# MEDICARE AND MEDICAID FRAUDS

## HEARING

BEFORE THE

## SPECIAL COMMITTEE ON AGING

## UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

PART 7—WASHINGTON, D.C.

NOVEMBER 17, 1976

Printed for the use of the Special Committee on Aging

U.S. GOVERNMENT PRINTING OFFICE

88-307 WASHINGTON : 1977

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

Medicare and Medicaid Frauds:

Part 1. Washington, D.C., September 26, 1975.
Part 2. Washington, D.C., November 13, 1975.
Part 3. Washington, D.C., December 5, 1975.
Part 4. Washington, D.C., February 16, 1976.
Part 5. Washington, D.C., August 30, 1976.
Part 6. Washington, D.C., August 31, 1976.
Part 7. Washington, D.C., November 17, 1976.
Part 8. Washington, D.C., March 8, 1977.
Part 9. Washington, D.C., March 9, 1977.

(Additional hearings anticipated but not scheduled at time of this printing.)

# CONTENTS



## CHRONOLOGICAL LIST OF WITNESSES

# MEDICARE AND MEDICAID FRAUDS

WEDNESDAY, NOVEMBER 17, 1976

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
*Washington, D.C.*

The committee met, pursuant to notice, at 10:10 a.m., in room 318, Russell Senate Office Building, Hon. Frank Church, chairman, presiding.

Present: Senators Church, Moss, and Percy.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Val J. Halamandaris, associate counsel; John Guy Miller, minority staff director; Margaret Fayé, minority professional staff member; Patricia G. Oriol, chief clerk; Donna Gluck, resource assistant; and Eugene R. Cummings, printing assistant.

## OPENING STATEMENT BY SENATOR FRANK CHURCH, CHAIRMAN

Senator CHURCH. The hearing will come to order.

We would like to welcome our witnesses this morning. The purpose of today's hearing is to learn what can be done to improve the management and the fiscal integrity of the medicare and medicaid programs.

I am sure that members of this committee and the American public generally have been shocked and dismayed by the recent disclosures of fraud and abuse in Government health care programs.

I want to say that all the members of this committee appreciate what Senator Moss has done in the last 2 years in bringing this situation to light, and I want to express on behalf of the committee, Senator Moss, our gratitude for your leadership in opening up a field of fraud that seems to be pervading the entire medicare and medicaid system. I do not know of a more urgent problem of this kind that faces the Government and, on behalf of the committee, I simply want to express our deep appreciation for your work.

By now it should be clear to everyone that reform cannot wait. It is the cruelest paradox that I can think of that thousands of our elderly are going without the health care they need, and yet we lose millions of dollars to fraud and mismanagement.

Our two witnesses today will further demonstrate the severity of existing problems and they will give us some guidance concerning legislation which is needed.

Mr. Charles J. Hynes, the New York special prosecutor for nursing homes, brings with him the statewide perspective of his special work. Mr. Sam Skinner, U.S. attorney, northern district of Illinois, will tell us what we can do to strengthen the hand of Federal prosecutors.

### Cost Effectiveness Praised

I am particularly interested in the cost effectiveness of the New York special prosecutor's office. I am told Mr. Hynes has recovered many times the amount of money spent on his investigation. In fact, he recently announced that his auditors find $2,500 in medicaid overcharges for every man-day of effort.

If all prosecutors could claim such a return we could pay off the various State, municipal, perhaps even national debts.

In the coming months or years we will consider national health insurance plans. I want to make it clear this morning that we want to make sure that the elderly are not short-changed in our efforts to make health care more generally available to all Americans. At the same time we will make every effort to make sure we do not repeat the mistakes that have been made in medicare and medicaid and that we take such corrective action as may be available to us.

Senator Percy, you have played an active role in the investigations to date. If you have a statement you would like to make at this time, we will be happy to receive it.

## STATEMENT BY SENATOR CHARLES H. PERCY

Senator Percy. Thank you, Mr. Chairman.

I would first and foremost like to say how very pleased I am that Senator Moss could be here this morning. I have worked intimately with him for 6 or 7 years as the ranking Republican on this Subcommittee on Long-Term Care. I have known his devotion to this field. He has conducted his subcommittee in a totally nonpartisan fashion, and we have worked intimately and well with the staff appointed by the Democratic members.

It has always been a nonpartisan relationship, and I have drawn upon them for advice, counsel, and support, and I commend them and commend the leadership we have had.

It is a great tragedy to have his continuing guidance and leadership taken from our committee, but I know he shall have a lifetime interest in the field. We cordially invite him to participate in every way possible. We are gratified by his presence this morning.

I would like to express my deep appreciation to Senator Church and the staff of the Aging Committee for these investigations. I would also like to welcome Mr. Charles Hynes and Mr. Sam Skinner this morning to testify before the committee.

I look forward to their suggestions as to how we can enact legislation which will curtail fraudulent practices in medicare and medicaid programs and, furthermore, how we can alleviate obstacles which presently impede Federal prosecutions.

## First Convictions Received

Last Thursday, November 11, Samuel Skinner, the most active U.S. attorney in terms of medicaid fraud prosecutions, received the first convictions under the 1972 Federal law prohibiting kickbacks in the medicaid program.

Since 1969, Senator Moss and I have been concerned with nursing home scandals and medicare-medicaid frauds. It pleases me that after 7 years of hearings, repeated investigations, and numerous reports, our efforts are finally bearing fruit.

The purpose of a public hearing such as this is to disseminate information as to what our policy is going to be and how the law is going to be implemented. I feel we should serve notice today—publicly—that with the Skinner convictions we can now effectively serve notice to all who would defraud and abuse the medicaid program. They simply cannot and will not escape prosecution.

We passed the law. The law is going to be carried out and has now been put into effect. Congress and the judicial system mean to put an end once and for all to one of the worst scandals of our time: medicaid fraud and abuse.

Persons who would defraud the elderly poor, I think, are the most reprehensible—certainly those in the medical profession themselves who have taken a vow to serve their fellow man. I think it is an unconscionable action on their part to engage in these practices—those under the cloak of engaging and caring for the poor who profit from the poor.

The same goes on Wall Street. There is money to be made on the poor, providing they are elderly—particularly if they are elderly. I think we intend to move, and move strongly.

We have had witnesses before us who are now serving time in jail. We intend to carry this forward and, Senator Moss, I pledge to you that the committee will carry on in the spirit in which you have chartered our course.

Prior to the efforts of Sam Skinner and Charles Hynes, little had been accomplished with the slap on the hand we have been giving the doctors convicted of medicaid fraud. We need to strengthen the medicaid laws at both the Federal and State levels. Some steps have been taken in that direction, but more are needed if we are going to clean up our medicare and medicaid programs and move on to national health insurance.

## Abuses Threaten Proposed Program

I, for one, will do everything possible to assure the enactment of the medicare-medicaid antifraud bill during the 95th Congress. Both political parties have pledged to carry forward a national health insurance program. Until we can find a way in these much smaller programs to carry them out without the millions of dollars of fraud that we have, there is no possibility of having a sensible, sound, rational national health insurance program where the potential of fraud would not run into the billions. This is really what we are

aiming at—to find out how to administer these programs in such a way that we can even broaden the health care that is needed for all Americans rather than just the elderly.

I welcome these hearings and certainly appreciate the testimony we are about to have from our distinguished witnesses.

Senator CHURCH. Thank you very much, Senator Percy. I surely agree if we are to move ahead with a national health program, we are going to have to demonstrate we can competently manage those programs that now exist for the elderly and that we can eliminate this problem of kickbacks, payoffs and bribes that have been disclosed through the investigations of this committee and the special work of Senator Moss.

I want to ask Senator Moss for whatever statement he would like to make at this time. Before doing that, I think it might be appropriate to include in the record three articles that appeared in the New York papers yesterday. One appeared in the New York Times which discusses the 26 indictments that have been issued by the special prosecutor and our witness this morning, Charles J. Hynes, and also has to do with kickbacks that he will be discussing this morning, and a similar article appearing in yesterday's Daily News giving further details.

And finally, a New York Times article published yesterday entitled "Medicaid's Lab Fees Being Cut Up To Half," which indicates how bloated the costs have become due to these fraudulent practices and the immense savings that can be realized through the efficient enforcement of the law.

[The articles referred to follow:]

[From the New York Times, Nov. 16, 1976]

HEALTH CARE PAYOFFS CALLED RIFE BY HYNES AS 26 ARE INDICTED

NURSING-HOME PROSECUTOR CHARGES KICKBACKS BY SUPPLIERS—FEELS ALL MEDICAID IS INVOLVED

(By Richard J. Meislin)

The State's special nursing home prosecutor charged yesterday that illegal kickbacks from commercial supplier's were widespread in the health-care system in New York State, and he announced the indictments of 26 nursing home owners, operators, employees, and suppliers.

The prosecutor, Charles J. Hynes, said that up to half the 125 nursing homes in the metropolitan New York area could be involved in the alleged kickback schemes.

"Our indication is that the same kinds of abuses are found in all provider services in medicaid," Mr. Hynes said, adding that he included hospitals and pharmacies.

Mr. Hynes, whose jurisdiction is limited to nursing homes, said his 18-month inquiry had uncovered evidence of kickbacks ranging from 5 percent to 33 percent of business volume from suppliers of a variety of goods and services to health care facilities.

He indicated that additional indictments were expected soon from grand juries hearing evidence about other aspects of the alleged kickback schemes.

SOME INDICTMENT DETAILS

Thirteen nursing home officials—in most cases, operators or administrators—were charged in yesterday's indictments with conspiracy and with violating the anti-kickback provisions of the State health laws. Eleven suppliers were

charged with perjury, and two meat company owners were accused of bribing a witness, criminal solicitation and conspiracy.

The indictments were returned by five grand juries in Brooklyn, the Bronx, Queens, and Nassau and Suffolk Counties.

Mr. Hynes said that his investigation, which focused on 30 of the metropolitan area's major nursing home suppliers, had uncovered three major kickback schemes:

(1) "Inflated billing," in which the supplier would bill the nursing home for more than the amount actually owed.

(2) "Phony billing," in which a false invoice would be issued for deliveries that were never made.

(3) "Phony items," in which bogus items were included and charged for in an otherwise legitimate bill.

In each of these cases, Mr. Hynes said, the nursing home official would pay the amount requested by the supplier. The supplier would then return to the official, in cash, the difference between the actual amount owed and the inflated bill.

The nursing home would then file the inflated bill with the State health department for medicaid reimbursement, the prosecutor said.

Yesterday's indictments open a new area of inquiry by Mr. Hynes, whose investigation to date has concentrated on nursing home operators who allegedly filed false medicaid claims to cover personal expenses.

OWNER WHO WORE MICROPHONE

Instrumental in the inquiry, Mr. Hynes said, was a New Jersey nursing home owner who, while opening a new facility in Emerson, N.J., agreed to wear hidden electronic equipment while negotiating contracts for his nursing home with 30 major suppliers in the New York area.

The bugging was conducted with the approval of Joseph Woodcock, the Bergen County Prosecutor, Mr. Hynes said.

In more than half the 50 conversations recorded in this manner, the vendors on their own initiative proposed kickbacks to the nursing home operator, Mr. Hynes asserted. He would not name the nursing home informant, but he is identified in several indictments as Ira Feinberg, who is facing an 18-month sentence on a Federal stock fraud conviction relating to another nursing home.

Confronted with the tape recordings, several suppliers agreed to wear electronic listening devices themselves, and in subsequent visits to nursing home owners they recorded discussions of the kickbacks and the transfer of money, the State prosecutor said.

Mr. Hynes said that the average monthly kickback discussed in the conversations recorded by his informants was $500 per supplier.

These conversations resulted in the indictments against the 13 nursing home officials.

In 11 other cases, suppliers who allegedly had discussed kickbacks with Mr. Feinberg denied any knowledge of illegal propositions, and they were indicted on perjury charges that carry a maximum 7-year prison sentence.

Twenty of those indicted surrendered yesterday morning to the special prosecutor. Six others, not yet named, are expected to surrender "within the next day or two," Mr. Hynes said.

---

[From the New York Daily News, Nov. 16, 1976]

26 ARE INDICTED IN KICKBACK PLAN AT NURSING HOMES

(By Marcia Kramer)

Twenty-six persons were indicted yesterday in a nursing home swindle that prosecutors said involved up to $4 million in kickbacks from vendors and in medicaid fraud. The charges were based on an 18-month investigation by grand juries in three boroughs and in Nassau and Suffolk counties.

Charles J. Hynes, the State nursing home special prosecutor, said that while 13 nursing home officials at seven homes had been indicted, the investigation by his office had revealed that as many as 50 percent of metropolitan area nursing homes were involved in the kickback arrangement. There are 125 homes and related facilities in the New York region and 753 in the State.

The prosecutor said that the suppliers viewed kickbacks as part of their normal course of doing business. They contracted with the operators to supply cleaning services, paper products, meats, groceries, and clothing for the residents. He estimated that each home operator dealt with 10 vendors, each of whom shelled out an average monthly kickback of $500.

### 11 SUPPLIERS NAMED

Besides the nursing home officials, the indictment named 11 suppliers and two meat company owners. The home operators were charged with the receipt of specific cash kickbacks from the vendors; suppliers were charged with committing perjury in connection with grand-jury testimony and the two meat-company owners were charged with offering a $1,000 criminal solicitation bribe to a government witness.

The indictments climaxed an investigation that began in May 1975 when a New Jersey nursing home operator, who had been convicted on Federal fraud charges, agreed to cooperate with the special prosecutor's office.

The operator, Ira Feinberg of Paramus, posed as a man who planned to open a nursing home in Emerson, N.J. Working from a list of 200 suppliers, all of whom did business in excess of $25,000 a year with nursing homes. Feinberg invited the top 30 suppliers to his office to discuss business proposals. The conversations were secretly tape recorded for presentation to the grand juries.

The prosecutor said that in most of the taped conversations the suppliers offered kickbacks of up to 33 percent a month.

The alleged schemes fell into four categories:

(1) Inflated billing, which raised the actual costs of goods received.

(2) Phony billing—invoices for goods never delivered.

(3) Phony item invoices, in which nonexistent items were listed on otherwise legitimate bills.

(4) Front money—in which the nursing home operator received substantial loans from suppliers in return for long-term contracts.

In each instance, the prosecutor said, the operators submitted the bogus bills to medicaid for reimbursement.

Although none of yesterday's charges alleged medicaid fraud based on the inflated supply costs, sources said that fraud indictments linked to the kickbacks are expected within two months.

Special Assistant Attorney General Philip Stern, who headed the investigation, said that the kickback scheme was a three-step process.

First, the operator wrote a check to the supplier for the inflated bill. Then the supplier would give the operator a cash payment reflecting the difference between the real costs and the inflated invoice. The third step involved the nursing homes submitting the inflated bills to the State health department for reimbursement.

In one case, the operators of the Franklin Park Nursing Home in Franklin Square, L.I., were charged with receiving approximately $42,000 in cash payments from an unnamed meat vendor. The operators, Louis Hodes and Herman Surkis, were charged with conspiracy and 21 violations of the health laws.

The nursing home officials named in the indictments include:

Aaron Feuereisen, owner of the Far Rockaway Nursing Home, 13–11 Virginia St., Far Rockaway, Queens, charged with receiving $17,700 in kickbacks; Herman Greenbaum and Josef Levi, of the Queens-Nassau Nursing Home, 520 Beach 19th St., Far Rockaway, $11,700 in kickbacks; John Marksamer, operator of the Woodbury Nursing Home, 8533 Jericho Turnpike, Woodbury, L.I., $15,966 in kickbacks; Jeffrey White of the Woodbury Health Related Facility, 8565 Jericho Turnpike, Woodbury, L.I., $3,965; and Samuel Leifer, director of the River Manor Health Related Facility, 630 E. 104th St., Brooklyn, $12,523.

Charged with bribing a witness was Sidney Lieberman, 62, owner of a Brooklyn meat company.

The suppliers were identified as Donald Berkowitz, 45, general manager of Donnell Box Meat Distributors, 547 Monida St., Bronx; David Lev, 48, owner of Lev Bros. Produce Co., 1110 54th St., Brooklyn; Lewis Gross, 45, manager of Kleen Linen Service, Inc., 5610 Second Ave., Brooklyn, and Joshua Pomerantz, 30, president of Pomerantz Paper Co., 239 26th St., Brooklyn.

Other suppliers named were Joseph Segal, 27, vice president of Full Line Distributors, 1313 39th St., Brooklyn; Chaim and Joseph Weinstock, owner and

president of the Boro Park Aquamat Corp., 2109 Summit Ave., Union City, N.J.; James T. Heelan, 45, president of Olympic Maintenance Inc., Robbins Lane, Jericho, L.I.; Anthony Fanza, 40, a salesman for the Jamaica Food Co., Inc., 187–40 Hollis, Jamaica, Queens; Donald Luneberg, 33, owner of Jet Laundry, 245–17 Jamaica Ave., Bellrose, Queens, and Raymond Servidio, 30, a salesman with DiMirando & Sons Produce Co., 191 Second Street, Huntington Station, L.I.

The names of six other defendents were not released by the prosecutor because they are not yet in custody.

---

[From the New York Times, Nov. 16, 1976]

## MEDICAID'S LAB FEES BEING CUT UP TO HALF

### MOVE BY NEW YORK CITY AGENCY SLATED TO TRIM REIMBURSEMENT COSTS BY $3 MILLION A YEAR

(By Pranay Gupte)

Medicaid reimbursement fees for the most frequently ordered laboratory tests will be reduced by up to one-half, thereby saving the program an estimated total of $3 million a year, New York City's medicaid administration announced yesterday.

The city's action is a part of an economy move designed to trim at least $10 million from New York's annual $1.9 billion in medicaid expenditures, according to Dr. Martin Paris, the city's associate commissioner of health.

But the announcement yesterday, made jointly by Dr. Paris and by Forest Williams, director of medical assistance in the city's department of social services, drew bitter criticism from representatives of the 250 laboratories in the city that participate in medicaid.

"We are initiating a lawsuit against the city concerning these new rates," said Irvin R. Karasik, a lawyer who represents several small and medium-sized laboratories. "This is a most serious matter because our survival is at stake."

#### SCHEDULE HELD DISCRIMINATORY

Mr. Karasik said that the new fee schedule would be, in effect, discriminatory toward the smaller laboratories because they would be much less able to absorb the cutbacks than some of the bigger laboratories, such as Metpath Inc. of Hackensack, N.J.

His view was endorsed yesterday by Metpath's president, Robert Burns, who acknowledged in an interview that the new fees could indeed be absorbed better by larger concerns such as his.

But the position of the laboratory representatives did not appear to surprise Dr. Paris.

"We fully expect to be sued a lot on this," he said. "But the labs' cost of producing services has decreased immensely because of new and better techniques, and lately they were getting an unreasonable built-in profit margin."

#### $10 MILLION PAID IN YEAR

Dr. Paris said that the city's medicaid program had paid $10 million last year to the laboratories in fees, of which about 75 percent went to 16 large laboratories.

"So you see that smaller labs are frozen out of medicaid anyway," he said, adding that it was the administration's contention that a substantial part of the lab fees was funneled into kickbacks by the labs themselves.

Responding to Mr. Karasik's charge that the new rate reductions—which would affect such services as blood tests—would be discriminatory to the small labs, Dr. Paris replied: "Do we have an obligation to subsidize the smaller labs? We are not going to subsidize inefficient labs."

But Dr. Paris also sought to stress in a telephone interview from his office at 330 West 34th Street that the new rate reductions would also affect the larger laboratores because the cutbacks concerned the most commonly ordered tests—such as blood and urine analyses—that were done by the labs through automation.

Dr. Paris noted that in a telephone survey conducted by medicaid officials, the administration had found a discrepancy of 500 to 800 percent in the rates of tests available to individuals in labs and the rates charged to medicaid.

"There unquestionably were kickbacks here," Dr. Paris said, stressing that the city's observations concerning alleged illegalities by laboratories paralleled those contained in a report earlier this year by a special U.S. Senate subcommittee. That report, prepared by the staff of Senator Frank E. Moss, Democrat of Utah, alleged that it was a widespread practice among laboratories to share their "extraordinary" profits with medicaid physicians in the form of kickbacks.

Senator CHURCH. It is my pleasure to turn to Senator Moss for such remarks he would like to make at this time.

## STATEMENT BY SENATOR FRANK E. MOSS

Senator Moss. Thank you, Mr. Chairman, my dear friend. I am pleased to be here and be with my great friend, Senator Percy of Illinois, who has served as ranking Republican member of the subcommittee on Long-Term Care so effectively and diligently over the years.

It is both heartening and disheartening to be here. I am delighted to see that you, Mr. Chairman, and Senator Percy are going to press ahead on the investigation and also the legislation that will grow out of this. My only disappointment is that after the first of the year I will not be able to continue as a member of the subcommittee or the full Committee on Aging.

It is my belief that this committee, created as a special committee some 15 years ago, has become really one of the most effective and hard-hitting of committees in the Congress. We are not what is called a legislative committee in that we cannot lay legislation before the Senate; but we do have the investigative powers that have been used so effectively and also the power of recommendation so that legislative committees benefit from our work. Much good has been accomplished, but much remains to be done.

I am delighted you are continuing this work on medicare and medicaid because, although we have been able to accomplish a good bit, as you pointed out, very much remains to be done and must be done to protect our elderly, the sick, and the poor. And I think you two Senators who are here must and will be in the forefront of pushing this investigation.

### "NOTHING IS GOING TO FALL BEHIND"

I am very pleased; in fact, I feel assured that nothing is going to fall behind by reason of the fact that I cannot be with you, because I am sure both of you will carry on very effectively. I did want to be here at least part time this morning to welcome the two prosecutors who have come this morning to tell this committee what they are doing in their two great jurisdictions.

I have come to be friends with both of them, and I admire them very greatly. Mr. Charles Hynes took over where our committee left off in New York last year because he received the books and the records which we had under subpena. I am happy to see he has already succeeded in sending several of these unscrupulous operators

to jail—one of the things that had to be done in this field. He was of great help to me.

As you may remember, when I walked into the medicaid mills, it was with the help of Mr. Hynes. He had me all wired for sound, in fact, so that I could do that and we would know exactly what went on from what I said and what others said to me while I was there. This turned out to be a very great break in finding those who were abusing and defrauding the system.

A few weeks ago Mr. Skinner of Illinois announced the indictment of eight medicaid mills and six of the clinical labs that we had investigated there in Illinois. And he, too, has been doing a great job.

So I am pleased that these two great public servants have followed through on the work which our subcommittee and this committee was able to get started and for which this committee must now push for further remedial legislation to give them the full tools they need to make sure the medicaid and medicare programs work.

Like you, Mr. Chairman, I do not want to see the system damaged in the sense the poor and the elderly do not get medical services. There have been those who have stood up and said: "Well, why don't you just lop $1 billion out of the fund? Then there won't be so much money to go around."

Well, the problem is, the cuts would come out of the services. It would come down hard on the poor and elderly who need that care and service. What we have to do is find ways to stop this hemorrhage of funds where the money is siphoned off illegally and redistribute it toward improved care.

This is a happy occasion, and I think a good omen, that right now, with Congress in adjournment, still your committee is pressing on. I do commend you, Mr. Chairman, and my friend, Senator Percy, as well as those who have come here this morning. I am sure we are on the right track.

Thank you.

Senator CHURCH. Thank you very much, Senator Moss.

Mr. Hynes, would you like to proceed with your testimony?

## STATEMENT OF CHARLES J. HYNES, DEPUTY ATTORNEY GENERAL, OFFICE OF THE SPECIAL STATE PROSECUTOR FOR NURSING HOMES AND SOCIAL SERVICES, NEW YORK CITY; ACCOMPANIED BY HARRY BLAIR, ADMINISTRATIVE ASSISTANT, AND ALBERT APPLETON, EXECUTIVE ASSISTANT

Mr. HYNES. First, Mr. Chairman, and members of the committee, I would like to introduce the gentlemen at the table. To my right is Harry Blair, administrative assistant; to my left is Executive Assistant Albert Appleton.

Mr. Chairman and members of the committee, I would like to begin by telling you how much I appreciate this opportunity to appear before you this morning. What I would like to do, with your permission, is to read some of the remarks from the text and then offer the text to the stenographer for the record.[1]

[1] See p. 772.

Senator CHURCH. That will be fine.

Mr. HYNES. Your committee, Mr. Chairman, has been most helpful and cooperative to my office in the past, and we are much indebted to your assistance and the encouragement in the execution of the difficult task that faces us both.

When last we met, this committee had just finished holding hearings in New York City and had turned over to my office various books and records of local nursing homes that were of great value to us.

I would like nothing more than to tell you today that since that time the forces of evil in the health care industry in my State and elsewhere had been vanquished; that order and justice had returned to the benefit of our old people and that we can all go home and live happily ever after.

## OUTCOME UNCERTAIN

Unfortunately, the sad truth is that the outcome of the battle remains very much in question, both in New York State and nationwide. I fear that there still exists a climate in this country where the exploitation of old people is a respectable and risk-free profession, and that our Nation is in danger of losing far more than Federal and State tax dollars—it is in danger of losing a cornerstone of the American way of life itself.

I am afraid that fraud in New York State exists on a massive and pervasive scale. We are now in the process of completing an audit of literally the entire proprietary nursing home industry in the State. We expect that audit to identify about $70 million in fraudulent nursing home costs.

We have concluded that the false submission of direct costs is but one aspect of provider fraud. We have uncovered phony construction costs and concealed ownership of related companies in webs so entangled that even the principal owners cannot set them straight.

But the all-time favorite kind of fraud is for health care figures to write off personal expenditures as costs of doing business, thereby obtaining reimbursement with taxpayers' dollars.

The following is a laundry list of some of the more egregious examples of the free-wheeling personal expenditures we have discovered so far and which has been underwritten by health care funds:

Personal maids and servants; private residential landscaping; travel expenses; food items at levels you would not believe; luggage; works of art, including paintings by Matisse and Renoir in one instance; vast quantities of liquor; interior decorating; dental and medical care; pharmaceuticals; heating fuel for private residences; charitable contributions; political contributions; profits to investors; private automobile expenses; private pension plans; vacation expenses; real estate taxes; mink coats; personal investment stock; renovations to private homes; entertainment; legal fees; theater tickets; tickets for sporting events; high fidelity stereo equipment, and so on.

Only 2 days ago grand juries in five New York counties, empaneled by my office, returned indictments against 26 nursing home owners, operators, employees, and suppliers. This is by no means the end of the situation. The investigation is actively continuing. As a result of the investigations conducted so far in this field, there is reason to suspect that as many as half of the 125 nursing homes in the New York area could be involved in one form or another of the various kickback schemes.

We have uncovered evidence of kickbacks of between 5 percent and 33 percent of the volume of business from suppliers of various goods and services to health care facilities.

## 26 Indicted

On Monday we indicted 13 nursing home officials for willful violation of health laws and conspiracy; 11 suppliers for perjury; and 2 meat company owners for bribing a witness, criminal solicitation, and conspiracy.

These indictments climaxed an investigation which began in May of 1975 when a New Jersey nursing home operator who was then engaged in opening a new nursing home in Emerson, N.J., agreed to cooperate with our office.

Working from a list of major nursing home suppliers, those who dealt with four or more nursing homes or did business with nursing homes in New York in excess of $25,000 or more annually, the nursing home operator invited the top 30 suppliers to this office to discuss business proposals. All of the conversations were covertly recorded on tape.

The kickback schemes fell roughly into three categories:

One: Inflated billing—in which the supplier would give the nursing home official a bill for an amount exceeding the amount actually owed. The nursing home operator would then submit the bill to medicaid and be reimbursed for the inflated amount.

Two: Phony billing—in which the supplier would give the nursing home official a receipt for deliveries never made. The nursing home official would then submit the bogus receipt for medicaid reimbursement. We are investigating medicaid reimbursements.

Three: Another item would be the "phony item," in which the supplier would give the nursing home official a receipt for a bill where there were legitimate items as well as phony added into the bill.

A final scheme that we uncovered during the course of the investigation was one used by a certain linen company where front money would be given to a nursing home which was starting up and a contract for services would be given in return. And each year the linen company supplier would inflate the cost of the linen supplies by a percentage to include the kickback. Again, we are investigating whether or not, as a result, medicaid was tricked into giving illegal reimbursements.

Several of the suppliers, when confronted with the tape recordings, agreed to cooperate in the investigation. Wearing body microphones, they then visited nursing home officials with whom they had pre-

viously established kickback arrangements. These tape recordings picked up conversations in which kickbacks were explicitly discussed and money handed over. The average kickback discussed was $500 per month per supplier per home.

To put it plainly, Mr. Chairman, we have found ourselves steeped in the investigation of a massive, institutionalized, ongoing white-collar criminal conspiracy throughout the length and breadth of New York State. For a prosecutor, this is a murky area; an area with few established statistics detailing its exact nature and extent; an area that has, until very recently, been swept under the corporate, governmental, and political rugs of this Nation.

It seems to me from the nature of the beast that no State agency, no matter how well equipped, trained, and motivated, can "go it alone."

## Federal Superstructure Needed

What is really required is a Federal superstructure in which the States can operate in those instances where they demonstrate the resources, ability, and willingness to do so. Failing such circumstances, there needs to be a comprehensive and dedicated Federal effort.

Mr. Chairman and members of the committee, I have met with representatives of more than a dozen States over the last 24 months while my investigation has been ongoing. In almost every instance, when followup calls were made to the various representatives, the same complaint was made. There is no financial commitment to this kind of investigation. They have no resources.

Currently, Mr. Chairman, we have a situation that does not really make sense. The Federal Government each year gives out literally billions of dollars in taxpayers' money to fuel the engines of medicaid and medicare. This is done within a framework of laws, rules, and regulations which, for the most part, are reasonable and workable. But from an enforcement point of view, Mr. Chairman, there is very little now being done either by the Federal or State Government in proportion to the magnitude of the problem.

At this point, Mr. Chairman, I want to make it clear that my purpose here is not to blame anyone for this state of affairs or charge negligence or anything else. The reasons for this state of affairs are many and varied, and I am confident that it is not through willful neglect that we find ourselves in our current predicament.

Nevertheless, we are where we are, and the situation, from the law enforcement point of view, is desperate. Still, rather than weeping and wailing, I would rather treat it as an opportunity to start from scratch and fashion an effective nationwide enforcement structure that can turn the currently crowded profession of stealing Federal and State health care moneys from one that is respectable and risk-free to a perilous and despicable pursuit.

By way of analogy, Mr. Chairman, I would point to the Internal Revenue Service which, by dedication, a high standard of professionalism and great vigilance has made the evasion of income taxes in this country into a most hazardous occupation. It seems to me that with the growing amounts of moneys being expended in pursuit of health care schemes in this country each year we can do no less.

Established State prosecutors such as district attorneys are currently so overworked, understaffed, and underfinanced that it would be wildly unrealistic to expect that they can cope with health care fraud. As I have explained, the schemes in operation are so complex, wide-ranging, and sophisticated that they require a special staff of highly trained professionals working full time to even provide a ghost of a chance of coping with them.

## "Attorneys . . . Stretched Very Thin"

The U.S. attorneys currently are in much the same position. Most, if not all of them, are currently stretched to the limit of their resources to deal with ongoing criminal and civil problems and lack the resources to take on pervasive and complex fraud schemes such as those extant in the health care field.

Normally a U.S. attorney relies on the various Federal law enforcement agencies to develop criminal cases to be referred to him for consideration. If he believes a prosecution is warranted on the basis of evidence handed to him, then he acts if no action is taken. The agencies that provide him with these cases are rather highly specialized in areas other than health care and, as a result, this problem has had a tendency in the past to fall through the cracks of law enforcement jurisdiction.

If one considers the nature of health care fraud as I have discussed here today, I think it is fair to say that this reflects no discredit on these agencies. Clearly, to combat health care fraud on an ongoing and effective basis, a special and separate investigative and prosecutorial framework is necessary; and I see no alternative but that it be Federal.

This is not to say that I don't believe the States have a role to play and an important one. I think the Federal Government could develop a framework, perhaps along the lines of one that I will suggest to you in a moment, and then integrate those States into it that are willing and able to do so.

The Federal authorities could create a set of standards against which to measure a State application to participate. States meeting those standards could become eligible for Federal funds. I would suggest that, initially, a qualified State agency who had the commitment to this kind of investigation receive 100 percent funding from the Federal Government for a period of 3 years, then following that, phasing down to 50 percent.

This, Mr. Chairman and members of the committee, would be a powerful incentive to the States to establish an ongoing and effective agency to police the expenditure of health care dollars and would, in the long run, lessen the Federal burden by the establishment of Federal-State partnerships.

Even so, the number of States that would participate in such a scheme would, of course, likely be limited. For the rest I see no alternative to Federal intervention to keep the health care entrepreneurs honest and prevent a recurrence of the present chaotic situation, if indeed we can succeed in cleaning it up to some degree.

To do this, I would suggest the establishment of a special bureau or office within the Department of Justice dedicated entirely to health care fraud. This bureau would have to be staffed with the same types of professionals—auditors, investigators, and attorneys—all schooled in the mysteries of the delivery of health care services, that we have developed in New York State, operating under the same strike-force type of philosophy without which indictments and convictions in this field would, in my opinion, be next to impossible to obtain.

### Additional Assistants Suggested

In addition, I would suggest that each of the 90 U.S. district attorneys be provided with an assistant, in addition to the complement he is now allowed, who would work full time in the health care fraud area with the cooperation of the bureau I mentioned in operating out of Washington.

The personnel of this Washington bureau could be loaned on an as-needed basis to the various U.S. attorneys. In those States with agencies of their own that received Federal certification, the State agencies and the U.S. attorneys could work in tandem both with each other and with the Washington bureau.

In my view this, or something like it, is clearly what is needed. Many of the targets of our investigations operate across State lines and, of course, as a State prosecutor, I am unable to follow.

In addition, I have found that the trail of fraud and thievery leads to medicaid mills and hospitals—indeed, with the whole provider service—in New York City. However, I am powerless to follow that trail because of lack of money, personnel, and jurisdiction. I have my hands full right now just trying to cope with the problems we have.

Mr. Chairman, the conspiracies to defraud the public in the health care field are enormous in scope and complexity and pervasive through every area of our Nation. To cope with them effectively will require a massive effort on the part of the Federal Government. I see no other way.

Mr. Chairman, New York responded to a scandal in 1974 with the appointment of my office and, more important, the funding necessary so we could do a job. But how many times in the past have we seen a great hue and cry in the media about some pressing social evil uncovered in our midst? Each time, press exposés are followed by pious pronouncements from those in positions of leadership. Promises are made, commissions and special prosecutors appointed, lengthy and erudite reports are issued, a few indictments handed down, and occasionally a prison sentence is imposed and served.

Then what happens? Usually, after a brief period of quiet, it becomes business again as usual for the bad guys, and another 20 years go by before another newspaper explosion—and the process is repeated again.

Those who stand up and announce earnestly in some public forum that this time it has to be different—that this time we have to take steps to make sure it doesn't happen again—those people are con-

signed by a jaded and scandal-weary press and public to the categories of amiable crackpot, office seeker, or worse.

Well, Mr. Chairman, this time it does have to be different. This time we do have to clean it up. And if we can't prevent it from happening again we must prevent it, at the very least, from becoming respectable and risk-free to deal with old people like a commodity in the futures market in Chicago.

It is simply too important and too central to our existence as a Nation to permit this matter to be treated like just another scandal.

To prevent the merchandising of our elderly from becoming risk-free will take more than the creation of special State prosecutors and the writing of some inspired editorials in our leading newspapers.

It will require a comprehensive, well financed, and organized Federal preserve dedicated to eradication of health care theivery. It will require a pronounced change of attitude on the part of the public in general—and the judiciary, in particular.

The crimes against our old people, despite their frequently tragic overtones where human life is concerned, primarily fall under the heading of white-collar crime as far as the law is concerned.

## Sentencing: A Difficult Issue

The moment you attempt to deal with white-collar crime you must also deal with an issue few lawyers and almost no prosecutors want to touch—sentencing, which is the single most difficult thing a judge has to do.

The bitter truth is that there is simply little precedent and less enthusiasm in America about sending white-collar criminals to jail. The reasons are many and complex and I will not dwell on them here.

But if we are to prevent the criminal exploitation of old people from becoming a respectable profession, then our Federal Government has got to start taking an interest and playing an actual role, and judges have got to start sending people convicted of these crimes to jail. It is as simple as that.

This time the men and women who have stolen our tax dollars and preyed upon our parents must be apprehended and prosecuted, and those found guilty must be sent to prison. A weary and cynical public must be shown beyond doubt that such artful crimes are neither respectable nor risk-free.

I believe the people of this Nation are hungering mightily for justice in these matters and to see the white-collar criminals—who loot their treasuries and mock their laws and institutions—put in jail where they belong.

The price for failure can be high, Mr. Chairman—a precious segment of our democracy itself. For, as one of the great parliamentarians and champions of democracy, Edmund Burke, once observed: "All that is necessary for the forces of evil to triumph in the world is for good men to do nothing."

Thank you.

[The prepared statement of Mr. Hynes follows:]

## PREPARED STATEMENT OF CHARLES J. HYNES

Mr. Chairman, members of the committee, my name is Charles J. Hynes. I am a deputy attorney general of the State of New York in charge of the office of the special State prosecutor for nursing homes, health and social services. I would like to begin by telling you how much I appreciate this opportunity to appear before you this morning. Your committee has been most helpful and cooperative to my office in the past and we are much indebted to you for your assistance and encouragement in the execution of the difficult task that faces us both.

When last we met this committee had just finished holding hearings in New York City and had turned over to my office various books and records of local nursing homes that were of great value to us.

I would like nothing more than to tell you today that since that time the forces of evil in the health care industry in my State and elsewhere had been vanquished, that order and justice had returned to the benefit of our old people and that we can all go home and live happily ever after.

Unfortunately the sad truth is that the outcome of the battle remains very much in question, both in New York State and nationwide. I fear that there still exists a climate in this country where the exploitation of old people is a respectable and risk-free profession, and that our Nation is in danger of losing far more than Federal and State tax dollars—it is in danger of losing a cornerstone of the American way of life itself.

I am proud to say that the State of New York has made a major commitment to reverse this tide, not only with the establishment of an office specially mandated to investigate fraud and abuse in the nursing home industry, but in providing the necessary funding to do the job. From the outset, Governor Carey has insisted that the resources made available to me mirror the broad scope of the problem. As a result, we are now the largest statewide office in the country dedicated to the investigation of white-collar crime.

As of today, I have a staff of more than 400 people, including some 300 professionals—attorneys, auditors, and investigators—working closely together out of regional offices in New York City, Long Island, Syracuse, Rochester, Westchester, Buffalo, and Albany. Our investigation to date has resulted in the indictment of 76 persons, and the conviction, thus far, of 20 of them.

Our efforts to date, while far from complete, have brought about a number of accomplishments. Together with the substantial assistance of the New York State Department of Health:

—We have brought about improvements in overall care for those in nursing homes.

—We have achieved the identification and return of many thousands of dollars stolen from the State over a 5-year period—and not always through criminal proceedings, but frequently by civil action, as well.

—We have addressed ourselves to the task of putting in place an ongoing mechanism that, once our task is completed, will effectively serve to identify, retard, and eliminate fraud in the medicaid-sponsored industry and to eliminate the potential for fraud in the future.

Before expanding on medicaid fraud, the persistent problem which brings me here today, I thought it would be helpful to give you a brief description of some of the investigative areas my office has undertaken thus far.

The first is patient abuse. This extremely sensitive area poses enormous problems for a prosecutor. Quite obviously we are obliged to prove crime beyond reasonable doubt. Although an incident of abuse may appear on the surface to be outrageous, the strict burden of proof required in a court of law necessarily imposes severe limitations on the ability to secure convictions. Secondly, witnesses—for a variety of reasons—are reluctant, and often unable, to testify, or to do so effectively. Nevertheless, we have succeeded in achieving a number of significant convictions arising out of the abuse of helpless patients in nursing homes.

### UNANNOUNCED VISITS INSTITUTED

In an attempt to improve the quality of care in nursing homes, we have instituted with the cooperation of the State department of health an ongoing series of unannounced, surprise visits to facilities throughout all seven regions of the State. Although these inspections have been successful in significantly upgrad-

ing standards of care, there continues to be a great deal of room for improvement.

A third area under investigation by our office is that of adult homes. We have only recently undertaken this new assignment, which involves the licensing and operation of some 530 such facilities in New York State. Eighty percent of these are proprietary facilities sheltering some 18,000 residents. Twenty-five percent of these residents have been discharged from mental hygiene institutions. Currently we are evaluating the scope of whatever fraud and other crime may exist in the adult home industry. If it appears that a full-scale investigation is needed, we will begin that work in the spring of 1977.

And then, there is the widespread and pervasive problem of medicaid fraud itself.

I am afraid that fraud in New York State exists on a massive and pervasive scale. We are now in the process of completing an audit of literally the entire proprietary nursing home industry in the State. We expect that audit to identify about $70 million in fraudulent nursing home costs.

We have concluded that the false submission of direct costs is but one aspect of provider fraud. We have uncovered phony construction costs and concealed ownership of related companies in webs so entangled that even the principal owners can't set them straight.

But the all-time favorite kind of fraud is for health care figures to write off personal expenditures as costs of doing business, thereby obtaining reimbursement with taxpayers' dollars.

The following is a laundry list of some of the more egregious examples of the free-wheeling personal expenditures we have discovered so far and which has been underwritten by health care funds: Personal maids and servants, private residential landscaping, travel expenses, food items at levels you would not believe, luggage, works of art including paintings by Matisse and Renoir in one instance, vast quantities of liquor, interior decorating, dental and medical care, pharmaceuticals, heating fuel for private residences, charitable contributions, political contributions, profits to investors, private automobile expenses, private pension plans, vacation expenses, real estate taxes, mink coats, personal investment stock, renovations to private homes, entertainment, legal fees, theatre tickets, tickets for sporting events, high fidelity stereo equipment, and secret personal profit.

Only two days ago grand juries in five New York counties, empaneled by my office, returned indictments against 26 nursing home owners, operators, employees, and suppliers. This is by no means the end of the situation. The investigation is actively continuing. As a result of the investigations conducted so far in this field there is reason to suspect that as many as half of the 125 nursing homes in the New York area could be involved in one form or another of the various kickback schemes.

We have uncovered evidence of kickbacks of between 5 percent and 33 percent of the volume of business from suppliers of various goods and services to health care facilities.

On Monday we indicted 13 nursing home officials for willful violation of health laws and conspiracy, 11 suppliers for perjury, and 2 meat company owners for bribing a witness, criminal solicitation, and conspiracy.

These indictments climaxed an investigation which began in May of 1975 when a New Jersey nursing home operator who was then engaged in opening a new nursing home in Emerson, N.J., agreed to cooperate with our office.

Working from a list of major nursing home suppliers (those who dealt with four or more nursing homes or did business with nursing homes in New York in excess of $25,000 or more annually), the nursing home operator invited the top 30 suppliers to his office to discuss business proposals. All of the conversations were covertly recorded on a tape.

The kickback schemes fell roughly into three categories:

(1) "Inflated billing," in which the supplier would give the nursing home official a bill for an amount exceeding the amount actually owed. The nursing home operator would then submit the bill to medicaid and be reimbursed for the inflated amount.

(2) "Phony billing," in which the supplier would give the nursing home official a receipt for deliveries never made. The nursing home official would then submit the bogus receipt for medicaid reimbursement.

(3) "Phony item," in which the supplier would give the nursing home official a receipt for deliveries which were made. However, the receipt would also include fictitious items not included in the delivery. The nursing home operator would then submit the bill for medicaid reimbursement.

Under each of these proposals, the nursing home official would write a check to the supplier. The supplier would then return, in cash, the phony or inflated amount which constituted the kickback.

In addition, a number of the indicted suppliers proposed a fourth technique: "Front money," in which the nursing home operator would receive substantial loans from suppliers in return for a long-term business contract. The loans would then be repaid by means of inflated bills and subsequent medicaid reimbursement throughout the time of the contract.

### Eleven Indicted for Perjury

When the same suppliers were summoned before grand juries months later, 11 denied under oath that they discussed or offered any of the illegal propositions mentioned above. They were subsequently indicted for perjury.

Several of the suppliers, when confronted with the tape recordings, agreed to cooperate in the investigation. Wearing body microphones, they then visited nursing home officials with whom they had previously established kickback arrangements. These tape recordings picked up conversations in which kickbacks were explicitly discussed and money handed over. The average kickback discussed was $500 per month per supplier.

To put it plainly Mr. Chairman, we have found ourselves steeped in the investigation of a massive, institutionalized, ongoing white-collar criminal conspiracy throughout the length and breadth of New York State. For a prosecutor this is a murky area—an area with few established statistics detailing its exact nature and extent; an area that has, until very recently, been swept under the corporate, governmental, and political rugs of this Nation.

My office is considered to be a new concept in the battle against such flourishing white-collar crime. Not only are we funded on a scale that enables us to address the scope of the problem—our budget this year is $6 million—but we are armed with broad and unique powers to carry out our investigations. For example, we are empowered by statute to issue nonjudicial, factfinding subpenas which are returnable at my office in proceedings which form the basis for civil actions and recommendations to the Governor.

The investigation of complex and sophisticated white-collar crime is a long and tedious operation. Generally, we begin by sending a team of auditors into a facility or by bringing the books of the nursing home into our office. Our auditors, using a variety of sophisticated techniques developed, tested, and refined from the inception of our office, make preliminary judgments as to the validity of the expense claims submitted by the facility to the State. This initial audit work generates leads which are handed over to the investigators who operate under the direction of an experienced prosecuting attorney assigned to the case. Underscoring this investigative effort throughout are the following considerations:

—Was there a false submission of patient-related expenditures?

—Was there a material misrepresentation of fact?

—Was it intentional?

Once we are reasonably certain that criminal activity was involved in the operations of a particular nursing home, the evidence is presented to a grand jury which must determine whether or not there is reasonable cause to believe that a crime has been committed, and who has committed it.

These crimes are "paper crimes," and the only "smoking gun" we are likely to find is a set of phony books and records.

Since the extent of white-collar crime is limited only by the ingenuity of the white-collar criminal, we have launched our investigative assault on several different fronts:

—My office and the State health department—the State agency responsible for monitoring and setting nursing home rates and standards—have entered into a memorandum of agreement designed to insure that our work dovetails with and complements the program and monitoring work of the department of health.

—We provide the State health department with technical assistance and up-to-date training.
—We have extended ourselves to providing information and expertise beyond New York State. I have encouraged—and continue to encourage—law enforcement agencies throughout the country to avail themselves of our knowledge, experience, and intelligence information—and they have done so. Florida, Michigan, Ohio, Colorado, and New Jersey are only some of the States we have worked with.
—We have developed standard procedures for referrals of criminal information leads, both from our office to other governmental agencies and to our office from those offices. For no arm of government has a right to think that it can achieve success in an arena of these dimensions without such regular candid exchanges.
—We have developed sophisticated computer programs to assist in investigations, and have assisted the New York State Bureau of the Budget in a cost analysis of both nursing homes and adult homes.
—In addition to these efforts, it is imperative that we initiate and support legislative recommendations which will help to eliminate the problems which infect the Medicaid program. We reach out to citizens in the communities to aid us in enacting remedial changes in the law. In fact, I plan to submit within the month my first package of such proposals.

"BEST LAWYERS WHITE-COLLAR CRIMINALS CAN BUY"

We have selected and trained a staff of capable lawyers who are, for the most part, former prosecutors. This cadre works closely with our special investigators—former police detectives, ex-FBI agents—and auditors. We conduct frequent in-house seminars. We have invited prominent members of the legal profession in and out of law enforcement who have lectured to the staff and kept them current on the latest developments in the law, strategy, and techniques—all this in the pursuit of a standard of excellence which is necessary to cross swords with the best lawyers that white-collar criminals can buy. The building blocks in this project are patience, aggressiveness, innovation, and raw talent.

Our office has recently put together a manual which lays out in detail a tested and proven design for the successful investigation of health care fraud and which we will make available on request. We stand ready to cooperate with any agency which seeks to tackle this problem for, Mr. Chairman, New York State has no monopoly on medicaid crimes. And we cannot go it alone.

In fact, it seems to me from the nature of the beast that no State agency, no matter how well equipped, trained, and motivated, can "go it alone."

What is really required is a Federal superstructure in which the States can operate in those instances where they demonstrate the resources, ability, and willingness to do so. Failing such circumstances, there needs to be a comprehensive and dedicated Federal effort.

Currently, Mr. Chairman, we have a situation that doesn't really make sense. The Federal Government each year gives out literally billions of dollars in taxpayers money to fuel the engines of medicaid and medicare. This is done within a framework of laws, rules, and regulations which, for the most part, are reasonable and workable. But from an enforcement point of view, Mr. Chairman, there is very little now being done either by the Federal or State Governments in proportion to the magnitude of the problem.

At this point, Mr. Chairman, I want to make it clear that my purpose here is not to blame anyone for this state of affairs or charge negligence or anything else. The reasons for this state of affairs are many and varied and I am confident that it is not through willful neglect that we find ourselves in our current predicament.

Nevertheless we are where we are and the situation, from the law enforcement point of view, is desperate. Still, rather than weeping and wailing I would rather treat it as an opportunity to start from scratch and fashion an effective nationwide enforcement structure that can turn the currently crowded profession of stealing Federal and State health care moneys from one that is respectable and risk-free to a perilous and despicable pursuit.

By way of analogy, Mr. Chairman, I would point to the Internal Revenue Service which, by dedication, a high standard of professionalism and great vigilance, has made the evasion of income taxes in this country into a most hazardous occupation. It seems to me that with the growing amounts of moneys being expended in pursuit of health care schemes in this country each year we can do no less.

Established State prosecutors such as district attorneys are currently so overworked, understaffed, and underfinanced that it would be wildly unrealistic to expect that they can cope with health care fraud. As I have explained the schemes in operation are so complex, wide ranging, and sophisticated that they require a special staff of highly trained professionals working full time to even provide the ghost of a chance of coping with them.

The U.S. attorneys currently are in much the same position. Most, if not all, of them are currently stretched to the limit of their resources to deal with on-going criminal and civil problems and lack the resources to take on pervasive and complex fraud schemes such as those extant in the health care field.

Normally a U.S. attorney relies on the various Federal law enforcement agencies to develop criminal cases to be referred to him for consideration. If he believes a prosecution is warranted on the basis of evidence handed to him, then he acts if no action is taken. The agencies that provide him with these cases are rather highly specialized in areas other than health care and, as a result, this problem has had a tendency in the past to fall through the cracks of law enforcement jurisdiction.

## Separate Framework Needed

If one considers the nature of health care fraud as I have discussed here today, I think it is fair to say that this reflects no discredit on these agencies. Clearly to combat health care fraud on an ongoing and effective basis, a special and separate investigative and prosecutorial framework is necessary; and I see no alternative but that it be Federal.

This is not to say that I don't believe the States have a role to play and an important one. I think the Federal Government could develop a framework, perhaps along the lines of one that I will suggest to you in a moment, and then integrate those States into it that are willing and able.

The Federal authorities could create a set of standards against which to measure a State application to participate. States meeting those standards could become eligible for Federal funds. I would suggest that, initially, a qualified State agency receive 100 percent funding from the Federal Government for a period of 3 years following which the Federal share would be phased down to 50 percent.

This would be a powerful incentive to the States to establish an ongoing and effective agency to police the expenditure of health care dollars and would, in the long run, lessen the Federal burden by the establishment of Federal-State partnerships.

Even so, the number of States that would participate in such a scheme would, of course, likely be limited. For the rest I see no alternative to Federal intervention to keep the health care entrepreneurs honest and prevent a recurrence of the present chaotic situation, if indeed we can succeed in cleaning it up to some degree.

To do this, I would suggest the establishment of a special bureau or office within the Department of Justice dedicated entirely to health care fraud. This bureau would have to be staffed with the same types of professionals—auditors, investigators, and attorneys—all schooled in the mysteries of the delivery of health care services that we have developed in New York State, operating under the same strike-force type of philosophy without which indictments and convictions in this field would, in my opinion, be next to impossible to obtain.

In addition, I would suggest that each of the 90 U.S. district attorneys be provided with an assistant, in addition to the complement he is now allowed, who would work full time in the health care fraud area with the cooperation of the bureau I mentioned operating out of Washington, D.C.

The personnel of this Washington bureau could be loaned on an as-needed basis to the various U.S. attorneys. In those States with agencies of their own that received Federal certification, the State agencies and the U.S. attorneys could work in tandem both with each other and with the Washington bureau.

In my view this, or something like it, is clearly what is needed. Many of the targets of our investigations operate across State lines and, of course, as a State prosecutor, I am unable to follow them once they leave New York.

In addition, I have found that the trail of fraud and thievery leads to medicaid mills and hospitals. However, I am powerless to follow that trail because of lack of money, personnel, and jurisdiction. I have my hands full right now just trying to cope with the problems in my own area.

Mr. Chairman, the conspiracies to defraud the public in the health care field are enormous in scope and complexity, and pervasive through every area of our Nation. To cope with them effectively will require a massive effort on the part of the Federal Government. I see no other way.

How many times in the past have we seen a great hue and cry in the media about some pressing social evil uncovered in our midst? Each time, press exposés are followed by pious pronouncements from those in positions of leadership. Promises are made, commissions and special prosecutors appointed, lengthy and erudite reports are issued, a few indictments handed down, and occasionally a prison sentence is imposed and served.

Then what happens? Usually, after a brief period of quiet, it becomes business again as usual for the bad guys, and another 20 years go by before another newspaper explosion—and the process is repeated again.

Those who stand up and announce earnestly in some public forum that this time it has to be different—that this time we have to take steps to make sure it doesn't happen again—those people are consigned by a jaded and scandal-weary press and public to the categories of amiable crackpot, office seeker, or worse.

## "This Time We Must Succeed"

Well, Mr. Chairman, this time it does have to be different. This time we do have to clean it up. And if we can't prevent it from happening again, we must prevent it, at the very least, from becoming respectable and risk-free to deal with old people like a commodity in the futures market in Chicago.

It is simply too important, too central to our existence as a nation, to permit this matter to be treated like just another scandal.

To prevent the merchandising of our elderly from becoming risk-free will take more than the creation of special State prosecutors and the writing of some inspired editorials in our leading newspapers.

It will require a comprehensive, well-financed, and organized Federal preserve dedicated to eradication of health care thievery. It will require a pronounced change of attitude on the part of the public in general—and the judiciary in particular.

The crimes against our old people, despite their frequently tragic overtones where human life is concerned, primarily fall under the heading of "white-collar crime" as far as the law is concerned.

The moment you attempt to deal with white-collar crime you must also deal with an issue few lawyers and almost no prosecutors want to touch—sentencing.

The bitter truth is that there is simply little precedent and less enthusiasm in America about sending white-collar criminals to jail. The reasons are many and complex and I will not dwell on them here.

But if we are to prevent the criminal exploitation of old people from becoming a respectable profession, then our Federal Government has got to start taking an interest and playing an actual role, and judges have got to start sending people convicted of these crimes to jail. It is as simple as that.

This time the men and women who have stolen our tax dollars and preyed upon our parents must be apprehended and prosecuted, and those found guilty must be sent to prison. A weary and cynical public must be shown beyond doubt that such awful crimes are neither respectable nor risk-free.

I believe the people of this Nation are hungering mightily for justice in these matters and to see the white-collar criminals—who loot their treasuries and mock their laws and institutions—put in jail where they belong.

The price for failure can be high—a precious segment of our Democracy itself. For, as one of the great parliamentarians and champions of democracy, Edmund Burke, once warned: "All that is necessary for the forces of evil to triumph in the world is for enough good men to do nothing."

Thank you.

Senator CHURCH. Thank you for your statement, Mr. Hynes. I remember reading not too long ago about the first doctor—or dentist, I do not recall—who had been actually sent to jail on a fraud charge connected with medicaid. It was so exceptional and so unique that it made the newspapers all acress the country.

How do you get judges to begin to understand that doctors and dentists and white-collar people should be as equally accountable as ordinary street criminals?

Mr. HYNES. Judicial attitudes.

Senator CHURCH. How do you affect the judicial attitudes so these people are given sentences comparable to the kind that are now pretty much reserved for the street criminal?

Mr. HYNES. Mr. Chairman, I think they have to understand the pervasiveness of the problem. I can only give you, by way of analogy, my previous experience. I was in charge of the rackets bureau of the district attorney's office in Brooklyn between 1970 and 1974. And as you well know, Mr. Chairman and members, police corruption was heralded as a pervasive situation during that period.

We had a special commission which investigated problems of police corruption. At that time, the prevailing judicial attitude—and a well-meaning one I might add—was that what other punishment could be given to a police officer than for him to lose his respectability, his badge, his pension, and all those things which go with becoming a police officer—all the pride and respect he gets in his community?

## PUNISHMENT: A KEY DETERRENT

It was our position and our direction to try to make it clear to the judges that we cannot have this kind of repetition of activity; that police corruption had become pervasive in New York City and the only deterrent was assurance of a speedy trial, conviction, and punishment. The punishment was the key.

In 1973, 24 police officers who were assigned to control gambling and corruption in New York City—more specifically, in Brooklyn—were indicted. Twenty-two of those were convicted after a 4-month trial, and each and every one of them received jail sentences of between 1½ and 3 years.

I am told from friends of mine in the police department today that one of the reasons that we have one of the highest levels of integrity in the history of that department today is the fear of punishment.

It seems to me the more it becomes clear to judges in New York, and maybe across this country—that the deterrent factor is every bit as important as rehabilitation.

Senator CHURCH. You mentioned in your testimony, Mr. Hynes, that you thought medical profiteering, kickbacks, and things of that kind might be as prevalent in the hospitals as they are in the nursing homes.

Mr. HYNES. That is a result of the 18-month investigation which we just concluded. Many of the people who have cooperated with us, offenders who had been previously involved in kickbacks, indicated—I state this very carefully, this is a continuing investigation—indi-

cated that the nursing home kickback scheme had no monopoly over the system; that it extended to other provider services, including hospitals.

Senator PERCY. Could I ask for clarification, Mr. Chairman?

You have pointed out that 80 percent of adult homes or nursing homes are proprietary?

Mr. HYNES. Yes.

Senator PERCY. Most of our hospitals are nonproprietary, nonprofit. Do you find any difference there at all? Is there an equal amount of fraud and kickback in the nonprofit hospitals?

Mr. HYNES. It depends on whether there is opportunity for this kind of fraud. In May of 1975 when this New Jersey operator agreed to cooperate with us—you are, of course, aware New Jersey was a flat-rate State as opposed to a cost-plus State like New York. We were not optimistic we could get this kind of activity rolling with the difference of payment.

But it was clear from the conversation we had from the various vendors that it mattered not whether it was cost-plus or flat rate, voluntary or proprietary. The same amount of moneys were available. The only difference, of course, was the initial one step further; in addition to the cash kickback was the opportunity to seek the repayment from medicaid of the inflated voucher.

Senator CHURCH. The amounts are staggering to me.

You testified in connection with the kickbacks in New York alone, that you would estimate the overpayment would run in the range of $70 million. Is that $70 million in a single year?

$70 MILLION OVER 5-YEAR PERIOD

Mr. HYNES. No, that is over a 5-year period. That is the statute of limitations we investigated.

Senator CHURCH. And that is in more than half of the New York nursing homes; I take it that would be in the New York City area?

Mr. HYNES. Yes.

Senator CHURCH. You have found evidence of the kickback practice ranging anywhere from 5- to 33⅓-percent overpayment?

Mr. HYNES. That is correct.

Senator CHURCH. In those cases, you said you were investigating to determine whether these overpayments which were billed in various fraudulent ways had, in fact, been reimbursed by medicaid or medicare. Do you mean by that, that your investigation is not yet sufficiently complete so you can testify that the reimbursements have been, in fact, taking place?

Mr. HYNES. There is just one step remaining, Senator. Of course, New York State reimbursement forms are backed up by vouchers for the various services. We are not aware of any situation where there were duplicate vouchers issued by a vendor which contained the amount of the kickback in one of the legitimate vouchers. So there is reasonable suspicion when the nursing home operator puts in his request for reimbursement that he submitted the phony voucher. The books and records of the various homes have been subpened.

We are now in another round of litigation, but we are confident these vouchers were used.

Senator CHURCH. It would be very surprising, indeed, if they had not filed for the full amount of the reimbursement.

Your testimony with regard to remedy—that is a key matter of interest to this committee. You say you think there must be a Federal remedy; that the States alone are unable to solve the problem because of its magnitude.

How did your agency get started?

Mr. HYNES. As a result of the massive scandal uncovered by the media, Governor Carey, who took office in January 1975, asked the attorney general to appoint a special prosecutor.

Myself and two other assistants began on the third floor of an old State building in New York. We received some additional funding from the State to set up. We were charged by the mandate of setting up a statewide investigation. We then received a budget of approximately $3.6 million. We spent $3.4 million of that in the first year.

We have offices in Albany, Syracuse, Rochester, Buffalo, New York City, Long Island, and the Westchester area. We have a current operating budget of $6 million. That would include the additional investigation which would be charged to adult homes—DCF's—domicile care facilities.

We received enormous commitments from New York State in terms of funding. One of the problems we have been confronted with—we have now spoken to nearly a dozen States and there is a common threat of the following:

FUNDING UNAVAILABLE

What we generally do is give a 1- or 2-day introductory explanation of what we are doing. When there is a followup by people on my staff, the consistent answer is that we do not have the funding and we cannot get the funding.

How is it that you excited enough interest in the legislature to get the funding? How is it? Scandal. The adult home part of our investigation is a step forward and it was because of the work of this committee.

We did not react this time. We initiated on the basis of information we received about problems in the adult-home industry. But apparently there is very little enthusiasm in most of the States I have dealt with to launch this kind of statewide effort.

Now it seems further that you can provide an incentive which would underwrite the cost of this kind of investigation, at least in the initial States. I picked 3 years because it will probably take that kind of time to have an investigation run smoothly and effectively.

Senator CHURCH. Well, in your case where you have been able to recoup $2,500 a day for each man-day of labor spent——

Mr. HYNES. I do not want to mislead you, Senator. That is identified. The recovery process is undeterminable. But for the figures, we have recouped in cash half a million dollars. We have tied up

the assets of two other nursing home operators to the extent of $3.6 million. I am very confident we will get that in the next couple of months.

But, in addition, we are in the process of identifying the overpayments. But the due process procedure, as it should be, is strictly along constitutional lines.

Senator CHURCH. But knowing what you do now and estimating what your recovery is likely to be, you are more than paying for yourself, are you not?

Mr. HYNES. Yes, no question about that. It requires the initial amount of money, whether it comes from the State or Federal Government, to launch this kind of investigation.

Senator CHURCH. At least 50 percent of the funds for medicaid comes from the State in New York, as is true for the State of Illinois, and a substantial part of the money from medicaid is contributed by each State.

In my own case—a less developed State like Idaho, I think, contributes a third of the amount but, nevertheless, a substantial part. You would think the State legislatures would have a reason to protect such large outlays of State money to make certain that it is not being siphoned away and that would demonstrate the success of your particular group—the contagion might spread.

### WOULD STATES ENFORCE ADEQUATELY?

But if we were to provide for Federal funding, say, for the first 3 years and point to success stories of the kind your own effort represents, do you think then with that kind of inducement the States themselves would set up appropriate enforcement facilities so that it would not be necessary to establish a new and permanent Federal agency or some agency for this purpose?

Mr. HYNES. I do not know, sir. That is why I suggest the alternative remedy.

Senator CHURCH. Do you think it would be worth experimenting to see if the States would respond sufficiently well so that we do not just add another layer to an already huge Federal bureaucracy, or do you think the issue is of such a magnitude and the experience you have had is such to suggest we ought to go ahead with legislation that would set up a permanent division within the Department of Justice devoted exclusively to this purpose and a separate U.S. deputy district attorney in each State to prosecute these cases?

Mr. HYNES. I honestly do not know. That is why I suggest the alternative. It seems to be not mutually exclusive.

I can tell you the representatives I have met with in more than a dozen States would be very happy with the form—that they get the kind of funding that is necessary to start an investigation.

Senator CHURCH. You stated in a speech you made last week—I think you delivered it in Dallas—that one of the chief accomplishments of your office to date has been to bring about an improvement in the overall quality of medical care afforded to those currently in nursing homes.

Mr. HYNES. Yes.

Senator CHURCH. In what ways has this care improved as a result of your work?

Mr. HYNES. We have had responses to allegations that there was a relatively poor level of care in the homes, practically on a statewide basis. We have, with the full cooperation of the New York State Department of Health, engaged in surprise, on-site, unannounced visits to nursing homes in every region of the State.

Since we are prosecutors, we are not permitted to go on the premises of a nursing home, nor should we, without the permission of the nursing home operator. The department of health has inspection capability. What they had to do was to enter the homes in those cases where we are not given consent to enter and make observations. They are trained by us to look for those things which would be necessary to prosecute.

I think the program has been successful because of the surprise nature of the operation. No one can be certain who will be coming from either our office or the State department of health in any period of time.

PROSECUTED ON NINE COUNTS

Out of one of those inspections, we prosecuted the owner of a home in Westchester. He was indicted for nine counts of violations of the public health law. They were all misdemeanors. He was convicted after a fairly extensive trial. He was fined as a result of that prosecution.

But more importantly, his home is closed up. I think the spotlight of publicity, the ongoing kind of investigation that we are conducting, has accrued to the benefit of the people in the home. We get this not only from health department inspections but community people who visit the homes regularly.

Senator CHURCH. Your unit, I take it, is the only one of its kind in the country today—is that correct?

Mr. HYNES. Yes.

Senator CHURCH. Is it authorized for any time period?

Mr. HYNES. No, its authorization depends very much on the commitment of Governor Carey. Based on my prior experience with the Governor, he has an enormous commitment to this investigation.

Senator CHURCH. Is there any particular reason why your jurisdiction should continue to be limited to nursing homes? What happens when your investigators uncover municipal fraud, let's say, in hospitals, in medicaid mills, or the like?

Mr. HYNES. We make a practice of turning over the information to prosecutors with jurisdiction. As to whether or not we should expand our jurisdiction, we intend shortly to bring the data that we have compiled over the last 23 months to the attention of the Governor and to the legislature for them to make a judgment as to how we should broaden the jurisdiction.

I might say in at least two instances where we had investigations, owners of nursing homes own hospitals, and we intend to go to the Governor and ask for at least broadened jurisdiction for that limited purpose. I do not anticipate any problem.

Senator CHURCH. What kind of opposition, if any, have you run into? Do you readily obtain the support of the local district attorneys in connection with your work?

Mr. HYNES. Yes, without question.

Senator CHURCH. Active support from the State agencies?

Mr. HYNES. Yes, sir, we are very happy with the cooperation we have received on all levels.

Senator CHURCH. How about the cooperation you have received from the Federal agencies—the Department of Health, Education, and Welfare?

Mr. HYNES. We have been working with people from the New York region of HEW. They have been very responsive to our needs and, in addition, we have had at least two joint prosecutions with two of the four U.S. attorneys in New York State: U.S. Attorney Fiske for the southern district of New York, and U.S. Attorney O'Carroll from the western district of New York.

Senator CHURCH. I was interested, when listening to your testimony, in your explanation of the ways that you are able to uncover these practices. I suppose this is a lawyer's question but, nevertheless, it concerns me because of other investigations I have dealt with: with the CIA and the FBI, the unlawful use of wiretaps and of bugging devices.

### "ENTRAPMENT" CHARGE PRECAUTIONS

As you have proceeded, have you encountered charges of entrapment—of unlawful use of electronic devices—anything of that kind? What can you tell me about how you proceeded in such a way as to make the evidence admissible in court and avoid countersuits?

Mr. HYNES. During this investigation, the one we just concluded, no court-ordered electronic surveillance was required. A well established Supreme Court case, the *White* case, covered this situation.

In terms of entrapment, we will proceed in any trial we have in this case and will establish that issue. We are very confident there was no entrapment. In each instance, the proposal was made by the person who ultimately was indicted or ultimately cooperated, because of a decision that the goods were on him. So we have had no problems. I do not anticipate a problem.

I guess the precise answer to your question is "Not yet," because this is really the first investigation that we have had—a prosecution we had in which the use of electronic surveillance was used.

Senator CHURCH. You are persuaded as a lawyer that your use of electronic devices was wholly within the law?

Mr. HYNES. There is no question about it. And it is necessary, too, Senator, because without that kind of corroboration, which is a prerequisite for any prosecution in New York State law, there would not be a prosecution.

Senator CHURCH. Senator Percy.

Senator PERCY. I will try to be very brief. I have a board meeting at 12 noon.

I would like for you to step out of your role of the law enforcement official and see whether you can philosophize for us for a moment on

why we have this situation, as you described on page 2, as the climate in the country where you say the exploitation of old people is a respectable and risk-free profession. It almost gets down to the point about the crime we have against old people in this country by youth.

"Sixty Minutes" had a marvelous program on the aged in the Soviet Union; the reverence the people have for the aging. They certainly have in Communist China. The Chinese have always had reverence for the aged.

Why is it in this society we have a condition where aged, particularly old poor, are often specific victims of exploiters as well as youth criminals?

Mr. HYNES. Senator, I have not met a defendant who has been convicted—20 have been convicted so far in our investigation—who really focused in on that precise problem. None of them believed they were doing evil to the old people. It was a question of dollars and cents.

The Federal and State Governments had thrown these massive amounts of money into the State. There was no enforcement. So it is difficult for me to step out of the enforcement area.

The fact of the matter is there was no enforcement. In New York State we had 60 auditors prior to 1975 to regulate the books and records of 2,400 facilities, including nursing homes, adult homes, health-related facilities, hospitals, and the like. And though there is substantial evidence that year after year they cried out for more auditors, year after year they were rejected and turned down.

## THE "INVISIBLE" CRIME

That is one of the peculiarities of white-collar crime. That is why I suppose what I am asking for is a public change in attitude. Everyone can relate to the fear of mugging or the rapist or the murderer. That is something you see. That is something that is vivid and frightens you.

What people do not see, it has been my experience in organized crime investigations, is the lost-tax drain. The tax-money drain affects people every day in equally terrible ways, but people do not focus in on that. Nor do the defendants in white-collar cases focus in on that. They do not believe it is a question of personalities with human beings. It is dollars and cents. It is that simple.

Senator PERCY. Health care is one of the biggest businesses in this country, and it is essentially conducted, so far as hospitals are concerned, on a nonprofit basis. But when you cite, as you did yesterday, that half of the 125 nursing homes are engaged in kickbacks and fraud, payoffs, and so forth, how does that compare to other businesses in the private sector?

You have white-collar crime there, but would you not say it is a very small percentage of the total business that is done, as against the 50-percent here?

Mr. HYNES. I do not know, Senator. The practice of rebates is not an uncommon one. It could be anyplace in this country. Of course, the crime is committed if there is no report of it on State or Federal income tax. And in here the difference between this kind of rebate is

that the State of New York—we believe the investigation will show—underwrote the rebates.

Senator PERCY. But in this case, what is good for General Motors is good for the country. Can you imagine what would happen to half of the transactions carried on by General Motors if those who are somehow engaged in their purchases received kickbacks? You know there is a very, very small percentage of this going on because they have very tight controls. They have procedures that have been worked out through a period of years.

My own business experience reveals occasionally you do have a problem, but it is a rare instance when you get a case like that. Generally, your internal auditing procedures are such that no one would dare do it. The chances of doing it and getting caught are simply too great.

Here you imply the crooks are rushing into this business. Why is it then that HEW—why is it that our health organizations and our governments cannot set up procedures ahead of time?

You are proposing, and rightfully so, that you receive an increase in your budget, but that would promote enforcement after the crime has already been committed. Can we put equal emphasis at the beginning of this process? In student loans alone, HEW revealed we have $1 billion worth of unpaid, overdue accounts in the student loans out of $8 billion. That is a pretty high proportion.

## TIGHT STANDARDS NEEDED INITIALLY

Any business would go broke if they had that percentage. They generally run around losses of 1, 2, or 3 percent. Wouldn't you say we really have to start at the beginning? When you set a program up, set it up in such a way that inducement for fraud, kickbacks, payoffs, and so forth, is miniscule because you set a very tight standard to begin with. Doesn't that lighten the load on law enforcement?

Mr. HYNES. I could not agree with you more.

Senator PERCY. You mentioned that in your undercover investigation in New Jersey, suppliers and vendors immediately contacted new nursing homes as soon as they opened for business to set up kickback arrangements. Is this a common practice then, in your judgment, in New Jersey and New York?

Mr. HYNES. At least in New York. We did not pursue it in New Jersey beyond the investigation.

Senator PERCY. You have indicated legislation would be desirable. What is the most urgent piece of legislation, in your judgment, that Congress should enact as early as we can in the 95th Congress?

Mr. HYNES. I was referring in that statement, Senator, to New York State legislation. One of the pieces of legislation I have asked the Governor's staff to work on to introduce in our next session is a very simple piece of legislation requiring vendor certification. You require a vendor to sign, under penalties of perjury, a confirmation that each item has been delivered to a nursing home.

In addition, in response to the other part of your question, we are looking at the possibility, which we do not believe is too compli-

cated, of setting up some kind of procedure within the State department of health in conjunction with our office to look into the standards of price lists throughout the State.

We believe it is a rather simple matter and subject to computerization to look at price lists over the State for the various goods and services given to nursing homes, and then have the computer capability of kicking back a voucher which is clearly beyond the scope of regular pricing.

Another part of legislation we are interested in getting is simply one directed to penalties. A nursing home operator, in one instance I think of, could be involved in kickbacks of more than $100,000 over a 2-year period, and the crime is a misdemeanor. The punishment for that misdemeanor is a year in prison.

Where a public official can take $5 for some activity in the State of New York, that is a felony. There does not seem to be equal justice in those kinds of situations despite the fact public officials—we demand from public officials higher ethics.

Senator CHURCH. Isn't that also true under Federal law that it is merely a misdemeanor?

Mr. HYNES. Yes.

Senator CHURCH. So far our efforts to convert it to a felony have not been consummated. We hope to do that next year.

Mr. HYNES. We are trying to draft legislation which would make it very much along the line of a private statute which we have for officials in New York.

Senator PERCY. I think that ought to be one of our high priorities.

Mr. Chairman, I have questions to put into the record and give Mr. Hynes a few remaining questions [1] so we can bring on Mr. Skinner.

I want to express my appreciation to you and our colleagues for being with us.

Senator CHURCH. I have just one final question. It is something that still puzzles me.

When a banker embezzles $300 from a bank and he is indicted for it, it is not uncommon for him to be sent to jail. Or if it is $1,000 or $5,000, jail sentences for embezzlers are not infrequent.

### EMBEZZLEMENT VERSUS MEDICAID FRAUD

Is the reason that judges are reluctant to impose jail sentences for medicaid fraud—in these cases much larger sums of money—the fact the money is stolen from the Government rather than from private banks or private businesses? Do judges feel stealing from private institutions is punishable by jail sentences, but stealing from the Government is such common practice one should be content to impose a fine and let it go at that?

Mr. HYNES. Senator, I have practiced in New York State, New York City, the better part of 14 years on both sides of the fence, as a defense lawyer and prosecutor. I cannot believe that for a moment. It is simply a matter of judicial attitudes. I firmly believe we have decent people on the New York bench to change this attitude.

---

[1] See p. 787.

In Erie County—Buffalo—we convicted a nursing home operator of extortion, whose common practice was to take the parents of the victims into a disgusting part of his complex which was literally a sewer, and indicate, because medicaid had such God-awful regulations, he could not afford to keep mom and dad in the decent part of the facility, but for $150 or $200 a month under the table, he would be glad to accommodate him. No one came to us until after the mother and father died.

Then he was prosecuted and convicted. He was given a sentence of 3 years on each of the counts to run consecutively. The judge in that case said, "I find no distinguishable difference from someone who mugs in the street and someone who would mug in a nursing home."

By the way, last week the appellate division unanimously affirmed that conviction and the day before yesterday a court of appeals judge, which is the highest court, declined a review in that case, and the defendant will begin serving that 10-year prison term on Friday.

I think the attitudes can change.

Senator CHURCH. Do you think more frequent prosecution in this field will have the effect of changing judicial attitudes? Is it that so few cases have been brought or so few prosecutions have been brought that accounts for the light sentences?

Mr. HYNES. The key is exposure, what your committee is doing, has been doing, it will have an impact; what the media has done will have an impact. It is a combination of things, Senator.

Senator CHURCH. Thank you very much.

Mr. HYNES. Thank you very much.

[Mr. Hynes' letter in response to Senator Percy's questions follows:]

STATE OF NEW YORK,
SPECIAL PROSECUTOR FOR NURSING HOMES,
HEALTH AND SOCIAL SERVICES,
*New York, N.Y., December 9, 1976.*

Hon. CHARLES H. PERCY,
*U.S. Senator,*
*Dirksen Senate Office Building,*
*Washington, D.C.*

DEAR SENATOR PERCY: Enclosed below is the additional information you requested following my testimony before the Special Committee on Aging of the U.S. Senate. I am pleased and gratified by your interest and I hope this information will assist you and the committee.

You addressed to me four specific questions:

(1) *How does your office coordinate its efforts with those of the New York Department of Health?*

To avoid duplication of effort, a memorandum of agreement was executed between our office and the State health department. The memorandum provides for mutual consultation before targeting audit work. Pursuant to that agreement our initial responsibility is to concentrate on investigation of all proprietary nursing homes in New York State. The State health department is responsible for the auditing of voluntary nursing homes and referring any cases of fraud to us. Our work dovetails with and complements the program of the State Health Department.

Also, pursuant to that agreement, we have spent considerable time in joint training sessions with the State health department. Our training was conducted by an auditor, investigator, and attorney, each emphasizing the experience of their particular discipline and how it was helpful to the health department auditors. The State health department sessions for our office's auditors were conducted by a rate setting supervisor and a field audit supervisor, again each giving the benefit of their expertise.

We have conducted a series of unannounced ongoing inspections with the State health department throughout all seven regions (New York City, Long Island, Syracuse, Rochester, Westchester, Albany, and Buffalo), of the State. We believe these joint inspections have contributed to the upgrading of standards of care in nursing homes and health related facilities.

Finally, we refer to the State health department for civil recovery of all our audit findings. We often work with the State health department in the recovery process. We also work with the department on legislative matters of joint interest.

(2) *To what extent have you worked with appropriate agencies in other states?*

We have worked with many agencies in other states. The Attorney General's office in Ohio, the State Attorney's Office in Dade County, Florida, the State Commission on Investigation in New Jersey and the Criminal Division of the United States Attorney's Office in Boston, Massachusetts are some prominent examples. Representatives from various law enforcement and monitoring agencies from the States of Michigan, Colorado, New Hampshire and Maryland have been to our office to learn about our investigation. My office is committed to providing law enforcement agencies outside New York State with the experience and expertise we have developed over the past two years in investigating this massive, on-going white collar criminal conspiracy.

As I mentioned in my recent testimony before the Senate Special Committee on Aging, many of the targets of our investigations have operated across State lines. As a State prosecutor, I am unable to follow them once they leave New York. Despite the aid and goodwill I have received from other jurisdictions, their cooperation is necessarily limited by their lack of available staff, particularly in State agencies.

(3) *How does the existence of kickbacks among some vendors affect competition (i.e., between independent suppliers who could provide the service but will not offer kickbacks)?*

There is no doubt that these schemes completely undermine normal business competition. No honest supplier, however efficient, can sell in a market where fraud against the government gives his competitor 25 percent to 35 percent cost advantage. We have numerous claims (admittedly self-serving) that these practices had to be engaged in to meet the competition. It is a Gresham's Law situation of dishonest practices driving out honest ones.

(4) *Could you estimate how much money we could save the Government and patients if we could eliminate the numerous kickback schemes?*

A full estimate is impossible. We are still actively investigating, so the extent of these schemes is uncertain. They impact on the reimbursement of each home differently, but in New York State, approximately $250 million of the annual cost of nursing home care are for vendor supplied services. Even if these schemes turn out to be largely limited to the New York City metropolitan area, (where some vendors were in 50 percent of the homes), the dollar volume they could be inflating is enormous. The normal kickback, as I described, is 25 percent to 35 percent.

However difficult it is to state a figure, there is no doubt of the harm they cause. The elderly suffer in the Medicaid kickback schemes among vendors and nursing homes because they receive something less than the full dollar amount of goods and services to which they are entitled. The taxpayers also suffer—as it is from their pockets that the kickbacks are reimbursed. And finally, though no less importantly—the honest vendors also suffer.

The problem is pervasive as it not only diminishes the income of those wishing to conduct their businesses with integrity, but the financial gains of those engaging in illegal schemes discourage the honest vendor and ultimately lead to a weakening of his resolve.

Thank you again for your interest and for making available to me the opportunity to assist you and the other committee members by sharing with you my experiences in dealing with medicaid fraud.

Very truly yours,

CHARLES J. HYNES.

Senator CHURCH. Our next witness is Mr. Samuel Skinner, U.S. attorney, Northern District of Illinois.

## STATEMENT OF SAMUEL K. SKINNER, U.S. ATTORNEY, NORTHERN DISTRICT OF ILLINOIS

Mr. SKINNER. Mr. Chairman, Senator Percy, although I am here alone and I have submitted my prepared remarks [1] to the committee I would like to just mention a couple people who should be here with me because they have been putting forth the efforts, including helping me with that report as late as last night. They are busy taking pleas today in nursing home cases. I think it is best we get more convictions and sentences. Bill Elybury, Glynna Freeman, Tom Johnson, and a number of other people in my office have been working very hard.

I am going to depart a bit from my prepared remarks because of the time and because I think what I said in there would be repetitious of what has already been said.

I have been a prosecutor for 8 years; almost 9. Before that, I had been in business working for the IBM Corp. in computers and systems. So in my remarks today, I think I have tried to add a little bit of my experience in both these fields as I go forward.

I have been a U.S. attorney since June 30, 1975. When I first became a U.S. attorney, having served in the office 7 years, it became quite apparent to me that fraud in Federal social programs was increasing at a very alarming rate.

I was interested to hear Senator Percy comment about the student-loan program. Medicaid and medicare are a major problem in my district, but VA-loan programs, SBA programs, FHA housing programs, food stamp programs are of equal importance and have equal problems.

### FIRST FRAUD UNIT IN NATION

I set up and have still in existence the first governmental fraud unit in the Nation to address these problems. It started with four lawyers. It now has 10. These are not new resources, Senator Church. They are resources I have allocated for my existing staff.

The Congress has not seen fit to increase the budget too much for U.S. attorneys, and they are in dire need of additional resources. But we felt that it was a problem which had to be dealt with, so we reallocated and just did not prosecute some cases of a minor nature so we can address this problem.

We empaneled a special grand jury under the act of 1968 and 1970 that Congress gave us. It is for 18 months and meets three times a week, all day, addressing these problems. About 50 percent of their time is spent on medicaid problems.

We use immunity and plea bargaining very extensively. I would like to at least make this comment for the record because, as you are well aware, there are efforts in the Senate and House to cut back substantially on the Federal grand jury bill and the rights and effectiveness of Federal grand juries. If they do that, it will have a direct effect on our ability to perform in areas such as this.

We would not have been able to receive the convictions, the fines, the jail sentences across the board. We would not have been able to make the cases through use of the grand jury, through use of immu-

[1] See p. 792.

nity, through use whenever necessary, of court-ordered wire taps, consensual monitoring, pursuant to the law. Our overreaction to Watergate, I hope, will not become a major problem for prosecutors who have a very difficult job to do.

We have used statutes that exist on the books. We have very few laws that directly deal with this problem. We have used existing criminal statutes. We have 1396(h), the kickback statute, and did receive our first convictions.

We have also used a statute that was designed primarily for corrupt organization and organization activity called RICO, which allows us to not only file criminal charges of a felony nature where there are repeated activities of illegal kickbacks in nursing homes, it also allows us to criminally forfeit to the Federal Government the interest in the nursing homes, the clinics, the proprietary interests, subject, of course, to liens.

We find this to be a most effective deterrent against others. Last week we received evidence of $50,000 in kickbacks between nursing homes and druggists that we were able to prove. We were able to obtain jail sentences of anywhere from 60 to 90 days on a plea of guilty, plus fines of $900,000 from these nursing homes—without any evidence, that we were able to develop, of the Government actually being defrauded, because in Illinois the bills are submitted directly to the State by the pharmacist.

## Kickbacks May Affect Quality of Care

I am not so sure, however, that in generating the kickbacks the pharmacist might not have to take steps that would decrease the inherent quality of care. We just were unable to prove it.

I think that demonstrates the importance in a strong deterrent in these crimes. These people are removed from the programs. They control about a third of the nursing home industry in northern Illinois. So we have gotten some good results. We found the same experiences in nursing homes that Special Prosecutor Hynes found in kickbacks on a regular routine basis.[1]

Senator Moss's report of the subcommittee is one of the first things I read back in 1975. The information in that report was 2 and 3 years old. It was almost like a book of how kickbacks operated in Illinois. His light and the beacon this committee set out was not seen for some time. I am glad it has been seen now, because that subcommittee was right on the money as to what was going on. You will recall that was in California and other States as well.

We have also seen activities in what are known as the medicaid mills. A number of people have been indicted. There are all kinds of allegations that are now pending before district court. The indictment we have with one of the biggest medicaid mills in Illinois, 26 organizations in one conglomerate. We found everything, from the drawing of excess blood so the samples can be sent several places for several analyses and then billed to the State.

We found people were seeing every station and every doctor within the clinic, even though they did not need to see them. We found a

[1] See "Nursing Home Care in the United States: Failure in Public Policy, Supporting Paper No. 2, Drugs in Nursing Homes: Misuse, High Costs, and Kickbacks," Subcommittee on Long-Term Care, Senate Special Committee on Aging, issued January 1975.

number of labs were doing tests on a number of occasions but with the same samples.

We found radiologists were examining the same X-rays four and five times and billing the State. The fraud in medicaid mills in the clinics, in the northern part of our State is, in my opinion, greater than the fraud that existed in the nursing homes. It directly relates to fraudulent billing and fraudulently obtained Federal funds.

We also have other investigations underway in optical services. We found families, entire families, received four and five pairs of glasses in a year. I might add, a low-caliber glass at that.

We found dental situations of overbilling under dental care. They are the most difficult cases to develop because you have to have a dentist actually look at the patient to see if the work was done. X-rays are taken at several different times and they are billed for the same analysis as the one X-ray.

## "Lists Sold to Highest Bidder"

Overbilling; sale of Medicaid numbers. It is interesting to see, once a list of medicaid numbers is developed by a State, these lists are actually sold in the State of Illinois to the highest bidder. They use those numbers, without the medicaid patient even knowing it, to submit bills to the State.

We also found additional problems in the area of factors because of the delay in payments, the need of cashflow by the clinics and doctors, they go to factors who then inflate the bills before they forward them to the State for payment.

These are all problems that exist in the medicaid program. I believe they exist not only in New York, Chicago, but in other major cities throughout the Nation.

I am going to, for a minute, discuss why I think this happened, because I think as you discuss national health insurance in this next session of Congress it would be suicidal to go forward in a national health insurance program when we have not demonstrated to the American taxpayer we can handle the program we have already implemented.

No prior plan, no test marketing, no trying out of a program with regulations before we announce it on a nationwide scale. No corporation worth its salt in America would market a product like medicaid without testing it first. No standards which could apply on a nationwide level.

Everyone should have the same standards they can operate under. No auditing function, no oversight by Congress, no audit of any substance by the Bureau of Health Insurance or HEW and no mandating by Congress upon the States of an audit function, yet they begin paying bills.

We have in the State of Illinois one auditor, a total of five or six Midwestern region States in the Midwestern region of HEW are responsible for several billion dollars worth of HEW programs.

We had one auditor for Illinois until recently. They cannot do the job. It is just beyond imagination that you can ask anyone to do that.

The State does not have the facilities as well. They begin overnight to start spending the money with no existing program to implement or administer the program.

Finally, there is no gradual phase-in. They should gradually phase in these programs and grow with them so we can handle these programs. Overnight we started spending in my State, almost a billion dollars. Then when the program is in existence, we have virtually no audit function at all, no audit function from HEW's viewpoint.

Fortunately the Senate, in my opinion, has done more, and your committee and the subcommittee has done more to audit these programs and bring them to the public's attention than anyone else within any of the branches of government. It is unfortunate it has taken so long for the message to get across. This is imperative if these programs are going to be implemented, and they are going to be successful.

"EASY TO DEFRAUD THE GOVERNMENT"

We have no disclosure or qualification standards for providers. I have individuals who are now in the health care industry in Illinois and have been the subject of convictions recently, who, several years ago, were not only not in the health care business but had no positions of responsibility in the community at all. They saw that it was easy to defraud the Government and they got on board. Now they are making several hundred thousand dollars a year. There is no disclosure of financial interest. There is no true demonstration of who owns these various organizations.

In many cases they are sweetheart arrangements with the same ownership. We have no disclosure. I think that is imperative.

I also think we have got to address the problem at the congressional level about prosecution. And at the Federal level it is a major job. The resources are limited. There are a number of other problems that have to be dealt with. Task forces do exist in the area of FHA and HUD housing. Task forces do exist in the area of narcotics. Congress specifically appropriated funds, as you recall, for a program to deal with the drug problem. I think it is important, as Congress goes into its next session, that they give consideration to the allocation of resources or at least some demonstration of desire by Congress that a certain portion of any new resources be dedicated to this area of Federal social program fraud, especially in medicaid.

[The prepared statement of Mr. Skinner follows:]

PREPARED STATEMENT OF SAMUEL K. SKINNER

One measure of a free and democratic society is the nature and breadth of governmental services afforded its citizens. Judged by that standard, the panoply of Federal agencies which provide jobs, housing, health care, and social services in this country stands as a tribute to our Nation's commitment to an ever improving quality of life for all.

To keep pace with that commitment, financial resources of staggering proportions have been and will continue to be applied. For instance, the Department of Health, Education, and Welfare spends over $2 billion a year on over 150 programs in Cook County alone, a substantial portion of which is allocated to the medicaid program.

Regretfully, noble motivations and lofty goals do not automatically translate into meaningful and successful social programs. On the contrary, the 1970's

have witnessed the greatest ripoff in history as literally millions of dollars in hard earned and sorely needed tax dollars have been mismanaged, squandered, wasted and stolen from federally funded health care programs. As a result, Federal health care programs have become a mockery and simply do not provide the quantity and quality of medical services which the poor, the sick, the disabled, and the old, both need and deserve, and which Congress intended to provide. This national disgrace is the byproduct of two basic conditions: (1) health care programs are typically conceived, initiated and continued without regard to adequate internal and external controls, and (2) corrupt profiteers are at the ready, seeking opportunities to line their pockets at public expense.

The obvious need not be belabored—our citizens are entitled to better medical treatment and a more effective utilization of their tax dollars.

I wish to turn now to the experience of the Northern District of Illinois in the identification of, and response to, such problems on a district wide basis. In July of 1975, I stripped other units in my office of four of my most experienced Assistant U.S. attorneys to form the Nation's first Governmental Fraud Unit. This unit was established as the first phase of an effort to combat what I then believed to be a major fraud problem in the Federal and federally funded social welfare agencies, including medicare-medicaid fraud. At our request, the chief judge of the district impaneled an 18 month special grand jury to hear nothing but such cases. We began this project prepared to use the full array of traditional criminal statutes including bribery, mail fraud, wire fraud, false statements, conspiracy and interstate travel in aid of racketeering as well as civil injunctions and recoveries and (for the first time in this District) the RICO provisions of title 18. At present, the grand jury is meeting as often as three times a week, major indictments and convictions have been obtained and over 20 separate areas are under investigation. I now have 10 highly experienced assistant U.S. attorneys working full time on Governmental Fraud and the problem demands more. What appeared to be only a "major" problem 16 months ago is now more accurately seen as a mother-lode of fraud and corruption within medicaid and medicare programs.

In order to illustrate the nature and extent of this problem, allow me to turn for a moment to some individual areas of program abuse which have received a great deal of attention in my district. For obvious reasons, I shall not discuss particulars of cases currently under investigation or indictment. As to those cases, I draw no inferences or conclusions which are at odds with the presumption of innocence.

### THE NURSING HOME EXPERIENCE

Since February 1975, my office has been investigating pharmaceutical kickbacks paid to nursing homes and their principal owners for the privilege of obtaining the pharmaceutical business of medicare and medicaid patients at those homes. Two indictments (76 CR 96 and 76 CR 355) charging violations of RICO (18 U.S.C. 1961 et seq.) mail fraud (18 U.S.C. 1341) and medicaid "anti-kickback" misdemeanors (42 U.S.C. 1396(h)(b)(1)) were returned by the grand jury.

Within the last week, five nursing home owners have each entered pleas of guilty to 38 counts of mail fraud and 18 misdemeanor counts as charged in these indictments. (Two nursing home owners and four pharmacists are presently awaiting trial). Two pharmacists have also entered pleas to the misdemeanor kickback statute and are awaiting sentencing. The sentences imposed on the nursing home defendants were as follows:

(1) Three were sentenced to 90 days incarceration and one was sentenced to 60 days incarceration, to be followed by 21 months probation. One was sentenced to two years probation due to his age and heart disease.

(2) In addition to incarceration, four of the defendants were individually assessed $200,000 fines and one was fined $100,000, totalling $900,000 in fines.

These jail sentences and stiff fines, being the largest ever imposed on individuals in the northern district of Illinois in any type of case, were the result of plea negotiations with the U.S. attorney's office. The severity of the sentences and fines represents our commitment to end the rather common practice between pharmacists and nursing home owners of paying kickbacks in connection with obtaining public aid pharmaceutical business.

*I. The conduct discovered*

The conduct alleged in the two indictments disposed of consists of a pharmacy paying monthly kickbacks to the principal nursing home owners via a management company. The amount of the kickback was, at least initially, calculated on a set amount ($3.00 to $6.00) per public aid patient per month in a home serviced by the pharmacy. In other investigations the form of the kickback payment is made under the guise of rent, consulting fees, fraudulent credit memos, loans and cash. The result of such kickback schemes is that the pharmacy must provide the same services for less money, the State and Federal government receive no financial benefit, the quality of services to medicaid patients suffers actual or potential harm, and the nursing home or its owners receive benefits over and above what they are entitled to under payment schedules established by the State. Regardless of whether the kickback is offered or required, it interjects a criteria or qualification for the pharmacist's employment that has either nothing to do with, or is counterproductive to his quality of service to the patients. In choosing a pharmacy, the nursing home owner is inclined to be motivated by which pharmacy is most willing to pay, and can best afford, the kickback, rather than by which pharmacy can best service the home's patients. Due to the financial pressure placed on the pharmacy, the kickbacks may result in the following practices:

(1) Hiring of less expensive unlicensed pharmacists to fill prescriptions;

(2) Failure to comply with regulations imposing certain duties on the pharmacist, such as checking patient medication charts to detect administration of incompatible drugs, training nursing home personnel in procedures for dispensing pharmaceuticals, and acting as a consultant to the home;

(3) Requesting and obtaining prescriptions not necessary to the patient's case such as vitamins;

(4) Billing for prescriptions not delivered; and

(5) Substituting less expensive generic drugs for prescribed brand names, but billing the State for the more expensive brand name.

In other words, the payment of the kickback causes the pharmacist to at least cut corners on the quality of the services he performs, if not engage in false billing. The patient or the Government, if not both, suffer.

*II. Theories of law*

To our knowledge, these cases are the first enforcement of the medicaid "anti-kickback" misdemeanor. (42 U.S.C. 1396 (h)(b)(1)). Although the offense is a misdemeanor, imposing a maximum term of 1 year incarceration, it does provide for a $10.000 fine. This heavy fine penalty enabled the court to impose the substantial fines in the instant cases. The medicaid misdemeanor also serves as a basis for the mail fraud theory.

The defendants in these nursing home indictments were also charged with using the U.S. mails to defraud the Government of its right to have its medicaid programs conducted honestly, fairly, free from deceit, corruption, bribery and kickbacks. The existence of the medicaid misdemeanor demonstrates the congressional intent to outlaw kickbacks among providers of medicaid services. The nursing homes, by entering into an agreement with the Illinois Department of Public Aid, agree to follow the regulations and statutes which guide the medicaid program and agree to accept the money allotted by the State as full payment for that provider's care of the medicaid patient. Thus, by giving and receiving a kickback, the pharmacists and nursing home owners are violating the duty to abide by the medicaid regulations, a duty which they voluntarily assumed by entering into a provider agreement with the state.

Finally, the defendants were charged with violating RICO and conspiring to do so (18 U.S.C. 1962(c) and (d)). Section 1962(c) makes it illegal to utilize an enterprise (such as a nursing home, pharmacy or management company) which affects interstate commerce to perpetrate a "pattern of racketeering activity" which includes two or more mailings in furtherance of a scheme to defraud. In addition to a possible 20 year sentence and $25.000 fine, RICO (18 U.S.C. 1963) provides for the criminal forfeiture of the enterprise which was unlawfully used. In other words, the defendants could have suffered the forfeiture of their interest in the nursing homes or pharmacies, which were used in furtherance of the scheme to defraud the Federal Government. Although these counts were dismissed by the Government, the amount of fines imposed reflect the impact of this possible liability.

The defendants in the cases pending were charged with receipt of a total of approximately $50,000 in kickbacks. They were fined $900,000. The message: no matter how enticing, the kickback isn't worth it.

THE CLINIC/LABORATORY EXPERIENCE

Since its inception, the Governmental Fraud Unit has worked closely with Federal Bureau of Investigation agents and Postal Inspectors in an intensive investigation into allegations of fraud and corruption among Chicago area providers of medical services under the medicaid program. This investigation has revealed fraud, dishonesty, and corruption within the medicaid program, similar in virtually all respects, to the activities revealed in the Staff Report prepared for this subcommittee and submitted by a Letter of Transmittal dated August 30, 1976.

In September 1976, as a result of this on-going investigation, 10 indictments were returned by a Federal grand jury charging various medical providers, that is, doctors, pharmacists, clinical laboratories, and related officers, shareholders and employees with various violations of Federal law. In a 66 count indictment, 13 individuals, including a medical doctor, three registered pharmacists, and executives and employees of 28 medical clinics and pharmacies were charged with conspiracy to defraud the United States and with mail fraud. In addition, three defendants were also charged with conspiracy to solicit and receive kickbacks from clinical laboratories to which laboratory work was referred. Seven defendants were named in RICO counts which charged a pattern of racketeering activity designed to defraud the United States and the State of Illinois out of the fair and honest administration of the medicaid program. The 28 medical clinics and pharmacies identified in the indictment and which are subject to forfeiture to the United States are located in the more economically depressed areas of the city of Chicago where the great majority of medicaid recipients reside. These clinics and pharmacies are reported to have grossed in excess of $15 million during the last 3 fiscal years. The majority of the work handled by these clinics and pharmacies is Medicaid funded.

The indictment charges diverse and imaginative procedures utilized to generate excessive work and commensurate fees. Among the activities alleged in the indictment are:

(a) Generation of a certain monetary amount of laboratory analyses and tests regardless of or in the absence of medical necessity;

(b) Administering a certain number of electrocardiograms and X-rays regardless of or in the absence of medical necessity;

(c) Issuing a certain number of prescriptions regardless of or in the absence of medical necessity;

(d) Directing patients to all doctors and medical specialists regardless of or in the absence of medical necessity;

(e) Ordering additional and unnecessary laboratory tests and analyses without regard to or in the absence of medical necessity;

(f) Forcing and requiring medicaid patients to submit to blood specimens;

(g) Mislabelling excess specimens from some patients for submission to laboratories for analyses under names of other patients from whom specimens were not obtained;

(h) Substituting and submitting their own blood specimens, urine specimens and throat cultures for laboratory analyses as the specimens and cultures of Medicaid patients from whom such specimens and cultures had not been obtained.

(i) Prescribing and dispensing no less than a minimum number of drug and nondrug items to medicaid patients;

(j) Prescribing and dispensing drug and nondrug items for which the Medicaid program provided the greatest compensation;

(k) Prescribing large sizes and quantities of certain drug and nondrug items but dispensing only small sizes and quantities of such items and thereafter billing the State of Illinois for the prescribed but not dispensed sizes and quantities;

(l) Prescribing certain specific drug and nondrug items but dispensing different, less expensive drug and nondrug items, and thereafter billing the State of Illinois for the prescribed but not dispensed items;

(m) Executing prescriptions in blank, in whole or in part, to facilitate the dispensing of drug and nondrug items without regard to medical necessity; and

(n) Prescribing and dispensing drug and nondrug items without regard to medical necessity.

This indictment resulted from a year and a half of grand jury work and lawyers' time, as well as thousands of manhours of effort by agents of the FBI and extensive cooperation by the Illinois Department of Public Aid.

### OTHER INDENTIFIED AREAS OF ABUSE

The wide ranging investigations of the Governmental Fraud Unit have identified a variety of other areas of medicare-medicaid fraud. The extent to which corruption exists has not yet been accurately determined in these areas which include the following:

(1) Optical services: bills submitted to public aid a welfare family. Many optometrists who work for optical companies are paid by the hour and had not previously been advised of the dollar volume of bills submitted by their employer. This practice has only recently been corrected by the Illinois Department of Public Aid.

(2) Dental services: proving fraud and overbilling in this area is extremely difficult because aid recipients must be identified, located, and examined by a dentist and a comparison of their billings and actual dental work made.

(3) Radiological services: bills are submitted for numerous X-rays for a patient when in fact only one X-ray was taken.

(4) Overbilling by doctors, podiatrists and other health providers for services never rendered: the extent of this fraud cannot be accurately determined.

(5) The sale and distribution of medicaid numbers to health care providers: once a medicaid provider receives the medicaid numbers and names of public aid recipients, he is able to submit bills to the medicaid program without the knowledge of the medicaid recipient, without having met the recipient, and without having performed the services billed. Such information is readily available to various providers in that each time a medicaid recipient appears at a hospital, medical center, or other provider, he must provide this information. Once a provider has this information, he may exchange it with other providers or this information can be collected by various employees of hospitals, medical centers, etc. and sold to other providers. The extent of such abuse is unknown.

### ADDRESSING THE PROBLEM

I do not presume to hold the panacea to all the infirmities of our nation's health care programs. The experience of the U.S. Attorney's Office for the Northern District of Illinois in the area of Governmental Fraud, however, has led to the formulation of a number of suggestions:

*A. Program initiation*

Health care programs which are conceived and initiated with the most miniscule attention paid to program control and provider qualification are an open invitation to thieves and quick buck artists. The lesson to be learned is that problems are created, not solved, by blindly opening the cookie jar. Well planned and coordinated programs must be staffed by competent people and tested on a limited basis before full implementation. Internal and external audit controls as demanding as those utilized by private industry, as well as uniform nationwide regulations must be in place at a program's inception and must expand as the program expands. Providers should gain entry to a program only after demonstrating professional qualifications and disclosing their economic interest in all areas of health care.

*B. Program continuation*

Functioning programs must be subjected to audit and review on a continuing basis. Economic interest and ownership data for each provider should be resubmitted under oath every year. This information should include all direct and indirect benefit, income and interest and should be cross-referenced by the agency. Audits of providers' billings as well as their own books and records should be periodically conducted as should reviews of patient care itself. Such reviews should be coordinated to include related providers such as doctor,

clinic, laboratory, pharmacy, and patient. Patients should be routinely advised of the goods and services billed on their behalf (as is done in the medicare program). Standardized computer programs should be designed which will catalog provider, recipient, and billing information. Questionable trends and suspect patterns can be automatically red-flagged and targeted for investigator follow-ups.

*C. Other manpower needs*

The Department of Health, Education, and Welfare expends $25 billion in the Fifth Region covering six States, yet there are only five investigators assigned to investigate fraud. This investigative force is so understaffed that it has no hope of obtaining or maintaining any handle on the fraud which appears to exist. No entity of private enterprise would allow the expenditure of such sums of money without providing for a far more meaningful watchdog.

Due to the past failure to supervise the medicaid program, a task force composed of experienced prosecuting attorneys, investigative agents, auditors, and members of the medical professions should immediately be formed in each major district. For assurance of long range viability of these programs, however, a permanent force of investigators, auditors and medical experts must be born and nurtured.

*1. The task force*

In the Northern District of Illinois, I have assigned eight assistants to supervise investigations and prosecute medicaid-medicare fraud abuses. To support this team I would suggest a task force of investigators including postal inspectors, IRS special agents, agents of the FBI, and HEW investigators assigned solely to investigate this fraud and free to exchange the information gathered. Included in this task force must be accountants experienced in reviewing and digesting complicated books and records of large business enterprises; experts in various medical fields, i.e., doctors, dentists, optometrists, podiatrists, pharmacists, etc., if only on an "of counsel" basis; experts in the procedures of each State's program with knowledge not only how the State's medicaid program works, but also how to obtain or retrieve information from the State's records or computers; experts from HEW, well versed in the Federal regulations governing these programs, and capable of explaining them to a jury of laymen. To coordinate each district's efforts, a central source of information for all districts should be established.

*2. Permanent supervisory staff*

Never again should Congress allow a program to grow to the present day size of medicaid and medicare without a meaningful supervisory force to prevent or minimize fraud. This does not mean that "busy work" regulations or procedural requirements should be imposed. However, a force of attorneys, accountants and investigators must be maintained if this committee's dedication and hard work is to have any long range impact.

*3. GAO*

The venerable and effective watchdog ought to play a major role in insuring that controls are followed and standards adhered to.

*D. Statutory changes*

The only statute aimed solely at medicaid fraud is 42 U.S.C. 1396(h). This statute is two pronged, prohibiting false statements or false billings and prohibiting kickbacks and rebates. The anti-kickback section has apparently not previously been enforced. Applying this section of the statute has highlighted several problems which could be eliminated by the legislative process.

Unlike any other statute, the terms "kickback" and "rebate" are used without definition. In Illinois, a pharmacist, providing services to nursing home medicaid patients, bills the state directly for those services. The payment of monies by the pharmacist to the nursing home owner cannot be a discount, since a discount must go to the entity paying the bill, i.e., the State and Federal government. Thus, it can be properly labelled a kickback. In other States, and in the medicare program, however, the pharmacist bills the nursing home, which in turn incorporates the pharmaceutical costs as a part of its bill to the State or Federal government. The payment of monies by a pharmacy to a nursing

home; if reflected in its books and passed on to the governmental sponsor, could be a legitimate payment. Thus, conduct which is a crime in one State, is not a crime in another. Only uniformity in programs and/or more specific definitions of terms can avoid this possibility of confusion.

Second, the statute is imprecise in describing who is liable. The statute prohibits anyone who "furnishes items or services to an individual for which payment is or may be made" under the medicaid program. Does this language make liable only those individuals or entities who have a provider contract with the State or does it include individuals or entities who serve the medicaid patients but submit their bills through another individual or entity rather than directly to the State or Federal government? In *United States* v. *Lipman, et al.* both the pharmacy and the nursing home had provider agreements with and independently billed the State, so this issue of interpretation did not arise. Assume, however, that the pharmacy billings had gone through the nursing home to the State for payment. If so, would the pharmacy and its owners be liable under 1396(h)(b)(1) for offering and giving a kickback to the principle owners of the home via a management company? The impact of this conduct would be equally detrimental to the medicaid program, but arguably is not in violation of the law.

Finally, there is the issue of whether the medicaid misdemeanor should be elevated to the status of a felony. The answer is yes and no. The misdemeanor, imposing minimal incarceration but substantial fines, plays an important role in the world of a prosecutor. On the other hand, some individuals are involved in numerous homes or pharmacies or clinics and merit felony convictions due to the size of their impact on the medicaid program. In the false billing arena, the prosecutor can use 42 U.S.C. 1396(h)(a), the misdemeanor proscribing false statements in the medicaid program, or 18 U.S.C. 1001, the felony proscribing false statements to any Federal agency, or both. In the kickback arena, we have used mail fraud as the felony charge, rather than 1001. If Congress desires to more directly enable Federal prosecutions of kickback payments in all Federal programs, we suggest a general "anti-kickback" felony statute applicable to all Federal programs in addition to the existing misdemeanor statute.

CONCLUSION.

The spectre of flagrant corruption cannot be more disturbing than when it strikes at the heart of our Nation's system of health care. With national health insurance looming as tomorrow's probability, our track record in health care fraud must be eliminated as today's disgrace. I respectfully urge that measures be taken and resources be committed to immediately remove the pall of decay from the programs which could and should guarantee a meaningful quality of life for all our people, and a standard for civilized nations to follow.

I would like to take this opportunity to commend this committee and especially Senator Frank Moss. I have been somewhat critical of Congress in my remarks for failing to anticipate these problems and for failing to provide adequate controls and oversight. This committee and the subcommittee under Senator Moss' direction identified many of these problems at their inception. Their warnings were like a beacon from a lonely lighthouse warning of danger. It is too bad we did not see this beacon sooner. The people of our Nation owe this great American a debt of gratitude for lighting the way.

Senator CHURCH. Thank you. May I ask a question?

Mr. SKINNER. Yes, sir.

Senator CHURCH. Our last witness suggested that a special division of the Justice Department be set up for this purpose. He also alluded to the Internal Revenue Service where the enforcement agency has developed something of a formidable reputation. People, therefore, hesitate to fudge on their income taxes.

Do you think it would be more effective to set up an enforcement division within HEW connected directly with the medicare and medicaid programs as the principal enforcement agency for developing the evidence and preparing the cases that would then be turned over

to the Federal district attorneys in their respective jurisdictions? Or would you agree with our previous witness that it ought to be done as a part of the Justice Department, itself?

Mr. SKINNER. No. 1, there are several alternatives, I think, that would accomplish the same thing. I obviously am not here speaking for the administration regarding their policy. Although, as a member of the advisory committee. I know the U.S. attorneys almost unanimously feel they should be given the resources and be told, you can do the job rather than putting another structure of bureaucracy into the system.

I think one agency can play a major role. It has in Chicago. In this situation it is the Federal Bureau of Investigation. As you know, that agency has been shutting down some of its surveillance activities and it has been shifting its emphasis to the white-collar crime area. They have proved very effective.

## TASK FORCE APPROACH MAY BE EFFECTIVE

I think a task force approach with people from HEW, people from the State of Illinois, with accounting talent where necessary, either internally on the payroll or externally, along with prosecutors within an office forming a task force under the auspices of the U.S. attorney who is concerned and given a mandate by both Congress and the administration to do something about the problem is probably as effective as any way that can be used. And I think it keeps the structure and allows it to permit new resources to react to the problem.

When we set up separate structures, just as you were talking a few minutes ago with Prosecutor Hynes, if he finds evidence of medicaid mills as part of his nursing home investigation, he has to give it to someone else.

With a task force approach addressing the whole problem of medicaid fraud and Federal social program fraud in a specialized area, I think you can have a flexibility under the auspices of the U.S. attorney with guidance from the department on a national policy basis to react to the problem and put whatever resources are necessary into the problem and to deal with the problem.

When you set up separate structures, you limit it. The talent is there. I am convinced, from other Federal agencies or from the outside, we can hire the talent to perform this function.

It is really two functions, Senator Church. The prosecutorial function as a deterrent for the future, but also if we did not set up enough internal audit at the beginning or during the continuation of these programs, it certainly is not too late to set that up now because it appears these programs are going to be around for a long time.

Senator CHURCH. Senator Percy, I know you are under some time constraints.

Senator PERCY. Always we say the Federal Government has to do more or the State government has to do more. What is the matter with our private associations in this country; the American Medical Association, the American Dental Association, the Association of Auditors and Accountants? Every one of these nursing homes, every one of

these businesses has to somehow have an audit; a public accountant that comes in. Why can't they catch these things? Why can't the profession itself, as being so stained by these revelations, really do something about it?

Like the American Bar Association, I think can really move on these things. There are ethical practices and standards groups. Can't they move to see that doctors and dentists who participate are taken out? What can they do, the private sector, that does not take appropriations and more bureaucracy? They keep condemning Washington and they come around here, "We have a problem." "We have to have a bigger bureaucracy, more investigators, more Government employees to stamp this out."

What can we do in the private sector?

Mr. SKINNER. I think the private sector can and does play a role in this function where only the State medical system has the ability to discipline physicians. The department of registration has a way to remove their right to practice in the State.

## "BUREAUCRACY . . . ALREADY IN EXISTENCE"

But very frankly, Senator, I am going to disagree with you, as we do occasionally, because when we adopt these programs, the bureaucracy is already in existence. We decided as Americans through our elected representatives to raise the quality of care for all Americans. We have decided we are going to do that with a $1, $2, or $4 billion bureaucracy, medicare, medicaid—whatever the area is.

I think if we are going to make that kind of commitment, along with that, we have to bear the responsibility for setting up the structures, audit and administrative functions for that. If you are going to offer it to the private sector and say, run this program, some people say it should be tried. I am not so sure. There are several programs in this health care area where we should experiment with on a test-marketing basis in various areas, one part of the country with the private sector involved; another with the Federal Government totally; another with the combination of Federal/State and find out over a short period of time how they work, which works best and then choose the one that is best for the long run.

The Department of Defense has flyoffs for aircrafts before they make a decision. We certainly do not have that in the health care field. We say this is the money that is going to be spent. We are going to raise the quality of care.

But we do not do it, in my opinion, on an intelligent basis. And to ask the medical profession to bear more than their fair share of the load, I think, is unfair.

Senator PERCY. You think they are bearing a fuller share of the load today than they should be?

Mr. SKINNER. No, sir, I do not. But their ratio of the load, compared to our load ratio in the area, doing something about the problem, they are carrying the higher percentages than the Federal and State Governments are. A substantially higher percentage.

I think it is a matter of everybody working together. I would hope, and know this was a major issue in the last Presidential campaign—I

would hope the administration and the Congress would work together to set up a function that will have an ability—not another bureaucracy; it does not have to be a huge bureaucracy. It can be a coordinating council. It can work with the States in dealing with this problem. It has to be unified.

With 94 U.S. attorneys and 50 attorneys general and a number of State agencies involved, each doing it a little different, we should start sharing this information; we should start learning from each other's experiences. That is what we are doing.

Senator PERCY. I want to comment that you are the first U.S. attorney we have had before us for some time. Since I have been able to question any U.S. attorneys, we have adopted the Speedy Trial Act, we have given precedents and priority to criminal actions. The deferred civil suits and actions just cannot get on the calendar. We have got to take a look at that, no question about it.

### SPEEDY TRIALS IMPORTANT

But from the standpoint of getting prosecutions, getting cases tried in this field, do you feel there is now enough, even though it has caused a problem, that you are able to bring cases to trial faster now from the commission of the crime until penalty is imposed? Is the time reasonably short?

Mr. SKINNER. It requires us to bring those cases to trial. It is very important in cases like this, because if you delay the process, there is no deterring effect. It is gone by the time you do it. So I think it has done that. It has created tremendous problems for the courts, for the Justice Department. It has caused reordering of priorities in departments and U.S. attorneys' offices.

I think it is accomplishing to some degree what was intended, but I think you are going to have to address the problem of resources, courts and other parts of the criminal justice system, if you are going to handle the rest of the problem that exists. There has not been a commitment of resources to any of these areas of any substantive, substantial nature over the last several years. And I think the time has come now to address that, if that is the priority we want to place on quick, swift justice, which, as a prosecutor, I am all in favor of.

Senator PERCY. What, in your judgment, is the main obstacle Federal prosecutors must overcome in order to convict nursing home operators and others of medicaid fraud? What is your single largest barrier right now?

Mr. SKINNER. It is a very complex area. It is not as simple as people might think it would be. You need to analyze records. Review of records can take months. Thousands of documents and records have been subpened. I have three rooms full of records subpened from nursing homes just on one particular case.

One case took 15 months with half a dozen FBI agents as well as two lawyers and a grand jury meeting once a week. There is not a whole lot that can be done to speed up that process.

You cannot add 10 lawyers to it on 1 particular case and say you are getting it done in only 10 percent of the time. But you can address with more prosecutors and more resources, more of the problems in

the same time; concurrent processing as we used to call it in the data processing field. Right now I have things waiting to be worked upon because I do not have, I cannot, in good conscience, take any more resources than I already have, although I may, and put them into this area, because we are dealing with one congressional program which is a very key program. But there are a number of programs which have problems of a similar nature which also have to be dealt with. And it is all because I think there is no preplanning; there is no management approach to these programs—not all—but before they are implemented properly, providers, people who benefit from these programs recognize quickly this is happening and they take advantage of it.

Senator PERCY. Have you had a chance to go over the Talmadge medicare-medicaid antifraud bill Senator Church and I are cosponsoring?

Mr. SKINNER. I have not yet, Senator. I am sure I will shortly, and I would be more than glad to go over that bill and send you——

Senator PERCY. Suppose we give you, before you leave, a summary of that bill and a copy.

Mr. Chairman, if we could hold open the record so Mr. Skinner's comments on that could be given to us, I think we will press forward. The language is not set in cement now. We will have a chance to revise it.

### INFORMATION SHOULD BE SHARED

Mr. SKINNER. I think, Senator, the people who are in the field and who have learned from these experiences have an obligation to share that with people here in Washington whenever they can, so that we can have the benefit of the input or whatever decisions you make. It is a most difficult problem. There is not one easy answer to it. It is a problem that is growing, I know in Illinois and I am sure in other parts of the country.

I will be more than glad to offer whatever help I can.

Senator PERCY. We have a provision in the bill that attempts to clarify the prohibition against the assignments of medicare and medicaid claims to factoring firms or other third parties. However, in the past, hospitals or doctors have sought to avoid this prohibition by using a power of attorney.

The Talmadge bill would have made clear that this procedure, too, is also contrary to law. The particular provision, do you feel is worded——

Mr. SKINNER. I think the problem of factoring is directly caused by a failure of quick processing by State departments of public aid or welfare of payments. So therefore, because of the cashflow problems of hospitals and other organizations, they factor these payments, at a discount, and they will continue to do so, continue to look for legal loopholes to allow them to do so until we can find a way to quickly audit and pay these hospitals directly.

You cannot ask an organization that is not profit, such as a hospital which has serious cashflow problems, to wait several months—in some cases a year or more—for payment and then expect them to accept it.

There is just no budgeting for it; business does not budget for it, and there is a cashflow problem. The factors take advantage of the situation and recognize they have this advantage.

There is some evidence they make arrangements inside the departments of public aid for expedited service for cash payments and then they inflate the bills. It is interesting that when the HEW released the names of all the physicians and professionals who received medicaid and medicare payment in excess of $100,000, a number of them in our State said, I have only received $50,000 or $60,000. I have never seen these figures before. These are substantially greater than what I submitted to the factoring company for the forwarding to the State of Illinois.

This could be very helpful. You have to make it clear, direct payment is the only acceptable way of payment into the programs. But you have to work, by the way, Senator, with these organizations in this legislation. You cannot just say, it is going to be this way today, and accept it. You have got to take advantage of their input and listen to them.

### Cooperation Necessary With Medical Profession

If we want them to involve themselves in these problems, we have got to ask for it across the board. We cannot ask the medical profession to help in one particular area and then not consult with them at least, get whatever input they want to give us on this problem before we just say this is the way it is going to be.

Senator Percy. You mentioned some ballpark figures in your testimony, as I recall it, going through the written text, $2 billion in the Federal Government in Cook County, I believe, $25 billion in the Central States Region.

Do you have any estimates in your office as to how much is being lost to fraud in these programs in, say, the State of Illinois or in your district in northern Illinois? Do you have any figures as to what percentage of fraud we can really try to eliminate, how much we can afford to spend to eliminate it?

Mr. Skinner. It appears to me—these figures, you appreciate, are very difficult to arrive at—you have to judge commonsense, based on some ratio you develop looking at a particular situation. But I would not be surprised to see a fraud figure in Illinois of close to $75 to $100 million a year or more in the medicaid program alone, which is a billion dollar program. Ten to twenty percent fraud factor in that program would not surprise me at all.

I think in some of the medicaid, as you know, it is concentrated in some of the low-income areas of our State, and the fraud we are finding in those programs and those clinics and medicaid mills, in that particular community, is large. It is staggering.

So when you consider and address the problem along those lines, I think it could reach those proportions and those percentages without any problem. It does not apply across the board to every clinic and every nursing home in the State of Illinois. There are some very fine, high-quality nursing homes who care about giving the quality of care to our senior citizens.

I had lunch yesterday with the State president of the Illinois State Medical Society to discuss one of the problems we discussed a few minutes ago. He reminded me several years ago there was no such care at all. These nursing homes are suffering from the reputation that has been developed by a few and they are offering a quality of care to senior citizens in this Nation that they never had before.

There is no, and was no alternative. So these programs are necessary, I am convinced, to afford the quality of care, and the taxpayers will justify it if they are run efficiently.

Very frankly, I give a lot of speeches in the community, as I know both of you do. This subject is a prime concern to the taxpayers in my State and my district. It is one that I get a number of questions on. It is one that I get enthusiastic response about. If we do not demonstrate we can run these programs with integrity, they are not going to send back to Washington, people who approve these programs, because they will only tolerate so much.

In essence, that is the feeling I get having given several hundred speeches in the last 8 years to community groups.

Senator PERCY. I am glad you have put in the fact there are some notable and worthy nursing homes. I have been in quite a few, and I say for the most part, the homes I have been in this year have been better than any previous business I have ever been in. I think in this whole effort, we have driven out, we have jailed a lot of people that have been in the business, and there are steady improvements being made. There are some residents, you would not hesitate to say, that do receive outstanding care.

I would like to ask, though, in the areas of fraud, you mentioned a very high figure for potential fraud. What specific types of fraud are the most flagrant, in your judgment, and what are the difficult types to detect as a Federal prosecutor goes about trying to obtain evidence once fraud or some type of cheating in this program is discovered?

### PRIME AREAS FOR POTENTIAL FRAUD

Mr. SKINNER. I think the biggest area of potential is probably in the area of clinics in the medicaid program. I will address, in the area of clinics and labs that do business, what we call prime areas for medicaid care.

These organizations do millions of dollars worth of business. They have a number of patients that see them every day for one problem or another. Generally what they do is—we have seen a practice with some of the clinics—an individual comes in with a cut on his hand. He will then see every station in that clinic—go all the way around, almost like a merry-go-round. Then, of course, the State will be billed for every visit to every station, even though the patient has no problems along those lines.

This quality of care, whether the physician or the clinic should have ordered it, is most difficult to prove. Philosophy exists that these people do not have this quality of care. As long as they are in the clinic, why don't we see if they have these problems along these lines and have them visit every station? When we see them visiting every station three or four times a year, that raises questions.

As you can appreciate, these people are not well educated. They are not as helpful as far as what their problem was or who they needed to see. They do not make good witnesses for that reason. It is very hard to get inside information. In some cases we have had threats. People have been intimidated about testifying and cooperating.

In other situations, we have gotten a lot of cooperation inside from people once they are confronted with it. They accept it, but they do not like it, and they are looking for a way out. I think that is why it is very important we have this presence—this Federal presence as well as State presence—so they know there is some place they can go to bury their soul.

### Some Cases Difficult to Investigate

The area of dental care is very difficult. You have to go in and actually examine individuals' dental work to see what was done before, what work was done after, and it calls for an expert opinion. Analysis of specimens—you have to find the people. If a number or specimen was submitted under the medicaid number, you have to go out and find that public aid patient and say, "Were you there?" In some of these areas of our community they move around a lot. They are not easy to find. It is not the easiest type of investigation to conduct. That is why they are so time consuming.

These are all problems we found in addressing the whole medicaid fraud problem. And they make the investigations more difficult.

Senator Percy. I want to thank you very much, indeed.

I want to thank the chairman for his courtesy in letting me go so I can get to my board meeting.

I would like to say this, though. In change of administrations, a great deal of quality in composition depends upon the quality of our Federal district court judges and circuit court of appeals judges, our Supreme Court, and our U.S. attorneys. I am very privileged to have participated in this process during 8 years of public presence, and as I look at the predecessors, in this position that you hold, one is now a circuit court of appeals judge, one is a district court judge, one is the Governor of the State; that is a pretty formidable array of outstanding men who have performed in this job.

I know of none who have performed finer than Mr. Skinner, who came out of industry—the IBM Corp.—went into public life, and has devoted himself to it.

Mr. Skinner. I may be going back, Senator.

Senator Percy. I just certainly want to express my deep appreciation for the way you and your colleagues have approached your jobs —what you have done. You are the No. 1 U.S. attorney in this country in this particular field, and in certain other fields as well.

Mr. Skinner. Thank you, very much.

Senator Percy. I speak highly of the work you have done, the dedication you have had, and I want to associate myself with whatever your future plans are whenever I can.

Thank you.

Senator Church. Thank you very much, Senator Percy.

Did I understand you to say you feel kickbacks should be a felony under the law?

Mr. SKINNER. Yes, sir, I do. I do not think the existing misdemeanor charges should be replaced with felony charges. I think we should have an additional felony charge to deal with the most aggravated situations.

We need additional tools that demonstrate to the judiciary and to the American people that we will not tolerate this type of conduct, and we want it dealt with on a particularized basis.

## MINIMUM MANDATORY SENTENCE

I am also, by the way, in favor—and this will shock, I am sure, some of my colleagues in the judiciary—of a minimum mandatory sentence of at least some nature of incarceration for the most aggravated situations. We have done it in the area of firearms. We are talking about doing it in the area of narcotics.

There is no reason why we should not have what I consider to be minimum mandatory sentences—maybe not as strong as we have in other areas—to get sentences of incarceration in this area. They are deterred by going to jail. Defense counsels who discuss these cases with me tell me their clients are concerned about going to jail. If they can get away with it, there is a lot of money to be made. If they go to jail, the risks are probably not worth taking.

I have been very fortunate in my district, with rare exception, to have a judiciary who understands the importance of a deterrent sentence of incarceration in the white-collar crime area. I differ with them on a number of occasions on the length of the sentence. I think it is a matter of indication, as Prosecutor Hynes mentioned, as to the seriousness of the problem and the effect of the deterrent sentence.

The judiciary is somewhat removed in my State because of their job and what is expected of them. I do not think they have the same perspective you and I see down the trenches, so to speak. It is up to us and the media, who has done an excellent job in my State also, of exposing this problem and bringing it to their attention.

Senator CHURCH. Some of the people you have convicted in nursing home and pharmacy kickbacks, I understand, controlled about a third of the nursing homes in Illinois; is that correct?

Mr. SKINNER. That is correct, Senator. They had an ownership position in a number of homes.

Senator CHURCH. Do they also operate in Wisconsin?

Mr. SKINNER. Yes, they have some interest, although their involvement in Wisconsin is not nearly as great as it is in Illinois.

Senator CHURCH. Have any of the law enforcement authorities in Wisconsin expressed any interest in prosecuting or investigating the nursing homes that are located in Wisconsin and known by this same group you found engaged in kickbacks and other wrongful practices in Illinois?

Mr. SKINNER. I think we have had a number of discussions with Mr. Mulligen, the U.S. attorney from Milwaukee. Although I met him professionally, I think he is an excellent U.S. attorney. And I think he has recognized we are dealing with the same people. He has been,

to some degree, holding back and waiting to see our results, because there is no sense in piling on charges if you are not going to have any additional deterring effects.

A number of people that own homes in Wisconsin recently pled guilty and are going to jail with almost $1 million in fines. So I think it has not really been an action more than just waiting until they see how successful we are.

I might add, Senator, we shared the funds with the State of Illinois. We split $900,000 in fines with the State of illinois on a 50–50 basis because they are our partners in the medicaid program.

Senator CHURCH. You also mention in your testimony that you were able to secure ownership by slapping liens on these nursing homes. Can you explain that a little more fully?

FORFEITURE OF EQUITY INTERESTS

Mr. SKINNER. We decided that it was important not only to prosecute them under misdemeanor statutes but to make sure these individuals were no longer involved in the health care fields. This is sometimes difficult because of administrative regulations and legal technicalities, so we used a concept known as RICO. To a lawyer it is title 18, United States Code, section 1961. It allows for the forfeiture to the Federal Government of equity interests in organizations that are used to commit Federal crimes.

If you are an organization and you use that organization to commit two or more Federal crimes, such as mail fraud violations, you can forfeit to the Federal Government after a jury trial the equity interest in the home.

And we received permission from the department to go ahead on this approach and did so file these charges.

Obviously when we filed liens on the titles of the properties, they could not sell the homes. I think this was one of the reasons we were able to obtain the substantial fines as well as the sentences of incarceration. And we received this in cases where we were not able to prove any defrauding of State or Federal Government other than their right to have the programs run honestly.

I think this is a very effective deterrent. We have used that statute in other cases involving medicaid mills and clinics. Those cases are pending.

I think I will skip any further comment on them.

Senator CHURCH. How do you determine the amount of the lien if there has been no actual loss to the Government?

Mr. SKINNER. The statute requires if you commit the violation, you forfeit your entire interest, or any portion thereof that the jury decides should be forfeited. So the jury decides what is to be forfeited. If the home is worth $3 million net worth or equity in the home, the jury could decide anywhere from $100,000 or $3 million of that should be forfeited to the Government. If they forfeit the entire home, we would then sell it to qualified people on the highest basis. That money would go into the Federal treasury. As you can understand, it is a very strong penalty and one, I think, that causes even the most greedy nursing home operator to hesitate before he goes forward.

Prosecutions, by the way, Senator, can have a deterring effect. We think we have stopped, pretty much, the kickbacks between pharmacies and nursing homes in Illinois as a result of our prosecutions, jail sentences, and fines. At least that is the word we are getting back from the pharmacists who do business in our State.

Senator CHURCH. Our Subcommittee on Long-Term Care has investigated nursing home fraud and investigated the medicaid mills—problems that you have mentioned in connection with them.

It may well be we ought next to look into the matter of hospitals. What is your opinion, based on your experience, concerning the possibilities of medicaid and medicare fraud within the hospitals? If you do feel that is going on, who is reaping the benefits?

### FEW ALLEGATIONS OF HOSPITAL FRAUD

Mr. SKINNER. I have not received allegations of fraud within hospitals on the medicare program with any degree of frequency. I do not know whether that is because there are no problems or because people have not thought about it and have not felt comfortable going forward with it.

I have a number of people tell me that when they leave the hospital they notice on their hospital bill the medication that has been given, and tests appear on their hospital bill that they do not believe they received. This, of course, is billing to private hospital programs as well as medicare, but I am not so sure that would be any great indicator.

I do think, though, because of the amount of money that is spent in these programs and because of the problems we find in the other areas, that it is an area that at least should be reviewed on kind of a pinpoint basis, in an area we think these problems may exist, to find out if they do exist.

I would be interested to see a current inventory of drugs, plus what was received during the month, plus what was disbursed and billed to the State and Federal programs as well as health insurance agencies. It might be very interesting. We might be able to do that with a computer with some degree of ease. If they have a lot more drugs being billed than they purchased, that would be a good indicator.

I do not think, in my State, that it is as great a problem as it is in other States. Hospitals are under tremendous pressures. They are generally quite professional. They are experienced. They have been in business a long time. They generally give a high quality of care. I hope it is not going to be nearly the problem we found in the new area of medicaid. But we cannot afford to assume that. We have to check it out. I think that would be a good investment of resources.

Senator CHURCH. This is my last question. You stressed again and again in your testimony that there is a lack of adequate planning, a lack of controls, proper management, and sufficient auditing. That might be understandable if we were talking about programs that had just been established, but we are talking about programs that are at least a decade old. We have been doing this for 10 years now.

We are talking about disclosures of the grossness of mismanagement, and also outlining fraud, criminal embezzlement, and all the rest of the public funds on a vast scale. Yet we still have the same deficiencies.

Evidently no action is being taken by the Health, Education, and Welfare Department to improve the administrative procedures and to tighten down on the controls, despite your efforts and despite the efforts of this committee.

Would you think that is a fair judgment?

Mr. SKINNER. To answer that—I do not duck questions—I think you are right. The programs have grown substantially over the last several years. They have been around for a long time.

I do believe there has been a failure of the HEW administration to recognize the seriousness of the problem. There is no reason I should have had but one auditor or five auditors for the whole Midwestern region of HEW. They are reacting now. I admit it is late—several branches of Government reacted late.

Your committee and Senator Moss, to hear him credit me—he is the one that started this area way back when I was first practicing law. I would have been glad to carry his briefcase then. He has done more to demonstrate these problems than almost any American in the public sector.

## "THEY DID NOT APPEAR TO LISTEN"

Yet the Congress and the administration—the administrators of the program did not appear to listen. I am hopeful they will listen now. There is no question they have been inadequate in their controls.

I suppose I have been inadequate in not addressing the problem sooner. I accept responsibility for that as well. But the programs have grown substantially and the volume is growing as a number of providers enter the area.

What happened was, it grew; providers in there started passing the word that this was the way to get rich quick, and more providers started joining the agency.

I think if you will look at the number of providers that are authorized today as compared to what was authorized 5 years ago, you will see a substantial number of increased providers available, and there are more people receiving aid as the provider organizations take form.

I would just like to make one final comment, sir, if I might, in observation. I hope whoever takes Senator Moss's place—I am delighted to see he is chairman of the subcommittee and spent time here today.

I will tell you what concerns me most. What concerns me most is that the people who should be receiving these benefits and are entitled to these benefits—who we can afford to give quality care to—not only are not receiving them but they are seeing programs running away, a lack of integrity which they recognize, and it destroys their fiber. It gives them a totally false impression about the way the integrity of our Government and our private enterprise should run.

They look at these organizations. They know the bills are being submitted falsely. They know they should have this care; they know they are put in stations they should not be going to. They recognize

something is going wrong and somebody is getting rich on them. They start saying to themselves: "Well, that must be the way it is. These are professionals; these are respected people. That is the way I should conduct myself. That is the standard in my community and my Nation." That is going to destroy the fiber of our entire community if we allow that to continue.

That, in my opinion, is the real tragedy. That is the reason, more than any other, that we cannot spend enough time and care enough to do something about this problem.

Senator CHURCH. I can assure you the good work that was first initiated and carried on for so long by Senator Moss will continue to be carried on by this committee as long as it exists—as long as I am chairman—and I hope to take up where Senator Moss leaves off. I am sorry we cannot have him with us again in the next session of Congress.

Mr. SKINNER. That is good news. Your reputation precedes you, and I am sure you will do an outstanding job.

Senator CHURCH. Thank you very much. Thank you for your testimony. We appreciate it.

[Whereupon, at 12:20 p.m., the committee adjourned.]

○