honesty, that prerogative, as far as I'm concerned, was never abused and the files would document that because invariably you would find that we have acquired land for considerably less dollars than the appraisals and also what people sought. As a matter of fact, when the people walk into the front door, the first thing I tell them is, you know, we're going to get it for as cheap dollars as we possibly can and they should recognize that we were going to be very difficult with them as far as land acquisition with them.

So, we could have been very arbitrary. As a matter of fact, that just dawns on me right now.

THE CHAIRMAN: Were you arbitrary?
Who was arbitrary when --

THE WITNESS: It's quite possible. All these things I can't come to find out without looking at the file and without having discussion with my staff people, but it's very possible I could have said, "Hey, let's give this dollar amount," and then to satisfy ourselves, you know, we'll back it up with documentation. You know, I would find that to be no problem.

Q. With a two months' lapse in between the actual --

A. Yeah. That could happen that way. I mean, I can see the scenario. That could have happened here in this case, and I would not be uncomfortable with that.

THE CHAIRMAN: Tell me this: did you tell the Board that when you made the presentation --

THE WITNESS: That we have arbitrary --

THE CHAIRMAN: That you did, in this case, set an arbitrary figure and announce it in a letter in the latter part of February, then two months later you sought back-up material?

THE WITNESS: I don't think that was -- I don't think that was -- I don't think I have explained that precisely in that fashion, but they know now very well I was giving more in the appraised value. They knew. No question about that.

COMMISSIONER PATTERSON: How did they know?

THE WITNESS: I think it's stated in the report and I made it known to them in the public session.

COMMISSIONER PATTERSON: So you told them at the public session that there was an appraisal for \$260,000, but that you or somebody, you had decided that the \$360,000 is a more realistic figure and that's what you have included in the mortgage commitment amount?

THE WITNESS: Okay. I don't know if that's precisely what I said, but what I did say is a matter of record in the minutes and I think probably says what you're saying. I don't know whether it's precisely in those terms. I think if we looked at the minutes, you will find that's probably what I said.

Q. Were you ever concerned that upon review a Board member would get the wrong impression of the chronology of the events from the documentation available in the file?

A. I never got the impression about the chronology of events. I suspected that at some point in time that I would be questioned about the fact that we gave them three hundred sixty thousand as opposed to the appraised value. Yes, I knew that.

THE CHAIRMAN: Why? Why? Why?

THE WITNESS: It's obvious, if you give somebody a hundred thousand dollars more there's going to be all kinds of inferences.

THE CHAIRMAN: Did you get those inferences in the other six cases that you arbitrarily raised the price?

THE WITNESS: No, but the circumstances in the Agency were different then.

THE CHAIRMAN: Well, when were those six other instances?

THE WITNESS: Well, certainly, you know, prior to this time. I don't know the precise dates.

THE CHAIRMAN: Well, the, I don't understand what was different.

THE WITNESS: Well, the Agency's being investigated and there are all kinds --

THE CHAIRMAN: Was the Agency being investigated at the time these in-house comparative figures were ordered?

THE WITNESS: Yes.

THE CHAIRMAN: Was that the reason for ordering them?

THE WITNESS: The appraisals? You mean the comparabilities.

THE CHAIRMAN: Yes. Was the reason for ordering the appraisal, the comparability study, whatever it may be called, --

THE WITNESS: Well, not so much --

THE CHAIRMAN: Is the reason because the Agency was being investigated?

THE WITNESS: Not so much because the Agency was being investigated, but because I knew somewhere along the line that there was going to be some questions about it, and I just felt that it would be at least more comfortable to have some documentation to support my judgment.

COMMISSIONER PATTERSON: That adds up to you did it because it was being -- that you knew the Agency was being investigated.

THE WITNESS: Well, you know, that could very well be, but it wasn't done -- it wasn't done for that reason, necessarily.

I mean, I just did it because I felt we needed some documentation, and I knew some questions would come up, and if I thought -- if I was uncomfortable with that decision, I must tell you that I never raised the question to them, obviously.

THE CHAIRMAN: Did you raise it to them verbally or was it just on this sheet?

THE WITNESS: Verbally.

THE CHAIRMAN: And that shows in the written minutes, does it?

THE WITNESS: I would think it shows in the minutes.

THE CHAIRMAN: Did you explain to them that you ordered this appraisal, the comparability figures, two months after you had set the rate, set the figure of three sixty?

THE WITNESS: I don't know whether I said that or not.

THE CHAIRMAN: You don't see it in this; it isn't here?

THE WITNESS: No, it isn't said there.

MANAGEMENT REPRESENTATIVES' FUNCTIONING

One of the responsibilities which the agency has undertaken is the monitoring of funded projects from the perspective of the management of those projects. The agency has created a "management division" which assigns certain funded projects to a particular management representative and supervises his work. His task is to visit these projects on a regular basis, inspect its physical structure and monitor its financial transactions. The SCI inquiry has raised important questions about the capabilities of these management representatives to monitor financial transactions since many of the fiscal derelictions of the projects which have been mentioned in this report, and which became involved in other investigations, might have been prevented by a more thorough and professional audit function at the agency. Steps have been taken by the agency to alleviate this problem by having an audit division rather than management representatives audit projects.

False Reports

During the course of the SCI inquiry, the question arose: "What do the management representatives do?" In order to determine whether these employees were properly carrying out their functions, the Commission conducted selective surveillances and discovered that in certain instances their actual field activities were inaccurately described in their required daily reports to the HFA office. Management representative Aundra Cook of East Orange gave candid testimony about such false reporting on field work:

Q. And what time do you usually leave these projects when you are there?

A. Depends. If my work were completed, sometimes I do leave earlier than the prescribed five o'clock time. A lot of days I don't take a lunch, or my work is completed and I don't sit there.

Q. And you would, if you finished your work, would you still attribute seven hours work

--

A. Yes, I would.

Q. -- even if you could finish what you feel to be seven hours work in less time; is that right?

A. Yes.

Q. For instance, on this occasion you went an hour and 15 minutes at Alba. Then you went down to the project and you spent about another hour and 15 minutes and then you went home. Would you argue with that?

A. No, I would not.

Denies SCI Proofs

Management representative John Del Mauro of Newark was under surveillance by the Commission for 10 days. His activities disclosed very brief stays at his assigned projects and two visits to Monmouth Race Track during scheduled working hours, contrary to his reports to the HFA. Del Mauro's credibility when confronted by proofs of his actual activities in Executive Session was severely lacking.

Despite the Commission's proofs to the contrary, Del Mauro, at his first appearance before the SCI, persisted in contending he worked more than seven hours daily at projects assigned to him in South Jersey. He insisted that certain weekly "payroll and labor distribution reports" which he prepared and signed were truthful, although surveillance of his work-day activities by SCI agents showed otherwise.

Since he subsequently decided to return and recant what he first told the Commission, portions of his initial testimony are included here to demonstrate the extent of his attempted cover-up:

Q. And what happened the next day?

A. Friday?

Q. Yes.

- A. Cape May. I think we had -- yeah, we had a job meeting on Friday at Cape May. We have some problems.
- Q. And what time would that suggest, that listing suggest, that you left, that seven hours?
- A. At Cape May?
- Q. Yes.
- A. Well, five o'clock from Cape May.
- Q. Because you worked the seven hours?
- A. Right.
- Q. Okay. It's not possible that you would have left that project as early as 2:03 p.m., would it be?
- A. 2:03? No.
- Q. No. Okay. It wouldn't be possible that at 2:08 you made a telephone call from an Arco station on Washington Avenue and Route 109?
- A. An Arco station?
- Q. Yes.
- A. I might have; I might have.
- Q. At 2:08?
- A. I really can't tell.
- Q. Well, you just said you didn't leave till five o'clock.
- A. I might have gone for lunch and made a call.
- Q. Did you go north on the Parkway at 2:12 p.m.?
- A. I'd have to check my log.
- Q. That's September 5th. Take a look again at C-200, which is your weekly activity report, and lists seven hours and you just told me you left at five o'clock and it's impossible that you left at 2:03.

A. I don't, I don't understand your question.

Q. Okay. Let me see if I can make it clear to you. I'm suggesting to you that, instead of leaving at five o'clock and instead of working seven hours at that project on that day, you, in fact, left at 2:03 after having arrived at the project at 9:20. I am suggesting to you that that's the fact as opposed to what your weekly activity report suggests.

A. Well, if I did leave at that time, it's still -- to get to Newark would take me three hours. But I didn't leave at 2:0 -- 2:12.

Q. Well, as a matter of fact, that day you didn't leave from Newark, you left from a motel by the name of Lincoln Beach Motel?

A. Yes.

Q. Does that ring a bell to you?

A. Yeah, that's where I stay occasionally.

Q. And it's impossible that our agent saw you arrive at the project at 9:20 a.m. and leave at 2:03 p.m. Is that what you're saying?

A. No, I'm not saying it's impossible.

Q. Okay. Then would that seven hours on that weekly activity report be incorrect?

A. No.

Q. You spent the seven hours at the project?

A. As I said before, it's travel time, also. I don't, I don't know exactly until I check my log.

Q. Well, would your log be inconsistent with your weekly report?

A. No, it shouldn't be.

Q. It shouldn't be, should it?

A. No.

Q. Is it ever inconsistent with your weekly report?

A. No, it shouldn't be.

Q. Let me ask you this question: If somebody observed your activities at the projects and looked at their watch when you were engaging in these activities, would their reports on what you were doing ever be inconsistent with your weekly activity reports?

A. I don't know what, what's on their reports.

Q. I'll tell you what's on ours. On September 5th you got to this project at 9:20 and left at 2:03, and you have got seven hours on your report. Let me see if I can refresh your recollection. Do you remember going up the Parkway that day and exiting the Parkway at Route 9 and turning around and getting back on the Parkway south at 3:10?

A. No, I don't.

Q. Don't remember that. Okay. I'm showing you now what's been marked Exhibit C-201, which is your weekly activity report for the week ending 8/3/80, and what does that have for Thursday?

A. Victorian Towers, seven hours.

Q. And were you there at the project for seven hours?

A. I'd have to check my log. But, as I said, if I have seven hours on here, my log would say the same, yes.

Q. And it would be, again, incorrect if somebody saw you spend about half that time at the project. Would that be right?

A. No.

Q. It wouldn't be right or it would be right?

A. No, I would say it wouldn't be right.

Q. Do you remember perhaps leaving that project at 1:44 on that date?

A. No.

Q. Okay. Do you remember going to a place called McSweeney Real Estate in Atlantic City that day?

A. I've been there, yes.

Q. What do you go to McSweeney Real Estate for?

A. I have a friend of mine that works there.

Q. What's his name?

A. Ray Reid.

Q. How do you know Mr. Reid?

A. He's a mutual friend and he's in the real estate business.

Q. He's in the real estate business?

A. Yes, he's a salesman.

Q. Do you have any business with Mr. Reid?

A. No, no.

* * *

Q. Okay. Here's another one, Mr. Del Mauro, it's been marked Exhibit C-203 for purposes of identification. I would like you to take a look at Friday of that week. Let me know where you say you were.

A. I was at Wade East.

Q. How long were you there according to that report?

A. Seven hours.

Q. And how long were you there?

A. Well, travel time and all, seven hours.

Q. Travel time again? Did you stay at the Lincoln Beach Motel, to your recollection, that day?

A. I think it was because the other hotels were completely full for the season. It seems like it was in the heart of the season.

Q. Do you include in travel time, by the way, when you stop for coffee for an hour at nine o'clock?

A. Yeah, I put it on my breakfast if I just have a coffee or toast or something.

Q. I mean, are we including that in your travel time from the Lincoln Beach Motel to the project? If you stop for coffee for an hour, is that included or is that excluded?

A. No, I would say it's included.

Q. Included?

A. Yes.

Q. Included in your seven hours?

A. Well, as I said before, between travel time and actual staying time, it's usually more than seven hours a day.

Q. Well, let me see if I can illustrate this through an example. On this particular day, July 25th, Friday, you left Lincoln Beach Motel at 8:00 a.m.; you got to a coffee house at 9:07 and then you spent from 9:07 to 9:53 at the coffee house and arrived at the project at 10:37. Now, that period of time, 9:07 to 9:53, my question very directly and very clearly is, are the taxpayers paying for that hour or not?

A. Well, I probably got home late that night. I don't know. I have to check my log.

THE CHAIRMAN: But your log is consistent with that sheet you have in front of you?

THE WITNESS: Yes, it should be.

THE CHAIRMAN: Why would you have to check your log, how would that do you any good?

THE WITNESS: To find specifically what he's referring to, what time I left Wade East.

THE CHAIRMAN: You have more information in your log than is on that sheet?

THE WITNESS: No, no.

THE CHAIRMAN: Why turn to the log? Why can't you use the sheet in front of you?

THE WITNESS: Because he asked a specific question, what time did I leave, did I leave Wade East at 6:30.

THE CHAIRMAN: Do you have in your log the precise time you left?

THE WITNESS: No, no.

BY MR. SIAVAGE:

- Q. Well, at least that weekly report would suggest that, if you got to the project at 10:37 and even if we give you the hour for travel time, we'll call it 9:37 you started working, you should be working that night till 5:30 if your report is consistent with your activities?
- A. And there are times when I never had lunch and I worked right through, but still left at 5, 5:30, whatever time it took to complete, you know, the business at hand.
- Q. I'm not sure that that answer is responsive, but I think what you're saying is you may have left that day at 4:30 and you still would have gotten your seven hours in. Is that fair?

A. Yeah, I would say, yes.

Q. Either that or you're lying on your report. Right?

A. No, I'm not lying on the reports.

Q. Okay. So, then, the correlary is that you did leave at 4:30 or thereafter on that day?

A. Right.

Q. Did you go to Monmouth that day?

A. Monmouth where, sir? Monmouth County?

Q. No, Monmouth Race Track.

A. No.

Q. Didn't go that day?

A. No.

THE CHAIRMAN: Are you sure of that?

THE WITNESS: Yes, sir.

THE CHAIRMAN: You're looking at the date and you have definite knowledge or recollection that you didn't go to Monmouth Race Track that day.

BY MR. SIAVAGE:

Q. How do you know that?

A. That's the 25th of July, isn't it?

Q. Yes. How can you be sure of that?

A. What do you mean how can I be sure?

Q. Simple question, it calls for a simple answer.

A. Because I wasn't there that day.

Q. So again, I guess, if three people saw you leave the project at 12:20 and drive up the Parkway and arrive at Monmouth Race Track parking lot at 2:35 and walk into the track, they would be having delusions again? Strike that. They would be incorrect again?

A. Yes.

Q. Okay. If these people had taken pictures of your automobile in the parking lot of Monmouth Race Track, the camera would be lying?

THE CHAIRMAN: On that certain day at that hour?

MR. SIAVAGE: Yes, sir.

THE CHAIRMAN: Or during those hours.

MR. SIAVAGE: Yes, sir.

A. I'd have to say yes.

Q. You would have to say, yes, that the camera's lying?

A. Yes, I have to say yes.

Q. Well, you don't have to say yes, Mr. Del Mauro. As a matter of fact, through the Chair, I would now recommend to you that you begin to say, instead of what you think you are required to say, what, in fact is the truth.

Is the license tag on your Chevette 852-MEN?

A. Yes.

MR. SIAVAGE: Okay. Mark these two.

THE WITNESS: May I see those?

MR. SIAVAGE: As soon as they're marked.

(Photographs marked Exhibits C-204 and C-205.)

BY MR. SIAVAGE:

Q. I am showing you what's been marked 205 first asking you if that's the back of your Chevette with the tag number that you just --

A. Yes.

Q. I'm showing you what's been marked Exhibit C-204, which is another view of that automobile with the track in the background.

A. I can't identify that.

Q. You can't identify that car?

A. No.

Q. Why don't you try harder, take a look at it for a moment. Does it look like your car?

A. Oh, it's a Chevette, no doubt about it.

Q. How many times have you been at Monmouth Race Track this summer?

A. Twice, I think.

Q. Twice? Is that twice during working hours or twice at all?

A. No, twice on my own time.

Q. Twice on your own time?

A. Yes.

Q. When is that?

A. Oh, I don't recall.

Q. Is it on weekends or on weekdays?

A. No, it's weekends.

Q. You don't consider any of the weekdays your time, do you?

A. No.

Q. I'm showing you what's been marked Exhibit C-202, which is another weekly activity report for the week dated 8/17/80, prepared and signed by yourself, certifying the hours shown to be a true

record. I ask you to examine that and take a look at August 14th. Where does that report say you were?

A. Victorian Towers.

Q. Victorian Towers again. And how many hours does that report say you put in at Victorian Towers?

A. Seven hours.

Q. Seven hours. Again, is it fair to say that you would have left the project at 4:30 or thereafter on that day?

A. Yes.

Q. If you worked the seven hours. And did you go to Monmouth Race Track that day?

A. No, sir.

Q. Never went to Monmouth? You didn't leave the project at 12:13 p.m. and arrive at Monmouth Race Track at 2:20?

A. No.

THE CHAIRMAN: You're seriously considering these questions, your answers, I take it?

THE WITNESS: Yes, sir.

THE CHAIRMAN: Because you well realize you're under oath here.

THE WITNESS: Yes.

THE CHAIRMAN: I suppose you know that there are penalties for perjured testimony, do you not?

THE WITNESS: Yes, sir.

THE CHAIRMAN: All right. You are well-advised to listen very carefully to the questions and give precise answers.

THE WITNESS: I think at this point, sir, I think I'm not going to answer any more questions and I think this is the time I'll consult my attorney.

Witness Returns and Recants

After the above sworn testimony, and after conferring with a lawyer, Del Mauro decided to retract his initial responses to questions about how and where he spent many hours of his working days as a project representative for the HFA. More than three months later he reappeared at the SCI to give truthful answers to those questions. His subsequent testimony on January 27, 1981, follows:

Q. Mr. Del Mauro, there are several things I am going to place on the record before I begin the questioning this morning. One of those, of course, is what we consider to be the usual advice given to witnesses before the State Commission of Investigation. You have been here at a previous hearing before this Commission, have you not?

A. Yes, sir.

Q. And you remember me bringing certain things to your attention at that time; do you remember that?

A. Yes.

Q. I am going to do that again for the purposes of the record. I will ask you at certain points during that advice if you understand me, so listen closely.

A. Yes.

Q. This is an Executive Session of this Commission, and your testimony will be taken under oath and transcribed by the shorthand reporter. It can and will be used against you in a court of law, and if you feel any answer may tend to incriminate you, you may refuse to answer.

Do you understand that?

A. Yes.

Q. Perhaps at this point I should place on the record the fact that since your last appearance which occurred on October 3, 1980, I have been in communication both written and verbal over the telephone with your lawyer who's presently Mr. Robert Sarcone; is that right?

A. Yes, sir.

Q. The outcome of those discussions is that you are appearing here today to be asked the same questions that you were asked on October the 3, 1980, and hopefully to give different responses to those questions.

Do you understand that?

A. Yes, sir.

THE CHAIRMAN: What do you mean by that?

MR. SIAVAGE: I will go further.

THE CHAIRMAN: Hopefully, truthfully, whatever the truth of the matter is.

MR. SIAVAGE: Right. As a matter of fact I might place on the record and mark as an exhibit a recent letter that I sent your lawyer approximately a week ago.

THE CHAIRMAN: Isn't there a copy here?

(Whereupon, a letter is received and marked Exhibit C-205A for identification.)

MR. SIAVAGE: With your permission this is a short letter; I think it best to read it into the record. Mr. Chairman, may I read the letter?

THE CHAIRMAN: Surely.

MR. SIAVAGE: It is re: John Del Mauro; "Dear Mr. Fusella," who is also in the law firm of Robert Sarcone. "I have repeatedly requested over the last few months that you make some decision with respect to the sworn testimony of the above-captioned individual before this Commission on October 3, 1980. I now herewith formally

advise you that the inquiry to which Mr. Del Mauro's testimony is relevant will be concluded on or about January 23, 1981. Thus, if I do not hear from you regarding the aforesaid testimony regarding January 22, 1981, I will assume you and your client have decided to let the aforesaid testimony stand. Very truly yours."

Q. You understand, Mr. Del Mauro, the reason we are here is because you have chosen not to let that October 1980 testimony stand?

A. Correct.

Q. You have decided to come in and truthfully testify to those questions?

A. Yes.

Q. I talked to Mr. Sarcone, your lawyer, who advised me that he would not appear with you today since he had already gone over the transcript with you and advised you simply to tell the full and complete truth; is that not a fact?

A. Yes.

Q. Did I give you the opportunity to talk to Mr. Sarcone over the telephone to confirm those facts of our conversation and you did?

A. Yes, sir.

Q. Did you obtain a copy of your October 3, 1980, transcript through your lawyer?

A. Yes. He still has it.

Q. You have talked about that transcript with him?

A. Yes.

Q. Now, last time you were here, Mr. Del Mauro, do you recall being asked certain questions about your activities as a project manager?

A. Yes.

Q. By the way, before we begin you said in response to several of those questions that you would have to refer to a personal log that you kept of your activities. Do you remember those responses?

A. Yes.

Q. And that particular personal log is different from the exhibits that I showed you that are the weekly report of your activity; is that correct?

A. Would you repeat that?

Q. Let me try it this way: I will show you Exhibit C-199, which is one of the exhibits that was shown to you at the last time you appeared in Executive Session and ask you whether that report, which is entitled the weekly report of the activities of John Del Mauro for a certain time period, is that the log that you were discussing or is the log something else?

THE CHAIRMAN: Is that a page of the log? Is that what you keep?

THE WITNESS: The other log we keep is a mileage sheet and on the mileage sheet we record the visits to the projects and its mileage, start and finish mileage.

THE CHAIRMAN: What do you have in front of you?

THE WITNESS: This is payroll and labor distribution report.

THE CHAIRMAN: Who makes it out?

THE WITNESS: We do.

THE CHAIRMAN: You make one out every week?

THE WITNESS: Every week.

Q. And you sign it, too?

A. Yes.

MR. SIAVAGE: The document that the Chair has had reference to is exhibit C-200.

Q. I am going to show you what's been marked exhibit C-202 for the purposes of identification, which is your weekly payroll and labor distribution report for the week ending 8/17/80, a document which was also shown to you the last time you were here. Do you recognize that as what I have described it to be?

A. Yes.

Q. Now, in certain instances, although the log and the weekly report sheets agree, neither one was the accurate description of what you did on a particular day in question; is that correct?

A. I was inaccurate on two occasions.

Q. Was one of those inaccurate occasions August 14, 1980?

A. Yes.

Q. Where did you go on August 14, 1980?

A. To Monmouth Race Track.

Q. I will show you exhibit 204 and 205, which were shown to you the last time you were here, which are pictures of a Chevette with a license plate number 852 MEN which you identified previously to be your automobile and those pictures depict that automobile in the track parking lot. Was in fact your automobile in the Monmouth Race Track parking lot?

A. Yes, sir.

Q. And it was there because you were there?

A. Yes.

Q. Do you recall what time you got to the track on August 14?

A. It might have been around twenty to three, a quarter to three. I didn't log it.

Q. We had you arriving at the track at 2:25.

A. It could be, yeah.

Q. You did go to the track on the 25 of July also though, didn't you?

A. Yes.

Q. Do you recall what time you got to the track on that occasion?

A. It might have been around the same time, twenty to three, two-thirty.

Q. I am going to show you your weekly activity report for the week ending 8/3/80, which has been marked exhibit C-201, and ask you whether that particular weekly activity report claims credit for seven hours work on one of the days you were at the track, that is July 25, 1980?

A. The 25 is not here, the 29, 30, 31.

Q. Exhibit C-203 for the week ending 7/27/80, which contains the 25?

A. Right.

Q. What does it say?

A. Wade East job, total regular hours seven, which was a Friday and it has seven hours in the bottom.

Q. You weren't at Wade East for seven hours, were you?

A. No.

Q. By the way, on the occasions you used the Chevette to go to the track --

A. Which was two occasions.

Q. I will come to that in a second. On those occasions, did you use your personal money for the tolls up to the track or did you put in for HFA money for those tolls?

A. Personal money.

Q. How about the gasoline, did the HFA pay for the gasoline?

A. Yes.

Q. You have got exhibit C-202 in front of you and for the purposes of the record, does that report take credit for seven hours on August 14, 1980?

A. Yes.

Q. And what project does it say you were at?

A. Victorian Towers in Cape May.

Q. Were you at that project?

A. Not for seven hours.

Q. The balance of the time from about two-thirty you were at the race track, correct?

A. Right.

Q. How many times have you gone to the race track during working hours?

A. Twice. Those two particular times.

Q. Just those two times?

A. To the best of my knowledge, yes.

Q. That may be the truth, but here is what I want to advise you of. We obviously surveilled your activities on more than two occasions and on two of those occasions you went to the race track. Is it that ironically we were looking at you on the only two times you ever went to the race track on a weekday?

A. I would say, yes.

Q. The last time you were here you said you had only been to Monmouth Race Track on two occasions.

A. I think I said three; one Saturday I went on my own time.

Q. You said in this transcript you had only been there on weekends, which is not the case?

A. No.

Q. How many times have you been to Monmouth total in let's say the last summer?

A. Three, maybe four but I am pretty sure it was three.

Q. And two out of those three or four were weekdays when you were working for the HFA?

A. To the best of my knowledge, two. One I was.

Q. Now, who checks -- does anybody check to see if these weekly sheets are the fact beyond the certification that you give the HFA?

A. Well, we call in sometimes; I make up to a half dozen calls a day to the office.

Q. They want to know exactly where you are, what you are doing?

A. Where you are at, what the phone number is.

Q. How do you cover yourself when you are going to the track?

A. On the two times I went?

Q. How do you cover yourself when you go to the track?

A. I gave them the number of Victoria Towers.

Q. Suppose he called, what would happen?

A. I didn't think about it.

Q. There were other occasions upon which you were questioned concerning your weekly activity report the last time you were in Executive Session, which did not refer to a day where you went to the track. Do you recall those?

A. Yes.

Q. Specifically I am going to show you what's been marked exhibit C-201 for the purposes of identification and refer your attention to Thursday of the week ending 8/3/80; do you recall being questioned about that particular day?

A. Yes.

Q. Were you at Victoria Towers for a total of seven hours on that day?

A. No.

Q. What did you do on that day?

A. If I recall correctly, I think you saw me in McSweeney's Real Estate.

Q. That's correct. We weren't mistaken about that, were we?

A. No.

Q. Do you recall how many hours you spent working that day?

A. No, I don't.

Q. I asked you the following question the last time you were here. "Do you remember perhaps leaving that project at 1:44 that day?" and your response was "No." Do you now remember leaving the project at about 1:44 that day?

A. Yes. I went to McSweeney's because I had a luncheon date.

Q. You had a luncheon date at McSweeney's?

A. Yes.

Q. You had a luncheon date at McSweeney's?

A. Yes.

Q. Business lunch?

A. No.

Q. You didn't go back to the project?

A. No.

Q. We talked the last time about a mutual friend you met, Mr. Reid, at McSweeney Real Estate; is he the one you had the appointment with?

A. Yes.

Q. Now, I am going to show you what's been marked for the purposes of identification in the last hearing exhibit C-200 which refers to your activity for the week ending September the 4, 1980. Do you remember being questioned the last time about that week's activity?

A. Yes.

Q. On September -- is that a 4 or 7 referring to the number?

A. It would have to be a 7 if that's correct. 9/5 would be a Friday.

Q. Okay. Then exhibit C-200 refers to the week ending 9/7/80 and you were asked if you spend seven hours at a project called Cape May?

A. That's Victoria Towers.

Q. Were you at Victoria Towers for seven hours that day?

A. No.

Q. We are referring now to the 5 of September?

A. Right.

Q. I asked you whether you left the project around two in the afternoon and you said no. Did you leave the project around two in the afternoon?

A. Yes, I think it was 2:05.

Q. You say you think it was 2:05; why do you think it was 2:05?

A. You mentioned it last time.

Q. I made a phone call.

Q. You made a phone call from the Arco Station at 2:08. Were you calling the office on that date?

A. I don't recall.

Q. Now, that was I believe the four occasions upon which you testified the last time; so that the record is clear on each one of these four occasions you did not spend the amount of time at the project that your weekly report suggests, that is seven hours?

A. Yes.

Q. No question about that?

A. Yes.

Q. You mean no, there is no question?

A. There is no question.

Q. How often would you say out of a typical work week you spent less than seven hours at a project where your weekly report says you did spend seven hours at the project?

A. Not too often.

Q. 20 percent, 10 percent?

A. I would say less than ten percent.

Q. Where do you go? Is it a matter of knocking off early or do you do personal business or something else?

A. It is a matter of knocking off early.

Q. Do you recall any specific occasions outside the ones that you were asked -- questioned upon the last time you were here where you spent less than seven hours at the project?

A. None particular, but as I said it's probably about ten percent.

Q. Is it fair, and you correct me if I am wrong, is it fair that you might leave the Cape May project to get on the road to get going back home before spending the seven hours there?

A. Yes. Sometimes I go right home to North Jersey, but other times I make it on my southern trip where I have to go back to Atlantic City because I am sleeping over the night and the next day I am back in South Jersey again.

Q. One of the events you were questioned on last time involved rather than leaving early, stopping for coffee for about an hour in the morning and we had some colloquy over whether that was a charge or not. It appears that it was charged. Are there times you do that kind of thing? Instead of leaving early, spend a little time before you get to the project?

A. Yes.

Q. Let me ask you this question: Is there any way of reviewing the structural facets of the project could take you seven hours?

A. No.

Q. How long does it take you?

A. To walk a building and to walk and talk with the site manager or the superintendent, it could take a couple of hours; in the meantime you have phone calls and they may have other problems that they discuss with you because this is our part of being a rep.

Q. What would it take, the total?

A. On an average visit?

Q. Yes.

A. I would say anywhere from two to four.

Q. Who is your direct supervisor who receives these weekly reports?

A. Mr. Frank Cassiere

Q. Why doesn't Mr. Cassiere know you can't spend seven productive hours at the project?

A. I can't answer that.

Q. Was he ever project manager?

A. He came in as chief of management.

Q. Do you know how he got his job?

A. No.

Q. How long has he been there?

A. I think he was there October of '79.

Q. Nobody has ever whispered in his ear and said "They can't be spending seven hours at a project," to your knowledge?

A. No.

Q. What do you look for when you look through the records of different --

A. What item is purchased, as a management rep, the managing agent cannot order over \$500 worth of material without the authorization from the agency and myself, and I have a limit that I can authorize.

Q. Are you presently covering the 16 projects to which you were assigned in the three days per work week that you are now working in the field?

A. Yes, I am.

Q. And those are the same number of projects that you were covering in the four days that you were formerly working in the field; is that right?

A. No. I picked up, I would say, two additional. One which is under -- they are both under construction but I am in the process of opening up one now that will be renting probably about the middle of February.

Q. So you used to cover only 14 projects in four days a week?

A. Yes.

Q. And do you feel the job you are doing now is an adequate job on those 16 projects?

A. Yes. I would consider myself the best rep in the office.

KAREN WHITACRE'S DESTRUCTION OF RECORDS

Shortly after its investigation of the HFA began, the Commission received information that an employee, Karen Whitacre, had removed records from her office files and destroyed them. These records were accounting summaries prepared by LaGloria Starks, a staff auditor at the agency under Whitacre's supervision in June, 1978. The accounting summaries, which pertained to Parkview Towers in West New York, confirmed with incriminating auditing details the unusual excess of income at the project (now known to have been generated by the direct -- and improper -- pass-along of Section 8 subsidies). Whitacre's testimony about these auditing records follows:

- Q. Did you tell her to go up and do that, that reconciliation, if that's what --
- A. I believe I did.
- Q. Okay. How long did she spend at Parkview; do you recall?
- A. No, I don't remember.
- Q. Let's see if we can set a date first. Do you recall when that was? Was it right after she arrived or later on?
- A. I really don't remember.
- Q. Okay. Did she report to you on her findings in any fashion?
- A. She didn't have any findings. She pulled some schedules together and brought them down to the agency.
- Q. Were they --
- A. She couldn't figure it out either.
- Q. Okay. What couldn't she figure out?
- A. How -- well, they had apparently a cash disbursements journal, and the disbursement to various items or companies or disbursements to return on equity they called it. What she would do, she summarized by months the different categories the disbursements were going to and just did that by month for a year or so.

Q. On a 17-column pad?

A. Yeah.

Q. Okay.

A. Thank you.

Q. Did she show you her work sheet when she returned?

A. Yes.

Q. And you said she couldn't figure it out. Could you figure it out?

A. Not really.

Q. Why not? What was it about it that looked unusual?

A. Well, there seemed to be a lot of cash there to be disbursed, and I didn't know whether they were combining their construction funds together with their operating funds or funds from other entities and disbursing out of this. I didn't know what was going on.

Q. Is it fair to say from a layman's point of view that their income appeared to be more than you thought it was?

A. Yes.

Q. And you couldn't figure out where it was coming from?

A. The cash there appeared to be more than there should have been at that point.

Q. Did you do anything as a result of looking at that work paper?

A. Yes, I took it into Ray Howell, the comptroller, and showed him, and I believe I gave him a copy of the whole thing so he could look at it also.

Q. And anything else? What did --

A. No.

- Q. -- Howell say to you on that occasion when you took it in to show it to him?
- A. Oh, okay. There was one other thing we did. We also had -- oh, and we had LaGloria, because we couldn't figure it out, make copies of the cash disbursements book, see what -- because they had things going to construction, general construction, other, I don't know what they were, and just to try to trace back, see what what is happening she took a copy of the cash disbursements book.

From that I went through and tried -- I wanted to reconcile the management fee they took because there were disbursements to the owners. So I made a sheet up telling during this period how much, how much of these disbursements went to the owners. They had quite a number of disbursements going to their attorney. I did that, also. And it appeared that they -- and then I did a calculation based on the rental income that should have been going in, how much management fee they should have taken, and this was -- the amount they had taken was quite a bit in excess of the management fee. So I did that analysis, also, and gave that to Ray Howell. And we also discussed that with -- I believe then Ray had them down.

LaGloria Starks's Version

Raymond Howell, Whitacre's supervisor at the time, told the Commission he does not recall Whitacre advising him about Starks's audit. He further denies receiving a copy of the workpapers at issue at the time. LaGloria Starks's testimony on the matter follows:

- Q. And when you called Miss Whitacre, she said to you to photostat as much of the documentation and back-up for your opinion as you could; is that right?
- A. Xerox as much information that I could and take it back into the office and make it -- sit down and review it.

Q. She also asked you to do that in any way that both the bookkeeper and any other representative of Parkview would not take particular note of what you were doing; is that right?

A. Yes.

Q. Okay. Did you do that?

A. Yes.

Q. Okay. And did you also have some work papers that you worked on while you were there?

A. I was telling Mr. Best, I think, I had -- it wasn't -- it wasn't a lot; okay? It was only a few pieces of paper I have had to copy. Xerox copy that I took back to her, yes.

* * *

Q. What happened when you came back to the Agency? Let's assume it was on the 19th of May?

A. I gave Karen Xerox copies and whatever papers I may have written up. I gave it all to her.

Q. And did you have a conversation with her?

A. I remember talking to her, okay, about it, but it wasn't -- it wasn't a lot of details. Just merely, you know, a couple of questions. She asked me a few questions, I gave her the answer, and I -- that was basically it.

Q. Was this the first thing in the day?

A. First thing in the morning, yes.

Q. Where did the conversation take place?

A. In her office.

Q. And you gave the materials, gave her a brief explanation and you left?

A. Yes.

Q. What was her response to your brief explanation; did she say anything in conclusionary fashion?

A. Not to my recollection.

Q. What did she do with the documents that you gave her?

A. I don't know.

Q. Where were those documents when you left her office?

A. On her desk.

Q. Okay. And that was the end of the matter on the 19th of May at least?

A. Hm-hum.

* * *

Q. Okay. Now, since the final audit report was not prepared, where would those, based on your hypothetical answer of general procedures, where would those work papers that you prepared and those photostatic copies that you obtained be lodged at the Agency?

A. They should have been lodged in the files in Karen's office.

Q. Okay. All right. Those are those work paper files that were listed alphabetically that we talked about?

A. Right.

Q. That's where she should have put them?

A. Right.

Q. And, again, based upon your hypothetical of the procedures in the Agency, those would be the only copies of these materials that existed at the Agency; would they not?

A. Yes.

- Q. All right. And also based upon your hypothetical, if this is consistent, those papers would not be shared with any other party, to your knowledge? In other words, Howell wouldn't receive a copy of them?
- A. No, he wouldn't.
- Q. Okay. Do you know how anyone other than Karen Whitacre knew about what you found on those two days in May if they had not -- if those work papers had not been shared? Do you have knowledge of that?
- A. As far as I know, only Karen would have known what I had found.

What Happened To The Records?

The Commission learned from LaGloria Starks that the Parkview audit workpapers were substantial -- and that Karen Whitacre had the only copies. Whitacre was questioned about what happened to these records that she had received:

- Q. Okay. Well, the records that she brought back with her or anything that she brought back with her from Parkview, did you ever take that home?
- A. Yes, I did.
- Q. When did you take it home?
- A. I don't recall the date.
- Q. Was it after the meeting with Raphael at the agency or before?
- A. Probably after.
- Q. All right. Why did you take it home?
- A. Well, at that point, I believe, all of our records were being subpoenaed. I was going through my records. We had instructions to go through all of our files to see if there were any correspondence in there from the attorney general's office, that's all to be removed, and generally if there was notes I had to myself about something which I wanted to follow-up on, or I would take those out, and usually

incomplete work papers. So I had these and I weren't sure, I wasn't sure about what to do with them, so I spoke to Kate Okenica and George Feddish about the situation and they didn't feel it was a problem that they were removed from the files.

Q. Okay. When you say "about the situation," did you say specifically to Kate Okenica, "I'm taking incomplete work papers out of the file"?

A. Yes.

Q. And she said that's no problem?

A. I said, "I have incomplete work papers and I would like to take them out of the file. Is there a problem with that?"

Q. And?

A. No. The answer is no.

Q. Did you tell her there were other things that you wanted to take out of the file, too?

A. No. There wasn't anything else out of the Parkview file that came out. I don't believe I had any correspondence from the attorney general's office or any personal memos in there.

Q. The personal things, did you take those out on your own without asking Okenica?

A. Yes.

Q. But you asked for a specific direction with regard to incomplete work papers?

A. Yes.

Q. Were there a lot of projects that you took home with you, incomplete work papers?

A. No. These were really the only set of incomplete work papers there were.

Q. These were the only ones?

A. Yes.

- Q. And these were -- strike that. LaGloria came back from Parkview with a compilation of documents that she got from Parkview that really couldn't be characterized as work papers, could they?
- A. Well, we had done some work with them, footing them, going back through the copies of the cash disbursements book trying to trace them together. They were, they were -- they weren't really work papers in that she did any work with them. It was just Xerox copies and then she had done the compilation schedule of the various months and what the account, cash disbursements were charged to, what titles they were charged to.
- Q. Did you take the copies, everything, home with you?
- A. Let's see. I know there was a copy of the schedule and it was a Xerox copy. It was not the original. And a copy of -- my little summary of how much money had gone to Raphael and Canino. They had gotten this already and so had Ray Howell. And how much had gone to their attorney. And I believe a copy of the cash disbursements ledger, which is available for anybody's review.
- Q. What did you do with these things when you got them home?
- A. Reviewed them, looked over them, and then threw them out.
- Q. Okay. Weren't you concerned that that activity might in some way inhibit the investigators who were looking quite intensively at Parkview at the time?
- A. Not really, because Ray Howell had it in his files. The books and records were up there available for anybody's review. Anybody else could go and do the exact same thing. It wasn't any original work. The only original work that was done, like I said, it wasn't even original, it was compiling the information from the books and records in their office, and my summary of amounts taken by the owners

purportedly as management fees and going to the attorneys could easily be picked up the same way, and also there was a copy of Ray Howell's file and I had given a copy to the owners.

Q. If your work papers could have been helpful, to you, they certainly didn't see that, did they?

A. Pardon me.

Q. I'm not trying to argue. They're either work papers or they're not. They're either taken home because they're work papers or not, and they stay in the files because anybody else can have access to them. The work paper you did after they brought down the copies to you was taken home by you and later destroyed; is that correct?

A. The one work paper I did? Which, the compilation schedule?

Q. No, the work paper you took home because you were told you could take work papers home.

A. It was thrown out.

Q. That was destroyed? Okay. It was thrown out. It was not in the file when it was picked up by the attorney general's office?

A. Right.

THE CHAIRMAN: Thrown out by whom?

MR. SIAVAGE: Excuse me.

THE CHAIRMAN: Thrown out by whom?

THE WITNESS: By me.

Howell denied ever receiving a copy of the workpapers which Whitacre testified that he received. This account agrees with LaGloria Starks's previous testimony on the location of the copies of her workpapers. Kathleen Okenica and George Feddish have both reported to the SCI that they gave Karen Whitacre no such advice with regard to the disposal of incomplete workpapers or any other documents.

SECTION V

RECOMMENDATIONS IN DETAIL

INTRODUCTION

The recommendations contained in this first report by the Commission on its HFA investigation respond to two important findings (1) The excesses of power exerted by a despotic executive director who was receptive to corrupting pressures, and (2) submissive reactions of a staff that perpetuated the director's power by becoming a subservient vehicle for misconduct. In order to address the problems this spawned, the Commission approached the task of formulating recommendations with as much regard as possible for the objective functioning of the HFA while also proposing certain checks and balances to ensure that a fully objective system, once in place, is safeguarded by constant monitoring. In addition, in order to upgrade the credibility and integrity of the staff which must administer all the regulatory and developmental requirements for producing the low-cost housing so essential to New Jersey's welfare, the Commission recommends a number of new and expanded internal standards. While some of these proposals may be considered stringent, they are without question responsive to past indiscretions and other misconduct within the agency.

Before detailing its recommendations, the Commission must point out that important strides have been made in both of the basic problem areas since Bruce G. Coe became the executive director of the agency. Most of the factual situations which have been scrutinized in this report took place prior to his arrival and, so far as the Commission can determine, have largely ceased since then. Additionally, the present HFA board and Director Coe have joined in initiating progressive changes in both overall HFA policy and regulation. Such reforms so newly in affect are vital to maintaining the even broader concepts which the Commission hopes will result from the implementation of its recommendations. Certain important recommendations of the Commission will embrace the changes already addressed by the agency board and Coe, while others will aim at problems not yet approached. Where such latter proposals turn new ground, that will be noted.

RECOMMENDATIONS TO BAR FAVORITISM AND INFLUENCE PEDDLING

Criteria for Project Selection

Shortly after taking office, Executive Director Coe instituted an objective point system for the evaluation of projects pending at the agency entitled "Criteria for Project Selection." This important innovation ascribes a point value to the variables affecting a project's consideration by the agency. Due to its importance in

establishing objective priorities for processing projects and to the SCI's recommendations, the agency's criteria at the time this report was prepared are outlined below.

I. CRITERIA FOR PROJECT SELECTION

A method for scoring is given separately for each of the Criteria. All but three can be quantified to yield a precise score based on factual information. The same also determines whether any score is warranted for items 1 under family housing, 2, 4, 8, and 9. Where a score is warranted, Key Criteria are measured on a scale from 1 through 5, and Standard Criteria from 1 through 3, with item 9 requiring a negative measurement. The scoring of items 3, 5, and 7 involves judgmental decisions. Item 10 is a separate category awarding a score of 5 for projects leveraging market rents with subsidized units.

A. KEY CRITERIA (SENIOR CITIZEN)

1. Urban Location: Is the development located in an urban area? Score as follows: Designated Urban Aid City, score 5; Designated Community Development Block Grant Entitlement-City, if not also Urban Aid, score 3. All others, score 1.
2. Rehabilitation: Will the project contain rehabilitated units? Score according to ratio of rehab to total number of units: 80% to 100% = 5; 60% = 4; 40% to 60% = 3; 20% to 40% = 2; less than 20% = 1.

B. KEY CRITERIA (FAMILY)

1. Family Housing: Will the project contain family units? Score according to ratio of family to total number of units: 80% to 100% = 5; 60% to 80% = 4; 40% to 60% = 3; 20% to 40% = 2; less than 20% = 1.
2. Rehabilitation: Will the project contain rehabilitated units? Score according to ratio of rehab to total number of units: 80% to 100% = 5; 60% = 4; 40% to 60% = 3; 20% to 40% = 2; less than 20% = 1.

C. STANDARD CRITERIA

3. Community Development: Is the project area complemented by community development activities, such as: UDAG, NSA, CDBG, other HUD Special Programs, Code Enforcement, etc.? Score according to extent of such activities: extensive = 3; above average = 2; average = 1.
4. Redevelopment Plan, Urban Renewal or Municipal-Owned Site: Will the project be built on a site pursuant to an approved Redevelopment Agency Plan or Urban Renewal Plan, or on a municipal-owned site? Score as follows: Redevelopment Agency site = 3; Urban Renewal site = 2; municipal-owned site = 1.

5. Neighborhood: Is the project located in a stable neighborhood suitable for residential development with necessary supportive services such as transportation, shopping, etc.?
Score as follows: stable = 3; up-grading = 2; marginal = 1.
6. Innovation: Does the project have commitment to utilize exceptional social service programs, such as a medical program, meals on wheels, day care centers, recreation, etc.? Score according to proportion of occupants to benefit from special programs: 66% to 100% = 3; 33% to 66% = 2; less than 33% = 1.
7. Effective Team: Are the sponsor and the development team effective, efficient and responsive with respect to past and current performance?
Score as follows: excellent = 3; good = 2; average = 1.
8. Time of Filing Application: How long has a project been processing?
For Site Inspection Requests dated up to 12/31/75, score 3; for SIR's dated 1/1/76 to 12/31/77, score 2; for SIR's dated 1/1/78 until present, score 1.
9. Relocation: Will the project require the displacement of families?
Score on a scale of -1 through -3: 1 to 25 families = -1; 26 to 50 = -2; more than 50 = -3.

In an effort to promote economic integration and maximize the housing benefits of Federal subsidy dollars, the Agency has decided to award a special bonus of 5 points to those developments that leverage market units with subsidized units in a ratio of not less than three to one.

10. Subsidized/Non-Subsidized Housing: Will 25% or less of the units be subsidized? If yes, score 5, if no, score 0.

MAJOR PROCESSING REQUIREMENTS

A project must receive a "yes" for these criteria before it may be included in a bond issue.

1. Resolution of Need: Has the municipality in which the project is located adopted a Resolution of Need acceptable to the Agency?
2. Site Control: Is there written evidence that the site is controlled by the Sponsor, satisfactory to the Agency?
3. Site Approval: Has the site been reviewed and approved by the Agency?
4. Feasibility: Has the Agency determined that the project is economically feasible?
5. Zoning: Has the project received all required local zoning (and planning) approvals?

6. Utilities: Has the Agency determined that all required utilities are available and adequate to the development?
7. Tax Abatement: Has the local governing body adopted a tax abatement agreement for the project which is acceptable to the Agency?
8. Land Price: Has an appraisal(s) been made and has a land price been agreed upon by the Agency?
9. Incorporation/Partnership: Has a Certificate of Incorporation or Certificate of Limited Partnership, acceptable to the Agency, been filed by the Sponsor?
10. Development Team: Has the Agency approved the Sponsor and members of the development team (including a bondable contractor)?
11. Police Checks: Has the Agency received negative police checks on all principals of the sponsoring entity, all members of the development team, and the contractor?
12. Third-Party Contracts: Has the Agency approved all executed third party contracts as appropriate?
13. Environmental Clearance: Has the project received the necessary approvals from environmental, coastal, and historical review agencies?
14. Technical Approvals: Has the Agency approved architectural drawings and reached construction cost agreement for the project?
15. Seed Money: Has the Agency approved a seed money contract and has it been properly implemented? (Non-profits only).
16. Mortgage Commitment: Has the Agency adopted a mortgage commitment (or recommitment) in an amount appropriate to the project and is such commitment (or recommitment) still in effect?

Although, as has been stated, these criteria are an important step forward, there is a subjective weakness in certain areas which should be cured. The Commission makes the following recommendations with respect to the following criteria:

1. Neighborhood: This category is somewhat subjective in that, since most projects, due to other criteria, will be located in urban locations, the differentiation between "stability" and "upgrading" draws too fine a line. Mini-criteria should be added so that certain portions of each point are allotted according to more specific characteristics of a neighborhood, which can be developed by the agency.
2. Innovation: This criteria seeks to reward a project for planning to provide "exceptional social service programs" to a certain percentage of the tenant population. Three points are awarded if these

exceptional services are provided to 60 percent - 100 percent of the population, two points for 33 percent to 66 percent and one point for 0 percent to 33 percent.

First, although four examples of "social services" are noted, no further guidance is given for assigning of points. Therefore, the HFA definition of "exceptional" services becomes subjective. Second, a well-planned social program may provide two or three exceptional services, based on need, to each member of a group which comprises only, say, 65 percent of the total population. This program would receive only two points while a mechanical program which provided, for instance, meals on wheels to all residents, regardless of need, would receive three points. The HFA should develop a more comprehensive reference list of "exceptional" social services and should award the top three points to a well-designed plan for delivering these services. A decreasing point scale could be adopted for social service programs with less impact on particular segments of tenant populations.

3. Effective Team: A recent revision of this criteria by the agency concerns the past -- as well as current -- experience of project development teams. The criteria, nevertheless, appears somewhat unfair to an inexperienced team that is functioning for the first time -- but is performing well and has all its documentation in place. It should not be punished merely for a lack of previous handling of successful projects. It seems to the Commission that while past experience certainly merits consideration, effective current performance should receive more favorable emphasis in the rating system.
4. Time Filing of the Application: Although it appears to the Commission that a project should score extra points for longevity at the HFA, an inequity seems apparent in the case of a project that is on file for one day receiving the same number of points as a project that has been in the pipeline since 1/1/78.
5. Relocation: This criteria is mechanical but a knowing project sponsor or loan consultant could eliminate any detriment this topic poses by relocating families and buildings prior to the submission of the application for the site inspection. The criteria should be altered by the addition of the specification: "at any time, including the six months prior to the filing of its site inspection request."

Legislative Oversight

As illustrated by this report, internal misconduct at the HFA continued undetected for a prolonged period of time. A factor in the failure to reveal the numerous incidents of favoritism to certain project promoters, influence peddling pressures on behalf of a number of projects, and even acts of criminality or near-criminality, was the aura of respectability that the HFA enjoyed because of its public image as an aggressive producer of needed housing. However, the longer such an illusion persists, the more disastrous can be the sudden revelation that it had cloaked serious administrative and operational malfunctions.

To prevent a recurrence of the HFA's adverse experience, the Commission endorses the trend in recent years toward legislative oversight of the programs lawmakers enact and strongly urges that this oversight be immediately extended to include the agency. Since the Executive Branch of State government also shares a responsibility for the HFA's proper performance, through appointive and administrative control over the HFA's governing board, it also should participate in any watchdog mechanism to assure the agency's good conduct.

For the reasons cited above, the Commission recommends that:

A provision be added to the law governing the HFA to require an inspection and review of the operations of the agency at least once during each two-year session of the Legislature by a bipartisan Legislative Oversight Committee, augmented by the Governor's chief counsel or a lawyer or certified public accountant designated by him. Such a review of the agency shall be required to begin prior to the conclusion of the first year of the Legislature's two-year session and shall be concluded within six months of the authorization of such a study, unless an extension of time is granted by both legislative houses.

Executive Director Selection

The selection of William Johnston was not only a highly political process but also a direct result of the efforts of a project sponsor who then used favors owed to him by the new agency chief to gain an advantage within the agency. The selection of the director, furthermore, ignored the fact that Johnston had been forced to resign from a housing corporation job, after working there only 60 days, before he applied for re-employment at the agency.

The choice of Director Coe, due to its positive results, appears to have been based on the sounder principles of recognized experience and proven integrity. The SCI therefore recommends that:

The agency board formulate objective policy guidelines, including intensive background checks, for selecting future executive directors. Such an executive employment policy should prohibit political intervention and must be based on the criteria by which most successful corporations seek out their most capable and effective executive managers.

Audit Objectives Must Include Fraud

This report states (P. 17) that the HFA's internal audits of agency and project financial transactions "have not made the identification of fraud a specific objective." Additionally this report notes that information which was indicative of fraud was not, in at least one case, appropriately reported so that the situation could be rectified. "Fraud audits" are typically an expensive undertaking and performing them on all projects would not be justified. However, utilizing them on a spot basis, performed either by agency staff or an independent contractor, would add an important mechanism to the present HFA auditing capability.

The Commission recommends that:

Spot audits of various projects be required by law with the additional proviso that such audits be required to include among their objectives the identification of fraud and that such findings be immediately reported to the Executive Director and the Governing board for appropriate immediate resolution.

Agency Board Committee System

Even with the selection of a proper executive director, an improved system for processing projects through the agency and a number of specific operational checks and balances are needed to assure, for example, that the point system functions effectively and that the staff is not being pressed into inappropriate actions by oppressive supervision.

The Commission, therefore, recommends that:

The assessment criteria for selecting projects be split into appropriate groups and assigned to staff evaluation committees that are chaired by members of the agency board. The point values not being credited to or deducted from each proposed or pending project could then be reviewed by this committee on a regular basis. Any appeals by sponsors with projects pending in the agency should be evaluated by the appropriate committee, through its board-member chairperson, according to the issues on which an appeal is based for inclusion in the hearing records.

Expansion of the Board of Directors

Former Attorney General William Hyland reported to the Commission that he considered overly burdensome the requirements that cabinet officials sit on the many boards which are connected to their departments. Additionally, the availability of such board memberships offers much potential for enlisting talent from the general citizenry of the State and, in the case of the HFA board, could enhance its perspective in establishing and enforcing intelligent and effective policy. The Commission particularly recommends:

Reconsideration of the statutory provision that the Attorney General must serve on the HFA board, although it realizes the possible necessity of both the Commissioner of DCA and the State Treasurer serving as agency governors. The Attorney General would, of course, still have input through the designation of deputy attorneys general who provide essential legal counsel to the agency's administration.

The Commission particularly recommends that:

The private sector's participation in the board's activities be increased by adding two additional public members who have specialized experience and background in the relevant areas of public housing, construction, finance or law.

(With respect to this proposal, the Commission subscribes to Assembly Bill No. 1659, which has been approved by both houses of the Legislature.)

AGENCY ATMOSPHERE RECOMMENDATIONS

Code of Ethics

On September 18, 1980, the HFA board adopted a code of ethics. It deals with such important issues as the use of State property, acceptance of gifts and definitions of conflicts of interest. Because of the facts illustrated in this report that specifically pertain to the post-employment activities of certain agency personnel and the acceptance of gifts, the Commission makes the following additional recommendations for strengthening the newly enacted agency code of ethics:

1. With regard to "after employment restrictions", the code refers an agency employee to N.J.S.A. 52:13D-17, which provides importantly that a staffer may not become employed by an entity which had a project in the agency upon which that employee worked while he was at the HFA. Although this is an appropriate

restriction, the Commission's investigation disclosed that many of the post-employment conflicts problems that have occurred since the inception of the agency have been in areas skirting this issue of direct involvement with projects worked upon by the employee. Therefore, the SCI is of the opinion that an absolute proscription prohibiting an employee from employment with any entity doing business with the agency for two years subsequent to the employee's departure from the HFA should be adopted. The definition of the term "entity doing business" should be left to the HFA board, but should be so inclusive as to encompass all contractors, sponsors and professionals who regularly do business with the HFA.

2. The present agency policy on acceptance of gifts is set out as follows:

ACCEPTANCE OF GIFTS

A member or an employee shall not, directly or indirectly, solicit or accept any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred: that such gift, service or other thing of value was given or offered for the purpose of influencing him or her in the discharge of his or her official duties. Full disclosure shall be made by the member or employee to the Executive Commission on Ethical Standards if an offer of a gift, service or other thing of value is made to the member or employee.

- A. *The acceptance of any gifts, loans of money or goods, services, discounts, gratuities or anything else of monetary value from a person or organization doing business with the Agency or the granting of special treatment or favors to such persons or firms for the purpose of obtaining personal gain, is conclusively presumed to be a conflict of interest. Under this section, the term "person" would include employees of and persons associated (such as consultants, lawyers, or other agents) with organizations doing business with or contemplating doing business with the Agency.*

This restriction includes gifts directly to the member or an employee or indirectly to the member or an employee, such as a gift to any member's or employee's relative or designated organization. For purposes of this Code, "relative" shall mean immediate family of the member or employee or immediate family of the member's or employee's spouse.

B. Examples of such gifts include cash, liquor, personal or household goods, use of cars, lodging and entertainment, favored treatment from lenders or contractors or other sources. This includes a specific prohibition from accepting meals or beverages or entertainment from persons or firms doing business with the Agency or contemplating doing business with the Agency.

This includes Christmas parties and open houses given by persons or firms doing business with the Agency. This does not include a prohibition against accepting meals or beverages paid for by a firm or organization doing business or contemplating doing business with the Agency when offered in conjunction with an organized function, which has a purpose beyond the provisions of the meal or beverage (in furtherance of official Agency business) and is attended by a substantial number of persons. Examples would be a bank holding an economic forum for Agency employees with whom they have contact, a developer hosting a ground breaking or dedication ceremony, a reception for elected governmental officials or an infrequent (not to exceed two or three times per year) working session during which food is brought in by the sponsor or contractor. Discretion and judgment should be exercised, and if in doubt, an employee should consult the Executive Director or the Executive Director's designee.

Except as noted above, members and employees are responsible for payment of all costs of their meals, beverages, lodging and entertainment. Reimbursement by the Agency for expenses is limited to those allowed by and in amounts permitted by the Agency.

Due to the fact that the particular rules appear to completely prohibit acceptance of gifts, the Commission urges excising -- to eliminate confusion -- of that portion of the first sentence which reads "under circumstances from which it might be reasonably inferred: that such gift, service or other thing of value was given or offered for the purpose of influencing him or her in the discharge of his or her official duties." The proscription against the acceptance of any type of gratuity should be absolute.

3. Finally, in a paragraph intended to permit acceptance of meals or beverages at a groundbreaking ceremony or some other formalized function, the code of ethics states, "Examples would be a bank holding an economic forum for agency employees with whom they have contact, a developer hosting a groundbreaking or dedication ceremony, a reception for elected governmental officials or an infrequent (not to exceed two or three times per year) working session during which food is brought in by the sponsors or contractors." Although the agency points out that some discretion and judgment is necessary, the SCI urges a flat prohibition against accepting any meals or beverages of even the most trivial nature from contractors, sponsors and developers. Otherwise the possibility of a conflict, or the appearance of it, arising will remain a threat.

The Cessation of Political Hiring

The HFA, because it depends upon the professional expertise and objective judgment on the part of its staff in the housing production field, was established as a non-Civil Service agency. The SCI believes that provision should continue.

However, the SCI recommends that:

As with the Commission's call for changes in the process for choosing an executive director, similar requirements should be applied to staff employment in order to guarantee that all agency employees are hired solely on the basis of qualification and ability and a background of integrity. The SCI is of the further opinion that the agency board should create an additional committee to review all hiring practices and decisions by the executive director in order to insure compliance with such an improved employment policy. Background investigations, testing and other proven screening procedures should be incorporated into the employment process.

Reporting of Possible Corruption

Although the recently adopted code of ethics established a procedure whereby agency employees must report corruptive instances such as attempted bribery and gift giving, it does not provide a vehicle for reporting the possibility of corruption at higher administrative levels within the agency. Harris Osborne, the director of operations who felt something was wrong in 1975, was quickly terminated from his employment when he challenged questionable activity. The SCI recommends that:

The board adopt a prescribed method of notification for staff members who suspect, rightly or wrongly, the possibility of internal corruption. Such reporting should be made to the deputy attorney general assigned to the agency. That official must be required by agency regulation to keep such matters confidential at the time they are made and while they are being investigated by the appropriate authority to which they are referred.

Deceptive Practices by Agency Personnel

This report has noted several incidents of willful misstatement or omission of essential material facts in certain reports, memoranda and other papers (see particularly "Deception of the HFA Board," P.283) by certain officials and employees of the agency.

The Commission therefore recommends that:

Each present employee or prospective employee of the HFA must be notified immediately or upon employment that any willful misstatement or omission of material fact in any report, memoranda, letter or other official internal or external correspondence of the agency shall be cause for immediate dismissal.

