

# TRENDS IN LONG-TERM CARE

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON LONG-TERM CARE  
OF THE  
SPECIAL COMMITTEE ON AGING  
UNITED STATES SENATE  
NINETY-FOURTH CONGRESS  
FIRST SESSION

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PART 24—NEW YORK, N.Y.

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FEBRUARY 4, 1975



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- Part 4. Washington, D.C., February 9, 1970 (Marietta Fire)
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## TRENDS IN LONG-TERM CARE

TUESDAY, FEBRUARY 4, 1975

U.S. SENATE,  
SUBCOMMITTEE ON LONG-TERM CARE OF THE  
SPECIAL COMMITTEE ON AGING,  
*New York, N.Y.*

The subcommittee met, pursuant to recess, at 10 a.m., at 14 Vesey Street, New York County Lawyers Association, New York, N.Y. Hon. Frank E. Moss (chairman) presiding.

Present: Senators Moss, Percy, Williams, and Domenici, and Congressman Edward I. Koch.

Also present: William E. Oriol, staff director; Val J. Halamandaris, associate counsel; John Edie, professional staff member; John Guy Miller, minority staff director; Patricia G. Oriol, chief clerk; and Joan Merrigan and Donna Gluck, clerks.

### OPENING STATEMENT BY SENATOR FRANK E. MOSS, CHAIRMAN

Senator Moss. The hearing will come to order. I welcome all of you here this morning, as a continuation of a series of hearings that the Subcommittee on Long-Term Care of the Senate Special Committee on Aging has been conducting over a protracted period of time now.

This is the second one here in New York City within the last 2 weeks.

I am very pleased to have sitting with me this morning the Senator from Illinois, Mr. Percy, the ranking Republican member on the subcommittee, and the Senator from New Mexico, Mr. Domenici, also a member of the subcommittee, and although he will be a little late, we expect Senator Williams of New Jersey, who will join us. He is a member of the committee.

Two weeks ago we met in this room primarily to receive a large quantity of documents that we had subpoenaed. We also gave Dr. Bernard Bergman and his attorneys an opportunity to make a full and complete statement. Today we will recall Dr. Bergman to resume his testimony. We have a great number of questions to ask based upon our examination of records.

But at the outset, it is important for our audience to understand that the primary purpose of our hearing is to examine issues related to Federal policy on medicaid reimbursement for nursing home care. We examine the nursing home system in each State. After making a diagnosis, we then prescribe a list of remedies or recommendations.

From this preliminary examination of the data I can tell you that the nursing home system in New York is sick. The primary problem

seems to be the cost-plus reimbursement formula which permits generous gifts of taxpayers' funds to flow into the pockets of nursing home operators.

The greedier the operator, the more the profiteering. What appears to me is that your system is an illustration of the principle, that if things are not going so well just pump more money into it. By January 1977, every State in the Union could have a cost-plus reimbursement formula just like New York. The law will require that all costs be reimbursed to the operators.

Under these circumstances, I find it predictable that citizens of other States will soon be reading that nursing homes have been sold back and forth between related parties to increase reimbursement.

They will learn that operators are paying themselves large salaries and rents while complaining to the legislature that medicaid rates are too low and that the operators are going broke. They will learn that legal fees paid by a home to fight the State health department are reimbursable under medicaid. These and other abuses must be headed off by legislation.

Our experience in New York has taught us that it is impossible under the current ownership disclosure law to learn who owns nursing homes. This must change. With the taxpayer shelling out the great majority of the \$7.5 billion in nursing home revenues, the public deserves to know who is receiving the money.

The subcommittee cannot and will not ignore allegations of political influence related to nursing home operation. The full story has yet to come to light, but serious questions have been raised which will be the subject of future hearings by their subcommittee.

Our investigations in Florida, Illinois, and Massachusetts have begun to bring in results. As these develop we may travel to these States for hearings or we may hold hearings in Washington more convenient to a greater number of the subcommittee members.

No one should interpret these remarks to mean that we will not have further New York hearings or that we will not dig deeply into leads growing from our investigation here.

We expect to work in cooperation with the Special Prosecutor and the Moreland Commission. We will concentrate on the examination of the books and records we have received and will call individual operators. We will call officials from your department of health as well as high-ranking public officials.

I would like to call upon the citizens of New York for cooperation and concern. I would appreciate your sending me any information, questions, or leads that you think would aid us in our inquiry.

I should also announce that in cooperation with the chairman of the full committee, Senator Church of Idaho, I am seeking additional committee funds for a broadened nursing home inquiry.

In addition, within a few days Senator Church and I and perhaps other members of the committee will join in asking the executive branch to make a coordinated effort intended to provide health and investigatory officers of the Federal Government with early, accurate information on all investigations now underway in more than a score of States.

In addition, this coordinated effort should provide a direct line of communication with the highest levels of the executive branch in

order to correct current abuses while improving patient care and establishing truly effective and wise cost and controlled systems.

I would like to announce that Assemblyman Andrew Stein has requested that he not be invited to sit on the dais in view of objections raised by Dr. Bergman's attorneys and others. I will honor his request.

I am most pleased to have with me this morning the Senator from Illinois, Senator Percy, and I will ask him if he has any opening comments to make before we call the witness.

#### STATEMENT BY SENATOR CHARLES H. PERCY

Senator PERCY. Thank you very much, Mr. Chairman. I regret very much indeed that my absence from the country prevented my being here at the opening of these hearings.

I welcome the opportunity to work with you as the ranking minority member of the Subcommittee on Long-Term Care.

Our close association in this field began in 1971 when we conducted hearings in Chicago in response to a series of investigations of nursing homes conducted by the Better Government Association and the *Chicago Tribune*.

No Member of the Senate, in my judgment, has worked harder or accomplished more to improve the quality of nursing home care than Senator Ted Moss.

I would like to report to him that, because of our last investigations in Illinois, and the on-the-spot investigations I constantly made without notification to nursing homes, I presume the two of us have been in more nursing homes in this country than anyone, other than full-time inspectors. The publicity that has occurred, and the spotlight, the public attention that has been focused on nursing homes, has done a tremendous amount to correct the flagrant abuses that I found in my own State.

We still have a long way to go, but I think the hearings that were conducted several years ago have helped immensely in the monitoring of activities that have gone on in those nursing homes.

Our subcommittee's objective here today is not to prove or disprove allegations of wrongdoing against one or more individuals or to carry out any kind of personal vendetta.

As the chairman said on January 21, we are not here to conduct a trial. Nonetheless, if we are to determine whether or not tax dollars meant for the care of the elderly in nursing homes have been misused, then we must pursue the allegations of wrongdoing against individuals, such as Dr. Bernard Bergman.

If we find that Dr. Bergman or anybody else has misused medicaid funds, then our responsibility is to recommend changes in Federal law or administrative procedures.

The Governor of this State recently said those who mistreat our elderly for gain will feel the full force of an outraged people.

I would simply like to add to that, that we have a direct responsibility in seeing that the laws of the land, as laid down by the Congress of the United States, are obeyed to the fullest, and it would be my intention, Mr. Chairman, to recommend at the end of these hearings, in any cases where we feel Federal laws have been broken, willfully and knowingly, by individuals who have been uncovered in the course of

this investigation or tentative investigations, that we turn that matter over to the Justice Department for prosecution under Federal laws.

For the sake of clarity, I would like to list the type of questions we hope to answer and have answers from during the course of the hearings today.

Do a substantial number of nursing homes operate with substandard conditions primarily because of political intervention or bureaucratic neglect?

To what extent, if any, has political intervention influenced the process of certification, licensure, and inspection?

What is the impact, if any, of manipulations of nursing home real estate on the medicaid reimbursement rate and the quality of nursing home care?

To what extent, if any, are medicaid costs affected by inflated or nonallowable costs submitted by nursing home operators?

Are dollars thereby diverted from their intended source?

To what extent, if any, does collusion between nursing home operators and those who supply goods and services to the homes inflate operating costs and result in illegitimate profits?

Do operating costs accurately reflect services received by nursing home residents?

To what extent, if any, does the reimbursement system used in New York State lend itself to manipulation by unscrupulous providers?

Because the New York reimbursement system is considered a model one, what does the ability to manipulate the system imply about the wisdom of using it elsewhere?

To what extent, if any, has organized crime infiltrated the nursing home business?

What does this mean for medicaid costs and the quality of nursing home care?

Should full public disclosure of ownership be required of all nursing homes that take government-supported patients?

Since Congress passed the medicaid law 10 years ago, we have heard numerous reports of irregularities and outright fraud in the program. Congress responded with hundreds of hours of hearings by House and Senate committees, which focused on problems in the administration of the medicaid program and provision of long-term care to the medically indigent.

In 1972, measures providing criminal penalties for committing fraudulent acts or making false reports under medicare or medicaid were included in the Social Security Act. It provides for criminal penalties for such offenses as soliciting, offering or accepting kickbacks or bribes, including a rebate of a portion of the fee or charge per patient referral, concealing or failing to disclose knowledge of any event reflecting the person's right to benefit with intent to fraud, knowing and willfully converting benefits or payments to improper use, providing false statements regarding the health, safety conditions, operating conditions, and so forth.

Anyone who knowingly, or willfully makes, induces, or seeks to induce a false statement of material fact, with respect to the condition and operation of a health care facility or agency to secure a certification, recertification, or approval to participate in the medicare or



medicaid program is subject to imprisonment of up to 6 months, a fine not to exceed \$2,000, or both.

Anyone who knowingly or willfully makes improper use of medic-aid payments is subject to imprisonment of 1 year, a fine of \$10,000, or both.

Mr. Chairman, to my knowledge, no one has been prosecuted under these provisions. There is no excuse for lax enforcement of these laws.

Not only as a member of this subcommittee, but also as the ranking Republican member of the Government Operations Committee, and of its Permanent Investigations Subcommittee, I think we should act to make certain that when we pass the laws, and we provide for criminal penalties, that those who commit criminal acts are prosecuted under those laws. We are going to ask the U.S. attorney and the Justice Department to pay particular attention to this particular field.

For too long now, we have been aware of wrongdoing in this field, and I think this hearing can serve notice once and for all to this industry: it had better clean itself up, or the Federal Government will move in with all of the force and power we can muster and clean it up for the industry.

Recurring charges and investigations of financial fraud, in the health care delivery system in general, and the nursing home field in particular, raise important questions about public policy.

If Federal medicaid funds have been misused to provide incredible wealth for some individuals at the expense of the intended beneficiaries, then we should be concerned about the all-but-certain advent of national health insurance and the doubling or tripling of the Federal investment in health care.

I believe deeply in the free enterprise system. But the pattern of scandal and abuse which has pervaded the health care field in recent years concerns me greatly.

Is the profitmaking incentive compatible with the delivery of quality health care?

Does the effort to maximize profits have an adverse effect on the quality of care?

We must answer these questions.

The health care industry is going to be given its last chance. It is on trial now. And in the face of all of the protestations, you can find good homes, I would say, and we found good homes.

We have also found rotten conditions that should have been rooted out by the industry itself. They are going to drive out the profit-incentive system, and we are going to have to go as we have in hospital care, into an essentially nonprofit operation, unless the industry itself is aware of these abuses, and does not leave it as always to the local, State, and Federal governments to uncover them.

Allegations of wrongdoing obscure basic facts about the elderly and about long-term care facilities. I can state unequivocally from personal observation that all nursing homes are not alike.

I have visited many excellent facilities, particularly nonprofit institutions. I have visited others which have been improved dramatically after public exposure of deficiencies.

It is unfair to categorize all nursing homes as warehouses for the dying, but too many of them can be categorized just exactly that, warehouses for the dying, no more and probably no less.

Information about specific nursing homes which are certified to accept medicare and medicaid patients is available at local social security offices.

The law requires that summaries of inspection and certification reports be filed in these offices. The summaries and the complete reports are available to the public.

Most people are afraid of growing old. We must be careful not to view good and bad nursing homes the same way simply because we fear old age. We must distinguish between those residents of nursing homes whose condition is the result of normal aging, and those whose condition is the result of inadequate or indifferent care, and sometimes downright cruelty to our fellow human beings.

In closing, I want to acknowledge the important role which the Temporary State Commission on Living Costs and the Economy, chaired by Assemblyman Andrew Stein, played in following up the provocative series of articles by Mr. John Hess of the *New York Times*.

Also, I am pleased that the chairman responded to Congressman Edward Koch's request that this subcommittee initiate its investigation.

There are many separate inquiries now underway, but I know of no body nor no chairman who is more qualified through experience and expertise in the field of long-term care, to pursue the Federal Government's concern for the quality of nursing home care.

Mr. Chairman, we must not lose sight of this subcommittee's primary objective—the search for meaningful reform.

We must also be aware of the fact that if we are not able to administer properly this relatively limited program involving expenditure of some \$12 billion per annum in Federal funds, then how can we hope to have a national health insurance program administered by the Federal Government that would involve the expenditure of many, many times that amount.

What we must learn is how in this country to provide the financing by the Federal Government in health care in such a way that it can be carried out, administered in a way that is not a national scandal which I consider the conditions that have already been brought out in these hearings to have revealed. [Applause.]

Senator Moss. Thank you, Senator Percy. I do appreciate your fine statement, and let me say that Senator Percy has been one of the most diligent Members of the Senate, working in this field, when he talks about visiting homes in his own State of Illinois, as well as elsewhere.

I know that he and his wife often spend part of their weekends, just driving around to nursing homes, going without previous announcement, to see what the conditions are, and he has learned firsthand a lot of the things that he has spoken of in his statement, and he has been a great help to this committee.

I was glad to have your reference made to Assemblyman Andrew Stein, who was seated here today, and I am glad he is here.

The last time, as a gesture of courtesy, usually extended to State officials when we come into a State, I invited Mr. Stein to sit on the stand here with me to hear the testimony.

Mr. Lewin, representing Mr. Bergman, objected rather violently to that, and in fact threatened at one point to have his client not appear, if Mr. Stein sat up here.

He did sit for a good part of the hearing, but withdrew when Mr. Bergman came on the stand. Today Mr. Stein has requested that I not have him on the stand, so that we should not go through any kind of a demonstration like that again.

I have acceded to his request, I acknowledge it is being very generous in trying to help us move along, and certainly as a public officeholder in this State, I would extend an invitation to him as I would to any New York officeholder, if they wanted to sit with the committee, in a factfinding manner, but we do acknowledge that and thank you for it, Mr. Stein.

The Senator from New Mexico, Mr. Domenici, a member of this subcommittee, has done great work in his own State on nursing home problems, and he has some there.

I guess none of us can say we do not have any nursing home problems, because as the Senator from Illinois pointed out, there are many, many good homes, and good places for our elderly ill people to stay, but everywhere we find deplorable conditions existing also, and our target is to find out how to rid ourselves of the deplorable conditions, and to make sure that our elderly people receive humane and satisfactory care, and at the same time that we protect the public dollar that is going into this matter, and prevent the ripoffs that we see perpetrated.

Senator Domenici has great interest in that. I will ask the Senator if he has an opening statement.

#### STATEMENT BY SENATOR PETE V. DOMENICI

Senator DOMENICI. Mr. Chairman, in the interest of time, I would ask that my entire statement be made a part of the record, and just read a few of the remarks, and then I would like to make a couple of observations.

We have a system which will not pay a nickel to treat someone in his own home, to prevent institutionalization, but will pay thousands after he is so sick he needs nursing home care.

Our system in most States tells nursing home operators that the more they spend, the more will come back to them with a healthy profit. Practically everything is covered, including the legal fees nursing homes use to fight regulation by the health department.

Every auditor in the State of New York recovers 15 times his own salary in questionable medicaid payments, and yet in New York, as in other States, auditors are scarce.

In our recent subcommittee report, we described the inspection system as a national farce.

This conclusion has been reinforced in New York in the press and in public hearings. This has also been the case in New Mexico. Inspections are infrequent or cursory. When the inspectors wrote of intolerable abuses, their recommendations were ignored. Wretched conditions are tolerated year after year on the rationale that there is no place to put patients.

In our most recent report, we have pointed out that kickbacks between nursing home operators and vendors are common practice. In the area of drugs, the average kickback paid to a nursing home by the pharmacy as a precondition of obtaining a nursing home account is 25 percent of gross revenues paid by the State.

In New York, Mr. Berlinger, the former welfare inspector general, was quoted as saying that 30 percent of the drugs paid for by medicaid are either overstated or fraudulent.

In short, Mr. Chairman, the New York story is probably a familiar one except that like most things in New York, it is on a larger scale.

What is clear to me is that we have a system of services to the needy often provided by the greedy. What is just as clear is that graft and greed go hand in hand with poor care to those most vulnerable.

This must not continue. As I said when I began, the question is whether such practices will be permitted to continue. I say they cannot, and I will devote my full energies toward bringing about change.

Mr. Chairman, I want to make an observation. I noted in the material we prepared today that counsel for Dr. Bergman insists that we not proceed with these hearings.

In his letter to the chairman, he complains about the procedures, the practices, says perhaps we ought to wait and let some other process take place. He is concluding that perhaps we are prejudicing his rights.

Let me say, to anyone with any sense of what the Congress of the United States, and in particular the Senate of the United States, is charged with, that one only needs to listen to the series of questions proposed by the Senator from Illinois that have to be answered, and have to be answered by those who are involved in providing the services, to note that the U.S. Senate, indeed, has a bona fide and legitimate purpose to inquire of him today, and at any reasonable time hereafter, until we get the facts that will help us respond to what is obviously a system not working now, and without a doubt calculated to work worse and worse with each year that passes, as each State takes over more and more under the proposed legislation of the authority over nursing care to our sick and to our elderly. So I conclude the right of the U.S. Senate to be informed on these facts, should not take a second position to a fear that we are prejudicing anyone.

We have already seen the system work, and I say to the counselor for Dr. Bergman, we have seen it work across this land with the most notorious set of facts, and yet not a single judge in the United States has ruled that in the entire Watergate hearings, that those people could not get a fair trial because the Senate and the House proceeded openly and publicly to investigate what was a bona fide legitimate legislative concern in that area.

We have more than abundant evidence that there is a Senate interest at stake, and I would only say to his counselor, that I have far more confidence in the system, the people, and the press than he does.

The press can bite it as they want. He seems to be concerned he is being prejudiced. We will handle our own affairs. I think we are quite capable of handling them judiciously.

For myself, I even regret that he suggested in his letter that there was some kind of bias on this committee.

There is an insinuation in his letter that perhaps we have some anti-semitic bias, that pushes us on in this cause.

I can say to him loud and clear that his letter had an adverse effect on the junior Senator from New Mexico, for I might not have been here, but for the implications spelled out in his letter that we ought not pursue this matter, because the press and the Senate did not know how to protect his client's rights.

Thank you, Mr. Chairman. [Applause.]

## PREPARED STATEMENT BY SENATOR PETE V. DOMENICI

Mr. Chairman, I am pleased to be here in New York City to participate in the subcommittee's inquiry. While I am far from my native State of New Mexico, I have already found the people here to be warm and very hospitable.

We meet in a serious purpose today. We are here to decide if decent health care and humane treatment is to be a right for all intirm older Americans or whether the present hypocritical policy of neglect and abandonment will continue.

This may be strong language, but I think it is appropriate to the occasion. I think it is all too evident that we continue to play "musical chairs" with the elderly.

In my own State, a mass exodus is underway. Mental patients are being moved by the hundreds from State hospitals to nursing homes or boarding homes that are ill-prepared to handle them. This same trend is even more evident right here in the State of New York—it is especially evident in the Staten Island and Long Beach areas.

In fact, this trend is evident nationwide. The number of elderly in State hospitals has been reduced 40 percent over the past 4 years. The reason for such transfers is money. It costs States an average of \$800 per patient per month to care for a patient in State mental hospitals while the same patient can be housed in a boarding home for \$146 in Federal money.

By the same token, it is money that occasions the current national trend to move nursing home patients from skilled nursing facilities into cheaper intermediate care facilities. Money also motivates nursing home operators—some 80 percent of U.S. nursing homes are operated for profit. Our current system not only permits, but encourages, profiteering by operators. When I say "system," I use the word loosely, for it is really a collection of shortcomings. Consider the following: (1) We have a system which won't pay a nickel to treat someone in his own home to prevent institutionalization, but will pay thousands after he is so sick he needs nursing home care. (2) Our system in most States tells nursing home operators that the more they spend, the more will come back to them with a healthy profit. Practically everything is covered, including the legal fees nursing homes use to fight regulation by the health department. (3) Every auditor in the State of New York recovers 15 times his own salary in questionable medicaid payments, and yet in New York, as in other States, auditors are scarce. (4) In our recent subcommittee report, we described the inspection system as a national farce. This conclusion has been reinforced in New York in the press and in public hearings. Inspections are infrequent or cursory. When the inspectors wrote of intolerable abuses, their recommendations were ignored. Wretched conditions are tolerated year after year on the rationale that there is no place to put patients. (5) In our most recent report, we have pointed out that kickbacks between nursing home operators and vendors are common practice. In the area of drugs, the average kickback paid to a nursing home by the pharmacy as a precondition of obtaining a nursing home account is 25 percent of gross revenues paid by the State. In New York, Mr. Berlinger, the former welfare inspector general, was quoted as saying that 30 percent of the drugs paid for by medicaid are either overstated or fraudulent.

In short, Mr. Chairman, the New York story is a familiar one except that, like most things in New York, it is on a larger scale. What is clear to me is that we have a system of services to the needy often provided by the greedy. What is just as clear is that graft and greed go hand in hand with poor care. As I said when I began, the question is whether such practices will be permitted to continue. I say they cannot, and I will devote my full energies to bringing about change.

Senator DOMENICI. Mr. Chairman, I would ask unanimous consent of the committee that the letter referenced, addressed to the Chair, and the chairman's, I think, competent and able reply, be incorporated in the record at this point.

Senator Moss. Without objection, it will be included in the record.\*

Also, without objection, the full prepared text of Senator Frank Church, chairman of the full committee, and the prepared text of Senator Harrison A. Williams, a member of this committee from New Jersey, will be made a part of the record.

\*See "Trends in Long-Term Care," part 25, Feb. 19, 1975, appendix 5, items 5 and 6.

## STATEMENT BY SENATOR FRANK CHURCH

Senator CHURCH. I had hoped to be on hand to participate in today's proceedings, but I have heavy responsibilities related to organization of a new select committee established last week to investigate governmental intelligence-gathering activities.

As chairman of the Senate Special Committee on Aging, I regard the hearing to be conducted by Senator Moss today as significant and essential.

For years, the Senator from Utah has led a sometimes lonely effort, first to enact laws designed to raise standards of nursing home care, then to see to it that the standards were enforced once they became law. His Subcommittee on Long-Term Care has sounded the alarm again and again at the almost total abandonment of the extended care benefit under medicare and the drift toward over-reliance on medicaid, with its varying forms and standards throughout the Nation.

New York has a particularly controversial form of medicaid reimbursement called, popularly, cost plus. Under terms of a law passed by Congress in 1973, that mode of reimbursement will become required for all States by 1976.

If the New York experience under cost plus had been positive and progressive, there would be good reason to apply that system elsewhere.

But the press tells us daily of apparent shortcomings and abuses in the New York mode of operation. There is talk of huge and needless costs. There are allegations of sharp practices, padding of medicaid bills, and worse.

If the New York experience is a model for the Nation, should not the Nation be apprehensive?

If the ills now afflicting the medicaid reimbursement system in New York are to be applied in other States, won't the contagion spread and deepen?

For the moment, these are rhetorical questions. We do not yet have the positive proof we need for answers. That is why this hearing is being held. That is why other investigations are underway. The truth must out, to help us make judgments not only about medicaid but also about whatever health insurance program we enact for other Americans not covered by that program.

Senator Moss is one of the fairest men in the Congress. He is also one of the most determined. He will, I know, draw from today's testimony—and other testimony to follow—the conclusions needed to help shape new policy guaranteeing quality long-term care at reasonable costs. He will, in short, continue the work which has made him one of the most effective advocates for the elderly of this Nation and for consumers in general.

Senator Moss has reported to me that his subcommittee is receiving reports of investigations and possible investigations in other States. In addition, the extensive subcommittee hearings have yielded many other matters which require further investigation.

I have, therefore, asked for additional funds for such nursing-home-related inquiries during the next year. The Moss subcommittee needs more personnel and more operating funds.

The request I have made—and which Senators Moss and Percy support, along with the ranking Republican committee member, Senator

Fong—is modest, \$125,000. But it should be enough for the subcommittee to step up its investigations in cooperation with others which are already underway or under consideration.

In addition, Senator Moss and I are taking action to request the Congress to instruct the executive branch to take its appropriate part in any such effort.

My own personal belief is that certain Federal agencies or departments should perform an information-exchange function and on appropriate occasions a coordinating function for State and local investigations and of course for Federal investigations as well. Three States have already begun formal investigations into alleged nursing home abuses. Senator Moss tells me that attorneys general in five other States have been in touch with the subcommittee of late to seek assistance in launching other inquiries.

There is nothing inherently wrong in multi-State nursing home operations, of course. But on the other hand, complexity and distance can be powerful allies of those who engage in unlawful or unethical practices designed to divert public money to private and illicit profit while depriving chronically ill persons of the care that Congress says is their due.

With billions of Federal dollars at stake, an effort simply must be made to assure that medicare and, if need be, medicaid perform the functions they were meant to do. And in making that effort, the Congress and the administration should insist that better control of costs will result in better care for patients.

It is not enough simply to perform a police function. Responsible persons in Government should also insist on quality care for the patient.

Senator Moss has always kept this objective in mind. A series of important reports now being issued by his subcommittee has the same objective; these subcommittee reports are making an important record which deserves the attention of policymakers, health practitioners, and the general public.

In opening the January 21 hearing in New York City, Senator Moss said that he hoped that the showdown on high quality nursing home care supported with Federal funds—a showdown so long delayed—is finally here. I hope that an aroused public and receptive legislators and administrators will make certain that this is indeed the case.

#### **STATEMENT BY SENATOR HARRISON A. WILLIAMS, JR.**

Senator WILLIAMS. My statement will be brief because the subcommittee has a great deal of work to do.

First, I would like to give Senator Moss a word of thanks for pursuing important issues which have surfaced in New York. The Senator has been an ardent advocate and force for high quality nursing home care, with adequate safeguards to protect the patient and the taxpayer who foots such a large share of the long-term care bill. Senator Moss has worked for years to have laws passed, only to see improvement of standards delayed by executive-branch lag or outright reluctance to enforce the new standards. Now, thanks to Senator Moss' persistence—and a series of subcommittee reports which are spelling out the national nursing home failure of public policy in a way never

done before—the Department of Health, Education, and Welfare is showing more concern than has been the case in the past. In addition, the New York revelations and allegations should at last arouse the public, State, and local government, and certainly the Congress and Government officials responsible for national medicaid policy to the heavy price apparently being paid by the public for a nursing home reimbursement policy which invites careless and even wild spending without any assurance that the patient will receive better care.

As chairman of the Senate Committee on Labor and Public Welfare, I have special reason to be concerned about sore spots in any part of the health care system of the United States. Not only does the committee bear a heavy responsibility for health programs in general, it also will consider issues related to establishment of a national health insurance system within the fairly near future. The issues raised by the so-called cost-plus system in this State should not be lost upon our committee. I for one will pay close attention to the findings of this subcommittee and of other units now planning or conducting investigations in New York.

I am aware that a State legislative investigation is underway in New Jersey, where another form of medicaid reimbursement for nursing homes is employed. I will want very clear and specific answers on abuses or negligence related to long-term care in New Jersey. We in this Nation cannot tolerate drains upon our Federal taxes for slipshod or questionable practices for any purpose, and that is especially true when it comes to any public dollar intended to provide care and kindness to chronically ill, and very often helpless, elders of our society.

Finally, I would like to assure the subcommittee chairman and the committee chairman that I will support their efforts to request a coordinated and comprehensive effort by appropriate agencies of the Federal executive branch to link important facts emerging from investigations now underway on nursing homes in perhaps a dozen States. At a minimum, the Federal agencies should perform an information-exchange function. Even more desirable, however, would be a genuine effort within the executive branch to learn lessons from what is happening in New York and elsewhere and apply those lessons to the betterment of care within nursing homes under cost control procedures that really do the job.

Senator MOSS. Senator PERCY.

Senator PERCY. Mr. Chairman, I would like to simply say on behalf of the minority, and as ranking minority member, that no member of this subcommittee is more devoted to his task, more knowledgeable and experienced, than the able Senator from New Mexico.

I don't know if in New Mexico you have the kinds of problems that we have in many major metropolitan areas, but it has been a great source of help to have Senator Domenici, who cares about people—he has enough at home, 11 children—

Senator DOMENICI. Eight.

Senator PERCY. Eight?

Senator DOMENICI. My wife will shoot you for that, Senator Percy. [Laughter.]

Senator PERCY. I stand corrected. I get up over five or six and I lose track, but I do think he cares deeply about this problem, as dem-



onstrated by his activities on this committee and his activities today.

Senator DOMENICI. I want to say this with reference to your request that the two letters be made a part of the record.

I would like my views to reflect, Mr. Chairman, that your response was indeed an excellent response.

My only observation as a Senator, certainly not as a chairman, is that you are much too kind, much too mild, and much too generous in your response.

Senator Moss. Well, thank you, Senator Domenici, and Senator Percy. I think that is the only criticism I got out of holding the hearings before, they said I was too soft and too kind.

Before we call the witnesses, maybe I could outline just a little the issues that I think are before us, so I think we can focus in on it, with a multiple panel today, and we expect to be joined by the Senator from New Jersey, and we will have to focus on these matters and move along with as much rapidity as possible. The first issue is the cost-plus reimbursement.

Now, the Federal law requires that all States go to a cost-related reimbursement system no later than January 1977.

Because of this requirement, the subcommittee is interested in examining New York's weighted average cost-plus system of reimbursement, in an effort to evaluate its effectiveness, and to determine what, if any, safeguards should be recommended to reduce the possibility of medicaid fraud in nursing home operations.

The second issue is responsibility for inspection. The responsibility for inspecting nursing home operations was transferred from New York City to the State of New York in 1973.

Allegations have been made which suggest that certain politically well-connected operators, have consistently been able to short circuit this investigation process, thus enabling noncomplying nursing homes to continue to collect Federal and State medicaid payments.

Within recent weeks, the city health officials have attempted to reclaim authority for inspection. We want to know where that authority ought to be, and how is it being exercised, and is it being perverted in any way.

Another issue is padding of medicaid reimbursement. Allegations of such have been raised that certain nursing home owners or operators have been involved in attempts to pad their medicaid payments by claiming reimbursement for nonlegitimate expenses, such as liquor, limousine service, college expenses, fur coats, and so forth.

The subcommittee is interested in determining how much illegal, how such illegal claims could escape detection, and how could they be prevented in future instances.

In New York, nursing homes books are generally accepted as valid upon certification of a certified public accountant. Then the allegation of political influence—there have been numerous allegations of continuing patterns of political influence which has been used to benefit certain well-connected nursing home operators.

It has been suggested, use of political influence has effectively freed certain homes and operators from State regulations, thereby allowing subhumane conditions to persist in many of the States, in the nursing home facilities, and the final issue I will try to lay out is the disguised syndicate ownership.

There have been repeated allegations that several nursing home operators have been involved in complex nursing home syndicates, involving not only New York, but many other States.

These allegations suggest in many cases the ownership is disguised. The subcommittee would like to determine whether or not these alleged syndicates exist, and what the effect may be on the quality and the cost of the care.

I set those out simply to indicate what we are trying to measure here. As my colleague so aptly pointed out, we are not here to hold a trial. We are here to find the facts. We get at the facts as best we can, so that we can discharge our obligation as Senators of the United States.

We have several witnesses today. The first one I would like to call, Mr. Harold Michaels, counsel to the American Bank & Trust Co.

Is Mr. Michaels here?

UNITED STATES OF AMERICA  
Congress of the United States

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To Harold Michaels, Counsel or other Officer

American Bank and Trust Company, 70

Wall Street, New York, New York, Greeting:

Pursuant to lawful authority, **YOU ARE HEREBY COMMANDED** to appear before the Special Committee on Aging of the Senate of the United States, on February 4, 1975, at 10:00 o'clock a.m., at their committee room New York County Lawyers Association, 14 Vesey Street, New York, New York, then and there to testify what you may know relative to the subject matters under consideration by said committee.

The Committee requests you provide copies of any loan agreements or secured instruments between your bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass; along with balance sheets or certified statements of net worth supplied for purposes of establishing a line of credit with your bank.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To Patricia G. Oriol

to serve and return.

Given under my hand, by order of the committee, this

16th day of January, in the year of our

Lord one thousand nine hundred and seventy-five

Ted Moss

Chairman, ~~Committee~~ Subcommittee on Long-Term Care,  
U.S. Senate Special Committee on Aging.

Mr. MICHAELS. Right here.  
 Senator Moss. Mr. Michaels, are you able to comply with the subpoena?

**STATEMENT OF HAROLD MICHAELS,\* COUNSEL, AMERICAN  
 BANK & TRUST CO.**

Mr. MICHAELS. I have the material here. I understand Dr. Bergman's attorney was going to make some kind of motion with respect to the delivery of the documents.

Mr. LEWIN. Mr. Chairman, my name is Nathan Lewin. I think we met several weeks ago. I have for the committee an application to intervene on the matter of the subpoenas that were served on the bank, and I gather there were two sets of subpoenas that were so served.

Our application to intervene, which I would like to submit to the chairman and to the members of the committee, is being circulated to the absent members of the subcommittee today, and it is a matter which we submit, under the committee's rules, has to be considered by the full subcommittee.

I believe under the committee's rules, the chairman is authorized to conduct hearings for the taking of testimony, but under rule 3, is not permitted to make any determinations on substantive matters in the absence of a quorum.

The purpose of that application, if I may just speak to it for a moment, Mr. Chairman, or if I might just approach the microphone, I think my statements would become clearer for the record.

Senator Moss. All right.

Mr. LEWIN. We have attached to our application to intervene a copy of a subpoena that was served on the bank, and that the bank just furnished us with.

That subpoena was signed on the 16th day of January by the chairman, and it called on the bank to produce for presentation before this committee on February 4, copies of the loan agreements, or secure instruments between the bank and Dr. Bernard Bergman, Anne Weiss Bergman, and Amram Kass, who is Dr. Bergman's son-in-law, and Miriam Kass, Dr. Bergman's daughter, along with balance sheets, and a certified sheet of net worth for purpose of establishing a line of credit with the bank.

Let me say preliminarily, apart from the fact this subpoena was issued on the 16th day of January, which is 35 days before the hearing, it indicated that at that time this committee was already determined to look into Dr. Bergman's personal net worth.

Now, I recall, and I would refer the committee specifically, and I now have galleys of the transcript of the hearing of January 21, when in the course of those hearings, as sort of an afterthought, I believe Mr. Halamandaris said to Dr. Bergman and myself, by the way, would you supply us with a statement of your net worth, the financial statement indicating the net holdings that you have.

I think at that point I indicated to this committee I thought this was a substantial invasion of privacy.

\*See appendix 1, p. 3177 for material dealing with American Bank & Trust Co.

There was never any prior request on the part of the committee for this kind of information, and indeed if the committee is looking into the matters that the chairman has outlined previously, I submit that such a statement of net worth in regard to any individual is irrelevant, but certainly in regard to an individual who has testified before this committee under oath, as to a very limited ownership of homes in New York State, notwithstanding the fact that that subpoena had apparently already been issued by the committee, this request was made to me, and to my client here, in open session, before the committee.

The only inference I can draw, Mr. Chairman, is that in some way the committee was trying to derive from me, without notifying me as to the fact they already sought this information, some effort to get to personal private information, which I thought was inappropriate.

I made an objection, I stated we might consider it, if it were limited to the chairman and to counsel, and the indication I got was very likely that might be true.

It now turns out that a subpoena was then being sent, and in fact had been added to by the service of a second subpoena the other day.

Mr. HALAMANDARIS. Can I stop you at that point? Can we learn from counsel of the American Bank & Trust Co., the date the subpoena was in fact delivered, although it is dated on the 16th of January, the subpoena was not delivered on that day?

Can we learn when it was served?

Mr. MICHAELS. I do not recall.

Mr. LEWIN. I submit there is some indication of bad faith, although I very much regret to make that kind of assertion, but nonetheless, if in fact you have subpoenaed those documents, then to tell my client and myself here, now, would you please produce those, and in addition to that, Mr. Chairman, I believe in your letter, when we objected, in our letter of the two letters that are now made a part of the record, we objected to the fact that this subpoena had been served for personal documents, which the chairman replied in his letter that these personal documents had only been sought because Dr. Bergman had testified regarding his limited holdings.

In fact, it now appears that subpoena was issued sometime before Dr. Bergman even took the stand.

Senator Moss. Dr. Bergman had been quoted in the press long before that of saying the nursing home business was not profitable, and it was on that basis that we wanted to see whether we could find out whether it was profitable or not, and he reiterated on the stand under oath, that it was not profitable, and that he did not have much money.

Mr. LEWIN. I do not know whether he said he did not have much money, but, Mr. Chairman, I think the point is if in fact this committee sees the proper purpose of looking into the total net worth of anyone owning a nursing home in the United States, I submit, and I submit it is not a proper subject of legislative inquiry, but let me come back to the legal limitations of our application.

A subpoena has been served on a bank for personal documents. We submit that that subpoena far exceeds under any applicable case law, under any applicable Supreme Court decision, the proper province of this subcommittee.

We submit it is a substantial invasion of the fourth amendment.

Now, since the subpoena is served on a third party, the only way that the party who actually has the personal interest in these documents is

able to get into court, when a subpoena is served on a party is in court to intervene, and consequently we are now making application to the subcommittee for permission to intervening and quashing of these subpoenas.

This is done rather hastily. We would like to submit to the full committee this matter. As I say, this is a matter that has to be considered by the full subcommittee. It is a substantive issue under which one Senator cannot make any substantive determination.

It is something which is being circulated now in Washington to all of the other members of the subcommittee.

We would like to make a full presentation of our legal position regarding that subpoena, which we think is an improper one, prior to its return, and have the subcommittee rule on it.

Now, why are we doing that, rather than going to court in some way?

Well, the governing rules, and the control, and in fact, it is rather curious, I am sitting here today, making this argument, in fact, our law firm, and I myself have represented Senator Eastland, Senator Eastland's committee on precisely this very issue, as to whether a court can interfere in the enforcement of a Senate subpoena, and the courts have held that a court may not interfere, but it is precisely an issue the Senators have an obligation to consider under the law and under the Constitution, and have remanded the parties to the Senate committee itself, consequently, we are following the procedures that the Supreme Court cases and the lower court cases have recommended.

We are filing an application with the subcommittee, which we would like the subcommittee to rule on the basis of the law and the facts, and as I say, we would like to amplify this application, which was hastily gotten up and submitted this morning, we would like to amplify it with a legal brief to the subcommittee, and with an oral presentation to the full subcommittee which we are prepared to make in Washington, D.C.

Senator Moss. Mr. Lewin, we will take a very brief recess while I confer with my parliamentarian and my colleagues that we have here, and I will give you a ruling right away, to know whether we go on with this, or whether we will be stopped in our tracks.

Senator PERCY. Mr. Chairman, before we recess, I would like to ask Mr. Lewin a question.

Mr. Lewin, I would like to ask you, as you have looked over this matter, do you feel that this committee, or any body of inquiry, would have reason to ask questions about account No. 7, which is entitled "Loans and exchanges"? Do you feel that the records that have been made available to this committee are adequate to fully explain the numerous transactions that occur in this account—the most unusual set of entries that I have ever seen on a set of corporate books?

Do you feel that we have adequate information as of now to fully explain that account?

Mr. LEWIN. If the committee were to conclude on the basis of a fair examination of that account, that that account being in some way affected, that it in some way affected the medicaid payments, I think the committee would have reason to ask questions regarding that account, but as I tried to explain to Mr. Halamandaris at the last session, a loans and exchange account, I think any account, if a committee cares to ask whether a loans and exchange account affects an

income statement in some way, in other words, affects what any nursing home is receiving from medicaid, I think the committee will learn that a loans and exchange account is not.

Mr. HALAMANDARIS. Counsel, you may know a lot about criminal law, but you do not know a hell of a lot about medicaid. I will tell you that. [Applause.]

You are mistaken when you contend the loan and exchange account does not affect the medicaid rate.

Mr. LEWIN. It does not appear on the application for which reimbursement is made for medicaid.

Senator MOSS. Is this where you put a little in the candy store and take a little out?

Mr. LEWIN. The candy store I used refers to the fact if you have a family business, you have a profit-and-loss statement, which the family business may have as to what profits it makes, and what losses it incurs. With regard to loans to the business, the business has employees, the family members may lend money to it, and may borrow money from it, which does not appear on the income and expense statement. Before the committee adjourns, I would like to make it clear, Mr. Chairman, simply as a matter of personal privilege, I think that I am not trying to stop the committee in its tracks, and I do not want that inference to appear in the record.

I think the committee ought to continue with its investigation, and at a later point today, I think we may be discussing that.

I am referring to a particular subpoena, that the committee is looking for private records on.

I think it is an improper subpoena, I think the full subcommittee ought to consider its impropriety. I am confident the full committee considers the propriety of that subpoena, if it does that, it will determine it is not a proper subpoena, and it will be withdrawn.

Senator PERCY. I would like to pursue my question with a statement.

In the judgment of the Senator from Illinois, subpoenas have not been complied with, all of the records we have subpoenaed have not been provided to this subcommittee.

It is impossible to determine from the records that have been provided what has gone on, and it is the nature of the inquiry that we are making to try to find out what did go on.

Now, I wish to emphasize, as a coauthor of Senator Ervin's privacy bill last year, which was the toughest privacy bill ever adopted by the Congress, that all of us as Members of the Senate wish to preserve and protect the rights and privacy of individuals. I can assure you that whatever records we have subpoenaed which are placed in our possession for examination, will be treated with the utmost confidentiality, and only those portions will be revealed that absolutely are essential and crucial to the line of inquiry, and that we feel must be made a matter of public record, but having said that, I—

Mr. LEWIN. Senator, at the outset of these hearings I advised the committee by letter, and we advised them orally, that we would cooperate with every good-faith investigation to look into legitimate areas of inquiry.

With regard to the matter of this loans and exchange account, Senator Percy, I think I can represent to you, and without any fear of contradiction, that we have cooperated, for example, with the

prosecutorial effort by the U.S. attorney's office for the southern district of New York.

Senator PERCY. I just want to encourage your continued cooperation.

Mr. LEWIN. I think this committee can ask the assistant attorney whether we have cooperated with him in providing records to him pursuant to subpoena.

We had a difference with this committee, which we discussed in exchange of correspondence over the scope of the subpoena we were served over the Towers Nursing Home.

Mr. Halamandaris and the chairman said they view the scope of that subpoena, including such documents given to the U.S. attorney voluntarily by my client—we arranged to have those documents handed over to the committee. We are not in a position of not having cooperated in good faith, but when an investigation is not one that looks at documents that could in any way be related to the good faith of the inquiry the subcommittee is doing, but is solely an intrusion on privacy, like seeking to get total net worth statements, I submit there is nothing about a net worth statement relating to the Towers Nursing Home. When it exceeds that authority, it is my duty on behalf of my client to come before this subcommittee, and say a halt has to be called to that, and that is true with regard to any kind of inquiry this committee engages in with regard to my client.

If there is an effort made to exceed the legitimate bounds, and that is what I think has been done, then we will come in here and say you cannot do it, because the Constitution prevents you from doing it.

Senator MOSS. Senator Domenici, do you have a question?

Senator DOMENICI. Yes; I do.

As I understand your argument, first you are saying the subpoena is procedurally defective?

Mr. LEWIN. No; I have no objection to the procedure.

Senator DOMENICI. You have no objection to the procedure?

Mr. LEWIN. Except to the extent I am somewhat distressed, that while that procedure was outstanding, my client and I were sitting here on the witness stand in front of the television cameras, and we were asked in fact to have net worth statements issued to the Attorney General.

Senator DOMENICI. That is certainly not procedural in the legal sense.

Mr. LEWIN. Not procedural in the legal sense, it is just personal reaction to what I thought was really unfair treatment.

Senator DOMENICI. Is the Watkins case that you cite—I am not familiar with it—is it precedence for the fact that your first recourse is for us to pass judgment as a committee on the merits of your objection, is that the case?

Mr. LEWIN. No, the cases that rule that way are all cited in there, and as I said, one case we represented Senator Eastland, it is called *Eastland* versus—I forget who the respondent is, but it is presently pending before the Supreme Court, and there are a whole lot of cases that says a court may not enjoin the issuance of a subpoena, but the remedy is to go directly to the congressional committee, and the Congress has the obligation in passing on the legal objections to the issuance of a subpoena; and that is exactly what we have done.

Senator DOMENICI. Now, you cite in your application to intervene, you cite the jurisdictional authority of this committee.



You state what its purposes are, and is it your argument that we do not have authority because of some limited purpose affecting this committee?

Mr. LEWIN. Well, I will be candid, Senator Domenici. We have tried in our office in Washington for the last 3 weeks to receive the specific authorization of this subcommittee under a delegation from the full Special Committee on Aging, and we have not yet found any official document, we have not received an answer to informal inquiries of the committee.

I have never seen it. I don't know, as I sit here, the document may exist somewhere, but I can honestly say to this committee, I do not know whether it has authority to sit there and do anything.

Senator PERCY. Senate Resolution No. 267, unanimously passed by the U.S. Senate, mandates that this committee has the authority to look into all matters that pertain to the elderly, not just to medicaid, and whether or not someone is enriching themselves at the expense of the poor elderly is certainly germane to this inquiry.

Mr. LEWIN. Senator Percy, I have no problem with Senate Resolution 267.

Indeed, we know of Senate Resolution 267, but under all applicable law, when a subcommittee acts under delegation of the full committee, the subcommittee requires specific written delegation, and I have not found the written application from the full committee to the subcommittee.

Senator DOMENICI. Do you have any doubt we can get it?

Mr. LEWIN. I do not have any doubt.

Senator MOSS. We will have a brief recess while I talk with my colleagues.

[Whereupon, the subcommittee was in short recess.]

Senator MOSS. Let us have order, please.

The Chair is ready to rule on the motion made by Mr. Lewin, having conferred with the members of the subcommittee, and with the parliamentarian, based on the rules of the Senate, a copy of which I have here, the rules pertaining to this subcommittee, and I will read the pertinent section, after this committee as constituted, rule 3, says, a majority of the committee, or any subcommittee shall constitute a quorum sufficient for the conduct of business at executive sessions. One member shall constitute a quorum for the receipt of evidence, the swearing of witnesses, and the taking of testimony at hearings, so on the basis of that, the objection of Mr. Lewin is overruled, the documents will be received under the subpoena.

Mr. LEWIN. Mr. Chairman, is that that you are overruling our request for intervention, you are overruling our request to quash the subpoena, or are you just overruling the fact, that you say we have read the rule wrong, and we are entitled to enforce the subpoena?

Senator MOSS. You are overruled on all of those motions, and if you want to go to court, you may go down to court.

Mr. LEWIN. I would like to ask, Mr. Chairman, please, that the enforcement of the subpoena be stayed for a period of 48 hours to enable us to reply to the full subcommittee or to a court of law, because, as I say, if this is in fact a violation of one—of a legal right of my client, and of a constitutional right, I do not think that this subcommittee, with three members present, should take the step of infringing on that constitutional right.

Senator Moss. The stay is granted for 48 hours. [For resolution of legal issues, see appendix 1, item 7, p. 3190.]

Mr. LEWIN. Thank you.

Senator Moss. We thank you for your appearance, and if you would respond in 24 hours, we would appreciate it.

Our first witnesses today will be Mr. Horton R. Shaw, counsel to the New York State Office of Welfare Inspector General.

He will be accompanied by Mr. John Ruehle, assistant auditor.

## UNITED STATES OF AMERICA

### Congress of the United States

To Mr. John Ruehle, 655 Madison Avenue, New York, New York

....., **Greeting:**

**Pursuant to lawful authority, YOU ARE HEREBY COMMANDED** to appear before the Special ..... Committee on Aging ..... of the Senate of the United States, on February 4 ..... , 1975, at 10:00 ..... o'clock a.m., at ~~the Committee Room~~ New York County Lawyer's Association, 14 Vesey St., New York, New York ..... , then and there to testify what you may know relative to the subject matters under consideration by said committee.

The Committee requests your appearance along with all books, records, bank statements, cancelled checks received and all memoranda, reports or workpapers developed in the course of your employment in the Office of the New York Welfare Inspector General and his investigation of the Towers Nursing Home.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To John E. Hemington, Jr.

to serve and return.

Given under my hand, by order of the committee, this

28th day of January ..... , in the year of our

Lord one thousand nine hundred and seventy-five .....

*Ed Moss*

Chairman, ~~Committee on~~ Subcommittee on Long-Term Care,  
U.S. Senate Special Committee on Aging

I may say that the inspector general has delivered to this committee an updated copy of a report on the Towers Nursing Home, which I am pleased to receive, and we will be inquiring about this.

[The material referred to follows. Testimony resumes on p. 3076.]

**REPORT ON TOWERS NURSING HOME, PREPARED BY THE NEW YORK STATE WELFARE INSPECTOR GENERAL, FOR PRESENTATION TO THE SUBCOMMITTEE ON LONG-TERM CARE**

**THE TOWERS NURSING HOME—GENERAL**

**BACKGROUND INFORMATION**

*A Physical Description Of Towers Nursing Home*

The Towers Nursing Home commenced operations in 1956 and closed its doors in January 1975, at which time it had a bed capacity of 347. It is located at 2 West 108th Street, New York City.

The Towers Nursing Home, found to be in serious violation of the Federal Life Safety Code for several years, had joined the Hayden-Manor class action legal suit. However, in December 1974, the Towers Nursing Home decided, voluntarily, to cease operation because of uncorrectable deficiencies. Their decision to close seems also related to the fact that the NYS DH would not approve transfer of the Towers' license to another building located at Fifth Avenue and 108th Street, New York City.

The home consisted of four floors of round dormitories joined by corridors. These corridors were sufficient in width but were lined in many areas by stand-up closets, chairs, tables and other furniture and equipment. The fourth floor is located in the building's turrets and one cannot get from one section of this floor to the other without crossing over on the floor below. The building's floor plans vary from floor to floor. All patients, including blind and nonambulatory or physically handicapped patients, were quartered on all four floors.

In addition to patient rooms, the first floor contained the lobby, offices, and a physical therapy room which appeared to be used more for storage than rehabilitation. Each floor contained a patient dining/recreation area which was inadequate for the home's patient population. The home had only one treatment room located on the third floor. A basement housed the home's dietary facilities, staff dining room, laundry facilities, storage area, and boiler room.

**HISTORY OF OWNERS, OPERATORS AND ADMINISTRATORS**

The building housing the Towers Nursing Home was built as a hospital in the 19th century and sold, in 1952, by the hospital to Webb and Knapp, Inc.

West Par Realty Co., Inc., purchased the property from Webb and Knapp, Inc., in December 1955. West Par Realty Co., Inc., had two mortgages on the property: the first, for \$199,700 at 6 percent interest, was granted by David Lidsky and Joseph Rubenstein on November 29, 1955. It was payable in monthly installments of \$2,550 from December 29, 1955, to October 29, 1956, with the balance due on November 29, 1956. Lidsky and Rubenstein assigned the mortgage to the Lafayette National Bank of Brooklyn on the same date. The second (subordinated to the first) was for \$600,000—at no interest—granted by Philip Deutsch on July 3, 1956, and payable on November 15, 1959.

Three transactions took place prior to November 29, 1956, the due date for the first mortgage: (1) Lafayette National Bank assigned the mortgage to David Lidsky; (2) Lidsky assigned it to Bernard Bergman; (3) Bernard Bergman assigned it to Lafayette National Bank for a consideration of \$150,000.

In March 1957, West Par Realty conveyed the property to Anne Weiss (Mrs. Bernard Bergman). Anne Bergman was the secretary and Bernard Bergman the president of West Par Realty Co., Inc. The \$600,000 second mortgage, which had been assigned by Philip Deutsch to K. D. H. Towers, Inc., on December 12, 1956, was thereafter assigned by K. D. H. Towers to B & B Holding Corp. on January 6, 1958. Bernard Bergman was the president of B & B Holding Corp.

In October 1958, the following transactions took place:

(1) Anne Weiss conveyed the property to Bogardus Realty Corp. Her address was listed as 280 Riverside Drive, New York. The deed was subject to an \$800,000 consolidated purchase mortgage (to be recorded at the same time) and to a lease for the property, with Anne Weiss as lessee and Bogardus Realty as lessor. This deed was signed in the presence of Mark A. Bogart.

(2) Bogardus Realty was granted a mortgage by Anne Weiss for \$54,500 at no interest. This constituted a third mortgage on the property and was subordinate to the other two.

(3) Lafayette National Bank assigned the first mortgage to Anne Weiss.

(4) B & B Holding Corp., a corporation in which Anne Weiss owned stock under the name of Anne Bergman, assigned the \$600,000 mortgage to Anne Weiss (she was now the owner of all three mortgages on the property).

(5) A consolidation and extension agreement was entered into by Anne Weiss and Bogardus Realty on October 15, 1958. Under this agreement, all three mortgages were consolidated into one \$800,000 lien. Bogardus was to pay \$65,000 a year—\$150,000 on January 2, 1959, and 5 percent interest on the remaining \$650,000 lien, with the balance of the principal due on October 15, 1968 (the date that the lease with Anne Weiss expired).

(6) Anne Weiss leased the property from Bogardus Realty for an annual rent of \$130,000 from October 15, 1958, to October 15, 1968. The lessee was to pay all real estate taxes and water charges. The lessee was given the option to renew for an additional 11 years at a rate of \$130,000 per year. The address of the lessee was given as c/o Mark A. Bogart, Esq., 1270 Sixth Avenue, New York, N.Y. The mortgage between Anne Weiss and Bogardus Realty was recorded at the request of Mark A. Bogart.

(7) Bogardus Realty conveyed the property to Towers Associates, a partnership consisting of thirty (30) partners formed on October 14, 1958. [exhibit 1].<sup>1</sup> According to the papers of incorporation of Bogardus Realty on file with the New York Department of State, Benjamin Pulier is one of the directors of Bogardus (Pulier was one of the 30 partners in Towers Associates in 1958). The conveyance was subject to a \$800,000 mortgage as a first lien and to a lease entered into by Bogardus Realty and Anne Weiss.

As indicated above, Anne Weiss assigned the \$800,000 mortgage to Lafayette National Bank in December of 1958 for a consideration of \$150,000. According to the mortgage, Bogardus was to pay \$150,000 to the holder of the mortgage on January 2, 1959, as a reduction of principal. In July 1959, Anne Weiss and Lafayette National Bank entered into an agreement in which they were to share ownership of the consolidated mortgage, with \$628,014.70 in principal still outstanding. Lafayette's share of the mortgage was \$150,000. On the same date (July, 1959) Anne Weiss assigned her interest in the mortgage to Miltstol Syndicate, Inc., located at 50 Court Street in Brooklyn.

Miltstol Syndicate assigned its interest in the mortgage to Sterling Investment Corp. in July 1960. Sterling Investment, in turn, assigned it to Irving Fox in February 1961. In May 1961, Fox assigned his share of the mortgage to Anne Weiss, and Lafayette National Bank assigned its \$150,000 share to Anne Weiss for a consideration of \$150,000. She then assigned the entire mortgage to Laurence Tisch and Preston Tisch, who held an undivided one-half share, and to 221 Realty Corp., who received the other one-half share. The unpaid principal was \$563,644.67. Mark A. Bogart was the notary for this last transaction.

In July 1962, the Tisches and 221 Realty Corp. assigned their shares of the mortgage to Federation Bank & Trust Co., located at 10 Columbus Circle. The outstanding principal on the mortgage was then \$519,507.62. In May 1963, Towers Associates entered into an extension agreement with Federation Bank, the Tisches and 221 Realty Corp. The outstanding principal on the mortgage was then \$489,746.54. Interest was to be paid at the rate of 6 percent a year commencing on March 15, 1963. Monthly payments of \$4,075 were to be made from April 15, 1963, to October 15, 1978. The unpaid balance was scheduled for payment on October 15, 1978. Solomon J. Freedman was the notary of the Towers signatures. He was also listed as the vice president of Bogardus Realty.

<sup>1</sup> All exhibits mentioned in this report are retained in committee files.

On April 1, 1964, Aghadjan and Nourollah Elghanayan became the sole partners of Towers Associates. They assigned their interest to David Berg, Irving Dimson, Harry Feldman, Bernard Alt and Stanley A. Alt on June 18, 1964 [exhibit 2].

Anne Weiss and Towers Associates agreed to a modification of the lease on May 25, 1965. She agreed to make repairs and installations at a cost of \$90,000 in return for an extension of the lease from 1979 to 1989. There would also be an increase in the rent of \$7,500 per year. This modification was not recorded until February 27, 1968. Bernard Bergman signed as a witness to the agreement.

On July 12, 1965, Anne Weiss assigned the lease to Liberty House of New York, Inc. This document was recorded on February 27, 1968. Liberty House is a wholly owned subsidiary of Medic-Home Enterprises, Inc. According to a recent offering circular, dated September 25, 1974 (exhibit 3), Bernard Bergman is the chairman of the board of directors of Medic-Home and owned approximately 25 percent of the outstanding shares of common stock as of August 30, 1974. Furthermore, Samuel A. Klurman, the chairman of the executive committee, and a director, owned approximately 32 percent of the outstanding shares of common stock at that time [exhibit 3].

On January 12, 1968, Liberty House of New York sub-letted the property to a partnership, Towers Nursing Home, which partners included Alexander Forro, Sisel Klurman, and Anne Weiss. Samuel Klurman signed the agreement in his role as president of Liberty House. The rent was set at \$1,000 per bed annually, which was equivalent to \$347,000 in 1974. Accompanying this sub-lease was a consideration of \$100,000.

The following situation prevailed when the Towers Nursing Home was closed in January 1975:

(1) *Deed*: Held by Towers Associates.

(2) *Mortgage*:

(a) Laurence and Preston Tisch hold an undivided one-half share.

(b) United Jewish Appeal of Greater New York, Inc. holds 29 percent.

(c) Federation of Jewish Philanthropies of New York hold 21 percent.

(3) *Lease*: Liberty House of New York, Inc.

(4) *Sub-Lease*: Towers Nursing Home (a Partnership) consisting of Anne Weiss and Sisel Klurman.

*Principal Parties Involved in Transactions:*

1. West Par Realty Co., Inc., 19 West 44th Street; 2 West 106th Street, New York, N.Y. Bernard Bergman, president; Anne Bergman, secretary; Murray Kalik, attorney and vice-president.

2. B & B Holding Corp., 250 West 57th Street, New York, N.Y. Bernard Bergman, president.

3. Bogardus Realty Corp., c/o Benjamin Pulier, Esq., 51 Chambers Street, New York, N.Y. David Rabey, president; Solomon J. Freedman, vice-president.

4. Towers Associates (partnership), c/o B. Pulier, 51 Chambers Street, New York, N.Y. David Rabey and Benjamin Pulier.

5. Anne Weiss is the wife of Bernard Bergman. She uses the names Weiss and Bergman interchangeably and both names use the address: 280 Riverside Drive, New York, N.Y.

6. Liberty House of N.Y., Inc. (a subsidiary of Medi-Homes, Inc.), 250 West 57th Street, New York, N.Y. Samuel Klurman, president.

7. Medic-Home Enterprises, Inc., 1700 Broadway, New York, N.Y. officers: Dr. Bernard Bergman, chairman of the board; Samuel Klurman, chairman of the executive committee; Morris A. Shmidman, president; James M. Breiner, vice-president, board of director Conn. Soic.; Samuel Oberfest, secretary and treasurer. Directors: Bernard Bergman, Stanley Bergman (executive committee), James M. Breiner, Samuel A. Klurman (executive committee), Samuel Oberfest, Morris A. Shmidman (executive committee).

8. Miltstol Syndicate, Inc., 50 Court Street, Brooklyn, N.Y. Milton Stolitsky, president.

9. Sterling Investing Corp., 42 Broadway, New York, N.Y. Joseph Aliger, president.

The following information on the ownership, operation and administration of Towers Nursing Home for the years 1966-73 was obtained from the HE-2P's submitted by the Towers Nursing Home to the New York State Department of Health :

1966.—Administrator, Alexander Forro; operator, Anne Weiss; owner, Anne Weiss.

1967.—Administrator, Alexander Forro; operator, Anne Weiss and Jeanette Leifer; owner, "no change."

1968.—Administrator, Alexander Forro; operator, Alexander Forro, Anne Weiss, and Sisel Klurman (the wife of Samuel Klurman); owner, "no change."

1969.—Administrator, Alexander Forro; operator, Alexander Forro, Sisel Klurman, and Anne Weiss; owner, "same as above" (presumably Forro, Klurman, and Weiss).

1970.—Administrator, Mark Loren; operator, Anne Weiss and Sisel Klurman; owner, Towers Associates, Inc.

1971.—Administrator, Jack Stern; assistant administrators, Mark Loren and Simon Pelman; operator Anne Weiss and Sisel Klurman; owner, Towers Associates, Inc.

1972.—Administrator, Jack Stern; assistant administrator, Mark Loren, Simon Pelman, and Shapiro; operator, Anne Weiss and Sisel Klurman; owner, Towers Associates, Inc.

1973.—Administrator, Jack Stern; other licensed administrators, Mark Loren (executive director), Margaret Klein (assistant administrator—pending); operator, Anne Weiss and Sisel Klurman; owner, Towers Associates, Inc.

1974.—The Towers Nursing Home was closed in January 1975. HE-2P for the year ending December 1974 has not been submitted as yet to the NYSDH.

#### ON-SITE AUDIT BY OFFICE OF WELFARE INSPECTOR GENERAL

##### A. OBSERVATIONS WITH RESPECT TO BOOKS AND FINANCIAL RECORDS

The financial books and records of the Towers Nursing Home are such as to all but defy review to determine the home's true financial conditions. Moreover, the HE-2P's submitted to the NYSDH were not prepared in accordance with accepted accounting procedures, further complicating attempts to properly review financial activity at the home.

*Negative cash position in bank accounts:* The cash accounts at the National Bank of North America, as maintained in the general ledger, indicate a negative cash balance. The bank account does not show overdrafts.

The payroll account at the Manufacturers Hanover Trust Co. shows a negative cash position, as of December 31, 1973, of \$59,676.81, while the actual balance in the bank account on that date was \$27,799.15.

Following are partial payroll figures for the last 4 months of 1973 (payroll deductions not itemized). The weekly payroll ranges between \$25,000 and \$30,000.

	September	October	November	December
Gross payroll.....	\$130,806.61	\$149,841.93	\$132,820.97	\$281,326.13
	37.77	24.72	37.77	58.80
Net cash.....	102,502.14	116,998.32	104,340.56	241,622.91

*Cash receipts books:* Cash receipts books are maintained by a clerical employee who is not a bookkeeper. Her principal interest in this record is to maintain postings of payments of social security paid to or on behalf of patients.

For the year 1972, monthly posting totals from the cash disbursements book to the general ledger have been changed to higher amounts, the total difference for the year being an increase of \$199,650. This increase is noted without explanation,

and results in the negative balance carried in the accountant's statement of assets and liabilities and in the HE-2P submitted to the NYSDH by Towers for the year ending December 31, 1972.

For the year 1973, this same procedure was followed. The total difference for 1973 totaled \$114,350, resulting again in a negative balance. The reason for making such entries is not apparent and the offsetting entry is not apparent.

The schedule of payroll, which is a monthly memorandum record maintained by the home's accountant, Mr. Samuel Dachowitz, for the year 1973 (in rear of the cash disbursements book), shows a questionably large figure for December 1973.

Receipts of any other nature are entered under the week received and some receipts are identified, such as payments from the NYSDSS and receipts from the soda machine. Many entries are unidentified.

There are no monthly posting totals to the general ledger.

A memorandum record of "receipts and sales" is maintained in the rear of the cash disbursements book. Many entries are unexplained.

There are unexplained deductions (recorded in the cash receipts book) from the cash balance at the National Bank of North America. Such deductions are made frequently and it cannot be determined whether these are checks issued but not identified, or just an adjustment of figures.

*Lack of folio references and column footings:* Many of the books of original entry are missing both folio references and column footings. This makes it difficult, and in some instances impossible, to tell where a specific item appears in the general ledger.

*Unidentified entries in general ledger:* There are numerous entries in the general ledger, the source of which is not apparent and/or cannot be determined.

*Unexplained entries:* The journal contains many entries without indicating the purpose of the entries. The folio reference numbers for these entries cannot be easily read. Tracing these entries into the general ledger would have to be accomplished by trial and error.

*Loans & exchange account—G.L. #7:* Numerous checks in significant amounts have been issued, and according to the cash disbursements book are charged to "Loans & exchange account," or to "G.L. #7," or just to "7."

Almost none of these disbursements actually appear in the loans & exchange account in the general ledger. Just where they do appear, or what the offsetting entry is to the reduction of cash, is not apparent.

Many of these checks are listed as "outstanding checks." Recordak film at the Bank of North America indicates that a substantial number of these checks were paid to Samuel Dachowitz, the home's accountant.

*Capital account:* The capital account also reflects the absence of generally acceptable accounting practices. The capital account in the general ledger for 1972, for example, carries one pencilled entry, a debit entry in the amount of \$667,027, which seems to indicate a negative, or deficit, capital position.

No breakdown is shown by partner, and no record of any drawings against capital, or investment of additional capital funds is indicated.

*Year-end adjusting entries:* Year-end adjusting entries, in the form of setting up accruals under the accrual method of accounting, are made without explanation or supporting data.

The bookkeeper set up in accounts payable, an item of \$400, payable monthly to Samuel Dachowitz for audit (\$4,800 for the year). Examination of checks to Dachowitz showed that he received \$4,800 in 1971.

However, a journal entry dated December 31, 1971 shows a charge to auditing expense of \$10,200, with a corresponding credit to accounts payable. This brought total auditing expense to \$15,000 for the year, the amount claimed in the HE-2P dated December 31, 1971. Dachowitz accrues up to allowable entries. This entry was not reversed in the subsequent year, and Dachowitz was not at any time paid the \$10,200. The net effect was to overstate auditing expenses as indicated on the HE-2P.

*Illegibility of General Ledger and Recapitulation Sheets:* The work done by Mr. Dachowitz on the General Ledger and the Payroll & Cash Receipts recapitulations is untidy, abbreviated, cramped and nearly illegible.

*Explanations by Dachowitz:* During conversations with Mr. Dachowitz, attempts were made to elicit explanations of some of his entries. Explanations offered by Dachowitz to support his adjustments amounts to requiring a complete rehaling of all books and records.

Mr. Dachowitz did indicate that some entries were the result of combining figures, with no explanation as to the source, or to the various components.

It should be noted that the mailing address for bank statements of Towers Nursing Home from the National Bank of North America is as follows: c/o Samuel Dachowitz, 50 54 231st St., Bayside, N.Y. 11364.

#### ANALYSIS OF EXPENSES

##### 1. Ineligible expenses submitted for medicaid reimbursement

OWIG's limited audit of the Towers 1970-1974 books found that many expenses claimed are not eligible Medicaid expenses for Medicaid rate-setting purposes.

A review of the NYSDH Medicaid rate calculation sheets covering Towers expenses for 1970-1972 indicates that 1970 and 1971 disallowable expenses were reflected in the Medicaid rate. The 1972 expenses, however, did not affect the Medicaid rate because Towers exceeded the over-all cost ceiling.

The 1973 and 1974 rate calculation sheets were not reviewed. These expenses would normally be used to set the 1975 and 1976 Medicaid rates respectively. Because Towers has closed, it is assumed these expenses will not be reflected in any Medicaid rate-setting calculations for its "Group".

##### Summary of Disallowable Expenses By Year

1970	-----	\$807.70
1971	-----	21,163.35
1972	-----	7,317.92
1973	-----	<sup>1</sup> 16,314.66
1974	-----	5,556.08
Total	-----	51,159.71

<sup>1</sup>In addition, Towers in 1973, purchased an automobile from the Chrysler Corporation for \$6,982.50. This car is apparently exclusively used by Mark Loren. OWIG questions the expense as relating to patient care. Because the car is being depreciated, the expense was allocated over a number of years. OWIG did not calculate the expense for each year (see item 3).

##### DISALLOWABLE EXPENSES (SEE EXHIBIT 4)

Payable to—	Account charged	Amount	Reason for disallowance
1970			
Beacon Beverage	Not known		Not necessary.
Pilgrim Liquor	do	\$365.00	Do.
Royal Wine Corp.	do	62.70	Do.
Radio Church of God	Social services and recreation	25.00	Contributions are not allowable.
Parking violations bureau	Travel and entertainment	30.00	Fines are not allowable.
Do	do	25.00	Do.
Joseph Burg	"Audit"	300.00	Unsubstantiated.
Total		807.70	
1971			
Religious Zionists of America	Social services and recreation	500.00	Contributions are not allowable.
Bella Wies	do	1,000.00	Unsubstantiated.
Raye Goldberg	do	1,500.00	Do.
Congregation Mihas Service	do	225.00	Contributions are not allowable.
"Congregation"	do	560.00	Do.
Agudath Ashil Sphinka	do	200.00	Do.
Joseph Burg	do	100.00	Unsubstantiated.
Jewish Home and Hospital	do	400.00	Contributions are not allowable.
Joseph Burg	Legal	200.00	Unsubstantiated.
Royal Wine Corp.	Food	89.00	Not necessary.
Mark Loren (Christmas)	Social services and recreation	1,600.00	Unsubstantiated.
Parking violations bureau	Travel and entertainment	40.00	Fines are not allowable.



## DISALLOWABLE EXPENSES (SEE EXHIBIT 4)—Continued

Payable to—	Account charged	Amount	Reason for disallowance
Yeshiva of Spinka.....	Not known.....	500.00	Contributions are not allowable.
Margaret Moskowitz.....	do.....	500.00	Unsubstantiated.
Jenn Beverage Co.....	Food.....	3,971.50	Vending machine expenses are not allowable.
Coca-Cola Bottling Co.....	do.....	237.85	Do.
Samuel Dachowitz.....	Accounting.....	10,200.00	Expense charged to books but not paid.
<b>Total.....</b>		<b>21,163.35</b>	
<b>1972</b>			
United Hospital Fund.....	Medical supplies.....	25.00	Contributions are not allowable.
Burnside Nursing Home.....	Insurance.....	397.48	Unsubstantiated.
Do.....	do.....	178.28	Do.
Local 144—Dance.....	Medical and other professional fees.....	30.00	Not necessary.
Religious Zionists of America.....	do.....	500.00	Contributions are not allowable.
State Farm Mutual Auto Insurance Co.....	Travel and entertainment.....	319.80	Not nursing home expense—Personal expense of Mark Loren.
Parkway Lincoln Mercury.....	do.....	19.85	Do.
Do.....	do.....	425.99	Do.
Do.....	do.....	92.02	Do.
Brooklyn, Wines & Liquors.....	Medical and other professional fees.....	47.00	Not necessary.
Jenn Beverage Co.....	Food.....	3,723.00	Vending machine expenses are not allowable.
Various doctors.....	Medical and other professional fees.....	1,559.50	Private patient expenses are not allowable.
<b>Total.....</b>		<b>7,317.92</b>	
<b>1973</b>			
Academy Liquor Corp.....	Medical and other professional fees.....	44.91	Not necessary.
Moshe Braunstein.....	Office expense.....	5,000.00	Unsubstantiated.
Clinton Wine Co.....	Medical and other professional fees.....	144.10	Not necessary.
Burnside Nursing Home.....	Insurance.....	222.85	Unsubstantiated.
Do.....	do.....	137.50	Do.
Do.....	do.....	241.80	Do.
Mizrachi Publications.....	Medical and other professional fees.....	250.00	Contributions are not allowable.
Rider College.....	do.....	1,070.00	Not necessary.
United Federation of Postal Clerks.....	Office supplies.....	10.00	Contributions are not allowable.
Israel Emergency Fund of REA.....	Medical and other professional fees.....	3,123.00	Do.
Samuel Dachowitz.....	do.....	1,500.00	Unsubstantiated.
Parking violation bureau.....	Travel and entertainment.....	15.00	Fines are not allowable.
Jenn Beverage Co.....	Food.....	4,209.00	Vending machine expenses are not allowable.
Various doctors.....	Medical and other professional fees.....	346.50	Private patient expenses are not allowable.
<b>Total.....</b>		<b>16,314.66</b>	
<b>1974</b>			
Burnside Nursing Home.....	Hospitalization.....	193.44	Unsubstantiated.
Do.....	Insurance.....	234.09	Do.
Rider College.....	Indirect expense.....	450.00	Not necessary.
United Hospital Fund.....	Medicine and drugs.....	70.00	Contributions are not allowable.
Wilbur Ross, treasurer (New York State Democratic Legislative Campaign Committee).....	Legal.....	500.00	Do.
Jenn Beverage Co.....	Food.....	3,784.95	Vending machine expenses are not allowable.
Various doctors.....	Medical and other professional fees.....	323.60	Private patient expenses are not allowable.
<b>Total.....</b>		<b>5,556.08</b>	

## 2. Calculation of "True" profits 1966-1973

In calculating the "true" profit of the Towers Nursing Home, OWIG used the net income as reported by Towers to the NYSDH and adjusted it for the rent paid by Towers which was in excess of what it cost to provide the service, and, for excess salaries paid to owners of the Home, as determined by the NYSDH in setting the Medicaid rate.

The excess rent increases the net income in that any amount over cost required to provide the service is, in fact, profit resulting from the nursing home operation, even though that profit is reflected in the books of another business. Excess salaries necessarily increase the net income because they are actually a withdrawal of profit rather than an expense.

	Profit or (loss) per HE-2P <sup>1</sup>	Excess rent paid <sup>2</sup>	Excess salaries	Indicated profit or (loss) per OWIG
1966.....	\$422	\$195,325	0	\$195,747
1967.....	7,403	268,500	0	275,903
1968.....	46,390	298,500	0	344,890
1969.....	(181,242)	256,890	\$8,000	83,648
1970.....	(312,389)	255,864	5,800	(50,725)
1971.....	(275,145)	252,775	0	(22,370)
1972.....	(141,050)	249,665	1,175	109,790
1973.....	(332,205)	236,942	0	(95,263)
Total.....	(1,187,816)	2,014,461	14,975	841,620

<sup>1</sup> Includes income derived from private patient care. Since the HE-2P does not break out costs as between private and public patients, it would be extremely difficult to fix the exact income figure for patients versus public patients. However since the number of private patients has been small since 1966, it can be reasonably assumed that the major portion of reported income are public funds. These calculations do not take into consideration such offsets to income as bad debts, advertising expenses and depreciation allowed for income tax purposes.

<sup>2</sup> Excess rent was calculated by applying the rental figures reported by Towers in the HE-2P and deducting from them the actual costs incurred by the related company (Liberty House Nursing Home of New York) in providing the service. Because these costs were reflected only in the 1959 HE-2P, OWIG used the 1969 figures for the years 1966-73 inclusive (exhibit 7). In that these costs are basically rent and depreciation, it can be reasonably assumed that they would not vary greatly from year to year. OWIG's calculations by year of the excess rent is as follows:

	Rent expense per HE-2P	Cost of the re- lated company of providing service	Excess rent
1966.....	\$256,825	\$61,500	\$195,325
1967.....	330,000	61,500	268,500
1968.....	360,000	61,500	298,500
1969.....	318,390	61,500	256,890
1970.....	317,364	61,500	255,864
1971.....	314,275	61,500	252,775
1972.....	311,165	61,500	249,665
1973.....	298,442	61,500	236,942
Total.....	2,506,461	492,000	2,014,461

3. Towers Nursing Home was issued a Getty Oil Co. credit card dated 11/72, account #285-454-8563. Charges were all signed by Mark A. Loren. Most purchases were made in New Rochelle, New York, where Mr. Loren resided in 1972. Purchases of gas, oil, etc. were made for automobiles bearing 3 different license numbers, all in 1972, as follows:

1. License 8770YT (N.Y.)—known to be a 1970 Mercury; allegedly owned by Towers.

2. License YO2002 (N.Y.)—owner unknown.

3. License 9551-MB (N.Y.)—owner unknown.

The eligibility of all or a part of these expenses are in question.

4. Anne Weiss and Sisel Klurman, d/b/a Towers Nursing Home, 2 West 106th Street, New York City, were insured under a Workman's Compensation policy of the State Insurance Fund, Policy #319-837-1. The invoice submitted for renewal of the premium from 1/1/72 to 1/1/73 contained the following statement:

"This policy covers the following location in addition to the one shown above—250 W. 57th St., N.Y.C.". The invoice does not indicate what portion of the total bill applies to the West 57th Street location.

The eligibility of all or a part of these expenses are in question.

## ANALYSIS OF CASH RECEIPTS

OWIG investigated three possible sources of information to secure data on Cash Receipts:

- a. Bank deposits
- b. Cash Receipts Books
- c. The reconciliation schedule of cash receipts prepared monthly by Mr. Dachowitz and located in the rear of the Cash Disbursements Book each year. It is captioned "Receipts and Sales".

## 1. Cash Receipts Books

The Cash Receipts Books are, to say the least, very poorly kept. Pencil and abbreviated notations such as: "25,000—BB loan"; "MB"; "loan B.S."; "AWB"; "S"; "M.L.", identify cash transactions, when identification is made at all.

The total of such items in the Cash Receipts Books for the period January 1, 1971 to September 30, 1974 is \$2,256,300. It is not conclusive that these items represent loans. Many entries are not identified in any way. Of the above amount, a total of only \$1,523,050 has any sort of identifying legend, and those are abbreviations or initials, and often in pencil.

A total of \$733,250.00 is completely unidentified.

On October 31, 1974 Mr. Dachowitz, the Home's Accountant, and Mr. Loren, then a consultant to Towers, and also described as Executive Director in the HE-2P, conferred with our staff as to the identity of persons who had loaned money to Towers. They answered that "a very dear friend" of Dr. Bergman had loaned considerable money to the nursing home with the understanding that his name would not be disclosed.

The various initials found in the Cash Receipts Book were discussed and identified as follows:

"B.B." is Bernard Bergman.

"S.B." is Stanley Bergman, son of Bernard Bergman.

"A.W.B." is Anne Weiss Bergman, wife of Bernard Bergman.

"M.B." is Moses Braunstein, Secretary of the Metropolitan New York Nursing Home Ass'n. in 1972 and 1973 and owner of the Olinville and Laconia Nursing Homes. He was said also to have acted as a consultant to Towers on personnel problems, although the home's books do not reflect this.

"M.L." is Mark Loren.

"B.S." is not known to Dachowitz/Loren.

"S." is not known to Dachowitz/Loren.

Loans were also received from White Plains Nursing Home, owned by Mark Loren.

Examples of loan listings in the Cash Receipts Book, by initials, and totalling \$1,523,050, is as follows:

1. M. Loren, or M.L.:		7. "M.B.":	
1972 -----	\$107, 950	1973 -----	\$30, 000
1972 -----	52, 000	8. 7th Ave. Nursing Home:	
Total -----	159, 950	1971 -----	\$100, 000
		9. Jame Johnson (?)—	
2. "B.B.":		Somewhat illegible:	
1972 -----	\$119, 000	1971 -----	\$10, 000
1973 -----	184, 000	10. E. Gobel:	
1974 -----	25, 000	1971 -----	\$25, 000
Total -----	328, 000	11. 87 St.:	
		1971 -----	\$25, 000
3. "S.B.":		12. M.A.:	
1974 -----	\$335, 000	1971 -----	\$17, 000
4. "A.W.B.":		13. White Plains:	
1974 -----	\$380, 000	1972 -----	\$35, 000
5. "S":		14. Felman:	
1974 -----	\$1, 100	1972 -----	\$2, 000
6. "B.S.":			
1972 -----	\$25, 000		
1973 -----	50, 000		
Total -----	75, 000		

## 2. Samuel Dachowitz: Schedules of cash receipts

In the Dachowitz' schedules of cash receipts, there is a category captioned "Loans & Exchanges." Various amounts are posted each month with most not identified in any manner.

For the period January 1, 1971 to September 30, 1974, these amounts total \$2,756,731.53, which is \$500,431.53 greater than the amount shown in the Cash Receipts Books. This discrepancy is unexplained.

Mr. Dachowitz freely admitted that probably \$1.5 million in loans had been handled without recording same in the Loans and Exchange account. Money loaned one month was repaid the next and paired off without interest.

### SPECIAL AREAS OF STUDY

#### MISSING CHECKS AND UNRECORDED TRANSACTIONS

OWIG's study of a National Bank of North America bank statement for November, 1973, noted that two \$30,000.00 checks which had cleared the bank that month were not among the checks which accompanied the statement. Preliminary investigation, at that time, showed at least \$340,000 in checks "missing" in 1973 in amounts of \$10,000 or over. These transactions were not recorded in the Home's books.

OWIG contacted Mr. Samuel Dachowitz, CPA for Towers Nursing Home, by telephone, and asked him about the missing checks. Mr. Dachowitz first stated the checks had been destroyed as soon as the bank statements had been reconciled. Mr. Dachowitz claimed that this was done since these particular checks represented repayment of loans made to Towers Nursing Home by individuals not affiliated with the home. Further, these persons had requested (of Mr. Dachowitz) that their identities not be made known. When our auditor expressed some "surprise" as to this procedure, Mr. Dachowitz apparently conferred with someone and then stated that the checks were "not presently available." (Exhibit 5).

On 10/31/74, Mr. Loren, consultant to Towers, and Mr. Dachowitz, visited Towers and talked with our auditor. Our auditor asked Mr. Dachowitz if the missing checks had been destroyed. Mr. Loren's reply was "they are not presently available. The missing checks, said Loren, represent repayment of loans made to Towers Nursing Home by a very dear friend of Dr. Bernard Bergman who was promised that his identity would not be disclosed.

OWIG has examined bank statements and cancelled checks for the years 1971 through 1974. Findings are as follows:

1. For the years 1971-1974 inclusive, checks in amounts of \$10,000 and over, which are missing and unrecorded in the cash disbursements book, total \$2,220,816.67.

2. A number of other checks, in amounts less than \$10,000 are also missing, but there is no indication of which checks these are.

3. From 1-1-71 to 9-30-74, checks totalling \$1,895,535.46, recorded in the Cash Disbursements Book, in amounts of \$10,000 or over are outstanding, or are unexplained deductions from the bank balances.

4. Pursuant to a Subpoena issued by OWIG to the National Bank of North America, upon which the missing checks were drawn, our auditor was able to view Recordak film and to photocopy certain items. Only a relatively small percentage of the total of \$2,220,816.67 could be found, due to inadequate record-keeping procedures on the part of the bank.

OWIG found 30 checks, totaling \$807,816.67 as follows:

Date cleared	Payee	Amount	Check No.	Date of check
<b>1971</b>				
Feb. 18	Izlor Corp.....	\$25,000.00	1012	Feb. 18, 1971
May 6	Samuel Dachowitz.....	15,000.00	1017	Apr. 29, 1971
May 21	do.....	18,000.00	1159	May 18, 1971
May 20	Mark A. Loren.....	10,000.00	1243	May 19, 1971
June 30	Burnside Nursing Home.....	10,000.00	1597	June 19, 1971
July 8	Liberty House, Inc.....	12,500.00	1326	June 24, 1971
July 7	Bernard Izbicki.....	10,000.00	1598	July 6, 1971
July 8	Mark A. Loren.....	15,400.00	1341	Do.
Sept. 21	Sam Dachowitz.....	18,000.00	1691	Sept. 16, 1971
<b>1972</b>				
Jan. 10	do.....	15,000.00	2096	Dec. 14, 1971
Dec. 11	do.....	10,000.00	3096	Nov. 15, 1972

Date cleared	Payee	Amount	Check No.	Date of check
1973				
Jan. 15	Sam Dachowitz.....	12,000.00	4100	Dec. 20, 1972
Apr. 13	do.....	12,000.00	3597	Apr. 9, 1973
Nov. 9	do.....	30,000.00	4384	Oct. 15, 1973
1974				
Jan. 21	Liberty House.....	23,916.67	4713	Dec. 28, 1973
Feb. 14	Sam Dachowitz.....	30,000.00	4841	Jan. 8, 1974
Apr. 16	do.....	35,000.00	5067	Apr. 11, 1974
May 10	do.....	35,000.00	(7)	(1)
June 18	do.....	35,000.00	5068	June 7, 1974
June 11	do.....	35,000.00	(7)	(2)
July 8	do.....	40,000.00	5342	July 5, 1974
July 24	do.....	25,000.00	5355	July 22, 1974
Aug. 6	do.....	40,000.00	5474	Aug. 5, 1974
Aug. 16	do.....	35,000.00	5475	Aug. 14, 1974
Aug. 27	do.....	25,000.00	5476	Aug. 22, 1974
Sept. 10	do.....	45,000.00	5593	Sept. 6, 1974
Sept. 13	Mark Loren.....	10,000.00	7	Sept. 10, 1974
Sept. 17	Sam Dachowitz.....	45,000.00	5594	Sept. 12, 1974
Oct. 16	do.....	45,000.00	5595	Oct. 11, 1974
Oct. 24	do.....	45,000.00	5707	Oct. 4, 1974
Total.....		807,816.67		

<sup>1</sup> May 9 deb.  
<sup>2</sup> June 10 deb.

Twenty-two checks were paid to Samuel Dachowitz, CPA for Towers. These were endorsed by him for deposit in one or more accounts at Chase Manhattan Bank, Little Neck Branch, Little Neck, L.I. These twenty-two checks totaled \$645,000.

Others receiving payments were:

1. Izlor Corporation: 1 check, \$25,000.
2. Mark A. Loren: 3 checks, \$36,400.
3. Liberty House: 2 checks, \$36,416.
4. Bernard Izbicki: 1 check, \$10,000.
5. Burnside Nursing Home: 1 check, \$10,000.

The following checks bear the same check number drawn on the same Towers bank account (#0260-0315-001-1-3892-5).

Payee	Check No.	Date	Amount
Local 144.....	4841	Jan. 24, 1974	\$15,048.49
Sam Dachowitz.....	4841	Jan. 8, 1974	30,000.00
Mark Loren.....	5097	Apr. 11, 1974	637.50
Bernard Bergman.....	5097	Mar. 1, 1974	35,000.00
Izlor Corp.....	1012	Feb. 18, 1971	25,000.00
Local 144.....	1012	Mar. 24, 1971	574.73

#### TRANSACTIONS AT NATIONAL BANK OF NORTH AMERICA

1. Pursuant to its subpoena (Exhibit 6), OWIG secured from the National Bank of North America copies of Towers Nursing Home loan applications and related correspondence, a copy of a Towers' Balance Sheet dated October 31, 1972 and a Statement of Income and Expenses for the same period, prepared by Mr. Samuel Dachowitz, accountant to the Home.

A review of this information between figures submitted to the Bank in applying for a net loan of \$103,633.12 on December 12, 1972, and figures in the Home's Financial Statement of December 31, 1972, which were used as a basis for submission of the HE-2P to the NYSDH for 1972.

For example, on October 31, 1972, the Bank was told that Towers had a net worth of \$432,061.00, whereas on December 31, 1972, according to the Home's statements, it had a negative capital position of \$667,027.

2. On December 6, 1972, Anne and Bernard Bergman applied for a business installment loan of \$75,000 plus the amount necessary to pay off the balances

of two previous loans made in March and November 1970. The balance on these two previous loans totaled \$28,633.12. A note dated December 12, 1972 was signed by "Bernard Bergman, 280 Riverside Drive, New York, New York. Moses Braunstein, 2402 Bronx Park East, Bronx, New York, and Anne Bergman, 280 Riverside Drive, New York."

The amount of the loan was \$103,633.12 plus a finance charge of \$17,099.46, totaling \$120,732.58, to be paid in 36 monthly installments of \$3,354.

The bank's files on this loan contained statements dated December 31, 1972 on stationery of Samuel Dachowitz for the Towers Nursing Home that differ from those furnished to the NYSDH as follows:

(a) A Balance Sheet of Towers Nursing Home dated October 31, 1972 shows assets of \$564,536 and liabilities of \$132,475, leaving capital of \$432,061.

(b) A Balance Sheet prepared by Dachowitz for OWIG auditors for the year ended December 31, 1972, 2 months later showed a loss for the year of \$141,050 and a negative or deficit capital of \$667,027. This agrees with the General Ledger. (The difference between these two sets of figures is \$1,099,088.)

(c) The HE-2P dated December 31, 1972, prepared by Dachowitz and signed by Anne Weiss, shows, on page 12, line 65, under the caption "Equity", an item entitled "Owners Capital," in the negative amount of \$1,057.

(This increases the difference to \$1,489,938.)

The following items constitute the major differences in the Home's Statements of October 31, 1972 and the HE-2Ps dated December 31, 1972:

Cash in bank:	
October 31, 1972	\$18,604
December 31, 1972 (negative balance)	(105,343)
HE-2P (negative balance)	(105,094)
Accounts Receivable:	
October 31, 1972	88,450
December 31, 1972	191,614
HE-2P	191,614
Leasehold (an asset):	
October 31, 1972	360,000
December 31, 1972	
HE-2P	
Accounts Payable:	
October 31, 1972	86,775
December 31, 1972	1,024,871
HE-2P	1,024,871
Notes payable:	
October 31, 1972	17,500
December 31, 1972	159,220
HE-2P	159,220
Net profit (loss):	
October 31, 1972 (profit)	192,735
December 31, 1972 (loss)	(141,050)
HE-2P (loss)	(141,050)

3. On February 12, 1970, partners of Towers Nursing Home were Sisel P. Klurman and Anne Weiss.

On a loan application on this date, trade references for the Towers Nursing Home were as follows:

1. L. E. & S., 1319 Utica Avenue, Brooklyn, New York.
2. Medic-Home Enterprise, 1700 Broadway, New York City.
3. King Medical (Mr. Pour) 1969 Westchester Avenue, Bronx.

On this application, the Home's bank was given as Franklin National Bank; its broker was listed as All Eastern Brokerage Corp. (Mr. Greenberg); its accountant was Chas. Bick. The loan application was guaranteed by Bernard Bergman and Samuel Klurman. It was set forth that statements were attached for Bergman and for Klurman, but they were not included in material furnished by the Bank.

4. An application dated November 10, 1970 for a \$50,000 loan for physical improvements and installation of a new boiler facility was signed by Bernard Bergman, Anne Weiss, and Meyer Bergman. The insurance broker was listed as "Warren Janpo" (known to be Jampol), 369 E. 149th St., Bronx; the accountant was listed as Samuel Dachowitz.

## LEASEHOLD IMPROVEMENTS

In reviewing the accountant's balance sheet for the year ending December 31, 1973, leasehold improvements totalling \$157,057.00 were noted among the home's assets. Nothing could be located in the Towers' books to support any leasehold improvements in 1973.

The Accounts Payable Ledger for March 1974 included an account payable to the U.S. Construction Co. for \$57,057.00. The Towers made payment for this item in two installments:

1. March 6, 1974, check #4987—\$30,000.
2. May 22, 1974, check #5292—\$27,057.

The company's invoice for this particular job listed the name and address of the company as the United States Construction and Remodeling Co., 2067 Broadway, New York City, and also gave a terse description of the work performed. There was nothing in the way of improvements that could be physically verified by observation, since the majority of the improvements came under the general heading of normal repairs, such as caulking holes, replacing roof tiles, replacing toilets, etc.

OWIG requested a copy of the contract or agreement concerning this work, since the invoice was not itemized. Our auditor was informed that the agreement was in Stanley Bergman's possession. A copy was requested of Raye Goldberg and Meyer Bergman, but has not been furnished to date.

OWIG questions the expenditure of \$157,057.00 for leasehold improvement. Additionally, there is no explanation as to \$100,000 of the reported \$157,057 expenditure.

## PATIENT PERSONAL ALLOWANCE

(1) *Introduction*

While most items of need are provided directly by the nursing home, certain incidentals such as clothing, toilet articles, cigarettes and newspapers must be obtained at the patient's own expense. To insure that all patients are able to purchase such items, the federal government, under its Supplementary Security Income Program, provides a \$25 monthly personal allowance to each Medicaid patient who has no income. (42 USCA 1382(e), 1974 Supp.). If the Medicaid patient has income, he is allowed to keep \$11.50 of this income each month for his personal needs. NYCDSS supplements this amount by issuing an additional \$17 per month, so that the total monthly allowance for Medicaid patients with income is \$28.50 (18 NYCRR 352.8)

Eighteen (18) patients were interviewed regarding their personal allowances. Only two (2) were aware of the amount of personal allowance to which they were entitled.

Personal allowance records were examined based on a random sample of budget cards obtained from the Chelsea Social Services Center. Of thirty-two (32) patients in the sample, the home did not have personal allowance cards on five (5) of them. In view of this fact, OWIG examined the personal allowance records for all patients in the home for the period January 1972 through October 1974. One month from each of the three years was chosen at random and personal allowances paid to patients were totalled for these months.

(2) *Towers Nursing Home Personal Allowance System*

Towers Nursing Home, utilizes an index card system to record the patients' personal allowance credit-debit balance. For each patient that is entitled to a personal allowance, the home maintains an individual index card with monthly amounts written on the card. The monthly amount is issued to the patients in two payments, twice a month. Upon receipt of a payment, patients are required to sign the index card adjacent to the amount received.

Towers separates these index cards into three categories:

(1) For the patients who are deemed incompetent by the home, the cards are placed in the "hold" category, from which the home issues money in small amounts to a patient when the need arises. Clothing for these patients is ordered by the home and provided for out of their personal allowance monies, also;

(2) For those patients whose relatives have been made trustees, the cards are placed in a "pick-up" file. Upon receipt of personal allowance monies, these relatives are then required to sign the patient's index card and are obliged to provide for the patient's needs out of these funds;

(3) Index cards by the patients' room number. The home considers these patients to be competent enough to handle their own money. As such, personal

allowance monies are delivered to these patients, and the patient is required to sign for it.

The Towers' personal allowance system has several deficiencies as follows:

(a) The home does not maintain a running balance on the individual index cards. If a signature does not appear adjacent to a semi-monthly amount, there is no way to verify that the money was actually received. Consequently, to determine what is owed patients, the patients' cards dating back to the date the patient was admitted would have to be examined.

(b) Towers Nursing Home's General Ledger does not show its liability for the patients' personal allowance monies. This lack of control is compounded by the fact that, personal allowance funds are co-mingled with the home's regular operating funds in the books. Thus, the bank accounts cannot be reconciled to the individual patients' cards.

(c) In those instances where a patient does not sign for allowance, there is no single designated employee responsible for signing for these patients. OWIG found signatures of 28 different Nursing Home employees signing for the patients (Exhibit 7).

(d) A number of patient cards have no signatures and no notations of any sort.

### (3) Personal Allowance Audit Findings

For the period January 1972 through October 1974, \$17,622.85 in personal allowance monies was unaccounted for as follows:

(a) Twenty-seven (27) patients did not receive personal allowance monies for certain periods. Using an average personal allowance rate of \$25.00 and multiplying this by the number of months delinquent, OWIG calculated that these patients were owed \$3,725.00.

(b) Seven (7) patients' cards had neither signatures nor notations. The Home owed them \$158.00.

(c) The transmission of funds totalling \$13,458.25 can not be confirmed due to the multiplicity of responsibility for transmitting funds to patients.

(d) Personal allowance monies owed deceased patients are to be returned to the NYCDSS. The NYCDSS reports that monies owed at least five deceased patients had not been returned to the agency by Towers. This amounted to \$261.60 in this particular category.

### VENDORS

#### 1. Sani-Interiors, Inc. (Exhibit 8)

A contract for cleaning services dated January 1, 1971 was entered into between Sani-Interiors Co., 241 W. 97th St., N.Y.C., and Towers Nursing Home. Frank Moskowitz signed for Sani-Interiors. The contract called for payment of \$20,799. monthly.

That address, 241 W. 97th St., is the home address of Margaret Klein, Assistant Administrator of Towers Nursing Home. Her married name is Margaret Moskowitz (Exhibit 9).

At the time the Sani-Interiors contract was signed, Margaret Klein was purchasing agent for the Towers Nursing Home. She had originally been employed in 1969.

According to data furnished by the bookkeeper, Margaret Klein's name did not appear on the Towers payroll during 1971 and the first half of 1972. It was reported that she had left Towers and worked for Sani-Interiors.

She next appeared on the Towers payroll the week ending July 16, 1972 and has continued on. Her initial gross salary was \$275. per week, her total gross salary from July 16 to December 24, 1972 was \$6,875. Her W-2 form for 1973 reflects gross earnings of \$14,914. From January 1974 to September 22, 1974, she received \$9,520.74 as gross salary at the rate of \$237.25 per week.

The Towers' file on Sani-Interiors contains a number of Sani-Interiors bank statements and cancelled checks, mostly for the years 1973 and 1974. The account was maintained at Bankers Trust Co., 2520 Broadway, New York City and the signatory on checks was Margaret Klein.

Business dealings with Sani-Interiors ended in mid- or late 1971 because of unsatisfactory performance. OWIG was able to ascertain why a payment of \$82,000 was made to Sani-Interiors in 1972. There would appear to be no reason for business transactions in March 1974.

Other items of interest concerning Sani-Interiors are as follows:

1. An invoice from Gordon's Stationers (#20812, dated January 10, 1972) paid by Towers Nursing Home. This invoice included a charge for #300 W-2 Forms, imprinted "Sani-Interiors."



2. Payment to State Insurance Fund, Workmen's Compensation carrier, by Towers Nursing Home of \$760, on December 6, 1971, for Policy #427 794-3, the insured being Sani-Interior, Inc., 241 W. 97th St.

3. The Towers' cash disbursements book for 1971, which shows the following checks payable to "Local 144 (Sani)" and charged to Loans and Exchanges:

- (a) check #1012 dated March 24, 1971—\$574.73
- (b) check #1013 dated March 24, 1971—\$2298.92
- (c) check #1014 dated March 24, 1971—\$441.00

4. Letters in the Towers Sani-Interiors file from the I.R.S. addressed to "M. Klein, L. Moskowitz, and I. Weiss—Ptr., Sani-Interiors, 241 W. 97th St., N.Y., N.Y.

5. A photocopy in the Towers' Sani-Interiors file of a U.S. Treasury check dated March 5, 1970 for \$1,421.52 payable to "Weiss, et al, Ptr., Towers Nursing Home, 2 W. 106 St., N.Y.C."

6. A check dated February 12, 1973, in the Towers' Sani-Interiors file in the amount of \$5,900., signed by Margaret Klein, and drawn payable to Mosad Harav Kook. This check was deposited in the Security National Bank. The identity of this individual or organization could not be ascertained.

7. A check in the Towers' Sani-Interiors file dated December 31, 1972, drawn to Dr. Bernard Poupko, in the amount of \$1,500. This check was deposited by payee in the Mellon Bank, N.A., Squirrel Hill Office, Pittsburgh, Pennsylvania. Dr. Poupko, according to Towers' administrative personnel, is the "Chaplain" of Towers Nursing Home. Beginning in November, 1973, and continuing through October 1974, payments of \$400 per month were made to Dr. Poupko (Poupko). All of these checks, with the exception of one, were deposited by the payee in the Mellon Bank, N.A., Pittsburgh, Pa.

8. As has already been pointed out, a disbursement of \$500 actually paid to Margaret Moskowitz was erased and another entry was made stating that the payment was made to Sani-Interiors.

9. The Sani-Interiors' file contains a letter addressed to Sani-Interiors, 241 W. 97th St., N.Y.C., from the Internal Revenue Service, Holtsville, New York, which is a seizure notice for non-payment of taxes for the period ending September 30, 1971. This letter lists the 73 employees of Sani-Interiors, the amounts of compensation paid them by Sani-Interiors, and their Social Security numbers.

The fact that bank statements and cancelled checks for Sani-Interiors appear in the Towers file for this concern raises questions as to actual relationship between Sani-Interiors and the Towers Nursing Home.

## 2. Amsterdam Meat Company

The Towers Nursing Home's principal meat supplier is the Amsterdam Meat Company, 844 Amsterdam Avenue, New York City. Checks issued to the Amsterdam Meat Co. bear a handwritten endorsement of the payee usually followed by the name "Moskowitz". All checks are deposited in the Chemical Bank and Trust Company.

Margaret Klein, who is Mrs. Emil Moskowitz, has stated that her husband operates the Amsterdam Meat Co. Examination of cancelled checks payable to Amsterdam Meat Co. for 1971 through October 1974 showed that the dollar volume for the years 1971-1974 increased from \$4100 per month to \$5900 per month as follows:

- 1971—\$50,099.00
- 1972—\$56,784.26
- 1973—\$70,942.18
- 1974—\$59,417.36 (through October 31, 1974)

The Certificate of Incorporation for Amsterdam Meat Markets, Inc., filed with the New York Secretary of State, indicates that Jean Klein of 472 E. 48th St., Brooklyn, was the original Incorporator of this company (see Exhibits 14 & 15).

## OBSERVATIONS WITH RESPECT TO FINANCIAL TRANSACTIONS BY INDIVIDUALS CLOSELY RELATED TO THE TOWERS NURSING HOME

### 1. Samuel and Muriel Dachowitz

Since a scrutiny of the cancelled checks drawn on the Towers Nursing Home bank account disclosed payments made to Mr. Samuel Dachowitz, which were deposited to an account at the Chase Manhattan Bank, Little Neck, Queens Branch, OWIG subpoenaed two known accounts, namely, Samuel Dachowitz, Special Account No. 108-1-040345 and Samuel or Muriel Dachowitz, Account No. 108-1-031773.

An examination of these accounts revealed the following :

	Total deposits	Total withdrawals
<b>(a) Samuel Dachowitz—Special Chase Manhattan Bank—Account No. 108-1-040345:</b>		
1969 .....	\$381,401.79	\$251,796.11
1970 .....	1,067,160.01	1,019,395.05
1971 <sup>1</sup> .....	2,091,455.05	1,743,702.50
1972 <sup>1</sup> .....	1,887,047.47	2,001,653.32
1973 <sup>1</sup> .....	2,248,105.13	2,159,635.80
1974 (to December 4) .....	3,121,815.25	3,216,613.80
<b>(b) Samuel or Muriel Dachowitz—Joint—Chase Manhattan Bank—Account No. 109-1-031773:</b>		
1969 .....	89,082.72	115,125.00
1970 .....	90,280.00	80,903.00
1971 .....	42,100.00	49,870.30
1972 .....	5,484.00	4,839.14
1973 <sup>2</sup> .....	5,175.00	8,162.20
1974 (to December 4) .....	9,299.28	1,182.20

<sup>1</sup> The March 1971 and February 1972 statements contained several illegible entries and the July 1972 and July 1973 statements were not located by the bank.

<sup>2</sup> The January 1973 statement contained several illegible entries and the March and July 1973 statements were not located by the bank.

c. The microfilm library at the Chase Manhattan Bank depository, Granite Springs, New York, examined with respect to the Samuel Dachowitz special account (No. 108-1-040345) covering withdrawals of \$5,000 and above, indicated the following (microfilming of cancelled checks was not employed by the bank prior to July 1972) :

Payee	Date	Amount
Not located on film .....	Aug. 16, 1972	\$5,000
Bernard Izbicki .....	Aug. 28, 1972	5,000
Cash .....	Sept. 26, 1972	5,000
Bernard Izbicki .....	Oct. 13, 1972	6,000
Not located on film .....	Oct. 18, 1972	6,000
Mark Loren .....	do	5,000
Bernard Izbicki .....	Oct. 25, 1972	6,000
M. Loren .....	do	6,000
Towers Nursing Home .....	Nov. 29, 1972	25,000
Do .....	Dec. 26, 1972	25,000
Mark Loren .....	do	12,500
Towers Nursing Home .....	Jan. 22, 1973	25,000
Do .....	Feb. 27, 1973	25,000
Do .....	Mar. 22, 1973	25,000
Samuel Dachowitz .....	Apr. 2, 1973	5,000
Towers Nursing Home .....	Apr. 19, 1973	25,000
Do .....	May 24, 1973	25,000
Bernard Izbicki .....	May 25, 1973	5,000
Mark Loren .....	June 6, 1973	5,000
Do .....	do	12,500
Towers Nursing Home .....	June 25, 1973	25,000
Do .....	Oct. 10, 1973	25,000
Do .....	Oct. 31, 1973	25,000
Do .....	Dec. 18, 1973	25,000
Bernard Izbicki .....	Dec. 24, 1973	6,100
Do .....	do	6,000
Illegible .....	Dec. 26, 1973	25,000
Do .....	do	6,000
Towers Nursing Home .....	Feb. 1, 1974	25,000
Do .....	Feb. 19, 1974	25,000
Do .....	Feb. 21, 1974	25,000
Do .....	do	25,000
Do .....	Apr. 23, 1974	25,000
Do .....	May 17, 1974	25,000
Do .....	May 23, 1974	25,000
Do .....	June 18, 1974	25,000
Do .....	June 24, 1974	25,000
Do .....	June 25, 1974	25,000
Do .....	July 17, 1974	25,000
Do .....	July 19, 1974	25,000
Do .....	July 22, 1974	25,000
Do .....	Aug. 20, 1974	25,000
Do .....	do	25,000
Bernard Izbicki .....	Aug. 27, 1974	25,000
Mark A. Loren .....	Aug. 29, 1974	15,000
Do .....	Sept. 3, 1974	15,000

Payee	Date	Amount
Towers Nursing Home.....	Sept. 23, 1974	50,000
Do.....	Oct. 3, 1974	25,000
Do.....	Oct. 16, 1974	25,000
Do.....	Oct. 25, 1974	25,000
Not located on film.....	Oct. 28, 1974	45,000
Towers Nursing Home.....	Nov. 6, 1974	25,000
Sam Dachowitz.....	Nov. 25, 1974	8,410

<sup>1</sup> Appeared on same microfilm with requested check.

d. Bank statements for the Samuel Dachowitz special account (No. 108-1-040345) disclose substantial debit and credit memoranda. The following is listing of said memoranda with respect to items of \$5,000 and above:

Credit memo		Debit memo	
Sept. 26, 1969.....	\$80,000	July 29, 1969.....	\$78,951.11
Dec. 31, 1969.....	100,000	Oct. 2, 1969.....	98,000.00
April 28, 1970.....	175,000	Jan. 2, 1970.....	124,093.75
May 21, 1970.....	5,000	Jan. 29, 1970.....	171,430.73
July 28, 1970.....	175,000	April 30, 1970.....	171,701.13
Oct. 23, 1970.....	200,000	July 28, 1970.....	196,133.33
Jan. 23, 1971.....	250,000	Oct. 26, 1970.....	245,892.36
Feb. 22, 1971.....	25,000	Jan. 27, 1971.....	296,437.50
April 27, 1971.....	300,000	April 29, 1971.....	370,894.44
July 19, 1971.....	18,000	April 30, 1971.....	25,000.00
July 27, 1971.....	375,000	July 28, 1971.....	369,726.56
Oct. 26, 1971.....	375,000	Oct. 27, 1971.....	394,875.00
Jan. 25, 1972.....	400,000	Jan. 26, 1972.....	495,312.50
April 25, 1972.....	500,000	April 26, 1972.....	593,437.50
Oct. 24, 1972.....	600,000	Oct. 25, 1972.....	740,156.25
Jan. 23, 1973.....	750,000	Jan. 23, 1973.....	788,400.00
Feb. 26, 1973.....	31,350	April 23, 1973.....	883,961.25
April 23, 1973.....	800,000	Apr 25, 1973.....	31,350.00
Jan. 8, 1974.....	100,000	Sept. 10, 1973.....	96,625.00
April 22, 1974.....	1,000,000	Jan. 9, 1974.....	192,088.89
July 5, 1974.....	200,000	April 19, 1974.....	937,750.00
Aug. 7, 1974.....	200,000	May 10, 1974.....	194,746.53
Oct. 23, 1974.....	25,000	July 5, 1974.....	193,058.33
Nov. 1, 1974.....	200,000	July 26, 1974.....	24,343.06
Nov. 4, 1974.....	300,000	Aug. 7, 1974.....	291,563.54
		Oct. 22, 1974.....	25,000.00
		Nov. 6, 1974.....	500,000.00
		Dec. 2, 1974.....	159,474.67

## 2. Bernard Bergman

### a. Possible Loans from Bernard Bergman

As set forth elsewhere in this report, certain entries in the Cash Receipts Books identified by symbols are identified as loans. Under the initials "B. B." (Bernard Bergman) are the following:

1971.....	None
1972.....	\$119,000.00
1973.....	184,000.00
1974.....	25,000.00
<b>Total</b> .....	<b>328,000.00</b>

### b. Checks Paid to Bernard Bergman

1971.....	None
1972.....	\$139,000.00
1973.....	350,000.00
(two checks for \$25,000 are outstanding).....	
1974.....	55,000.00
<b>Total</b> .....	<b>544,000.00</b>

*c. Bank Accounts of Bernard Bergman*

Examination of endorsements on checks issued to Bergman discloses the following bank accounts:

1. Franklin National Bank, 80 Pine Street, New York City.
2. Royal National Bank of New York, N.Y.C.
3. Security National Bank, New York City.

*3. Anne Weiss (a/k/a Anne Weiss Bergman)*

*a. Possible Loans from Anne Weiss*

As set forth elsewhere in this report, certain entries in the Cash Receipts Books identified by symbols are identified as loans. Under the initials "A.W.B." are receipts totaling \$380,000 in 1974.

*b. Checks Paid to Anne Weiss*

- 1971—\$10,000 outstanding.  
 1972—\$13,500.  
 (2 checks, endorsed to Bernard Bergman and deposited by him).  
 1973—None.  
 1974—\$175,000.  
 (7 checks for \$25,000—all outstanding).

*4. Mark A. Loren*

*a. Possible Loans From Mark Loren*

During 1971 and 1972, entries in the Cash Receipts Books bearing the initials M. L. or the name Mr. Loren total \$159,500. In 1972, White Plains Nursing Home (owned by Mr. Loren) purportedly loaned \$35,000 to Towers.

*b. Checks Paid to Mark Loren*

Checks located at the National Bank of North America, total \$41,400, to Mark Loren.

A check dated December 10, 1974 in the amount of \$17,000 was paid to Mark A. Loren as "repayment of Loan." On the same date, Loren was paid \$1,250, representing interest on 3 loans as follows:

- \$30,000 loan 1½ months \$375.  
 \$27,000 loan 2 months \$450.  
 \$17,000 loan 3 months \$425.

Payments to Loren from Towers, in addition to consulting fees and loan interest in 1971:

- 1971—\$47,400.  
 1972—\$3,750.  
 1973—\$2,500.  
 1974—None.

*5. Moses Braunstein*

a. Moses Braunstein was, in 1972 and 1973, Secretary of the Metropolitan New York Nursing Home Association and was said, by Mark Loren, to be owner of the Olinville Nursing Home and the Laconia Nursing Home.

*b. Checks Paid to Moses Braunstein*

- 1972—\$3,750.  
 1973—\$7,500.  
 1974—\$5,000.  
 (charged to Loan and Exchanges).

*c. Possible Loans from Moses Braunstein*

The Cash Receipts Book for May 1973 reflects receipt of the amount of \$15,000, together with a notation "M. B."

The Cash Receipts Book for July 1973 reflects receipt of \$15,000, together with a notation "M. B."

OBSERVATIONS WITH RESPECT TO MEDICAID RATE-SETTING

*1. Medicaid rate-reimbursement problems*

Since the inception of Medicaid, Towers has waged a continuous battle with the NYSDH over expenses submitted by Towers for Medicaid rate-setting purposes. Towers has made many successful appeals of initial rates set by NYSDH. The result has been a number of upward revisions by the NYSDH in the Medicaid rate.

## 2. *Complex ownership and lease arrangements increase the Medicaid rate*

One of the most significant problems affecting the Medicaid rate has been the confusing ownership situation. The question at issue was whether the complex Towers lease arrangements involving Towers Associates, Liberty House of New York, Medic-Home Enterprises and the Towers Nursing Home were arms-length. It appears that Towers practiced a policy of revealing little concerning ownership of the Home. A good example of the NYSDH's confusion regarding the Towers ownership is reflected in a letter dated October 3, 1972 (more than 6 years after Towers had begun receiving Medicaid monies) from the NYSDH to Stanley Lowell, Towers attorney (Exhibit 10) admitting its confusion as a result of conflicting ownership information received from Towers over the years (Exhibit 8).

Due to the NYSDH's apparent lack of understanding of the "true" ownership picture of the Home and of the companies leasing the real property to it, the NYSDH from 1965 to 1970 had been improperly allowing, for Medicaid rate-setting purposes, an "arms-length" rental, when in fact they should have allowed a "non arms-length" rental. This resulted in large overpayments to Towers.

In 1970, the NYSDH determined that the rent allowed was improper and that a 1958 rental arrangement calling for rent of \$130,000 per year should be used. As a result, the Towers Medicaid rates were adjusted to reflect the new rental figure and to recover previous overpayments. In recovering the overpayments, the NYSDH did not assess any interest or penalty.

## 3. *Financial Condition of the Towers Nursing Home*

According to its financial records, the Towers Nursing Home was in extremely poor financial condition at the time of its closing. For example, at the end of 1973, Towers showed current liabilities (amounts owed which fall due within a year) of \$1,008,261 and current assets (cash, and assets readily converted to cash) of (-\$13,648). Clearly without immediate transfusions of funds Towers would have gone bankrupt. To a lesser degree this general condition has been reflected since 1966.

## 4. *Towers since the inception of Medicaid has been an extremely profitable operation*

According to Towers financial statements, Towers has been losing a substantial amount of money since 1969. However, because the financial statements include rent payments which are "non arms-length" in nature and far in excess of what it costs to provide the service, the Towers' statements do not fairly represent the true profits accruing as a result of the nursing home operation.

## 5. *Payment of salaries to Towers operators and owners and their relatives*

Towers has paid large salaries, almost all of which were reimbursed by Medicaid, to the operators of the Home and to their relatives (Exhibit 12). It is questionable that all of the salaries were earned. For example, in 1972 Anne Weiss was paid a salary of \$25,000 as owner-operator, yet did not report any hours worked. The full cost of this salary was included for Medicaid rate-setting purposes. A breakdown of these salaries by total amount paid since 1966 is as follows:

Anne Weiss—\$126,100.  
Sisel Klurman—\$57,400.  
Mark Loren—\$49,350.  
Alex Forro—\$84,900.  
Amram Kass—\$31,600.

In computing the true profit, OWIG considered these salaries as expenses, although at least a portion of these salaries should probably be considered as a withdrawal of profit. Thus, the true profit picture as developed by OWIG must be considered as a conservative one, which, if all relevant elements could be factored in, would be even higher.

## PATIENT CARE

### NYCDH AND NYSDH INSPECTION REPORTS

#### *Inspection Reports (Exhibit 13)*

New York State and New York City inspection reports for the years 1971-1973 indicate the persistence of substandard conditions in the Towers Nursing Home. A total of 18 reports were reviewed, and the deficiencies noted in them

are summarized below (some of these deficiencies are repeats, having been reported in prior inspections).

<i>Area of deficiency</i>	<i>No. of deficiencies</i>
Administrative and management.....	48
Staffing .....	9
Nursing service.....	83
Patient medical care.....	19
Patient care.....	6
Recreational activities.....	6
Plant equipment and maintenance.....	94
Housekeeping .....	87
Dietary .....	58

Some examples of these deficiencies as follows:

*September 23 and November 22, 1971.*—Violations from the Bureau of Sanitary Inspections re: "gnawed labels on food containers; mice droppings; and live roaches in bedside stands".

*September 8, 1971.*—Inspection report "call bells must be made accessible to all patients and the control switches of the call bells located at the nurses' station must not be deactivated by the staff at any time. These are serious offenses which also existed on the previous survey".

*March 13, 1974.*—"The frankfurters had been cut into inch long pieces and each patient received 3-4 pieces. Covers for the hot plates were not used. Diabetics were not given dessert because none was available for them".

*February 1 through 9, 1971.*—"On arrival it was found that the rear of the building housing 140 patients had only intermittent heat since January 25, 1971. On Monday, February 1, 1971, there was no heat in the rear of the building and temperatures ranged from 42° F. to 67° F., the median temperature being 54° F. Patients had slept in this area since the time of the breakdown of the heating plant and had only been provided with one, small, thin blanket.

"Patients were sitting in wet trousers and wet dresses with pools of urine on the floor under chairs. Some patients with circulatory conditions of the lower extremities had no socks or shoes on. Men's outer clothing was soiled, encrusted with old food spills and often pinned together, due to lack of buttons, zippers, etc. Many women were in dire need of head shampoos. Many patients' shoes were very dirty and lacked laces. Several ill patients lay in bed obviously unattended to. Two female patients had had ecchymosed and/or bruised areas on the face which no one could explain. One female patient had been readmitted from a hospital during this emergency period. The Director of Nursing Services was muddling through, making do, in a bad situation. It was obvious that the staff was just geared to getting through each day with no planned program necessary to deal with a situation where the time the emergency would terminate was not known. The lack of planning created difficulties and compounded hazardous conditions.

"The entire facility reeked with an odor of urine. The deodorizers were so strong as to cause an irritation of the skin, mucosa and stomach.

"The elevators were out of order on the first and second floors but not both at the same time. This added to the problem of getting meals to the patients".

Senator Moss. Is Mr. Shaw here?

Mr. SHAW. Yes, Senator.

Senator Moss. Will you take the stand, please, and Mr. Ruehle also. [Whereupon, Mr. Shaw and Mr. Ruehle were duly sworn.]

Senator Moss. We are pleased to have you gentlemen before the committee.

I have had an opportunity overnight to read the report of the inspector general of the State of New York Welfare Office.

I find it rather chilling and sickening. It tells a story of the abuse and neglect of elderly people, the systematic gouging and corruption, and ripoffs of medicaid and State welfare, and the calculated prying upon the most defenseless segment of our society.

Out of this we must find a way to punish those who commit offenses against the elderly, to increase our vigilance to detect and punish

acts of this nature in all segments, and to fashion a system of inspection and enforcement which will preclude the future abuses and ripoffs.

You may proceed.

**STATEMENT OF HORTON R. SHAW, COUNSEL, NEW YORK STATE  
OFFICE OF WELFARE INSPECTOR GENERAL; ACCOMPANIED BY  
JOHN RUEHLE, ASSISTANT AUDITOR**

Mr. SHAW. Thank you for the opportunity to present these brief observations on nursing home operations under medicaid that have been observed by the New York State Office of Welfare Inspector General in the course of its investigations.

As background, the functions of this agency should be explained, for it is the only one of its kind in the Nation. It was created in 1971 by the legislature as one of several actions undertaken that year to restore fiscal integrity to the welfare system that had been suffering for a decade from continuously rising costs. It was placed in the State's executive department, with the agency head reporting directly to the Governor.

Its mandate was to receive and investigate complaints of abuse, fraud, and investigate the welfare delivery system within the State. It was given no enforcement powers, which remained with existing State supervisory agencies.

Initial investigations were directed to ineligibility, mismanagement, and fraud in income maintenance programs. These included all Federally assisted programs in addition to State-funded programs to which the Federal Government does not contribute. As budget and staff increased, investigations were undertaken in medicaid programs. They dealt with recipient ineligibility, unlicensed "clinics," and frauds by professionals and other vendors of medicaid services, as well as the inadequate and sometimes chaotic management practices of administrative agencies that constituted an open invitation to abuse and fraud.

Institution investigations began in mid-1973 after the legislature appropriated additional moneys permitting this office to hire some investigative personnel with auditing backgrounds.

In most instances, institution investigations have been initiated after receipt of complaints. To date one mental hygiene facility and six nursing home reports have been published.

Our first nursing home report, published in October 1973, dealt primarily with patient care and poor local regulation compliance. More recent reports in 1974 dealt also with poor local social service department contact with patients, substandard staffing, apparent non-arms-length dealings, the nursing home rate setting mechanism, lack of on-site audits of proffered rate application forms, expenses submitted for rate setting which are questionably related to patient care, and poor recordkeeping. All these reports have been made available to your committee.

That abuses by nursing home operators reimbursed by medicaid recited to you and appearing in the press affect those least able to cry out in indignation is deplorable, but the fact of such abuse should not be surprising, for nursing homes are just one type of contractor in

an essentially unsupervised, government contract system for the delivery of health care.

If individual contractors are free to submit bills for visits never made or treatments never given, limited only by a check of their total capacity to render treatment or an incidental newspaper report that they were out of town on the date of the supposed treatment, should we be surprised if institutional contractors such as nursing homes similarly "short weight" those entrusted to their care? If individual providers submit bills at their private rate, leaving to harried government clerks the disallowance of the excess, it is not surprising that institutional vendors submit questionable items for rate setting purposes.

If real estate entrepreneurs have recognized the money to be made in providing working facilities for shifts of individual medicaid providers on a gross-fee-split basis, called medicaid mills, it is surprising that other interests have seen the possible advantages in providing nursing home facilities with their calculable income throwoff?

In short, the Congress has declared war on ill health and sickness and seems to be relying on the "patriotism" of its health contractors, a luxury not permitted other types of contractors and a shame which the country can ill afford.

Turning now to the topic of the Towers Nursing Home, about your subpoena of Mr. Ruehle, I would like to make the following preliminary remarks.

Since the release of our preliminary Towers report on December 4, which accented the condition of its financial books, we have been cooperating with all Federal, State, and local agencies who have requested nursing home information such as the SEC, IRS, the Southern District of New York Federal Prosecutor, the New York County district attorney's office, the New York State attorney general, and most recently the new Special Prosecutor, Mr. Hynes, who now in fact has all of our nursing home work papers, including those related to common interest and data for numerous homes as yet uninvestigated to any degree.

We have retained only documents related to Towers as a nursing home alone, and one unpublished report.

Further, we never regained access to Towers books in the month of December, during the period of time in which we were negotiating with them to gain further access, and they subsequently were subpoenaed by your committee, thus our work since the December 4 report has been limited to a running down of certain checks in excess of \$10,000 clearing the Towers account at the Bank of North America.

Item No. 3, of our December 4 report, an expansion of our report would include other material gathered generally as we did in other areas about Towers itself last fall. Does the committee have any questions?

Senator Moss. I thank you for your opening statement.

Now, the Towers report to which you referred, is a document dated January 31, and prepared by the office of welfare inspector general of the State of New York, and consisting of 49 pages, is that correct?

Mr. SHAW. That is the final report, yes, sir. I was just characterizing it, to bring you generally up to date on the difference between what work went into that report, in relevance to the December 4 preliminary



report, which was limited only to the financial condition of Towers' books.

In other words, we have expanded that report to go into the other areas which we normally look at such as habitability, patient care, and various other areas.

Senator Moss. Thank you. I wanted the identification, because this report will be printed in the record, and when we can refer to it by page number, and then it will be clear in the record what we are talking about, and perhaps Mr. Ruehle, do you have any statement you would like to make now?

Mr. RUEHLE. No, sir, I have no statement, but I am ready to answer any questions.

Senator Moss. You are ready to answer questions.

I have a question that relates back to the preliminary report, dated December 4, I think.

Yes, December 4, and in this report, you state that the office of welfare inspector general found there were a total of between 40 or 60 nursing homes in New York State, in which one or more members of Bernard Bergman's extended family have a beneficial interest, and we further found that the Bergman extended family has a beneficial interest in 27 to 50 nursing homes in seven States outside of New York.

We further found that the Bergman extended family also has considerable realty investments, and single room occupancy, SRO, domiciliary care facilities, DCF's, and health-related facilities, particularly in New York City, and said that both these areas are under further investigation.

When Dr. Bergman appeared before this committee 2 weeks ago, he went through a long list of homes, and denied any relationship of, first, himself or his family in any of those.

I just wondered, what was the basis for this statement in the preliminary report?

Mr. SHAW. Well, Senator, as I said in my opening remarks, with regard to our latest report, that is the so-called matrix information which has recently been turned over to Mr. Hynes, as I recall, this was some preliminary data we had, plus I believe some references in the medical home projection, that all of that material is now in the hands of Mr. Hynes, and we do not have access to it.

Senator Moss. Did you make any further inquiries or investigation?

Mr. SHAW. No, sir, as I said, we have been busy since the December 4 report, we have been busy answering questions from other agencies, plus turning over our material to those agencies, which the Governor has denoted as being our successes in the interest of the nursing home field, and all of the material, with the exception of the various other areas which are now contained in the recent Towers complete report, has gone to Mr. Hynes.

In other words, all of our data, that we have accumulated by bits and pieces, with regard to the innumerable nursing homes, which we started to make our matrix projection is now in the hands of Mr. Hynes.

Senator Moss. Did you have documentary backup for that original statement that has now gone on to Mr. Hynes?

Mr. SHAW. I have been informed that they were working papers on a tentative matrix, that we had started the matrix and had it.

Senator Moss. Now, Mr. Ruehle, you have done the investigatory work on this particular report that we have before us now?

Mr. RUEHLE. I did the audit work at the Towers Nursing Home. I did nothing else.

Senator Moss. Can you give me a word or two on your background? Are you an auditor by profession?

Mr. RUEHLE. I am an investigator with some accounting training. I do not have a degree.

I was a special agent accountant with the FBI.

Senator Moss. How long did you work with the FBI?

Mr. RUEHLE. Thirteen years.

Senator Moss. I see.

Have you been working for the State of New York since that time?

Mr. RUEHLE. No, sir, just since a year ago in October.

Senator Moss. In your report you talked about something that has puzzled me since the hearing of 2 weeks ago.

You say on page 9, that the financial books and records of the Towers Nursing Home are such as to all but defy review to determine the home's true financial condition. Moreover, the HE-2-P's, which is the form I think they make claim for reimbursement, submitted to the New York State Department of Health, were not prepared in accordance with accepted accounting procedures, further complicating attempts to properly review financial activity of the home, and then you go on to talk about a negative position in the bank account.

I am not enough of an auditor to know what a negative position means, and it seems that they could have a negative cash position, and have an actual balance in the bank. That is hard for me to understand.

Mr. RUEHLE. It was hard for me to understand too, and it all came about when I went to the cash disbursement book totals that you post to the general ledger at the end of each month, if you know anything about accounting.

The postings to the credit side of the ledger account, for the cash in the bank, in the Bank of North America, as it is known, did not coincide with the amounts in the cash disbursements book.

I started scheduling it for the year 1972, and the difference was greater in the ledger, in the general ledger account, was \$199,650.

I can only surmise, and I emphasize that, it has something to do with checks outstanding, but there is no way on Earth that I could reconcile that figure that I know of at least.

Senator Moss. You said in your report that the bank account did not show any overdrafts.

Mr. RUEHLE. This is an unreconciled bank account.

In other words, the bank statement does not show an overdraft, that is true.

The bank statement shows an amount in that bank that one could draw on; however, that amount is subject to whatever checks are outstanding, and I have no idea how many those were.

Senator Moss. Another thing that struck me as peculiar was this loans and exchange account, which is, I think you numbered as account No. 7, or is it their books that numbered it account No. 7?

Mr. RUEHLE. Their books showed it as general ledger account No. 7, entitled "Loans and exchanges," and that was of great interest to me.

Senator Moss. Now, account No. 7, explain "Loans and exchanges" to me, will you please?

Mr. RUEHLE. As the gentleman that first testified, it is hard to get a good accountant to answer that, but what it is really called is a wash account.

It is an account that handles temporary-type transactions, rather than having them posted to regular general ledger accounts, and then posted again.

It is a convenience account, of things that are not going to remain in the books very long.

That is generally speaking of what a loans and exchange account is. This particular account was an odd one, and what I could not reconcile, the reason I said it was almost impossible in tracing through the books, was that the cash disbursements book showed numerous checks listed by check number, and amount, but payable to no one, except loans and exchanges, or L. & E., or other letters, so that I looked then to see whether or not these checks were charged into the general ledger account No. 7, and they were not.

I do not know what the story is on that. I frankly do not know. There are so many answers here that we do not have, I am embarrassed to tell you.

Senator Moss. Who did the bookkeeping and accounting work for the Towers Home?

Mr. RUEHLE. The bookkeeping, that is the actual posting of the records of the original entry was principally done by Mrs. Raye Goldberg, with the exception of the cash receipts book, which I understand was handled by a clerk in the office, and Mrs. Helen List.

The general ledger itself, as well as any adjusting entries at the end of the year, was prepared by Mr. Samuel Dachowitz, the CPA for Towers.

Senator Moss. Mr. Dachowitz, is he a CPA?

Mr. RUEHLE. He carries the title on his worksheets, on his statements.

Senator Moss. Have you had conversations with Mr. Dachowitz?

Mr. RUEHLE. Yes.

Senator Moss. Did he explain how this account operated?

Mr. RUEHLE. Well, at one point he did, in a way. I still do not know how it operates. No reflection on Mr. Dachowitz.

There is more to be told before I tell you about my conversation with Mr. Dachowitz, if I may.

I began looking at the canceled checks of the bank statements, because of these entries in the cash disbursements books that were not identified, and I found, I will not say it is a brilliant stroke of accounting, but I found by tripping over it, the fact that there were two \$30,000 checks that were not in the books, and were not with the bank statements in November 1973, but they were however charged against the bank account under the bank statement, and that led me to a preliminary audit, you might say, of 1973, and I only took checks of \$10,000 and over for my own convenience, really, and I found a quick \$340,000 that were not with the canceled checks, so I asked the bookkeeper about this, and she said she would find out, and a couple of days later she had not found out, so I asked her again, and she called Mr. Dachowitz on the telephone, some place or other, and I spoke with him, and he said to me, those checks were destroyed, as soon as they came back from the bank and were reconciled with the bank statement, because they represented loans made to the Towers Nursing Home by persons not

connected with the home, who did not want their identities to be known.  
 Senator PERCY. May I ask this question, if you don't mind, on that same point, Mr. Chairman?

Similar checks of \$30,000 were issued for June and July, and two in August. Is it not unusual for those checks not to have been entered in a cash disbursements book, because I could not find them.

Mr. RUEHLE. They were not in the cash disbursements book. As a matter of fact, in 4 years of canceled checks I found the total of \$2,220,816.67 that were missing, and not recorded in the books.

Senator PERCY. Now, is it not true though in fairness to the book-keeping system, or unfairness, I am not sure which it is, that for perfectly legitimate purposes, sums of \$30,000 were transferred to the payroll account periodically?

Mr. RUEHLE. That had nothing to do with this whatsoever. Those were recorded.

Senator PERCY. These are different and separate, the same amounts that were customarily used, but there was no transfer for payroll purposes, and now you reveal that you were actually told the checks were destroyed?

Mr. RUEHLE. That is right, and then I might add that that story did not stay with me very long, because I thought it was a little incredulous, and Mr. Dachowitz who was on the telephone, got off the phone for some purpose, and came back on the phone, and said the checks are not presently available, and that has been the answer I have gotten since that time.

Senator MOSS. So "destroyed" has been changed to "not presently available"?

Mr. RUEHLE. That is correct.

Senator MOSS. I find a whole list of checks that go to Mr. Dachowitz, especially in 1974, and there are some for \$40,000 and \$45,000.

Did you find any reason for all of the number of checks being made out to Mr. Dachowitz?

Mr. RUEHLE. No, sir, I did not.

Senator MOSS. I think they totaled, according to this, \$645,000.

Mr. RUEHLE. \$645,000 to Mr. Dachowitz.

Senator MOSS. Well, Mr. Dachowitz, when he comes before the committee, maybe he can give us some explanation of that.

It troubled me. Your report said that the work done by Mr. Dachowitz on the general ledger, the payroll and cash receipts recapitulation, had been untidy, abbreviated, and illegible.

Mr. RUEHLE. After 2 months I have gotten to know his writing a little bit, but it takes a while. He does not allow himself enough paper. [Laughter.] I think he is economizing maybe on paper.

I think he is economizing maybe on paper.

Senator MOSS. Now, I was also interested very much in expenses that you found disallowable by the State of New York for medicaid reimbursements, and listing here some very strange sort of things, it seems to me.

Were these actually listed in the books, did you find, I am looking at pages 14, 15, 16? Now, this is of your report,\* and 17, also. Were you able to find in the books themselves, what these payouts being charged as expenses were given for, such as the \$365,000 to Pilgrim Liquor Co.?

Mr. RUEHLE. That was not explained.

\*See p. 3057.

Senator Moss. It was listed actually in there.

Mr. RUEHLE. It was an invoice from the liquor company, which said for liquor.

Senator Moss. What about parking violations that gets some money?

Mr. RUEHLE. No explanations.

Senator Moss. On page 14, there is a payment of \$1,000 to Mark Loren, for social services and recreation, and then it says "Xmas" right under there.

Mr. RUEHLE. That is right.

Senator Moss. What was the date of that payment, do you know?

Mr. RUEHLE. That was dated December 26, 1971.

Mr. SHAW. Excuse me, Senator.

Some of these are set forth in more detail on exhibit No. 4,\* that was cited on the page of the report itself.

Senator Moss. Yes.

Mr. SHAW. I think if you go down to 1971, little (k), you will find the answer there, sir.

Senator Moss. This item captioned "Xmas", and charged to social service and recreation?

Mr. SHAW. That is correct.

Senator Moss. I see a number of payments made to local 144. Can you identify what local 144 is?

Mr. RUEHLE. Well, I know generally it is the union they have at the home.

Senator Moss. Is this the local that the service employees belong to?

Mr. RUEHLE. All of the employees, except the office help, I believe, belong to one or more unions. I am not absolutely certain of that.

Senator Moss. Well, the one I am looking at particularly, is a payment to local 144, the account charged is medical and other professional fees.

Mr. SHAW. Excuse me, Senator.

Yes, that is explained on the exhibit again, in little (d).

The accounts payable ledger for October 1971 reflects the amount of \$30 payable to local 144 dance, charged to social service and recreation, and appears under medical and other professional fees.

I might add, Senator, the characterization in the extreme righthand column on the pages of the report, are our characterizations.

Senator Moss. I can see, these are disallowed, but I have been wondering, because they spread over about a 4-year period, and I wondered why this continued after say 1 year.

It would seem to me they would not any longer claim them.

Mr. SHAW. Well, sir, those are our characterizations. In other words, that should be read, as should have been not submitted for reimbursement, but in other words, in our opinion, the home did submit them.

This is not something which was pointed out to the home by the department of health. This is our characterization in going over the books later on.

Senator Moss. Well, is this medical and other professional fees, sort of a catchall, is that the reason so many things fall in it?

Mr. SHAW. The category is one that is called for under HE-2-P, which is a form submitted for medicaid reimbursement.

\*Retained in the files of the committee.

Mr. Dachowitz puts in a total of the charges to that particular account. It would not be possible on a desk audit by the State department of health to locate that particular check anyway. It is a total, all charges to a particular account that are claimed, and it is not possible to identify it.

Senator Moss. Well, the reason I ask, I am just running down page 17 now, the first one there, Academy Liquor Corp., medical and other professional fees, including a wine company, medical and other professional fees.

Israeli Emergency Fund of REA, medical and professional fees. Samuel Dachowitz, medical and other professional fees, and then finally down at the bottom, various doctors, medical and professional fees, \$346.

Mr. SHAW. I can explain that. The medical and professional fees includes the account called social service and recreation.

Mr. Dachowitz decided to put in the column that is medical and professional fees. I do not know why he selected that particular category.

Senator PERCY. Can you explain how doctors got \$346.50, and Mr. Dachowitz got \$1,500?

What sort of recreation did he provide?

Mr. RUEHLE. I asked Mr. Dachowitz what this \$1,500 was for, and he said it was a mistake, that it had been posted in the wrong account. He blamed the bookkeeper for that.

Senator Moss. Did he generally in his handwriting designate what accounts charges should be made against?

Mr. RUEHLE. Sometimes.

Senator PERCY. I went through the books, and it looked as though quite frequently it was a much heavier hand than Mrs. Goldberg's handwriting, and very legible, and there always seemed to be additions, and a decision by him, as to what account these charges should go against.

Mr. RUEHLE. There are some. I would not want to say flatly. I think as a matter of bookkeeping practice, she had become in the habit of charging certain items to certain accounts.

That is what I would expect her to do, but then if there was some exception, I would say that Mr. Dachowitz would make that decision.

Senator Moss. It was a little erratic, you can say that.

I see parking violation bureau, \$25, gets charged to travel and entertainment.

There is another interesting one on page 18, that is charged to legal fees, and it says \$500 in amount, Wilbur Ross, treasurer, New York State Democratic Legislative Campaign Committee, legal fee, \$500.

Mr. RUEHLE. Yes, sir. The words legal fees were listed in the place where the payee would normally appear, and it was written in pencil.

Senator Moss. It said Wilbur Ross, treasurer, and not Wilbur Ross, lawyer.

Mr. RUEHLE. It said nothing about Wilbur Ross, but I went to the check and found it was payable to Wilbur Ross, and endorsed by him as treasurer of the New York State Democratic Legislative Committee.

Senator PERCY. Was that put in as an allowable expense under medicaid?

Mr. RUEHLE. No; the medicaid law was July 1974, and they would not submit that until they were claiming 1976 reimbursements, establishing the 1976 rate, which of course they will not be doing, so that is possible that that category of legal expense would be changed at any time.

Senator Moss. I had a question about this calculation of true profits, where the amounts are claimed for rent expense.

This would be on pages 19 and 20, and you characterize in the right-hand column, excess rent, of various amounts, totaling \$2 million, but the third column is the one that concerns me.

In order to establish a standard, you calculate an amount of \$61,500, and why did the health department allow rent in excess of \$300,000?

Mr. RUEHLE. Sir, I will have to defer this to Mr. Shaw. I did not do that work.

Senator Moss. Mr. Shaw, could you tell me about that?

Mr. SHAW. Would you mind explaining it to me again?

I did notice in correcting this, for the presentation this morning, we did find some typographical errors, but I am on page 19, sir, so will you advise me?

Senator Moss. On pages 19 and 20, the report says for the years, 1966 to 1972, the Towers was allowed an excess rent each year of over \$200,000. Well, \$195,000 once, and all of the rest are over \$200,000.

You also say the actual cost each year should have been only \$61,000 for rent.

What I want to know is how do you calculate the \$61,500, and why did the health department allow rents in excess, well, in excess of \$300,000?

Mr. SHAW. I believe that is explained in footnote No. 3, no, 2, but basically, the excess rent was, this is our own calculation, by the way.

This is not something that the department of health did. We calculated the excess rent by applying the rental figures reported by Towers in its HE-2, and in deducting from them the actual cost incurred by the related home, the Liberty House Nursing Home, in providing the service, because these costs were reflected, that is the Liberty Home cost, only in the 1969 HE-2-P, we used the 1959 figures for the years 1966 to 1973.

We took the one year we knew the home figures, and used them throughout, in order to, in a sense, the cost providing for the rent, basically rent and depreciation, it would be reasonably assumed they would not vary from year to year.

I would have to go back to my personnel to find out any broader explanation than what is contained in the footnote.

In other words, we took the 1 year's rent that we knew, and used that.

Senator Moss. As a base?

Mr. SHAW. As the base.

Senator Moss. And calculated rents claimed over that excess?

Mr. SHAW. That is right.

Senator Moss. Well, what is Liberty Home?

Mr. SHAW. According to my recollection, Liberty Home is now—its name has been changed, but I believe, it was, for a period of time the name of the landlord of the housing company.

Senator Moss. Liberty Home at the time of 1969, actually owned the realty and the building; is that what you are saying?

Mr. SHAW. That is what I believe. At least they were the lessor of record, in relationship to the nursing Towers itself.

Senator Moss. And they received \$61,500, in that year of 1969, Liberty Home received that?

Mr. SHAW. That is correct.

Senator Moss. So if your calculation is correct, based on that assumption there would be an excess rent that was paid, and consequently paid, of \$2,014,000?

Mr. SHAW. Yes.

Basically, this is a roundhouse projection, just to touch upon certain aspects of being in the nursing home business, from a total viewpoint.

Senator Moss. Mr. Ruehle, the cash receipts books contained little notations about loans, and so on.

Were you able to identify the meaning of those letters in the cash receipts books?

Mr. RUEHLE. I had a conversation with Mr. Dachowitz and Mr. Mark Loren as to this particular situation, when they were talking about the missing checks, at that time, when I first talked with him, I had looked at 2 years' checks, and I got initials BB, which is supposed to be Bernard Bergman; SB, which is said to be Stanley Bergman, son of Bernard Bergman; AWB was Anne Weiss Bergman; MB was Moses Brownstein; ML was Mark Loren; BS was not known to either one of these gentlemen, and the initial S was also not known to them.

I later did the following 2 years that I had not been able to complete, and I picked up a number of other notations in the cash receipts books, one being the Seventh Avenue Nursing Home, which I know nothing about, a name that appeared to be possibly Jane Johnson, E. Gobel, and another notation was 87th Street.

Another notation was MA. Another notation was White Plains, and the last was Feldman.

Now, I did not ask either Mr. Loren or Mr. Dachowitz what those particular initials referred to. I had no subsequent conversation with him.

Senator Moss. But the previous one was Moses Brownstein, the one they did identify for you, MB?

Mr. RUEHLE. That is correct.

Senator Moss. Is he the man of the Metropolitan Nursing Home Association?

Mr. RUEHLE. Yes. I have seen him listed there.

Senator Moss. These examples listed in the cashbooks total a lot of money, \$1½ million?

Mr. RUEHLE. Yes. There were entries of even amounts which were in the cash receipts books, which were not identified at all.

They totaled for 4 years up to September 30, 1974, which is as far as I went, \$2,256,300, and of that amount, we were able to ascribe a total of \$1,523,050, but the difference is absolutely unexplained and unknown.

Senator Moss. Did you ever determine who S represented?

Mr. RUEHLE. I am not exactly sure. It is only an \$1,100 entry, but I found later on, in looking through some checks, of an organization called Sani Interiors, which was their cleaning vendor at the time in 1971. I should say, I found a check for \$1,100 which was paid to the Towers Nursing Home for reasons I am not able to tell you, and it is possible that S could stand for Sani Interiors.



Why it would be abbreviated I have no idea.

Senator Moss. We have had some discussion about whether or not the Towers has been profitable, or marginal, even nonprofitable operation.

According to the Towers financial statement it has been losing substantial amounts of money since 1969; however, because of the financial statements, which include rent payments, which are not at arm's length in nature, and far in excess of what it costs to provide the services, the Towers do not fairly represent the true profits.

Can you tell me how this has been operated so that the showing has been nonincome, and yet a lot of money has gone through?

Mr. RUEHLE. I cannot really tell you that. It all evolves around the loans and exchange account, and it may not mean anything to the medicaid rate, and it also means nothing to me, because I cannot understand it.

I can tell you this much. I took a trial balance for another reason for a 10-month period in 1972, and it would have shown for that period a net profit of \$240,000 and change, to be exact, but by the time December 31 had rolled around, they had shown a loss for the year of \$141,050, and I cannot account for that change.

Some of the entries at the end of the year that Mr. Dachowitz prepared for the general ledger, I do not understand, and I was not furnished with any supporting information, except I was given a story on some of the items which would have necessitated me duplicating entirely all of the work that Mr. Dachowitz and his bookkeeper did to come to these figures, and I was not about to do that.

Senator Moss. Was there any way to check whether salaries paid really were for services rendered, or whether they were passthrough?

Mr. RUEHLE. I did not audit the payroll account. We did a limited audit. That was one of the last things we were going to do, because it takes time, and at that time we were thinking about it, and it became apparent that the home was going to close, so we did not get into that.

The only salary I have any knowledge of was the one that was entered at the yearend, 1972, for \$25,000 for the owner's salary, that is Anne Weiss.

That was not paid in the form of a check issued to her. It was an entry in the general ledger, presumably the offsetting entry was her capital account, I have no idea why I could not find it.

Senator Moss. You say you did not look at the payroll account. I was just wondering, did Anne Weiss put in hours of work, do you know?

Mr. RUEHLE. Let me say this. I did as much as go through the names of the people that were issued certain payroll checks.

I did not do that, but I did go through enough to satisfy myself that did not audit the account, I did not take the totals to see that they were correct against the numerous checks issued for salary and payroll, and so forth.

I did not do that, but I did go through enough to satisfy myself, that Anne Weiss was not among those paid on the payroll.

Senator Moss. I must refer to my colleagues who I am sure must have some questions, Senator Percy being a corporate executive before he came to the Senate, probably knows his way through these figures better than I.

Senator PERCY. I do not know whether I could be any better than Mr. Shaw.

I have tried to go through some of the books, and I can assure you I have never seen a set of books kept like this.

I do not know whether it is intentional or otherwise, but it is extraordinarily difficult for someone accustomed to ordinary accounting procedures to wade through it.

We appreciate very much the help that you have provided, and I would like to ask Mr. Shaw, because of your general experience and background, and because of the overriding concern that this committee has with establishing proper procedures for setting up nursing homes for the elderly, whether or not you feel that the cost-related reimbursement system used in New York, which has been pointed to with some considerable degree of pride and also referenced as a possible system to be used in other States, whether this system on close examination really meets the needs of the times.

I am very concerned, and always have been, and have really fought my own company in engaging in cost-plus contracts.

I never liked them. I never liked the inefficiencies they built into the system. Even when government was claiming the cost, I thought it was bad discipline for an organization to have whatever the cost is, just totaled up, and then some profit put on top of it.

Now, in New York, they have tried to have some guidelines. It is possible to build costs up through padded payrolls, through payment for services that were never rendered, shipment of supplies that were never consumed or used, and so forth, but if there is to be an averaging system, and then you are allowed 15 percent above that average. But does it really, in your judgment, provide incentive for industry to hold the costs down? Would you be accused of not being one of the boys, and making it harder on the rest of us, if you ran too tight an operation, and you had your costs down so you brought the allowable average down? Is there incentive for the industry to really reduce costs, much less the individual nursing home to reduce costs?

Mr. SHAW. Senator Percy, I do not know exactly how to answer that, except I do believe that you have some department of health officials going to testify later today, and let me start off by saying that I understand that the trend away from a lumpsum mechanism was a recognition that, and I can only fall back on my general construction background, that in a lumpsum contract, the contractor is gambling, and it was felt by those in the nursing home field, they did not want the contractor to make a poor gamble, and then take it out on his patients, and thus the idea was that we would convert over to a cost basis, and encourage the contractor more.

Now, the real problem is in New York State you have sort of a cost-plus with a guaranteed maximum at the top, sort of a ceiling, and to a certain extent, to the fact the contractor under-runs that, he is given a slight bonus.

Senator PERCY. He gets a 40-percent bonus. It is a very high incentive payment.

Mr. SHAW. Philosophically he is supposed to participate in his under-run which is to encourage him to continue under-run.

The main thing I find lacking is that if these people in government, the philosophy of a cost-plus contract, is the contractor assumes a much greater position of trust.

He is sort of a fiduciary for the owner, which you do not find in the regulations, in this way the entire format is regulated in the State, as distinguished with a lumpsum contract, where he has made his margin, and he has to live with it, and in New York, the big thing is the fact of no onsite auditing.

What other types of contract system do you have, except in medic-aid, where there is no onsite auditing?

Now, the fact is that this is not unique to the nursing home industry. The housing industry has been regulated for quite some number of years. It has had its proportion of problems too, but the nursing home industry is far behind them in profit housing in New York State and the housing authorities have had auditors on circuit, and apparently they do a better job.

The department of health will get more auditors, I think that is also to the good, but the system is an uncontrolled government contract system completely.

Senator PERCY. In summing up, then, as counsel to the New York State Office of Welfare Inspector General, would you recommend to this committee that, as you have seen it, the cost-related reimbursement system operate in nursing homes, that we could then recommend that system to other States as a model system?

Mr. SHAW. I would really prefer to answer that question personally rather than on behalf of the agency, but if I could answer it personally, I would say that I still believe that there is merit in the cost system, because on the other hand, you then have to really in effect see that the only inarticulate group, mainly the recipient, is not being squeezed for a bad bargain.

Senator PERCY. In order to see it work, does it depend on adequate regulation, adequate inspection?

Mr. SHAW. Medicaid is rampant with no regulations. Nursing homes are symptomatic.

Senator PERCY. You mentioned in your testimony the nursing home operates in an unsupervised government contract system.

Can you pinpoint for us where the lack of supervision occurs, who is truly responsible here? Is it possible for us to say who has defaulted?

Is there adequate Federal inspection to go along with State or city supervision?

I noticed in some of these reports, that some of these nursing homes that are under examination have not been really examined for a period of many years.

Mr. SHAW. Well, Senator, the answer to that question, we have to put in perspective.

First of all, the nursing home, as an institution, is regulated by the department of health, in the same way as the department of health has responsibilities for institutions such as hospitals, irrespective of whether or not that institution is a medicaid contract.

The contracting officer, if we could use that word, is in truth the State department of social services.

This is the disbursing officer. In addition, the State department of health, now, because the institution is a government contractor, has

auditing and ratesetting functions aside from its general inspection of it as a facility, so the State department of health and State department of social services are involved.

If it is a mental hygiene facility, then the State department of mental hygiene is also involved, so in short, you have the rate, which is set by the department of health, which is responsible for the analyzing of the rate, which is turned over to the department of social services, which then mails out the rate, and then the beds on the per-bed rate, you have the bills paid by the department of social services.

Now, the unregulation goes to the question of the department of social services, as a payor, but it is the disbursing office.

There is no onsite inspection. The audits are desk audited in Albany, historically, up until recently, at least only 15 percent of the nursing homes had been audited.

You can see our reports, and in our annual report we say that.

Now, the department of health is getting more auditors, so that is all to the good.

Now, you bring up the Federal Government. Well, that is an interesting story in itself. The Federal Government has taken—

Senator PERCY. Could we have it very concise, because we have a long day.

MR. SHAW. Medicaid is not a Federal program. It is not considered to be so by administrators. They say all lawsuits should be handled by local district attorneys.

The State department of health is the investigating agency for the Federal HEW. Medicaid is not a Federal program. It has never been run by HEW in that manner.

Senator PERCY. All we do is pay the bills?

MR. SHAW. You pay 50 percent.

Senator PERCY. Yes, and the State pays 25 and local 25?

MR. SHAW. Yes.

Senator PERCY. So we pay double the share of either one of those agencies, but we do rely upon the State and local community supervisors, which we much prefer, but what do we do when they do not do it?

MR. SHAW. It seems to me there could be a lot of action right at the top of the State. There is no need for law in many cases.

All it needs is good regulation, and then of course, if the Federal Government gave it some impetus, by insisting on more proper supervision by the State.

Senator PERCY. Mr. Ruehle, as an individual, again, would you, having seen how the system is working, would you be able to recommend a cost-related reimbursement system to other States?

MR. RUEHLE. I do not feel I am qualified to answer that question, Senator.

Senator PERCY. All right.

I would like to ask in your judgment, Mr. Shaw, we are—well, when you consider only 15 percent of these accounts have been audited by a government agency, are we then very reliant upon a certified public accountant's certification, as to the truth of the statements, as to the adequacy of the accounting methods and procedures used? We very clearly have indicated in regulations we have issued, and I will just quote from it, that "whatever methodology is authorized, it should include adequate procedures for auditing as necessary the financial rec-

ords of institutions." This is taken right out of the guidelines for medicaid.

Are we very reliant on the reliability, the integrity, the accuracy, and the thoroughness of CPA's?

Mr. SHAW. The answer to that is obviously yes, and medicare employs the so-called big 8 or big 12 firms to audit their books, I am informed, as distinguished from the smaller accountants you find doing medicaid homes in New York State.

Senator PERCY. Mr. Ruehle, GAO reports a commingling of medicaid funds, with other funds in the Towers Nursing Home checking account. We find it difficult, if not impossible, to determine precisely what funds go into what account.

In your review of the books of Towers, were you able to assert if medicaid funds were involved in the loans and exchange transactions? Are you able to determine whether they were or were not?

Mr. RUEHLE. I cannot say they were. They became a part of the balance in the bank, upon receipt of a check from the department of social services which they got every month.

Whether any of that specific money was used for any of these checks involved in the loans and exchange account, I do not think anybody will know, because it is all in the same pocket.

It is in there with the receipts from social security on behalf of the patients, and any other income they might have, including loans, if any, and it is all commingled to the point you cannot tell just what dollar went for what. At least I cannot tell.

Senator PERCY. Mr. Chairman, I intend to reserve most of my questions on specific accounts to the auditors and owners when they appear.

I would like to ask this general question, taking just a couple of examples, in the liquor account, expenditure for liquor, \$1,264 that the Chair mentioned. I noticed the detail of that includes the bill for 1972, included 61 bottles of Scotch whiskey, 6 different brands, a wide variety of hard liquor and wines.

Are these expenses clearly nonallowable for a nursing home?

Mr. RUEHLE. I did not use the word nonallowable. In my thinking I used, because I am not the one that passes on what is allowable, what seemed to me to be related to patient care.

That is the only yardstick I used, and I did not want to say I knew all of the regulations of the New York State Department of Health.

Senator PERCY. Was any attempt ever made to determine whether or not such an unusual purchase for a nursing home was actually used in the home, or might not even arrive there?

Mr. RUEHLE. No; I did not do any followup on that.

Senator PERCY. And by notification in advance, we certainly will be putting that question to the operators of the nursing homes.

I would like to ask a question on the payroll accounts. In looking at the payroll accounts, I find it very difficult to determine why in 1973, in the Towers payroll account, January is \$171,000, May is only \$99,000, December is \$241,000.

Did the patient load that you know of fluctuate widely, or is there any reason that you know of why these charges would be made in that way?

Mr. RUEHLE. I have not the slightest idea, and as I pointed out in my report.

In addition to the December total being inexplicably large, Mr. Dachowitz in his December 31 report suggested an additional \$153,910 net, which was also part of the money claimed for medicaid.

Now, I do not have any idea of how he arrived at the accruals, or how he arrived at the figure for December.

Senator PERCY. The \$1,925, well, it apparently was charged to medicaid, social services and recreation, and made out to the Religious Zionists of America.

Is there any explanation as to what the nature of that service was?

Mr. RUEHLE. No invoice of any kind.

Senator PERCY. And the \$1,070 check made out to Rider College, charged to medicaid as a social service and recreation expense, 1974, the supporting voucher showed another check for \$450 to Rider College, and it showed providing tuition to George W. Goldberg.

Do you happen to know who George W. Goldberg is?

Mr. RUEHLE. I asked the administrator, Mr. Jack Stern, who he was, and if he was related in any way to the bookkeeper, Mrs. Raye Goldberg, and he said that he was her son, and I did not however ask her.

Senator PERCY. You did not ask for an explanation of why that was a chargeable and allowable expense?

Mr. RUEHLE. No; I did not, and partly for selfish reasons. I am getting along very nicely with her in the books and records department, and I wanted to continue until I got through.

Senator PERCY. Mr. Chairman, I would like to establish the fact that corroborating my own examination of the books, our expert witnesses today have categorized the books as follows:

There are no monthly posting totals in the general ledger. Many entries are unexplained. There are unexplained deductions, and I am extracting very quickly here.

Many of the books of original entry are missing, both folio references and column footings.

There are numerous entries in the general ledger, the source of which are not apparent, or cannot be determined.

The journal contains many entries, without indicating the purpose of the entries.

With respect to account No. 7, for which our subpoena has not been answered, and we do not have a general ledger account on that, as I understand it, I hope I am wrong on that, but it shows that almost none of these disbursements actually appear in the loans and exchange account.

It shows that substantial numbers of checks were paid to Sam Dachowitz, the nursing home's accountant.

Do you have any idea why those checks were made payable to the accountant, other than I presume his salary, which is fully warranted, and I trust agree?

Mr. RUEHLE. Not unless he is the very dear friend of Dr. Bergman. That was referred to in the conversation with Mr. Loren and Mr. Dachowitz.

After the initial conversation with Mr. Dachowitz on the telephone, I received a visit a couple of days later, in fact on October 31 last year, from Mr. Loren and Mr. Dachowitz, at the home, and at which time I asked them again about the missing checks. And I was told by Mr. Loren that these checks represented payment of loans made to the

Towers Nursing Home by a very dear friend of Dr. Bergman who did not want his identity disclosed.

Senator PERCY. In other words, nursing home funds were loaned to friends, or the friends made loans to the nursing home?

Mr. RUEHLE. First, in the order of occurrence would be the friends made loans to the nursing home, which are then being repaid, and the repayment checks were being destroyed, and of course later on they were not available, but this concerned a very dear friend of Dr. Bergman.

I don't know who that would be, because we have 9 or 10 sets of initials, and I do not know which one is a very dear friend.

Senator PERCY. Again, from a standpoint of general principle, is it an unusual practice to have loans of this type made?

I could not find any evidence in any of the material that we have subpoenaed, that is, even evidence of the loan, other than a little notation that it had been made.

Have you ever in your experience ever found that to be an accounting practice that is acceptable?

Mr. RUEHLE. I have never seen it before. I am not aware of it.

Senator PERCY. Could any CPA certify accounts, when he discovers, or possibly participates in such practices; could he certify those accounts in any way?

Mr. RUEHLE. I don't know the ethics of that, as far as the CPA is concerned, sir.

Senator PERCY. There is an unusual payment made that I saw this morning, in December 1973, in a loans and exchange account for \$150,000. I traced that through and it was a check that Towers had paid to Bernard Bergman.

However, at the end of that month, the bank advice showed an overdraft of \$48,000.

Why would a principal, such as Mr. Bergman, draw \$150,000 from an account, and then have an overdraft? Oddly enough, I found a little entry in there of \$150,003, and I could not imagine what that was, until I found the bank had charged \$3 for the overdraft, and they had taken that into account.

Mr. RUEHLE. That is correct.

Senator PERCY. Did you make any inquiry about that?

Mr. RUEHLE. No, not the \$3. I did not ask the bank about that; no, sir.

Senator PERCY. The committee would in advance like to advise Dr. Bergman that he will be questioned about that.

Mr. Chairman, I simply feel that this audit has been extraordinarily helpful to us. It makes it exceedingly difficult to find out what is going on, and that will prolong these hearings this afternoon, but possibly there is an explanation for many of these things.

I do want to correct the previous statement that I made, that we do have account No. 7 for Towers, but we could not locate in any of the subpoenaed material account No. 7 for Park Crescent, also owned by Mr. Bergman.

Senator Moss. Senator Domenici.

Senator DOMENICI. Thank you, Mr. Chairman. I guess you all have some idea of how seniority works in the Senate.

Most of the specific questions that I would ask, with the exception of the patients' account, personal account, have been asked. Senator

Percy has been talking about whether this system works, and he has indicated, if I understood him correctly, that certainly he approves, and if this was his statement, that I approve of having the private sector involved in nursing homes, in the nursing home delivery system, for reasonable profit, rather than to assume that it should all be turned over and run by government.

The thing that I see as the shortcoming in this cost-allowance process hinges on whether or not the transactions are bona fide as arm's-length transactions, as significant transactions that incur costs, whether they are bona fide at arm's length, or whether they are subterfuge, and other than arm's-length, and I think that is the heart of the problem in terms of your explanation of a profit or not a profit, of a real rent versus an excess rent.

Now, when you look at page 19 of your report, and you talk about the actual stated profit of the institution, versus what you indicate the profit would be, if in fact you put in the excess rents that were paid, and the excess salaries that were paid, that becomes relevant to the situation only if the excess rents are a subterfuge, or a way of profiteering, rather than making a reasonable profit.

When you used your base rental figure of \$61,000, you referred to that, that is the amount of rent charged by—what did you call that person?

Mr. RUEHLE. I did not do that work. I again refer to Mr. Shaw. Senator DOMENICI. Mr. Shaw.

Mr. SHAW. AS I was referring to footnote 2\*, sir, where our staff used as the base the cost reflected for the year 1969, and then as we say in the footnote, we utilized those for the years 1966-73, to reach the computation, and what you are saying, in essence, is that, as I gather, as I believe what you are saying, is that if it had been at arm's-length, the rent would have been a fair rent, and presumably the nursing home rate would not have reflected any overage.

Senator DOMENICI. Yes; I am not only saying that, but if there was true competition, then we would assume there is going to be a fair rent.

If there is not, of course, we do not know what kind of aberrations would occur, but it seems to me it is relevant to know whether or not there are any ties between these various entities to whom rent, or cost of services are paid, and the basic ownership, majority or minority in the corporate structure it is operating.

Now, do you have any evidence that the company to whom the excess rents were being paid, if they are excess, and they would seem to be, are related in ownership by family, or the like, with the operators of the institution?

Mr. SHAW. Well, Senator, are you talking generally, or are you talking of this particular case?

Senator DOMENICI. I am talking of this particular one.

Mr. SHAW. I did not bring it with me, but I believe if you refer to the SEC statement filed by the overall owner, if you would, Medic Homes, that there is a family relationship of some sort with regard to the landlord.

I mean, I am not necessarily characterizing it as a relationship, I would have to look at a chart, but there is a relationship between the

\*See p. 3064.



people who own the Towers real estate interest, and shall we say the operators of record.

Senator DOMENICI. Well, as a matter of fact, if excess rents were paid as a part of a scheme or plan, there would be no benefit through the Bergman interests, unless in fact they were profiting directly or indirectly from the excess rents, is that correct?

Mr. SHAW. Well, that is true, and that is the reason why we assumed that Prosecutor Hines is going forward with making up the matrix of what we said, nursing homes chains, in New York State, because actually only then would it appear that you would be able to unravel the mystery of loans and exchange account.

Senator DOMENICI. Now, the same would apply at almost every level that you have explained, in areas that are confused.

You have an account where you talk about improvements made through the premise, and they pay out \$150,000 for improvements, which I assume would then become part of the cost of operating the business.

There again, you would have an example if that is not a bona fide transaction, there is an obvious way that the cost-plus program could be used for profiteering, rather than a reasonable profit; is that correct?

Mr. SHAW. Yes, that is correct.

Senator DOMENICI. And that is rampant throughout the transactions between the operating entity, and outsiders, throughout this entire operation. We do not know the exact relationship of these various entities that have performed services, to whom we paid rent, and the actual operators, there is confusion, is that correct?

Mr. SHAW. I would say there is confusion. The word "rampant" is your word, and I would hesitate to make that characterization.

I am saying there is a lot of unknowns in this thing. That is the reason for our original Towers report. There were too many, it was obvious there were too many ancillary issues involved, and that is the reason we asked other investigating agencies to come in.

Senator DOMENICI. I think I have just one last question.

With reference to the moneys that each of the patients are supposed to receive as their own, you did find, did you not, that there was no aggregating of those funds, and that there was a lack of ability to actually trace whether or not the patients got the money or not?

Mr. RUEHLE. I did not work on that. I am familiar with the way the system operates, because I did check out what they call patients' account at the bank.

Our interest was not so much the patients' account, but merely the segregated funds from the other account, for the purpose to have enough money to pay the patients, but the young man who worked on the thing, and his purpose was to satisfy himself, that these patients had received this money.

I think his primary concern—and perhaps Mr. Shaw would rather do this—but his primary concern was whether there was a person who signed for the money, purportedly to be given to the patients, and anybody and everybody signed for the money, the head nurse, right on down, and there is no way, nor could I even suggest a way that we could prove with each patient, that she got her money, because I think some of these patients do not really know whether they got the money or not.

They are far out, some of them, and it is a problem I do not have a solution for, and it was disturbing to the young man who worked on this, to find that so many different people, employed by the home were signing for the money that was due for the patients.

Mr. SHAW. I might interject, Senator, the handling of personal funds, we have found in our other reports which have been made available to the committee, that this is an item that should require some scrutiny, because understandably, some of the patients are borderline, with regard to their ability to manage funds, and while others may be in a position where they are being taken advantage of, and it is another area of concern.

Senator DOMENICI. So you indicated in your report for the period of January 1972, through October 1974, \$17,622.85 in personal allowance moneys were unaccounted for, and you state how you arrived at that figure?

Mr. SHAW. That is correct, but in this home, as in other homes, upon our checking, this is the statement we make about this home, that is correct.

Senator DOMENICI. As a matter of fact, back to my first question, about arm's-length transactions, and subterfuge, the Liberty House is a subsidiary of Medic Homes, Inc. Is that correct?

Mr. SHAW. I believe it is, sir.

Senator DOMENICI. And Dr. Bergman is chairman of the board of Medic Homes Enterprises, Inc. Is that correct?

Mr. SHAW. I honestly—I believe he is. I believe I read on his SEC report where he was so stated, but those—

Senator DOMENICI. He was until he—apparently he decided he was going to devote full time to vindicating himself, as I remember the record.

Senator MOSS. That is when he stepped down.

Senator DOMENICI. He stepped down according to the *Wall Street Journal* story dated the 22d of January.

Mr. RUEHLE. May I correct something that was said before. We refer to Liberty Homes, it was referred to several times.

I believe it should be Liberty House, and later on in mid-1974, it apparently became Liberty Towers, because the checks paid for the rent then began to be paid to Liberty Towers, so I believe the name is now changed.

Senator DOMENICI. I have no further questions, Mr. Chairman.

Senator MOSS. Thank you, Senator Domenici.

Senator Percy?

Senator PERCY. Mr. Chairman, in deference to my colleague, it was my intention to suggest that possibly when we equalize the Democrats and Republicans, and the majority and minority, that we then observe the 10-minute rule, but I felt it unfair to suggest that when we outnumber the Democratic majority 2 to 1.

Senator MOSS. You should enjoy outnumbering the majority.

Senator PERCY. It is so rare we have that chance, but I would like to say that I have consistently voted against the seniority system, but I must say it looks better the longer I am in it.

Senator DOMENICI. Mr. Chairman, I was in no way complaining. You all did a much better job than I could, so I was just delighted to listen.

Senator Moss. Well, I understand, and we will try to divide up the time much more equally than was done, but there are so many things, and so many questions raised, that it is just almost impossible not to go on to the next one.

You have been very helpful, just talking about the funds of the patients, that they are expected to draw for spending purposes, and the inability to determine whether or not that money actually got to them, which was small in amount, but probably the final indignity of a patient being chiseled out of his spending money, whether it is done at the top, or just by the orderlies, or whoever does it, and we need to examine into that carefully to see how that could be done.

Mr. RUEHLE. Let me correct an impression. This money as mentioned as having been unaccounted for, that is not money that we can say the patients did not get. We cannot say the patients did not get it. We just have no way to establish that he did get it. That is a better way put it.

Senator Moss. Yes, that is obviously the difficulty of the system, unless there is some way of being assured that it is turned over to the patient.

Well, you gentlemen have been—all right. Counsel has a question or two.

Mr. HALAMANDARIS. Let me begin by asking Mr. Shaw, if I am still correct, that there are only eight States which require CPA-audited financial statements, under the medicaid program?

Mr. SHAW. I am afraid I could not answer that question.

Mr. HALAMANDARIS. Well, New York is one of the States?

Mr. SHAW. I believe it is.

Mr. HALAMANDARIS. So I would draw the conclusion that New York is far better off than most States as far as knowing where the money is going, and yet we are confronted with Senator Moss' suggestion, the fact is we do not know where the money is going, whether the patient is receiving it or not.

Is that the general impression you come away with, after you reviewed all of these books, and looked at great numbers of nursing homes, that there is confusion as to personal expense money, for one, and trying to identify whether the money is in fact going to various vendors? It is just that you do not know, as Mr. Ruehle said a moment ago, if it is going where the people say it is going. Do you want to restate that?

Mr. SHAW. It is quite a long and independent clause.

Mr. HALAMANDARIS. Just jump in there anywhere.

Mr. SHAW. Basically, I would say our position is the cost system, primarily because of the lack of onsite audit of the profit-expenses for the purpose of setting the future rate, shows evidence according to our reading of existing regulations, that abuses have crept in, and with regard to this one home, the books are in such a state that even searching for possible abuses, you cannot trace the funds to characterize it.

Mr. HALAMANDARIS. That is all I was asking you.

The second question, the General Accounting Office, in its analysis, the analysis which the staff has done on the books and records that we have subpoenaed indicate that there is rather widespread and common practice for patients' accounts to be casually handled.

You have indicated a while ago that that is your concensus as well?

Mr. SHAW. That so shows in the reports we provided your committee.

Mr. HALAMANDARIS. The next question, the GAO found instances where interest was paid on loans and exchange accounts. Did you find any such instances?

Mr. RUEHLE. We could not identify it as such.

Mr. HALAMANDARIS. Would you react to this hypothetical.

If interest was paid on a loans and exchange account, and knowing that interest is reimbursable as a medicaid expense, would you say that a loans and exchange account could affect medicaid reimbursement?

Mr. RUEHLE. Absolutely.

Mr. HALAMANDARIS. Tell that to Mr. Lewin the next time you see him. [Applause.]

Senator Moss. Thank you, gentlemen. We appreciate your testimony. You have given us a great deal of information this morning, and we have taken much longer than we expected. We do appreciate very much the effort you have put forth.

Mr. RUEHLE. Thank you, Mr. Chairman.

Mr. SHAW. Thank you.

Senator Moss. We have a long afternoon ahead of us, so we will stand in recess for lunch until 2 o'clock.

[Whereupon, the subcommittee was recessed at 12:45 p.m.]

#### AFTER RECESS

Senator Moss. The committee will come to order. We will ask you to take seats, those of you who can find seats.

Our first witness will be Mr. Rocco Scarfone.

[Whereupon, Mr. Rocco Scarfone was duly sworn.]

[Material related to Mr. Scarfone's testimony follows:]

UNITED STATES OF AMERICA  
Congress of the United States

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To Rocco Scarfone, Hallandale, Florida

....., Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the Special Committee on Aging of the Senate of the United States, on January 21st, 1975, at 10:00 o'clock a.m., at ~~THE NEW YORK PUBLIC LIBRARY~~ 270 Broadway New York, New York, Room 1601, then and there to testify what you may know relative to the subject matters under consideration by said committee.

The Committee requests your appearance along with all records relating to any income, compensation, loans, or gifts which you have earned, received, or become entitled to from any nursing home, or from any owner or operator of any nursing home, for the years 1969 to the present, and any agreements or contracts relating thereto.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To Donald D. Forsht, United States Marshal

to serve and return.

Given under my hand, by order of the committee, this  
..... 19th day of ..... December ....., in the year of our

Lord one thousand nine hundred and ..seventy-four..

Ird Moss

Chairman, ~~THE NEW YORK PUBLIC LIBRARY~~ Subcommittee on Long-Term Care  
U.S. Senate Special Committee on Aging

JANUARY 25, 1975.

DR. RAPHAEL CILENTO,  
925 41st Street  
Miami Beach, Fla.

DEAR DR. CILENTO: As I am sure you are aware, your client, Mr. Rocco Scarfone, was issued a subpoena by my subcommittee to appear before us in New York City on January 21, 1975. Just before our hearing convened, we received a handwritten note from Mrs. Scarfone indicating that her husband had been admitted to Miami International Hospital under your advice and care.

I think you will agree that the "convenient timing" of his admission to the hospital cannot be taken lightly by a Senate subcommittee. Therefore, pursuant to discussions you have had with my staff (Mr. John Edie, in particular) would you forward to us, at once, the following:

1. A copy of the admissions form for Mr. Scarfone.
2. Your diagnosis and description of his illness and your reasons for insisting that he be hospitalized.
3. Your prognosis of his illness and an estimate of how long he will be hospitalized.
4. Whether he is now well enough to be questioned or to take part in a deposition. If he is not well enough for either questioning or a deposition, when will he be?

I expect to receive the above-mentioned matter no later than Saturday, February 1, 1975. Enclosed you will find a return envelope for your use. Your speedy cooperation in this matter is greatly appreciated.

Sincerely,

FRANK E. MOSS,  
Chairman, Subcommittee on Long-Term Care.

FAMILY MEDICAL CLINIC,  
Miami, Fla., January 29, 1975.

FRANK E. MOSS,  
Chairman, Subcommittee on Long-Term Care, U.S. Senate,  
Washington, D.C.

DEAR SIR: Mr. R. Scarfone has been under my care for some time and was hospitalized at a "convenient time" as you put it for treatment of several problems including prostate enlargement for which he will be operated, degenerative disease of three cervical intervertebral discs for which he may need operation, and emphysema and arteriosclerosis. He is 70 years old and his admission was arranged before he ever got any subpoena, to the best of my knowledge. Your second paragraph re my agreeing that his hospitalization was "convenient" seems to infer some reluctance on the part of Mr. Scarfone to do his duty for the subcommittee, which I feel is quite unwarranted, since he is able now to make a deposition here at which I will be present as discussed with Mr. Edie. Also the inference that I "insisted" he be hospitalized seems at best untimely, since I have assured the council for the subcommittee of my cooperation at all times, and I have also spoken with Mr. Scarfone who is most anxious to do what ever he can to help your investigation.

I will allow Mr. Scarfone to be deposed at your convenience here in Miami as he cannot travel, mainly due to his neck problem.

Faithfully,

RAPHAEL CILENTO, M.D.

MIAMI INTERNATIONAL HOSPITAL,  
Miami, Fla., February 4, 1975.

Re Mr. Rocco Scarfone.

HON. TED MOSS,  
Chairman, Subcommittee on Long-Term Care, U.S. Senate Special Committee on Aging, Washington, D.C.

DEAR SENATOR MOSS: As per my telephone conversation with your office, please find enclosed the documents requested regarding the hospitalization of Mr. Scarfone who was admitted January 19, 1975, to our hospital and discharged January 31, 1975.

Please do not hesitate to contact me if additional information is required.

Sincerely,

GERARDO PORTELA,  
Administrator.

## DISCHARGE CARD

DATE 1-31-75PATIENT'S NAME: Scarfone, RoccoTIME 3:00 P.M.FLOOR: 5ROOM NUMBER: 516-03CASHIER'S SIGNATURE: [Signature]

PATIENT MADE FINANCIAL ARRANGEMENTS WITH  
BUSINESS OFFICE

PATIENT MUST RETURN TO CASHIER'S OFFICE  
AND MAKE FINANCIAL ARRANGEMENTS WITH BUSINESS OFFICE  
BEFORE LEAVING.

Senator Moss. Will you state your name, Mr. Scarfone?

**STATEMENT OF ROCCO SCARFONE, HALLANDALE, FLA.**

Mr. SCARFONE. My name is Rocco, R-o-c-c-o. The middle initial is A. The last name is S-c-a-r-f-o-n-e.

Senator Moss. And where do you live now?

Mr. SCARFONE. I live in Hallandale, Fla.

Senator Moss. Mr. Scarfone, you were served with a committee subpoena on January 2. On January 21, we received your letter telling us you were hospitalized as of Sunday, January 19. When did you go into the hospital?

Mr. SCARFONE. Sunday, January 19, sir.

Senator Moss. And where is the hospital located?

Mr. SCARFONE. 173d Street and Northwest 7th Avenue, North Miami.

Senator Moss. When did you know you were going into the hospital?

Mr. SCARFONE. I knew it much before that, but I was delaying it.

Senator Moss. Well, much before? You knew a week or a month?

Mr. SCARFONE. I have been ailing for a long time, Senator. I have known it for a long time.

Senator Moss. Did you have an operation or medical procedure while you were there?

Mr. SCARFONE. Yes; I was anesthetized. Anyway, I got an anesthetic for my prostate and a vasectomy which was not completed.

Senator Moss. And what is your doctor's name?

Mr. SCARFONE. Dr. Raphael Cilento. R-a-p-h-a-e-l C-i-l-e-n-t-o.

Senator Moss. And did he perform the operation?

Mr. SCARFONE. No, sir.

Senator Moss. You had another doctor for that?

Mr. SCARFONE. Dr. Korman. If you want the name—

Senator Moss. Yes.

Mr. SCARFONE. Korman. K-o-r-m-a-n. I don't know his first name.

Senator Moss. Is Cilento your regular doctor, or why did you seek his counsel?

Mr. SCARFONE. He has been my doctor for quite a number of months.

Senator Moss. His specialty is what?

Mr. SCARFONE. He is a neurosurgeon.

Senator Moss. And you have known him for some time, have you?

Mr. SCARFONE. Yes.

Senator MOSS. How long has he been your doctor?

Mr. SCARFONE. Quite a number of months, sir.

Senator MOSS. Do you know Mr. Bernard Bergman, and members of his family?

Mr. SCARFONE. I know Dr. Bernard Bergman and his family; yes.

Senator MOSS. How long have you known them?

Mr. SCARFONE. Well, his family, 5, 6 years, his immediate family you are talking about?

Senator MOSS. Yes. How long Mr. Bergman himself?

Mr. SCARFONE. I have known Dr. Bergman or Mr. Bergman about 9 years.

Senator MOSS. Have you been in business with him, or with members of his family?

Mr. SCARFONE. Never.

Senator MOSS. Were you ever employed by any nursing home?

Mr. SCARFONE. I was not employed by a nursing home.

Senator MOSS. You have never been. Did you ever receive a loan or any other considerations from Dr. Bergman?

Senator PERCY. Mr. Chairman, could I ask to clarify the chairman's question?

Were you in any way employed directly or indirectly in connection with a nursing home?

Mr. SCARFONE. That is the question I would like to answer.

Senator PERCY. That is the one I think you ought to answer, and that is the intent of the Chairman's question.

Mr. SCARFONE. Well, I misunderstand the question, Senator Percy. I am under a little sedative, and I am not the smartest man in the world.

Senator MOSS. None of us are.

Senator PERCY. None of us are.

Mr. SCARFONE. I had less education than anybody in this room. I did not graduate from elementary school, which is not rock good. I was employed to perform security work.

Senator MOSS. By whom?

Mr. SCARFONE. Dr. Bergman asked me to do some security work for him.

Senator MOSS. Well, did you receive a loan or any other consideration from Dr. Bergman or members of his family?

Mr. SCARFONE. No, I did not receive, but I did receive a loan from Dr. Bergman.

I had a detective agency at the time, and I went into business, I borrowed \$2,800, and I paid him back.

Senator MOSS. And how long did you do this security work that he asked you to do?

Mr. SCARFONE. Well, it was not—I would say about 4, 5 years, at different times, not steady.

Senator MOSS. Not steady?

Mr. SCARFONE. No.

Senator MOSS. Did you ever live in a nursing home?

Mr. SCARFONE. I did live in a nursing home.

Senator MOSS. Could you tell me where that was and when?

Mr. SCARFONE. Yes, on September 12 or 13, I received a call from Dr. Bergman to come into New York, and he sent me the plane fare,



and I got to New York, he told me of the serious conditions that were prevailing at the Park Crescent Nursing Home.

We had a security guard there. Oh, he asked me to stay in New York. I told him I could not afford to stay in a hotel. He said, "There is a room upstairs."

Well, Senator, I lived in that room, I don't know if anybody of your committee was up to see that room, I lived up there 11 days doing security work for him, and that Park Crescent, it needed a lot of security work done.

If you know my background, Senator Moss, I am a former superior officer of the police department. I know what security is, and I know what prevention is, and Dr. Bergman being a good friend of mine, I would do it for him, and for many years to come, so I volunteered, and I stayed there 11 days, and I lived at the Park Crescent Nursing Home up on that top floor.

I left a beautiful home in Florida to live in an iron bed, two broken chairs, I could not take a shower, and that was the penthouse.

Senator Moss. And that is the penthouse.

How long did you live there?

Mr. SCARFONE. Eleven days, sir.

Senator Moss. Eleven days.

And did you pay any rent?

Mr. SCARFONE. No, I did not.

Senator Moss. This was in compensation in part for your security work?

Mr. SCARFONE. Well, I would say that. Just I had to sleep somewhere, Senator Moss.

Senator DOMENICI. Mr. Chairman, what year is that he is referring to. September 12, he said.

Mr. SCARFONE. 1973, I think.

Senator DOMENICI. Thank you, Mr. Chairman.

Senator Moss. Have you ever lost any luggage, or had it misplaced on airlines, that you recall?

Mr. SCARFONE. You really have a dossier on me, have you not?

Senator Moss. Well, these are just some questions I need to have answered.

Mr. SCARFONE. Let me tell you, Senator. I have been traveling a long time, but when I got off that plane, my luggage was not there, it is true.

Senator Moss. Where was that?

Mr. SCARFONE. I don't know. It traveled all over the world by the time I got it on September 25.

Senator Moss. That was last year that this happened?

Mr. SCARFONE. 1973.

Senator Moss. 1973?

Mr. SCARFONE. That is the year I visited the Park Crescent. I got off the plane without my luggage.

Senator Moss. So what happened, other than protesting to the airline, which I assume you did?

Mr. SCARFONE. Well, I got the luggage back, but broken up, a lot of stuff was missing, sir.

Senator Moss. Did this include money that was in the luggage?

Mr. SCARFONE. I had money in there, but that was insured.

I had a beautiful watch, what they call—I forget the name now, but anyway it is a very expensive watch, and other things, but they compensated me to the amount of \$500, and I think I lost over—

Well, that was sentimental gifts, or things of sentimental value, Mr. Senator Moss, no money could pay.

Senator Moss. How much in money did you have in there other than sentimental items?

Mr. SCARFONE. I had about \$300 that I was going to spend in New York.

Senator Moss. Are you employed now, Mr. Scarfone?

Mr. SCARFONE. No, sir.

Senator Moss. And do you have a business or business interests, anything like that?

Mr. SCARFONE. No. I rely on my little police pension, and I get social security. I am over 70 years of age, Senator Moss.

Senator Moss. Is it true, as the press has asserted that you have seven bank accounts, four in New York, three in Florida?

Mr. SCARFONE. Your Honor, I mean, Senator Moss, it is not true.

Senator Moss. How many do you have?

Mr. SCARFONE. Well, I was asked this morning, Senator Moss, by a public defender in Federal court, I have \$6.45 in the Home Federal Savings Bank of Hallandale, \$6.45.

Senator Moss. And that is all you have?

Mr. SCARFONE. That is all I have.

Senator Moss. Do you know any of the following people, and if so, what was your association?

Joseph Pullman of Toronto?

Mr. SCARFONE. I do not know the gentleman.

Senator Moss. Meyer Lansky?

Mr. SCARFONE. I never met him in my life.

Senator Moss. The late Joseph Cannastrasi?

Mr. SCARFONE. I never met him in my life.

Senator Moss. The *Village Voice* reports that you were a major adviser to Joe Colombo, is that true?

Mr. SCARFONE. That is not true.

Senator Moss. Did you discuss Mr. Colombo's grand jury testimony before he testified in 1969?

Mr. SCARFONE. I beg your pardon, Senator Moss. I did not know Joe Colombo in 1969.

Senator Moss. Did you ever—

Mr. SCARFONE. I knew Joe Colombo as a friend, as a founder at the Italian-American Civil Rights League, and as an American of Italian extraction, I was proud to be a member of that Italian-American Civil Rights League, as I am proud of being a member of any Italian-American group in Hallandale, in Hollywood, in New York, and I was instrumental in building the House of Italy in 1965 to 1970, I raised pretty nearly a quarter of a million dollars to build the House of Italy with an Italian-American group.

Senator Moss. And Mr. Colombo is a friend of yours in this relationship as part of the Italian-American Civil Rights League?

Mr. SCARFONE. Joseph Colombo was a founder of the American-Italian Civil Rights League. I became a member of that league, and I met Joe Colombo, yes, sir.

Senator Moss. And you knew him for how long?

Mr. SCARFONE. I knew him until he met with the mishap.

Senator Moss. But reaching back, 10 years, 5 years?

Mr. SCARFONE. I did not know Joe until Joe, Joe Colombo, until I would say 1971 or 1972. Yes, or 1970, if I recall correctly, when he started that organization, and right after that I became a member.

Senator Moss. This morning, in getting testimony about moneys paid out by the Towers Nursing Home, there was some money paid out to just an initial "S" for identification.

Did that happen to be you? Did you get any money in that way?

Mr. SCARFONE. Yes; I was getting about \$50 some months, \$100 another month, according to the amount of time I put in there.

I visited that Towers Nursing Home at night, in the morning, in between shifts, so that I would prevail upon the employees there that I was present, and in the capacity to prevent any thefts if at all possible, within my capacity.

Senator Moss. And it was not a large amount of money, just about \$1,100 according to this.

Mr. SCARFONE. If I did get \$1,100, sir, I think it was a lot, if I recall, and then of course the records speak for themselves.

Senator Moss. When were you released from the hospital, Mr. Scarfone?

Mr. SCARFONE. January 31, 1975.

Senator Moss. And were you aware that your physician had told the committee it would be several weeks before you could get out?

Mr. SCARFONE. He did not tell me, but I think he might have told the committee, but he did not tell me anything, Dr. Cilento.

Senator Moss. I see you are wearing a brace around your neck.

Mr. SCARFONE. Yes; I have been in traction for 7 days, the last 7 days in the hospital, Senator Moss, I was in traction with a 5-pound weight behind my neck.

As a matter of fact, I have to prepare to put it in my home pretty permanent.

Senator Moss. The amount that you received for wages with the Towers Nursing Home was very small.

Mr. SCARFONE. It was a \$50 check, \$100 check, it is according to the amount of time.

The more time I put in, there was time I was there 2 or 3 nights a week, in the afternoons, and, of course, I would get compensated in that fashion.

Senator Moss. Why did you accept a job of such small remuneration?

Mr. SCARFONE. Primarily, Dr. Bergman is a good friend of mine, and, second, it was a supplement to my pension, and my social security.

Senator Moss. You did not have any other employment at that time?

Mr. SCARFONE. No, sir.

Senator Moss. Senator Percy, do you have any questions of the witness?

Senator PERCY. Yes; thank you.

Mr. Chairman, has the witness been sworn?

Senator Moss. Yes; he was sworn.

Senator PERCY. He was sworn; all right.

I would like to ask this question, Mr. Scarfone. You indicated that you came to New York, and that you did not have enough money to pay for a room, and that you were offered a room by your friend, Mr. Bergman.

Did he make that offer when you came up to New York, or prior to your coming to New York, to use the room?

Mr. SCARFONE. No; I did not even know I was going to stay, when I came, on that September 14 visit, Your Honor, I mean, Senator Percy, but if I may volunteer information, as I said before, as far as I was concerned, I never had too much in life, Senator Percy, and I was satisfied to sleep in that room.

Senator PERCY. Do you know pretty exactly what you had in the way of cash in that suitcase?

Mr. SCARFONE. Well, yes.

Senator PERCY. I mean a man of your care, I am sure would not just stuff money in a suitcase, and not know how much you had there.

Mr. SCARFONE. There was about \$350 in cash.

Senator PERCY. \$350 in cash—

Mr. SCARFONE. Between \$300 and \$350.

Senator PERCY. And an expensive watch?

Mr. SCARFONE. Yes.

Senator PERCY. If you put \$350 in cash in a suitcase, and a watch in a suitcase, and shipped it through on the airline, how much did you have in your wallet then, did you have an expensive watch on?

Mr. SCARFONE. Well I had another watch on, yes. I was given—

Senator PERCY. How much would you have presumed you carried in cash with you?

Mr. SCARFONE. At that time, I don't know, \$50, \$60, I had in my pocket when I came on the plane.

Senator PERCY. What I have trouble reconciling is why you would, having looked at this so-called penthouse, with its broken chairs up in the garret, with the iron bed, why you would even have stayed there for 11 days.

Mr. SCARFONE. Well, it was clean.

Senator PERCY. You were not destitute when you arrived, and you had money in a suitcase, and you carried expensive jewelry with you.

You do not look like a man who would want to stay in that kind of quarters, unless you had to. What compelled you to stay in it?

Mr. SCARFONE. The suitcase was not with me when I got to New York. When I got to the Park Crescent, the suitcase was lost.

I did not get the suitcase until September 25, and then it was empty, excepting some shirts they could not use, but it was broken through. I could not put it together in fact.

Senator PERCY. What caused you to leave the nursing home after 11 days?

Mr. SCARFONE. Well, my wife has been ailing for many years. She has arteriosclerosis. She has got heart trouble and a very sad case of arthritis.

In fact, she was in the hospital from the 24th of December to the 22d of January of this year. She is here now.

Everytime I would call up, she would say, "Why don't you come home? What are you doing? After all, you are always leaving me."

Senator PERCY. Where is she living?

Mr. SCARFONE. She lived in Florida. She stayed down there.

Senator PERCY. Did you only stay up here for 11 days?

Mr. SCARFONE. Yes. As soon as I got my baggage back, Senator Percy, I left.

Senator PERCY. You left?

Mr. SCARFONE. Yes.

Senator PERCY. Over how long a period of time did you keep getting these checks for \$50 and \$100 from the nursing home?

Mr. SCARFONE. I would say an average of 4 years, 5 years.

Senator PERCY. And how much time did you spend in New York?

Is this in connection with nursing homes in Florida?

Mr. SCARFONE. No, not in Florida. I don't even know about nursing homes in Florida. I am talking about the nursing homes in New York.

Senator PERCY. How long did you spend doing security work for those nursing homes?

Mr. SCARFONE. Well, oftentimes, that has been, I would say, within an average of about 4 years. I mean, not continuous, just visiting them.

Senator PERCY. How many days did you spend in New York in that 4-year period?

Mr. SCARFONE. Well, I did most of that work, Senator Percy, when I was living in New York. Everytime I came to New York, I spent more time.

Senator PERCY. How many days, if you were paid over the period of 4 years, how many days did you spend in New York to earn that pay, and then where did you live?

Mr. SCARFONE. Well, I lived at my sisters'. I have two sisters living in New York. I have five sisters-in-law, and I lived in various places amongst my relatives.

My daughter lived in New York, in Rosedale. I spent a lot of time with my daughter.

Senator PERCY. You were paid fairly steadily over the period of 4 years, not very much, but you were paid \$50, \$100 a month; is that right?

Mr. SCARFONE. Not every month, sir.

Senator PERCY. Pardon?

Mr. SCARFONE. Not every month.

When I performed the service, I would get some money.

Senator PERCY. How would you notify the nursing home? Was it on request of them that you performed these services, or was it whenever the spirit moved you?

Mr. SCARFONE. I was requested by the administrator and sometimes Dr. Bergman to supervise and look over these various employees.

A lot of thefts in nursing homes. My presence there, when it was, whether it was at 2 or 3 or 4 in the morning, and during the day, at least my actions caused these employees, kept them aware that I was present, kept them wary of doing things they should not do.

Senator PERCY. How many nursing homes did you actually supervise in this security category? Was it just Towers, or was it others?

Mr. SCARFONE. I visited the Oxford Nursing Home for a short time, the Willoughby Nursing Home at other times, and the Towers.

Senator PERCY. Would you be able to give this subcommittee the names of people in those nursing homes who were aware of your work, and who would be able to certify as to the services you performed?

Mr. SCARFONE. At the Towers, the administrator was Mr. Goldberg; at the Willoughby, it was Mr. Farber; at the Towers, it was Mr. Jack Stern.

These are administrators, sir. These are the people I reported to, and these are the people I spoke with and made my reports to, and I kept a log of my activities there, every time I went there.

Senator PERCY. Would you be able to submit, and we specifically request that you do, to this subcommittee, the log that you referred to. Where is that log physically now?

Mr. SCARFONE. I left them all; they were the property of the nursing homes, and that is where they are, if they are available.

Senator PERCY. They are the property of what?

Mr. SCARFONE. The log is the property of the nursing home. It was attached on account, and I signed in and signed out, and related my activities.

Senator PERCY. When you say you kept the log, you simply signed their log?

Mr. SCARFONE. I signed in and signed out, the log was theirs.

Senator PERCY. May I ask the committee staff whether we have available to us those logs?

Mr. HALAMANDARIS. We do not.

Senator PERCY. I wonder if you could tell the committee, on occasion your payroll checks from Mr. Bergman were cashed in Florida banks. How many trips did you make back and forth between Florida and New York during the course of this 4 or 5 years employment with Mr. Bergman?

Mr. SCARFONE. To the best of my recollection, I had some deaths in the family, we made visits in New York.

My wife and I, would say, within the last 4 or 5 years, within the last 4 years I might have made about six or seven trips or more.

I am not exactly living in Florida 4 years, but within that time.

Senator PERCY. Of this time that you split between New York and Florida, roughly, what proportion would you spend in Florida, and what proportion in New York?

Mr. SCARFONE. Oh, I would spend most of my time in Florida, about 3 months, 2½ months in New York, when I arrived here.

Senator PERCY. You spent a total of about 3 to 3½ months in New York, and yet you were paid off and on over a period of 4 or 5 years for security work.

Now, this security work was entirely in connection with these nursing homes, is that right?

Mr. SCARFONE. Well, and also for acknowledgment of the extra services, the other services, and advice I gave, and of course you would call it a bonus, for the many thousands of dollars I saved by my presence there at the times I was there, Senator Percy.

Senator PERCY. Did you perform any personal security work for Mr. Bergman himself?

Mr. SCARFONE. I did not, sir.

Senator PERCY. You did not at anytime serve as a bodyguard to him?

Mr. SCARFONE. I did not, sir. I did ride with him, that is all.

Senator PERCY. Pardon?

Mr. SCARFONE. I rode in his car, that is all.

Senator PERCY. You mean you needed a ride, or were you there for a purpose?

Mr. SCARFONE. No, I visited his office.

Senator PERCY. Was this to do business with him, to discuss—

Mr. SCARFONE. No, no business at all. I did not know what his business was.

Senator PERCY. You know what I am trying to get at, you are a security man?

Mr. SCARFONE. Yes.

Senator PERCY. Now, you rode in the car with him?

Mr. SCARFONE. That is all I did.

Senator PERCY. Was this to converse socially with him?

Mr. SCARFONE. Yes.

Senator PERCY. Just to converse socially?

Mr. SCARFONE. Yes, that is right, sir.

Senator PERCY. You were not there as a bodyguard?

Mr. SCARFONE. No, sir.

Senator PERCY. What proportion of your time did you spend with Mr. Bergman when you were in New York?

Mr. SCARFONE. Oh, I don't know. Maybe I would see him about once a week, maybe.

Senator PERCY. Just a spasmodic visit?

Mr. SCARFONE. Just to say hello, because he is a friend of mine.

Senator PERCY. Then you described for the committee the nature of your security work in a nursing home. What kind of problems?

I have been in probably 100, 150 nursing homes in the last 4 years. What kind of security problems did you find in these nursing homes of Mr. Bergman's?

Mr. SCARFONE. Senator Percy, there is a lot of theft, especially linen, encased on the bodies of the persons employed therein, and anytime—

Senator PERCY. You mean some older person snitching some linen?

Mr. SCARFONE. No, employees.

Senator PERCY. Oh, employees?

Mr. SCARFONE. Yes, sir.

Senator PERCY. Stealing the supplies of the nursing home?

Mr. SCARFONE. That is right, food cans, taken out in their cars, and nobody able—they did it surreptitiously or what, but every time I took action, I made an effort to take action, they threatened, the union local threatened to walk out on the nursing home.

Senator PERCY. You threatened to take action to prevent theft?

Mr. SCARFONE. That is right.

Senator PERCY. And the local union—

Mr. SCARFONE. That is right. Whenever any person was taking out a sheet or a pillowcase, I would try to get the cooperation—

Senator PERCY. Was this the job description that Mr. Bergman gave to you when he hired you for the security work, was this the principal problem?

Mr. SCARFONE. Yes.

Senator PERCY. And how large were the losses involved in this?

Mr. SCARFONE. Well, according to the reports I would get from the administrators—

Senator PERCY. How large were the losses?

Mr. SCARFONE. Quite large, Senator Percy, quite large.

Senator PERCY. Can you give me in hundreds, or thousands of dollars?

Mr. SCARFONE. I could not give you in hundreds or thousands.

Senator PERCY. Because obviously if he had lost this amount of linen, it is a reimbursable cost, and we will be able to find the vouchers for it. I cannot imagine, with the meticulous bookkeeping that was

carried on, that they would not charge it as kind, so in essence—did you give under oath—I want to be absolutely certain you realize the seriousness of your answer to every single question, and I want to advise you ahead of time we intend on those questions and on those answers to check the records.

Now, I ask you once again, how large were the linen losses?

You were the security man. You had a responsibility apparently previous to this that would make this rather miniscule as to responsibility, but I assume you did it thoroughly and well, how much was the losses of linen?

Mr. SCARFONE. Well, whenever the administrators would volunteer the information, they would say, this month, lost \$100, this month, \$50, and they in turn tried to get reimbursed from the laundry who served them, that is the way they worked it.

Senator PERCY. How much did you receive in salary over a period of 3, 4, or 5 years, in total, could you estimate, from Mr. Bergman?

Mr. SCARFONE. I don't think I got, I don't think it was \$4,000.

Senator PERCY. About \$4,000?

Mr. SCARFONE. To the best of my recollection.

Senator PERCY. So it might have been at best a loss operation for Mr. Bergman, because you probably would not have lost \$4,000 worth of linen. Did you have any other duties?

Mr. SCARFONE. I beg your pardon?

Senator PERCY. Did you have any other duties?

Mr. SCARFONE. No.

Senator PERCY. That was mainly your task?

Mr. SCARFONE. To prevent thefts.

Senator PERCY. To run down these losses of linen?

Mr. SCARFONE. Yes, sir.

Senator PERCY. I wonder if you could tell the subcommittee where you do maintain bank accounts?

Mr. SCARFONE. At the Home Federal Savings Bank. I think that is the one.

Senator PERCY. That is where the \$6.41 is?

Mr. SCARFONE. Yes, and there is a checking account. When I get my pension checks, I put them into the First National Bank of Hallandale, so that I can pay my rent, so I can pay my little incidentals.

Senator PERCY. Fine. When I now ask this question, I want to know the bank accounts maintained by you, and direct members of your family, whether they be separately maintained, or whether they be joint accounts, what other bank accounts do you, your wife, other members of your direct family to your knowledge have?

Mr. SCARFONE. The savings account, I think the \$6 saving account is in my wife's name.

I deposit, when I get my pension check, and my social security check, sometimes there is a bank nearby, the Hallandale Bank, the First National Bank of Hallandale, and then sometimes I go, I deposit, I open accounts through friends, of course, I deposit in the Bank of Hallandale & Trust Co., that is where I put my pension check and my police check.

That is the only time I deposit, when I get my pension checks at the end of the month, one on the 3d, and I get my police check on the 1st.



Senator PERCY. I would like to ask you what your present net worth is.

Mr. SCARFONE. My present net worth today?

Senator PERCY. Including your wife.

Mr. SCARFONE. Including my wife, or my wife? My wife is worth all of the money in the world, Senator Percy.

Senator PERCY. I am sorry. I did not hear you.

Mr. SCARFONE. You said including my wife?

Senator PERCY. Yes.

Mr. SCARFONE. I answered you by saying my wife is worth all of the money in the world. You could not buy her with all of the money in the world.

Senator PERCY. Good for you.

All right. What is your wife's and your combined net worth?

Mr. SCARFONE. Today, as I am talking to you?

Senator PERCY. Yes.

Mr. SCARFONE. About \$300.

Senator PERCY. About how much?

Mr. SCARFONE. About \$300 in a checking account. We have a joint checking account, so as soon as we get back, I pay my rent.

Senator PERCY. You own an automobile?

Mr. SCARFONE. Yes. I have 16 notes to be paid.

Senator PERCY. Isn't that of value? Does not it have a value higher than \$300?

Mr. SCARFONE. Yes, if you want to call it that.

Senator PERCY. I want to give you an opportunity to correct your statement, which is under oath, that your net worth is \$300.

Mr. SCARFONE. Yes, in a joint checking account. I did not think of it. You reminded me. I have a 1973 Pontiac, Your Honor.

Senator PERCY. So there is no question about my question of net worth, I do not mean by that how much do you have in your savings or checking account.

I mean what is your total worth, your total assets of all kind, minus your liabilities of all kind, and the balance is at the bottom.

Mr. SCARFONE. Well, Senator Percy, I owe money. I owe on two insurance loans, two death policies. I had an unfortunate thing in Florida. I put my grandson in the auto parts business, and I borrowed up to my neck, and he took a walk, and left me holding the bag for about \$8,000, Senator Percy, and that store closed up last March, I think it was March or April, he had it open 4 months, on West Hallandale Beach Boulevard, 600 West Hallandale Beach Boulevard.

Senator PERCY. Just a few more questions on your relationships with Mr. Colombo and Dr. Bergman.

When did you first meet Dr. Bergman, under what circumstances did you meet him, who introduced you to him?

Mr. SCARFONE. I met Dr. Bergman about 9 years ago. I was working for a commercial laundry, I think it was the Star Laundry, and I was soliciting linen, and at that time I was employed by Saudi Goldberg. He said, "Why don't you see if you can get some nursing home work."

I did not know Dr. Bergman. I am a persistent fellow, I kept on moving around nursing homes, until I got the phone number. They said you have to see Dr. Bergman. It took me a long time to see him.

Senator PERCY. Why were you particularly interested in nursing homes?

Mr. SCARFONE. At that time, I was working for an employer, who told me, "See if you can get some linen business in the nursing homes."

Senator PERCY. What kind of business, who were you working for?

Mr. SCARFONE. Linen supply. I was working for a linen supply house.

Senator PERCY. Who owns this linen—what is the name of this linen supply house?

Mr. SCARFONE. Star Laundry, I think it is, on Myrtle Avenue.

Senator PERCY. Who is the owner?

Mr. SCARFONE. I told you, Saudi Goldberg.

Senator PERCY. Sole owner?

Mr. SCARFONE. I knew him as one of the managers or the bosses.

Senator PERCY. I would like to find who is the owner of this linen company, and I ask the question, simply because I do not know about other cities, but in Chicago, it is reasonably well known that certain legitimate businesses have been taken over by the syndicate, and this is their way of doing business, and they have fronts; and I do not need to explain that to you, I am sure, so I am inquiring specifically as to the ownership of this linen company, not with any implication other than the fact we would like to know who owns it, and why this particular linen company was interested in doing business with nursing homes, and how the coincidence happened that Mr. Bergman hired you, and paid you thousands of dollars to presumably investigate the theft of linen in his nursing homes.

It just does not wash. The story is not plausible. You do not have to be an educated man to realize the story does not hold water.

Mr. SCARFONE. Senator Percy, I am under oath, and I am telling you the truth.

Senator PERCY. That is what I want you to do, because it is a very serious offense, as you know, to commit perjury to a U.S. Senate committee; and I want to be absolutely certain you understand.

Mr. SCARFONE. I have been sworn under oath. I know what it is to be under oath.

I met Dr. Bergman, but I never got any business off of him. During the time I was meeting him, I became a friend of his.

Senator PERCY. But you presumably went there in order to sell him linen?

Mr. SCARFONE. To get linen business; yes, sir.

Senator PERCY. To sell him linen?

Mr. SCARFONE. Yes; the service is nursing homes; that is right.

Senator PERCY. What do you mean by to get linen business? Are you going to wash it?

Mr. SCARFONE. To sell it and wash it; yes. You seem to know the business, Senator Percy. They bring the linen, and then you get paid for washing and servicing it.

Senator PERCY. How do you account for the fact that Mr. Bergman apparently buys a tremendous amount of linen, and here you are a friend of his, you befriended him by acceding to his request to provide security to a nursing home, you went up into the so-called penthouse, which you could only stand for 11 days; and yet you could not do business with him, you could not sell him any.

Why could you not persuade him to do business with you?

Mr. SCARFONE. Well, because at the time I was working for this fellow Goldberg. He was telling me, when I did get to know him, of course, you know, there are contracts, contracts with the linen supplier, and, of course, there is also that friendly, I don't know what it is among them, but anyway I could never get any business from him.

In the meantime, I kept on, I was persistent, maybe I would get some business eventually, which I never did, in the meantime, I cultivated his friendship, Senator Percy, and I think, I am not sorry, I think he is a good man, I enjoy calling him my friend, Senator Percy.

That is all I can tell you.

Senator PERCY. Are you still friends?

Mr. SCARFONE. Yes, and I expect to be friends as long as I live.

Senator PERCY. And yet you cannot explain when you had a mission to go do business with him on linen, that you could not get the business?

Mr. SCARFONE. That is right. I never got any business.

Senator PERCY. Was your linen not good enough?

Mr. SCARFONE. I don't know. I am telling you, Senator Percy, he was tied up with other linen suppliers, and could not give me any business.

Senator PERCY. What reason did he give you that he was buying linen from these other suppliers?

Mr. SCARFONE. Don't ask me. I never delved into his business.

Senator PERCY. Well, I know, but he is a friend of yours, and here you are living in his quarters, and doing security work for him, and he owes you a logical explanation when you were sent there to do business with him as to why he could not buy linen from you.

Mr. SCARFONE. Senator Percy, in 1973, when I was called in, and moved into that allegedly called penthouse, I was out of the linen business, I was retired, I came to New York to do him a favor, because as of 1970, and I became 65 years of age, I did not do too much work for anyone.

Senator PERCY. Let me go back.

Did you not tell me before that you saw him, you made contact with him, because Mr. Goldberg wanted you to go out to sell him some linen?

Mr. SCARFONE. That was—

Senator PERCY. But then you tell me now you were out of the linen business by the time you met him.

Mr. SCARFONE. Well, I was in the linen business at the time I met him, but I still did not get any business, but I stepped out in 1970.

Senator PERCY. But then you withdraw the statement you just previously made you were out of the business by the time you went to New York and met him? You were still in the linen business?

Mr. SCARFONE. No.

Senator PERCY. How did you sell linen, on commission or salary?

Mr. SCARFONE. On commission basis.

Senator PERCY. What was your commission?

Mr. SCARFONE. Well, sometimes 6, 8, 10, whatever I could get. Ten percent, but I never got it.

Senator PERCY. What do you mean?

Mr. SCARFONE. Senator Percy, I never got any commission, because I never sold any laundry.

Senator PERCY. You are not a very good linen salesman, are you?

Mr. SCARFONE. That is right.

Senator PERCY. How long did you not sell this linen?

Mr. SCARFONE. I never sold it.

Senator PERCY. You never sold it, but over how long a period of time did you not sell it?

Mr. SCARFONE. A couple of years, I gave it up. I realized, Senator Percy, I realized that it was not for me.

Senator PERCY. Mr. Chairman, I have taken twice my normal 10-minute time. I would like to yield to my colleague, and then have the committee pass me up the next time. I had hoped I could elicit some answers, and I am sorry I cannot.

Senator MOSS. We are pleased that Senator Williams has joined us, and we are very glad to have you sitting with us, Senator Williams, and do you have any questions you would like to ask the witness?

Senator WILLIAMS. Well, Senator Moss, first I came in while your questioning was going on, and I heard Senator Percy, and many of my questions have been answered.

I did want to know about Mr. Scarfone's first meeting with Dr. Bergman, who now describes him as a friend, and I still did not, even though that was asked by Senator Percy, I did not quite get the time fixed, when you first knew there was a Dr. Bergman and met him.

Mr. SCARFONE. About 9 years ago, sir.

Senator WILLIAMS. And that was when?

Mr. SCARFONE. 1966. About 1966.

Senator WILLIAMS. Where was that first meeting?

Mr. SCARFONE. In his office at 84th Street and Broadway.

That is when I called him, sir, he said come on up. You have been calling me. I was calling him, and calling him. He never did want to see me, but he did see me.

Senator WILLIAMS. How did you get the lead to call Dr. Bergman?

Mr. SCARFONE. Through Mr. Goldberg, the administrator at the Oxford Home, where it was my area of soliciting.

I was soliciting these nursing homes for the business, and Mr. Goldberg gave me his telephone number to call him, because he said, Dr. Bergman could give, if there is any business, he is the only one that could give it to you, I cannot.

I am only an administrator, so I said, I kept on calling him, but it took a long time, before I was able to see him.

Senator WILLIAMS. And did he tell you he was not going to buy your product?

Mr. SCARFONE. He did not tell me he was. He said, I will see, I will see, I will see, and I kept on calling him, and kept on visiting him up at 84th Street and Broadway, and I never got the business, but I knew there was a potential there, he had something to do with nursing homes, and I was looking to get the business.

Senator WILLIAMS. How did you happen to go to Star Laundry, you were at that time a retired police officer?

Mr. SCARFONE. Yes, I was at the Star Laundry before I met Mr. Bergman.

Senator WILLIAMS. How did you happen to take that job with the Star Laundry?

Mr. SCARFONE. A friend, a businessman, a friend of Mr. Goldberg referred me to him, and I went over there.

Senator WILLIAMS. How soon is this after you retired from the police force?

Mr. SCARFONE. I am retired since 1945, I retired from disability, gunshot wounds, and I am a cripple, permanent cripple.

I was in an armed conflict, I got the news award, and I got the combat cross, and I retired in 1945.

I am what they call three-quarters disability, January 16, 1945, and I was a detective sergeant at the time, and my salary was, my pension is \$2,625 a year, untaxable, sir.

Senator WILLIAMS. When did you start working for the Star Laundry?

Mr. SCARFONE. Oh, many years after that. In the 1960's.

Senator PERCY. Was that 1960?

Mr. SCARFONE. Or around that time, as far as I could tell.

Senator PERCY. Could you be more precise to Senator Williams' question, what year did you go to work for them?

Mr. SCARFONE. I am not so sure if it was in 1960. Really, I am not too sure of the year.

Senator WILLIAMS. Well, at any rate, to jump now to your being associated with Dr. Bergman, I did not hear the first part of your testimony. I was not here yet, but were you called, or did he write you?

How did he first suggest to you that you come to New York in his employment?

Mr. SCARFONE. I was doing part-time security work for Dr. Bergman before I moved to Florida, permanently moved to Florida. I was doing security work for Dr. Bergman, I think in the early part, from the end of 1969, no, in 1970, when I was 65 years of age I retired from employment and did a little work for him.

Senator WILLIAMS. Where were you employed when you first started this security operation?

Mr. SCARFONE. He started me off, he asked me to go to the Oxford Home.

Senator WILLIAMS. Oxford?

Mr. SCARFONE. Yes. That was just the one place.

Senator WILLIAMS. Did you work there?

Mr. SCARFONE. No, I just visited, for security purposes. That is all.

Senator WILLIAMS. Did they have any other guards there?

Mr. SCARFONE. No, sir.

Senator WILLIAMS. Were there any guards at any of the locations, Bergman locations, where you were also doing security work?

Mr. SCARFONE. Yes, he had one guard at the Willoughby for a short time, but he had full-time guards at the Park Crescent.

Senator WILLIAMS. And that was one of your assignments there?

Mr. SCARFONE. That was when I went up there in 1973.

Senator WILLIAMS. And who is your supervisor?

Mr. SCARFONE. I have no supervisor, sir.

Senator WILLIAMS. You were part of the guard service?

Mr. SCARFONE. No, I was not part of that guard service. It was hired by the nursing home.

Senator WILLIAMS. Who was the supervising guard at the Park Crescent at that time?

Mr. SCARFONE. I don't know. I never seen him.

Senator WILLIAMS. Pardon?

Mr. SCARFONE. I never seen him. The guard supervisor, I never seen him.

Senator WILLIAMS. Did you ever see any guards?

Mr. SCARFONE. Yes; the guards were there 8 hours a day at the door.

Senator WILLIAMS. So they would know you?

Mr. SCARFONE. Sure. They knew what I was there for.

Senator WILLIAMS. You had no supervisor?

Mr. SCARFONE. Not me.

Senator WILLIAMS. Who did you report to?

Mr. SCARFONE. I did report to the administrator of the hospital. I mean as a matter of expecting to report, I reported to him.

Senator WILLIAMS. When you found what appeared to you to be a theft, how did you handle it?

Mr. SCARFONE. I tried to correct it. Sometimes the employee was an unfortunate, indigent, and that would create a stir in the home, the theft was nothing to talk about, he would get a reprimand, I would call his business agent down at the union and talk to him about it.

Senator WILLIAMS. What business agent?

Mr. SCARFONE. He was a black man, I do not remember his name.

Senator WILLIAMS. Where was their office?

Mr. SCARFONE. Local 144, I don't even know where their office is. I know they have the jurisdiction in most of the nursing homes.

Senator WILLIAMS. You contacted the business agent?

Mr. SCARFONE. Yes.

Senator WILLIAMS. Where would you go to meet him?

Mr. SCARFONE. I would have the administrator call him. He would come into the nursing home.

Senator WILLIAMS. Who was the business agent?

Mr. SCARFONE. It was a black man. I don't remember his name, sir.

Senator WILLIAMS. I have no further questions.

Senator MOSS. Senator Domenici?

Senator DOMENICI. Thank you, Mr. Chairman. Just a couple of questions.

Mr. Scarfone, early in Senator Moss' question, you indicated that you had difficulty understanding one of his questions, when he asked you something. Now, let me make sure that you understand what we have all been asking.

As I understand it, you have told us that your only financial relationship with Dr. Bergman of any kind was he loaned you \$2,800 at one time?

Mr. SCARFONE. To open up a detective agency.

Senator DOMENICI. And you paid him back?

Mr. SCARFONE. I paid him back. He was paid back without interest, in full.

Senator DOMENICI. All right. Did you pay it back?

Mr. SCARFONE. No; I left this detective man there who has the agency now. He paid him back in full.

Senator DOMENICI. What was your partner's name?

Mr. SCARFONE. John Mandel.

Senator DOMENICI. Now, the only other thing you have indicated to us of any financial nature whatsoever, was that you were paid, what you described as if it was \$4,000, it was a lot, over the period of time?

Mr. SCARFONE. Yes.

Senator DOMENICI. Over the period of time that you have worked kind of in an off-and-on basis for them as a security agent, and that you did some of that, even after you moved to Florida?

Mr. SCARFONE. That is right.

Senator DOMENICI. Is that correct?

Mr. SCARFONE. That is right.

Senator DOMENICI. Now, have you had any other business relationships with Dr. Bergman, have you introduced him to any of your friends, that you are aware of, that have had business dealings with him, have you yourself ever carried on business with him, for anyone else other than as you have described it here, in the questions and answers?

Mr. SCARFONE. Senator, that is true. I never introduced him to anyone, to get interested in his business, I never did, in the many years I know Dr. Bergman.

Senator DOMENICI. Do you have any friends, any people who you know, that have business relations with him, other than those you have described here today, administrators of the various homes?

Mr. SCARFONE. That is true, sir. I do not know anyone that is interested with Dr. Bergman in his business.

Senator DOMENICI. Whether it be here or anywhere else in the country?

Mr. SCARFONE. That is right, sir.

Senator DOMENICI. You are aware that Dr. Bergman's firm has interest in nursing homes in Florida?

Mr. SCARFONE. So I understand, sir.

Senator DOMENICI. When did you first find out about that?

Mr. SCARFONE. Oh, during the time I was associated with him, I would hear of, he had a home in Florida, a nursing home in Florida, but I never visited any nursing home. As a matter of fact, I don't know where it is.

Senator DOMENICI. You do not know whether he has one or more, is that your testimony?

Mr. SCARFONE. I know he had one that was mentioned, that is the Palms.

Senator DOMENICI. Do you know of any others?

Mr. SCARFONE. I do not.

Senator DOMENICI. Where is the Palms?

Mr. SCARFONE. It is in Florida.

Senator DOMENICI. Where in Florida?

Mr. SCARFONE. It is in Miami somewhere.

Senator DOMENICI. Where do you live?

Mr. SCARFONE. I live in Hallandale.

Senator DOMENICI. Do you know of any other nursing homes besides the one in Miami that are in Florida that he has an interest in?

Mr. SCARFONE. I do not know, no, sir.

Senator DOMENICI. Now, let me ask you about your security work, and I will not belabor the point, but you went into the business of trying to run a firm here that would provide a security kind of assistance to business people and others?

Mr. SCARFONE. I had a license for it, sir.

Mr. DOMENICI. You had a license?

Mr. SCARFONE. Yes.

Senator DOMENICI. How long were you in that business with your partner?

Mr. SCARFONE. Well, let's see; 1966. I was together in that particular business with Mr. Mandel about 6 months, more than 6 months, sir.

Senator DOMENICI. Did that one suffer from the same thing that laundry business did?

Mr. SCARFONE. No, we just had a little fallout, sir.

Senator DOMENICI. But you had some work?

Mr. SCARFONE. Pardon?

Senator DOMENICI. But you had some work?

Mr. SCARFONE. While we were together, yes.

Senator DOMENICI. After you left him, did you continue as a licensed security—

Mr. SCARFONE. I kept my license; yes, sir.

Senator DOMENICI. Was it in that licensed capacity that you worked for Dr. Bergman?

Mr. SCARFONE. No, sir.

Senator DOMENICI. So you just did this as a casual thing, kind of thing?

Mr. SCARFONE. I did it as a friend more than anything else.

In this case, when you are working for a particular fellow, you do not have to use, when you are working for yourself, you do not have to use your license. You can go in and work for security any place, if you are asked by the employer.

Senator DOMENICI. So what you did was to use your presence there more or less as security, is that what you are telling us?

Mr. SCARFONE. Yes, that is my presence there, and of course, don't forget, they would know my background, the employees there, it was effective at times, sir.

Senator DOMENICI. Were they scared of you?

Mr. SCARFONE. No; they were not. Senator, I used to go in at 2 in the morning; I used to go in at 3 in the morning, and, of course, that is when they did not like me to be in there at 3 in the morning, because that is when they were all sleeping, when they are supposed to take care of the indigent people in the nursing home, I would rouse them all up. That is what they did not like about me either.

Senator DOMENICI. Now, one last question.

When did you move to Florida, and how many times have you returned to New York to do this kind of security work that you have described for Dr. Bergman?

Mr. SCARFONE. Well, I moved down to Florida in June of 1970, I think, permanently, and I have been up here about six or seven times or more, to the best of my recollection, but not to come up here and do security work for Dr. Bergman.

As I said, I had some deaths in the family, a mother passed away, I had an aunt that passed away. I had some weddings to go to.

Senator DOMENICI. Did you do some security work for him or not on any of these trips?

Mr. SCARFONE. Yes. I had gone to see Dr. Bergman. He said, since you are away, we are having trouble, and I went there to visit the nursing homes that I mentioned.

Senator DOMENICI. So that on some of those trips, you did security work for him, is that what you are telling us?



Mr. SCARFONE. Yes, I would call it that, it was security work for a friend.

Senator DOMENICI. And once again that is all you did on those trips with reference to Dr. Bergman, you came here for other reasons, but you would do some of the kind of work that you described?

Mr. SCARFONE. That is correct, sir.

Senator DOMENICI. You never brought any money from Florida, or anywhere else, to Dr. Bergman on any of these trips?

Mr. SCARFONE. That is true, sir.

Senator DOMENICI. I have no further questions.

Senator MOSS. Did not Dr. Bergman have private guard service at the home, at the Crescent Park when you were there?

Mr. SCARFONE. Yes, he did.

Senator MOSS. And you were over and above them.

How did you relate to that private guard service?

Mr. SCARFONE. I would not interfere with the private guard service. I did not interfere, because they had a contract with that guard service, and they had their own supervisors.

I was there at the behest of Dr. Bergman.

Senator MOSS. Apparently the guard service was not doing very well, because he wanted you in addition, is that correct?

Mr. SCARFONE. That is correct, sir.

Senator MOSS. You have been friends with Dr. Bergman for quite a while now. Do you know of any relationship of Dr. Bergman and Joe Colombo?

Mr. SCARFONE. I don't know of any relationship between Dr. Bergman and Joseph Colombo.

Senator MOSS. You never have seen them together, or known of any dealings they have had?

Mr. SCARFONE. Not to my knowledge, Senator Moss.

Senator MOSS. Senator Percy?

Senator PERCY. Just a few questions. How were you paid, by check or cash?

Mr. SCARFONE. By check.

Senator PERCY. By check?

Mr. SCARFONE. Yes, sir.

Senator PERCY. And did you pay income tax and declare this as income?

Mr. SCARFONE. Yes.

Senator PERCY. So that could you furnish in a confidential nature to this committee the income tax returns, do you have them available in your files?

Mr. SCARFONE. No, I have not. I would have to refer to the homes.

Senator PERCY. You what?

Mr. SCARFONE. I have to refer to their records. The last time I moved, I think a lot of that, a lot of papers were lost and thrown out, lost in travel.

Senator PERCY. You have none of your previous income tax returns at all?

Mr. SCARFONE. Seriously, Senator Percy, when I got my first subpoena, I thought, and I kept looking, it might have been laying around, because I keep a lot of papers in the house, I do a little reading, I looked through a lot of old envelopes, I could not find it, sir.

You can believe me on that, sir, I tried very hard.

Senator PERCY. Did you say correctly that you only graduated from the third grade?

Mr. SCARFONE. No.

Senator PERCY. What was your academic attainment?

Mr. SCARFONE. Elementary school.

Senator PERCY. Pardon?

Mr. SCARFONE. Elementary.

Senator PERCY. You finished elementary school?

Mr. SCARFONE. Yes.

Senator PERCY. Was there any requirement of the New York Police Department that you go higher than elementary school?

Mr. SCARFONE. Not in 1925, sir.

Senator PERCY. Not at that time?

Mr. SCARFONE. No.

Senator PERCY. In the course of your work as a police official, did you have reason to know something of organized crime in New York City, did you have knowledge of it, did you have any contacts, and know of people who you believe to be members of organized crime?

Mr. SCARFONE. Surprisingly, no. I never knew of anyone that was in organized crime.

Senator PERCY. How did you happen to meet Joe Colombo the first time?

Mr. SCARFONE. I met Joe Colombo at a rally at 86th and 17th Avenue when I was visiting my mother-in-law. She was alive there then, she lived at 81st and 17th Avenue, and I heard of the movement of the Italian-American Civil Rights League, and as I said before, gentlemen, I am of American-Italian extraction, and I am proud as many of you in the room are proud of your own ethnic background, and I went to attend this rally, sir, at 86th and 17th Avenue, which is five blocks from where my mother-in-law lives.

Senator PERCY. Did you know of any other activities of Joe Colombo?

Mr. SCARFONE. No.

Senator PERCY. As a police officer, were you not aware at all of his business activities?

Mr. SCARFONE. I never knew Joe Colombo until I went to this rally. I never met him in my life.

I did not know of any of his activities, outside of being a founder of the Italian-American Civil Rights League of which I became a member. That is all I know about Joe Colombo.

Senator PERCY. Did you at any time have any direct or indirect knowledge as to his interest in nursing homes, or any interest in vendors that do business with nursing homes, actual or potential?

Mr. SCARFONE. I did not know of any business at all, Senator Percy, at all.

Senator PERCY. Do you have any knowledge at all that you can share with this committee as to whether or not organized crime is involved in the sale of supplies, goods, or services, whether it be protection, or otherwise, to nursing homes?

Mr. SCARFONE. Senator Percy, to the best of my knowledge, I do not know of anything such as you have described.

Senator PERCY. And once again, could you clarify finally your present total net worth, as I previously defined net worth?

Mr. SCARFONE. Well, I have the 1973 Pontiac.

Senator PERCY. You or your wife.

Mr. SCARFONE. That I have 16 notes more to pay. I have this little joint checking account that we use to pay our bills.

Senator PERCY. Do you have a home?

Mr. SCARFONE. I do not have a home, sir.

Senator PERCY. You do not own a home?

Mr. SCARFONE. No, sir.

Senator PERCY. You rent?

Mr. SCARFONE. Yes; I rent, sir.

Senator PERCY. And the assets that you have listed, outside of nominal value, personal clothing, and effects, that is all that you own?

Mr. SCARFONE. That is all that I have, and I will tell you, Senator Percy, I am open to an open investigation.

You can send your committee down there and look me over thoroughly. I am volunteering this statement, sir.

Senator PERCY. Then you, lastly—you have been characterized as an adviser to Joe Colombo.

That is someone who gives some measure of counsel or advice in whatever affairs he may be engaged in, legitimate or otherwise, and your answer to the question as to whether you are in any way an adviser, or have been in the past, an adviser of Joe Colombo?

Mr. SCARFONE. Absolutely not true, sir.

Senator PERCY. Thank you very much.

Senator MOSS. Senator Williams?

Senator WILLIAMS. Just one question, in connection with the league that Colombo started, did you work closely with him on that activity, the Italian-American Civil Rights League?

Mr. SCARFONE. I became active in the Italian-American Civil Rights League, yes, Senator Williams.

Senator WILLIAMS. Were you close to Mr. Colombo?

Mr. SCARFONE. Insofar as the Italian-American Civil Rights League, I was close.

Senator WILLIAMS. What did you call him, and what did he call you?

Mr. SCARFONE. I called him Joseph, and he called me Rocco.

Senator PERCY. Would you say you were giving him advice in connection with the league though?

Mr. SCARFONE. I would give no advice.

Senator PERCY. He never asked you what to do in connection with that league, because I again want to be absolutely certain you clearly understand my question.

Mr. SCARFONE. I said I became active in the league, because insofar as attending meetings, getting members, which I as an Italian-American, I did.

Senator PERCY. In other words, he asked you how can we enlarge our membership, and you helped him?

Mr. SCARFONE. We had these meetings at the Park Sheraton, and he asked me, he would say, let's expand this organization, and I thought it was a good idea.

Senator PERCY. And you gave him advice, did you, as to how to expand it?

Mr. SCARFONE. No; what the heck, if a man gets up and tells people to join, that is no advice.

The word was to get out there and get members to join the league.

Senator MOSS. Thank you very much.

Mr. SCARFONE. Thank you, gentlemen.

Senator MOSS. And you are excused.

Thank you for coming.

Mr. SCARFONE. Can I go home?

Senator MOSS. Yes.

Mr. SCARFONE. Thank you.

Senator MOSS. Our next witness is Samuel Dachowitz.

Mr. Dachowitz, come forward, please.

UNITED STATES OF AMERICA  
Congress of the United States

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To Mr. Samuel A. Dachowitz, 5054 231st Street,  
Bayside, New York 11364

....., Greeting:

**Pursuant to lawful authority, YOU ARE HEREBY COMMANDED** to appear before the Special Committee on Aging of the Senate of the United States, on February 4, 1975, at 10:00 o'clock a.m., at their committee room New York County Lawyers Association, 14 Vesey Street., New York, New York, then and there to testify what you may know relative to the subject matters under consideration by said committee.

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**Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.**

To Patricia G. Oriol  
to serve and return.

**Given under my hand, by order of the committee, this**  
16th day of January, in the year of our  
Lord one thousand nine hundred and seventy-five

Ted Moss

Chairman, Committee on Subcommittee on Long-Term Care,  
U.S. Senate Special Committee on Aging

[Whereupon, Mr. Samuel Dachowitz was duly sworn.]

Mr. SINGER. Mr. Chairman, may I first identify who is sitting with Mr. Dachowitz?

Senator Moss. I would like to have you identified; yes.

Mr. SINGER. My name is Irving Singer, I represent Mr. Dachowitz, and on the other side is Mr. Robert Lazarus.

Senator, before any questions are asked, I wonder if I could be given the opportunity to just put something on the record, that I thought might be of vital importance, especially in connection with the subpoena.

At the last hearing Mr. Dachowitz' name was mentioned, and I believe counsel for the committee, I did not see the hearing, but his name was mentioned, and it was stated that he was not available.

I spoke to him before, I spoke after, I believe that members of the press found his number in the phone book and called him.

He is a certified public accountant, as you probably know, and he has a listing in the phone book, no message was received from any investigator, no one telephoned his office, and ultimately he was served a subpoena, and as once explained, he would be available at all times, and I had another, and I will stop there.

Senator Moss. I want to thank you for the explanation, and we are glad to have that cleared up.

Mr. SINGER. I have another comment that I would appreciate if I could also have placed on the record, and that is this, that before we had appeared here this morning, my associate, Mr. Lazarus, telephoned counsel for this committee and advised him that Mr. Dachowitz intended to assert his constitutional rights against self-incrimination, and we asked that that be done in executive session, or in private session, so he would not be subjected to any further harm, once he has asserted this privilege, and they thought that would not be done, and, so, therefore, I would like to ask the Senator for permission to merely set forth that he intends to assert his constitutional rights of self-incrimination, and to further prevent any possible harm that may occur, if there should ever be a prosecution.

I have heard a great deal mentioned by Senator Percy and others this morning, and I do not think that there will be, but possibly there might be, so I ask if I could simply assert that claim, and we could leave as expeditiously as possible, to minimize the possible harm that may occur if there is a prosecution.

Senator Moss. You wish to assert the defense of silence, because of likely incrimination on behalf of your client?

Mr. SINGER. Well, as the Senator I am sure is well aware that a person guilty only of suspicious circumstances, has a right to claim such a privilege, and I think Mr. Dachowitz has prepared a brief statement asserting this particular point, that we have the right to raise it, and the committee has the right if they wish to grant it, but I think it is academic in this case, and I think that anybody sitting next to him would advise him to assert his constitutional right to assert self-incrimination, especially under these circumstances, which have been set forth at great length, and which you have read about in the newspapers.

Senator Moss. He certainly has a right to raise that, and if at any point he wants to raise it, to a particular question, or inquiry, he may do so, or do you wish to raise it against the whole appearance?

Mr. SINGER. Well, I told you frankly and honestly what he intends to do, and my advice after he has given his name and address, to assert his right, and I thought we might short circuit it to avoid any further harm to him that may occur, if the Senator wishes to pose the question beyond his name and his residence address, he is going to assert that claim.

Senator Moss. I understand.

Mr. SINGER. This is well known to counsel, so this is not a surprise that we are coming in and telling this. We alerted counsel.

Senator Moss. We understood this was the possibility, yes.

Well, I will proceed as far as you are willing to go, before you assert that right, and you have a constitutional right, or Mr. Dachowitz has a constitutional right to do that, if he wishes to.

Will you state your name, please, for the record?

**STATEMENT OF SAMUEL DACHOWITZ, CPA; ACCOMPANIED BY  
IRVING SINGER AND ROBERT LAZARUS**

Mr. DACHOWITZ. Samuel Dachowitz.

Senator Moss. And what is your address?

Mr. DACHOWITZ. 25 West 43d, New York City.

Senator Moss. And do you have a profession that you follow?

Mr. DACHOWITZ. On the advice of counsel and in good faith I respectfully decline to testify on the grounds that I personally believe such testimony may incriminate me or subject me to some other penalty or forfeiture.

Senator Moss. You may assert that. Could you explain the loans and exchange account procedure at the Towers?

Mr. LAZARUS. Senator Moss, the witness' position is that he is going to claim his privilege with reference to each question that is asked. He does that in good faith, and on the advice of counsel, as he already has said.

I merely want to state to you, Senator, prior to our appearance I spoke to Mr. Halamandaris and informed him of this.

I also want to tell you that we ask that this witness appear in executive or private session, so that he would not be placed in a position of having to claim his privilege in a public forum, which is broadcast and televised, because, frankly, Mr. Dachowitz is under subpoena by the special study prosecutor; his records have been subpoenaed by the U.S. attorney of the southern district of New York.

It is also the intention of the U.S. attorney, or of the assistant U.S. attorney handling the case, to subpoena Mr. Dachowitz.

Under the circumstances, he is obviously a prospective defendant, and I think requiring him to appear here, and to claim his privilege publicly in this forum, should he ever be a defendant in a criminal case, has all but done away with any possibility of receiving a fair trial, or certainly has diminished that.

Senator Moss. You surprise me that—

Mr. LAZARUS. I say that respectfully.

Senator Moss. I understand that, but let me explain, the committee has no facilities for meeting in executive session to hear witnesses.

As a matter of fact, the Senate as a whole now, as well as the House of Representatives, has adopted rules that all hearings must be open,

unless the committee as a whole votes to close them, and that is on the basis of national security, and in this case there was no vote of the committee to close the hearing, and, therefore, we had to meet in the open, and it was our decision that Mr. Dachowitz could appear in the open.

I can tell you that I am not too worried about his being prejudiced, because I recall that Mr. John Mitchell, for example, who had certainly all of the publicity in the world, was tried here in New York City, and in a criminal trial and was acquitted.

Now, it is not automatic because a person has publicity, and on the television, that he cannot get a fair trial, so that I do not think is an adequate reason; however, I acknowledge that Mr. Dachowitz has a constitutional right to refuse to answer, and if he does that, as he claims on the first question, then certainly he will not be compelled to answer.

Senator PERCY. Mr. Chairman, may I ask a question for clarification.

Senator Jackson and I are conducting a permanent investigation in the Senate as to executive sessions to make absolutely certain that there is nothing publicly revealed that would be harmful or injurious.

However, we understand that the witness, when he is going to cooperate with us fully and answer any and all questions, does not take the fifth.

For clarification, is it the intention of counsel to advise Mr. Dachowitz, or could Mr. Dachowitz advise us, if for instance we did go into executive session, would it be your intention at that time in executive session to take the fifth, or would it be your intention under oath in executive session to testify fully and completely, and cooperate with the intent and purpose and objectives of this subcommittee?

Mr. LAZARUS. I would like to respond to that if I may, Senator.

When we asked he appear in executive session, it is because we felt that it was a denial of due process for somebody to have to claim their privilege who is a prospective defendant, from what I have read, and from the fact he has been subpoenaed.

From all intent, claiming the privilege in public like this, I think, places him at a disadvantage, should he ever be a defendant.

Senator PERCY. All we are asking for here is the privilege of claiming the fifth in executive session; is that what you are asking?

Mr. LAZARUS. There are means, if he does claim his privilege—of course, this committee could secure his testimony, and under the proper circumstances, he would be required to testify.

As things stand now, he will claim his privilege with reference to these questions.

Senator MOSS. And you claim your privilege against the last question I asked about the loans and exchange account?

Mr. DACHOWITZ. Yes, sir.

Mr. LAZARUS. I just want to make one more point. You mentioned something about John Mitchell. I do not think Mr. Mitchell, the former Attorney General, was ever required to claim his privilege in public, and then go on trial as a defendant in the case, so I think there is a substantial difference.

Mr. SINGER. And I might add, it certainly did not do him any good.

Senator MOSS. Well, he was acquitted up here, and it seems to me that is pretty good, and to go into a criminal trial and come out acquitted.



Senator DOMENICI. Mr. Chairman, I would like to make this observation, if I understand the lawyers for the witness correctly, they are saying that the mere fact that he will be called upon to exercise his privilege will in and of itself be a denial of due process.

I have never heard of such a position. I know of no legal precedent to bear that out. I think they are absolutely mistaken. I think we have the right to ask him questions.

He has the obligation to respond or exercise his constitutional privilege of saying he does not want to, because the question in his opinion tends to incriminate him, I do not think we should let the precedent go where they can come here and say any public hearing—and it is open to the public—that it instantly gives one the right to refuse to answer any questions.

That is basically their position today. I know of no such precedent, and it appears to me that is an extreme stretching of the denial of equal protection of due process.

I do not believe any court in the land will support it, and I think we should proceed to ask the witness questions; let him make up his mind as to what he chooses to do, and thereafter we make up our mind as to what we choose to do.

Mr. LAZARUS. Senator, I requested he be permitted to appear in private session, because I thought if there was a question of due process, if there was a question of whether he could ever receive a fair trial, if he is the defendant, that the committee would opt in favor of doing it in private or in executive session rather than here.

I am not saying you do not have a right to ask him questions. That is not our position at all.

What I am saying is that we have somebody who is obviously the target of several investigations, and to place him in a position where he must claim his privilege publicly, puts him in a position where at some future time, should he be a defendant, any prospective juror is going to be able to say here is a man who claims his privilege, when he was asked questions about this investigation.

We requested that it be in private session. There is no question that you have a right to call him, subpoena him.

He is here. There is no question you have the right to ask the questions. He will assert his privilege.

Mr. SINGER. If I may make this comment in connection with Senator Domenici's statement, we asked him as a matter of discretion if this committee will allow him to assert his constitutional rights in private so that he would not be exposed at this particular time and have his position jeopardized. In addition to just asking him a whole series of questions where we know what the response will be, the only purpose that it would possibly serve is to hold him up to ridicule and scorn. So we ask in the most polite manner, most respectfully, everyone appreciating our position today—as Senator Moss has pointed out, we have a right to claim this privilege—to allow us to do it as expeditiously as possible, without putting him to a whole series of questions, which I am sure would invoke a laughter or similar response from the audience.

Senator Moss. I agree with Counsel, that there is no use in doing a futile thing.

I have asked two questions, and I will ask one more question so the record will be clear.

I will ask Mr. Dachowitz if he has been engaged as a certified public accountant to certify certain records for the Towers Nursing Home.

Mr. DACHOWITZ. On the advice of counsel and in good faith I respectfully decline to testify on the grounds that I personally believe such testimony may incriminate me or subject me to some other penalty or forfeiture.

Senator MOSS. Thank you.

It is obvious that we would simply waste time, since the witness indicates he is going to claim his privilege against all questions. He has done so on three specific questions thus far, therefore, we will excuse you temporarily, Mr. Dachowitz, and we will make a determination as to what further, if anything, needs to be done in the hearing.

Senator PERCY. Mr. Chairman, one question, please.

Mr. Dachowitz, I would like to ask a question that is related to your profession, that could not possibly involve any incrimination.

You have been, as I understand it, a member of the New York Society of CPA's, since July 1954.

You have served on the Society's health and welfare committees.

To the best of my knowledge, you have in the past been a member in good standing.

The Congress of the United States has enacted, or was in the process of enacting a consumer protection agency bill. We had such a high regard for independent auditors and certified public accountants, that at their request we changed the name of the bill to the Agency for Consumer Advocates, ACA, so it would not be mixed up with CPA.

Do you feel that CPA's, because of the nobility of that profession—and it is a noble profession, and a distinguished profession, performing a great need—do you feel their services are valuable in the carrying on of the private enterprise system in this country, negating the oversight and big brotherhood of government, and that they perform a public service as well as the service to their clients?

Mr. DACHOWITZ. In view of the position I took previously, I refuse to make a comment at this time.

Senator PERCY. In other words, you refuse to cooperate in any way with this committee, even though it could not possibly incriminate you?

Mr. SINGER. Senator, I do not mean to debate it, though this is not a court of law there is a great deal of latitude, but really it is placing him in a position where we had to make a decision, and counsel has advised him. We have taken the position—I may be wrong, we may be wrong—but I wish you would not embarrass me.

Senator MOSS. I think counsel is correct. You are excused temporarily.

Mr. SINGER. Thank you very much.

Senator MOSS. I would like to call to the stand Mr. Frederick J. Parker and Mr. Marvin Stern for just one single question, if possible, and if you will both stand, I will swear you.

[Whereupon, Mr. Frederick J. Parker and Mr. Marvin Stern were both duly sworn.]

Senator MOSS. Before we begin, I am happy to welcome Congressman Koch, who has joined us again today, as he did on our last hearing.

We are pleased that you are here with us, and I hope that you will participate with us on the panel.

Congressman KOCH. Thank you.

Senator MOSS. Counsel has just one or two questions, which is all that we thought we would call you for.

Mr. HALAMANDARIS. Mr. Parker, Mr. Stern, we would like to welcome you before the committee.

We have your prepared statement, Mr. Parker, and it will be inserted in the record.

I have one specific question I would like you to respond to. We all know of your expertise in this area. I would like you, if you would, to give us a little education, as to whether a loans and exchange account can possibly affect medicaid reimbursement, and if so, how. I would appreciate it if you would give us this instruction or this education in very elementary terms so we might all understand whether or not a loans and exchange account affects medicaid reimbursement.

**STATEMENT OF FREDERICK J. PARKER, DIRECTOR OF THE BUREAU OF PROVIDER AUDIT OF THE NEW YORK STATE DEPARTMENT OF HEALTH; ACCOMPANIED BY MARVIN STERN**

Mr. PARKER. As I explained to the Commission on Living Costs at the hearing yesterday, as I mentioned to the Commission on Living Costs, I gave a very simple example, if Senator Moss, for instance, had \$100 in his pocket, and it costs him \$100 for living expenses during that week, if he lent that \$100 to Senator Percy, at no interest, or gave it to him, he would then have to go out and borrow the \$100 to pay his living expenses, and he would pay interest on that \$100.

When this occurs, and you could project this into any type of establishment, if you lend money out at low interest, no interest, or withdraw moneys, and there is a lot of accounting technological problems here, you would then have to borrow money to pay your expenses, because you would deplete your cash position or lower it so you would have to borrow money to pay your expenses.

Mr. HALAMANDARIS. Now, if you had to borrow money to pay your expenses, you would presumably borrow money at current rates, and that interest is chargeable as an expense to medicaid?

Mr. PARKER. That is true, and during our audits, we have found such cases.

During our audits, we have found such cases, and we have disallowed the interest in these particular cases, because it should not be allowed in the reimbursement expenses, when we find it, and I think that at the hearing the other day, Marvin gave an example, he does not have the work papers here on that one, he had it the other day, and it is with the Stein Commission on Living Costs.

Mr. HALAMANDARIS. Do you have anything to add to that statement?

Mr. STERN. Yes, there is another factor that would involve reimbursement.

Included in the reimbursement rate is the factor for return on equity. In other words, if a man has a certain amount of money invested in the nursing home, we will include in the reimbursement a percentage return on his investment.

The loans and exchange account can be used to couch, or hide, withdrawals.

If a man takes \$100 out of the business, if he records it as a withdrawal, that will reduce his equity, and thereby reduce his return on that equity.

If he couches it through the loans and exchange account, as a loan, his equity position remains exactly the same, and he gets a return on this money which he has in effect withdrawn.

Mr. HALAMANDARIS. Thank you very much.

Senator MOSS. Any questions of the panel on this matter?

Senator PERCY. Just the question on the word "exchange." Is that the common term used in the nursing home field? Is it a common term used in the accounting profession, or is it unique to Mr. Bergman's experience?

Mr. STERN. I think it is common throughout the accounting profession.

Normally the loans and exchange account is a means of recording short-term moneys going in or out of the business, which are to be replaced again within a short period of time, possibly an advance, earlier in the month, which would be withdrawn, later on in the same month, and for short-term purposes.

Senator PERCY. The determination of return on investment, is that an averaging process through the year, or is it a determination as of any particular given date, as to what your investment or equity is?

Mr. STERN. Since 1970, it is an average. Prior to 1970, it was a base, it had an equity position.

Mr. PARKER. We also found that this percentage of equity had to be average, because we had found cases where the owners would put money in at the end of December, and then draw it out in January, so they had no money in during the whole year, but they showed an equity only at that point when they submitted their statement, and that was one of the reasons, in fact, this is an adaptation from the medicare principles of reimbursement, which is used both in medicare and medicaid, it is a form which actually averages over the year.

Mr. HALAMANDARIS. Thank you, that is pretty explicit.

Senator MOSS. Congressman Koch has a question.

Congressman KOCH. When this kind of transaction was described by Dr. Bergman's lawyers, he referred to it as a normal candy-store operation.

Would you characterize that as a normal candy-store operation, or would you suggest that it had more than innocuous consequences?

Mr. STERN. From the amounts of money involved, that would be some candy store. [Applause.]

Mr. PARKER. The nursing home field is a lot different than a candy store.

We are dealing with human lives, and we have a lot more involved in there, and where you have a nursing home that is running 100 percent of medicaid business, there is no candy store that the Government or the State or anyone will guarantee how many kids will buy candy.

Senator PERCY. Congressman, I would characterize it as more of putting your hand in the cookie jar. [Laughter.]

Senator MOSS. Thank you, gentlemen. You are excused. We appreciate your testimony.

Mr. PARKER. Thank you.

[The prepared statement follows:]

## PREPARED STATEMENT OF FREDERICK J. PARKER

My name is Frederick J. Parker. I am Director of the Bureau of Provider Audit of the New York State Department of Health. I have been in this position since March 25, 1971. I have been engaged in the field of medical facilities audits since 1958.

The Bureau of Provider Audit is responsible for three audit programs: 1. Audits of all medical facilities covered under the Medicaid reimbursement program; 2. The Article 28-A and 28-B State administered hospital and nursing home construction loan programs; 3. Outpatient deficit program. Covered under the Medicaid reimbursement program are approximately: 400 proprietary nursing homes, 300 nonprofit nursing homes, 150 health related facilities, 300 clinics, 120 home health agencies, 365 hospitals.

There are presently 112 projects in the 28-A and 28-B construction programs.

There are an estimated 50 hospitals covered under the out-patient deficit program.

## CHRONOLOGICAL PROGRESS OF BUREAU OPERATIONS

The Bureau was first organized in 1971 with one auditor in New York City who was already on staff, eleven auditors from 1972 to 1974 and fifteen in 1974. At the present time, the Bureau has 15 of 19 authorized for the Medicaid reimbursement program, 22 of 26 authorized for the 28-A and 28-B program, 5 of 6 authorized for the outpatient deficit program.

The Bureau is presently canvassing recently promulgated Civil Service lists to fill the newly authorized 36 vacancies.

## SUCCESS OF THE BUREAU OF PROVIDER AUDIT PROGRAM OF AUDITS OF MEDICAID REIMBURSEMENT

From period of establishment of the Bureau in 1971 to December 31, 1974, the Bureau of Provider Audit has audited: 125 Nursing homes in New York State, 302 total years reports (on audits, the Bureau usually does two or more years at a time), produced approximately \$8,611,300 estimated savings to the Medicaid program.

In addition, the Bureau estimates the savings to the Medicaid program on hospital reimbursement, through the mechanism of the shared audit, of approximately \$1,800,000 each year or a total of \$9,126,783 from the beginning of the program. The audit emphasis of Department staff has been on proprietary nursing homes.

## TYPES OF ADJUSTMENTS

The types of adjustments made by the Bureau are too numerous to list and although we cannot reveal the institution because of due process, a few examples are: Cars, including Cadillacs and chauffeur driven Rolls-Royce, tuition for family members at college, nursery school expenses for granddaughter, diesel fuel for yacht in Florida, expenses of other businesses not related to nursing home, poor distribution of expenses between nursing home and other businesses, usually a disproportionate share on nursing home books, various personal items of expense on nursing home books, relatives and others on payroll that do not work in nursing home; this has included personal maids and ex-wife to satisfy alimony payments, actual additions of unsubstantiated expenses on report, actual misstatement of days on report, political and other contributions and donations.

On nonprofit medical facilities, the Bureau has found items of waste by inefficient methods and poor controls. It is difficult to estimate the losses to the program by these inefficiencies and lack of controls.

As the Director of this audit operation, I have received complete cooperation and support from the Health Department, the Commissioner and other New York State Agencies. *At no time* has any pressure been exerted on the Bureau by any State agencies to change our findings or deviate from our goals. I consider such independence an absolute necessity in any audit program.

## FUTURE PLANS

The Governor has now authorized 36 additional auditors in our Department and with this increased staff the Bureau of Provider Audit will be able to engage upon a systematic audit of all medical facilities. At that time, there will be available 54 auditors for the reimbursement programs of audits of approxi-

mately 1,700 facilities for medical reimbursement. These systematic audits, together with systematic review by the survey teams on quality of care will help insure the highest quality of care at the lowest possible cost and help prevent further abuses.

#### SUGGESTIONS

Although the above proposals of staffing will permit the Bureau of Provider Audit to engage in a systematic approach to auditing, it is my opinion that minor changes must be made in the laws.

The changes I would recommend would permit:

1. The sharing of all audit information among governmental agencies;
2. The treatment of nursing homes as quasi-public establishments similar to utilities;
3. The tracing of institution expenditures through the books of suppliers;
4. Severe penalties for improper records and reporting or failure to disclose material facts;
5. Fiscal penalties in addition to audit recoveries.

Senator Moss. Is Dr. Bergman in the room?

[Subpenas issued to Dr. Bergman follow:]

UNITED STATES OF AMERICA  
Congress of the United States

To Bernard Bergman, Operator, Park Crescent Nursing Home,  
150 Riverside Drive, New York, New York

Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the Special Committee on Aging of the Senate of the United States, on January 21st, 1975, at 10 o'clock a.m., at ~~1000 Broadway~~ 270 Broadway New York, New York, Room 1601, then and there to testify what you may know relative to the subject matters under consideration by said committee.

The Committee requests your appearance along with all business records relating to the operation of the above named facility from 1969 to the present including but not limited to general ledgers for all corporations, partnerships and sole proprietorships including any subsidiary companies; all subsidiary ledgers; general journals; all supporting vouchers and invoices; all leases, contracts and mortgages; all records maintained by your Certified Public Accounting firm and all other fiscal and accounting records.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To Thomas E. Ferrandina, United States Marshal  
to serve and return.

Given under my hand, by order of the committee, this  
19th day of December, in the year of our  
Lord one thousand nine hundred and seventy-four

*Ed Moss*

Chairman, ~~Executive~~ Subcommittee on Long-Term Care  
U.S. Senate Special Committee on Aging

UNITED STATES OF AMERICA  
Congress of the United States

To Bernard Bergman, a principal or officer, Riviera Furniture Company,  
250 West 57th Street, New York, New York 10019

, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the Special Committee on Aging of the Senate of the United States, on January 21st, 1975, at 10 o'clock a.m., at ~~the committee room~~ 270 Broadway New York, New York, Room 1601, then and there to testify what you may know relative to the subject matters under consideration by said committee.

~~The Committee requests your appearance along with all business records relating to the operation of the above named facility from 1969 to the present including but not limited to general ledgers for all corporations, partnerships and sole proprietorships including any subsidiary companies; all subsidiary ledgers; general journals; all supporting vouchers and invoices; all leases, contracts and mortgages; all records maintained by your Certified Public Accounting firm and all other fiscal and accounting records.~~

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*Ted Moss*

Chairman, ~~COMMITTEE~~ Subcommittee on Long-Term Care, U.S. Senate Special Committee on Aging



Mr. LEWIN. Mr. Chairman, for the record, let me again say my name is Nathan Lewin. I am attorney for Dr. Bergman, and I would like to make a statement regarding his absence today.

Senator MOSS. Make it very brief.

Mr. LEWIN. I am afraid I will make it as brief as I can, Mr. Chairman. The record may and should reflect what I am about to say in full.

Senator PERCY. About how long will the statement be?

Mr. LEWIN. I am trying to deliver it extraneously. I have a letter which is 11½ pages long,\* which will fully set out on the record what the ground is.

I do not intend to read that letter. I intend to speak to it extraneously, because I think it is important the committee understand what the reasons are for Dr. Bergman's failure to be here today, or his absence today, and what reasons we are stating on the record for that.

Senator MOSS. Well, all right. We will give you what you need; 10 minutes.

Mr. LEWIN. I would hope 10 minutes would be ample. Fifteen possibly. I would think if the committee would have any questions—

Senator MOSS. We had hoped Dr. Bergman would be back with us today, and we would like to hear you, if you will make it brief.

#### STATEMENT OF NATHAN LEWIN, COUNSEL FOR DR. BERNARD BERGMAN

Mr. LEWIN. Mr. Chairman, as we advised the committee back on January 14 of this year, before the time that Dr. Bergman was subpoenaed to appear before this committee, it was then his intention, notwithstanding the fact that there was substantial amount of publicity, and in our view a deliberate vicious vendetta against him in the newspapers, and by a New York State commission, that it was nonetheless his intention to cooperate fully with every lawful government body that is seeking to conduct any good-faith investigation of the nursing home industry.

In response to our letter of November 14, the chairman advised us that in fact, this subcommittee would be conducting such a good-faith investigation of the nursing home industry, and that it would not be investigating or deliberately directing its attention solely to one individual or one person or one business.

Pursuant to that understanding, Dr. Bergman submitted voluntarily, and in a very dignified way to the service of a subpoena in an attorney's office in Manhattan, a week before this committee was going to be conducting its hearing, and pursuant to that understanding, he arrived, and testified here, and I might say, just from my own reaction here in the room that morning, I think it was to the substantial surprise of the New York press he arrived here and testified fully, and was here to answer questions on that day.

It appeared clear, however, to him, and I think to me, his counsel, sitting here that day, if there was any doubt, it has been reaffirmed by what has been going on here, until this very point, that this committee is not conducting an investigation of the nursing home industry, but in fact is conducting what can only amount to an inquisitorial investigation of the business of one man, which is Dr. Bernard Berg-

\*See "Trends in Long-Term Care," part 25, Feb. 19, 1975, appendix 5, item 8.

man, based I might say, not on any evidence that it has on his involvement, or extensive involvement in nursing homes, other than the fact it appears in newspapers, but he came here under oath and denied that, and denied it flatly and specifically said to this committee under oath he was not involved in about 95 percent of them, and that relatives described to him were not his relatives. Notwithstanding that fact, the committee has gone out, for example, this morning, and has had testimony heard before it, of a couple of investigators for the New York State Welfare Inspector General's office on the basis of a report, I might say, they submitted to this committee this morning, which I have not to this minute been dignified or been given the courtesy of that final report, and yet that report has been submitted to the committee, and these gentlemen are permitted to testify before the television cameras out in the public about what they view is questionable items in the books of the Towers Nursing Home.

Now, I called the committee's attention to the fact that according to an announcement made by the chairman prior to the time this committee was impaneled, subpoenas were being served on 41 different businesses, and I suppose records had been submitted as I saw it by those 41 different businesses 2 weeks ago.

From my own visual evaluation, it appeared to me that the Towers and Park Crescent were submitting substantially more records, and more detailed records than other nursing homes, yet with regard to this one nursing home which is closed, the committee sees fit to put on the stand witnesses this morning to testify to what the committee views, and what those witnesses view as questionable items.

Now, to me sitting here again, this morning, it struck me that this was about the kind of exhibition that would emerge, if, for example, a taxpayer were told that his initial audit by the Internal Revenue Service was going to be subjected to television, and the Internal Revenue Service agents, who would examine his return, and would not ask him any questions directly, and not ask him to reconcile anything, were going to put on in front of the television cameras, and were going to say with regard to the particular taxpayer, they have this question and that question and that other question, and the taxpayer may come in and explain those questions.

Now, we live in a government, I submit, Mr. Chairman, and a society, where we have more sense of decency and dignity than that, and where we say to individuals, who are involved in businesses, and who have personal financial transactions, if there are any questions about them, we sit down, we ask them if they want to explain, and then proceed from there.

Yet this committee has seen fit, I say, not only to call in people who without any showing, without any confrontation with Dr. Bergman, or those who might know about the books, are in any way able to explain what those matters consist of, but also to continue in the very same vein, and call in someone who says he is a friend of Dr. Bergman, because there has been some information in the newspapers regarding that friend's association with organized crime, and, therefore Dr. Bergman, and to subpoena, as I demonstrated this morning, to subpoena personal bank records, the work statements, a whole range of documents, which are personal, which are private, which are not

sought from any other nursing home owner in New York, no other person who has that interest in any other industry in New York, and try to bring them in, and bring them in and place them on television.

Now, Mr. Chairman, the result of what we have seen, in this regard, leads us to conclude that the offer of cooperation that was made by Dr. Bergman on January 14, and that he continued to exhibit on January 21, when he appeared before this committee, are now to be withdrawn, that there is no requirement beyond him to cooperate beyond the letter of the law, that when what this committee does is in no way indicative of any good faith with regard to the industry, to an investigation of the entire industry, but appears simply to be an investigation into his activities and his businesses, without looking at any other nursing home, without looking at any other business, without conducting any more general examination of the field.

When I say that we do what the letter of the law requires, that brings me simply to the matter of Dr. Bergman's absence today.

We are submitting to the committee, and I say I will not, I do not intend to read it, but there are copies available to the committee, a full letter addressed to the chairman which explains why in our view, simply as a matter of the letter of the law, there is no obligation upon Dr. Bergman to appear here today.

He is not under subpoena here today. He was under subpoena for January 21. He appeared on January 21, and he testified.

Senator Moss. And he agreed in open hearing he would be back today.

Mr. LEWIN. I beg to differ with you, Mr. Chairman.

There was a discussion, you stated February 4, as a possible date. I objected.

There was a discussion there might be an agreement on a convenient date to be set thereafter, in correspondence, stating beginning with January 27, and again on January 29, I called to your attention the fact there was no definite commitment to have Dr. Bergman back today.

The committee did not see fit, and I did not take any legal steps, or to do anything, as a legal matter that would require him to be here today.

Senator Moss. He was directed to be here, and that will have to be tested.

Mr. LEWIN. I am sorry. There was a request in your letter he be here, and with great respect, it pains me to have to say to a Senate subcommittee of the U.S. Senate, it pains me to say that so far as your request, which we have been intending to comply with, and so far as our offer of cooperation, that is now withdrawn, and we respectfully decline that request.

Senator Moss. Do you recall my letter to you of January 24, in which I say, at the close of business on January 21, I recessed the hearing until 10 a.m., on February 4, 1975, and I directed Dr. Bergman to reappear at that time.

Mr. LEWIN. That is what you say in your letter of January 24, Mr. Chairman, and our response to you on January 27, and I believe both the letters of January 24 and January 27, which were letters that are not made public should now be made a part of the public record.

Senator Moss. They will be made a part of the record,\* and I would like to also read from the transcript.

Let's see. I do not find the last part, where it says the adjournment—this is on page 55 of the galley of the transcript. I am quoted as saying:

We will set it for the 4th of February, and Dr. Bergman has indicated he would be willing to come. We will attempt to be accommodating. My colleague, Mr. Koch, might have a question or two here, since he has come up this afternoon, and he may not be able to be back on the 4th of February.

That is the quotation from the transcript, and on the last page, I adjourned the meeting, by saying:

Adjourned until the 4th of February.

Mr. LEWIN. The meeting was adjourned until the 4th of February. I do not question that the meeting was adjourned to the 4th of February.

The last words I read from page 55 of the galleys, was when you said, I am willing to try to accommodate Dr. Bergman to what is a convenient date for him, and we would try not to detain him too long. A half a day maybe would be plenty, and I said I think that could be worked out between us, and that is where it was left, that there would be an accommodation of some date.

Now, let me read to you from our letter of January 27, page 14, in conclusion, we should correct one particularly significant error in your letter. You state you directed Dr. Bergman to reappear before the subcommittee on February 4, and that you received both his and Mr. Lewin's promise in quote, that Dr. Bergman would be there.

The transcript, however, shows that Dr. Bergman stated a willingness to reappear, that you offered to try to work out a convenient date, and that Mr. Lewin responded; I think that could be worked out between us.

Dr. Bergman remains as stated in Mr. Cassidy's letter to you of January 14, prepared to cooperate with your subcommittee operating under its mandate, as with any other lawful agency, carrying out its proper function, under legitimate authority conferred by law.

We now, however, have even more reason than before to question the accuracy of this description. That was in our letter to you of January 27.

In our letter to you again of 2 days later, January 29, we repeated the fact that there was no definite commitment on Dr. Bergman's part to reappear here today, and as I say, if we had any doubt about that, the events of this morning taught us how wise it was on our part to question the procedure that the committee was following, and the purpose, the objective that it was seeking.

Now, I mean this, with no disrespect to you, Mr. Chairman. I just mean that it appears from the questioning, whether that has been directed by the staff investigation or some other manner, that there is no broader effort being made with regard to this investigation in New York, other than to uncover every last bit of possible private information regarding Dr. Bernard Bergman, and it is not Dr. Bergman's role, it is not a proper part of any citizen of the United

\*See "Trends in Long-Term Care," part 25, Feb. 19, 1975, appendix 5, items 3 and 4.

States to subject himself to that kind of inquisitorial system before the television cameras, and before the public in this country.

There are means, there are means that are well established, and that are well known, if in fact there are allegations made of criminal violations of some kind.

Those means are being pursued, and as I have represented to the committee this morning, we have been cooperating with the U.S. attorney's office of the southern district of New York, in terms of turning over information, and it is our intention to cooperate in every way with lawful investigations.

Senator Moss. I think you have stated your position now, and I think that I must state our position, and that is that Dr. Bergman is under a valid subpoena of this committee, that he was excused when we met last on the 21st of January, and that at that time he was directed, and in my letter, I say requested his appearance under the authority of the original subpoena, to answer questions posed by the full Senate subcommittee membership which is the meeting today, and, therefore, we must seek a citation of Dr. Bergman for failing to obey a subpoena.

We must do that in a court of law, of course, and this is where we will have to determine that matter.

You want to argue it your way. We think that we are proceeding lawfully. We have been very careful. I suppose if I had made any error, it is in trying to be too accommodating.

As you remember, with Dr. Bergman, I sat and talked with him, and I said, we will try to accommodate your time, but we are going to have to recess now, as you remember, I had to catch an airplane.

We will have to recess now, we will want you to come back, and he said, oh, yes, oh, yes, and I said, all right.

I will try to work it out with your counsel, if you find it is inconvenient, but I said, we will recess now for you to reappear on the 4th of February.

Now, if there was going to be any change from the 4th of February, that would have had to have been by communication back and forth, but we never wavered from this date, the 4th of February has been it, everytime, every day, since we recessed the last hearing.

Now, Dr. Bergman is under a valid subpoena. He was excused to reappear on this day. You now tell me he refuses to reappear.

The only thing left for us is to seek a citation to have him punished for contempt.

Senator PERCY. For clarification, this is for contempt of Congress?

Senator Moss. Yes.

Mr. LEWIN. We stated, Mr. Chairman, our grounds for believing there was no legal obligation on Dr. Bergman to appear today, and we have stated it in a letter, fully setting out the legal reasons.

We are absolutely convinced that that is correct, and that the full U.S. Senate, if this subcommittee determines it will refer that matter to the U.S. Senate, will agree with us.

Senator Moss. That is what will be done.

Mr. LEWIN. Let me proceed beyond that. Our letter goes beyond that. You made your letter of January 31 a part of the subcommittee's record.\* Our letter does various things beyond that. We advise the

\*See "Trends in Long-Term Care," part 25, Feb. 19, 1975, appendix 5, item 6.

committee in view of the record, as we see it, and in which the committee is solely looking into Dr. Bergman, and solely investigating Dr. Bergman's conduct, he is not obliged to answer any questions as a matter of constitutional law.

He is relying not solely on the fifth amendment. We believe it is a violation of the first, fourth, fifth and sixth amendments to require him to so testify.

Senator Moss. You have stated your point. There is no use arguing it back and forth. We must now present it for a contempt citation, and without even reading your letter of the 4th, that you have just handed, I will make that part of the record,\* because I want this whole thing spread on the record. I do not want anything held back.

Mr. LEWIN. That is right. That is our wish, Mr. Chairman.

Let me say in regard also in that respect, to the exchange that was had, so far as constitutionality, the assertion of constitutional rights are concerned, because I do not know what this committee will do beyond what the Chairman says, that is that he will seek a contempt citation, which I think is wrong as a matter of law, but if that is what you are going to do, it is clear under the American Bar Association Standard, it is unprofessional conduct, and I am reading from the American Bar Association Standard, relating to grievance function, it is unprofessional conduct for a prosecutor to call a witness who he knows will claim a valid privilege not to testify for the purpose of impressing upon the jury the fact of the claimed privilege.

We submit that calling anybody with that intention in mind is not proper.

Senator Moss. Let me tell you that I am surprised that Dr. Bergman did not walk in. He told me that he was coming.

Mr. LEWIN. Mr. Chairman, what he told you, and what the record reflects, is that a convenient time would be set up, if a convenient time would be set up, he would come, and I told you in letters, January 27 and 29, there was no time that was set up.

Senator Moss. A time that was convenient.

Mr. LEWIN. No time was set up, and right now our position is, Mr. Chairman, to the extent, and only to the extent required as a matter of law, will Dr. Bergman cooperate with this subcommittee.

Now, the reason—

Mr. HALAMANDARIS. Let me interject at this point, if I may.

If it was your intention to cooperate with this committee, it would seem to me you would have supplied this committee with the books and records that we requested.

You were very kind as to make available to us certain checks that were in the possession of the U.S. attorney, but I am talking about other statements, I am also talking about canceled checks with respect to the Park Crescent Nursing Home.

I appreciate what you did, but we have a disagreement about the terms of our subpoena. We drafted it as wide as possible without making it over broad. We sought the advice of the U.S. General Accounting Office in drafting the subpoena, in the hopes it would be broad enough to encompass every bit of information the subcommittee needed for its purposes.

\*See "Trends in Long-Term Care," part 25, Feb. 19, 1975, appendix 5, item 8.

I would like the record to reflect the following material has never been turned over by the Towers Nursing Home, according to GAO records: the check register, canceled checks of the payroll account, bank statements of the payroll account, bank deposit slips, subsidiary records of loans payable and received, the loan agreement, the trial balances, payable registers, accounts receivable, subsidiary records, petty cash register for the years 1971 through 1974.

On the Park Crescent home, the following items have not been received. Because you did not intervene and do this courtesy of turning over canceled checks and bank statements, we have not received them, nor have we received deposit slips, we have not received the check register, we have not received an income statement, we have not received loan agreements, we have not received any cash receipt book, we have not received patient account cards.

You have been telling us of your desire to cooperate.

I just want the record to reflect the fashion and degree of your cooperation. [Applause.]

Mr. LEWIN. I think that the record should reflect, Mr. Halamandaris, the record should reflect that very subject was the subject of your letter of January 24, in which we responded in detail on January 27.

There were at that time, you read into the record a list of documents, some of which were supplied at the time of January 27, we supplied two sets of documents, and others of which we advised you were simply matters of public record, we talk about income statements, balance sheets, and that we explained were therefore not submitted at that time.

Senator Moss. This is degenerated just into a quarrel back and forth here.

You have said Dr. Bergman is not going to come. We say he is under subpoena to come, and we will seek to have him cited for contempt of Congress for failing to come. [Applause.]

Mr. LEWIN. Thank you, Mr. Chairman.

Senator Moss. Senator Percy.

Senator PERCY. Mr. Chairman, I would like to say to Mr. Lewin, we have listened with interest to the dissertation. I find it totally unconvincing. I really say to you, that you have done a disservice. I think, to your client, because when you presume to tell this committee that one of the reasons that Dr. Bergman could not be here, is because he did not have adequate notice, could not prepare, whatever it might be, we must weigh this against the fact that we are asking him to testify about his business, a business that has been going for a long time.

He could be flanked by his counsel, by his auditor. All we are working from are the records, and the certifications that he himself has filed, or his agents have filed, so we are not laying tricky questions for him.

In fact, we tried to provide advance notice as to what we intended to do. This was his chance at the same time with regard to the allegations or implications, as were made, or accusations, it was his chance to lay on the record what the true facts are, and all we are attempting to do is learn what the truth is in this case.

We cannot study nursing homes in general. There is no way to do that. You can only zero in on particular cases, and try to see what happens in those particular cases.

Now, Dr. Bergman has taken his case to the public, and this was his chance to do it again.

In a *New York Post* article, January 16, which must have 600,000 or 700,000 copies, I do not know how many readers, over a million readers, it says "Bergman Speaks Out. Only God in Heaven knows I am innocent." We wanted people right here on Earth to have a chance to know. [Applause.]

Now, I am talking about Dr. Bergman's own words, and all we are saying is that we have a right to know, because he is spending our money. He is spending your money. He is spending the public's money. I would like to read a few statements right here as to what he said, and the kind of things we would ask him, we would ask his counsel, we would ask his auditor. He told Jacobson, I am quoting, that he actually owns two facilities, the Park Crescent, and he gives the various addresses at two different locations. I simply want to ask him then why, why did his own certified public accountant file under a letter with his signature dated July 20, 1973, and give Dr. Bergman a statement signed by his auditor, revealing his ownership in a whole multitude of nursing homes, revealing his ownership of 75 percent in Allentown, 100 percent in Carlton, and I could read the whole list of them here.

That is why we wonder when he tells the public one thing, and here we see another thing, and considering that he is in a business in which the Government is deeply involved, do we not have a right to question him with the facts as we see them, and see where the discrepancy is.

He said he has no connection whatsoever with nursing homes, that is, the operation of those, and he said further that he never was personally involved in operating the homes, not knowing how to run one. We then wondered why in 1973 he had a salary paid to him of \$25,000 as an operator of Park Crescent, and he filed an HE form certifying to that, and why his wife, who he admitted never put any time in was also paid a salary of \$26,000 as the operator of Towers Nursing Home.

This is Federal money, a profit is paid on these expenses. It is our money, it is your money that is paid to him. Are you questioning our right to ask him those questions?

It is on the record right here. Furthermore, he said, and I would just like to quote what he said, we want to find out, whether there is money to be made on the poor, particularly the elderly poor.

We have a woman, Mrs. Mendelson, sitting right here, who spent a great deal of time researching and writing a book on the whole subject. She made allegations in that book. We are trying now to be very specific, but Dr. Bergman says, and he quotes this to a religious publication. I am not a poor man, but neither am I a millionaire. The stories about my millions are exaggerations.

Why then, and I ask this question of you, does his certified public accountant file an account as of the same date that I previously gave to you, indicating that his net worth is close to \$24 million?

Do you dispute that, do you say that he is a poor man, that he is not a millionaire, when in December 1973, a certified public accountant of his own filed a certified statement, or a letter with him, saying that that is his net worth, and virtually all of that net worth, or at least three-fourths of it is involved in nursing homes that can easily be identified?



Now, are you questioning whether or not the public has a right to know what the truth is in this matter, and is this your kind of counsel to your client?

Mr. LEWIN. May I answer that, Mr. Chairman?

Senator Moss. Yes; you may answer.

Mr. LEWIN. I think, Senator Percy, that you have asked a long question, and I think I am entitled to give a moderate answer if I may.

Senator Moss. All right.

Mr. LEWIN. Senator Percy, it was our intention and Dr. Bergman's intention precisely to assist anybody who wanted to learn what the truth was, as you put it, in a fair, neutral, dispassionate way.

I submit to you, that what this committee, this subcommittee has gone through for a day and three-quarters, was not a search for truth, and I think you can look simply at the record of that.

I asked the chairman at the time of the last meeting, when there were allegations made against Dr. Bergman, and against the Towers, to be able to put on the witness stand three witnesses who are standing outside in that hall, who Mr. Thahl, who is my associate in this case, and myself had spoken with, and who are prepared to rebut squarely and precisely the allegations that were being made against Dr. Bergman.

No such permission was given to me. I submit to you, that this committee, this subcommittee, rather than going out and looking for the truth, has simply taken the one-sided version that a New York State assemblyman has prepared for his own commission, and I would like to just simply recount to the committee one small incident in that regard.

Senator PERCY. May I correct you on that. We are working from records that have been issued to this subcommittee, under our subpoena, and the reason that it was not necessary to have the material delivered this morning is because we had already received a duplicate of most of that material anyway. So the chairman, I think, was very gracious in giving 24 hours on that, so that a court process could go on, but we have the information anyway, and we did not receive it from the assemblyman.

Mr. LEWIN. Senator Percy, I wondered how the committee received that information.

I noticed that Mr. Stein disclosed it as subpoenaed bank records, and to me, and that was 2 days after the hearing, Mr. Stein did disclose that net-worth information as subpoenaed bank records.

To me that was a clear tipoff that what had happened was that this committee's subpoena had been used in some way to get into that bank and obtain its records in an informal manner.

Senator Moss. It was sealed up there this morning, and we still had not seen it.

Mr. LEWIN. Mr. Percy said you had those records.

Senator Moss. No, not those very records. They were sealed.

Mr. LEWIN. I wonder. I call on Mr. Stein to explain to this committee where he obtained subpoenaed bank records that he disclosed to the press 2 days afterwards.

I also call on Mr. Stein in that regard, and I would like to go to my little incident, because I think it is very relevant.

I would like to call on Mr. Stein to explain whether or not he interviewed a lady, who was at the Park Crescent, and who also worked as an assistant to Dr. Bellum in a New York City inspector's—in the New York City Department of Health—and who was interviewed by his committee at substantial length. She was brought down to the Stein Commission, and her testimony was entirely favorable to the Park Crescent, to Dr. Bergman, and indeed to the nursing homes.

Mr. Stein and his staff, according to the discussions that we have had with this lady after I talked to her, dismissed her and told her we are not interested in you because what you have to say is favorable to nursing homes, and we want to get the nursing homes.

Now, to me—

Senator Moss. This is far afield.

Mr. LEWIN. No, it is not far afield, because it is precisely the kind of testimony you have been hearing here today.

I can give the committee the name of this lady, and I can give you her address. I would like her to be put on the stand.

Senator Moss. Look, we simply cannot go on just arguing this all the time. You have told us you thought this committee did not give you a fair deal, that we did not have an open mind, we were not trying to find the truth, and we are trying to say that we are doing what we have been doing for about 7 or 8 years around this country, going from city to city, finding areas where we can dig in and find out what is going on.

Now, you do not have to believe that, and the public does not have to believe it. We are just going ahead and doing our duty, and I do not blame my colleagues for feeling incensed.

Senator Domenici wants to be recognized now. We feel incensed, because we do this in an attempt to fill our responsibility. We are not after Dr. Bergman. We are not after anybody. We are trying to get the truth laid out, and where we find misdoing, we turn that over to the law enforcement agencies.

Where we find that we need to correct the process, so that we can control it equitably; we try to do that as part of our job in writing the law; and that is what we are here for.

Senator Domenici.

Senator DOMENICI. Mr. Chairman, I first would like to ask the Chair if it would establish a rule and ask the guests here if they would not applaud, otherwise, for anyone, regardless of their feelings, although I wholeheartedly agree with what Senator Percy said. I think it is totally inappropriate.

I ask the chairman that you instruct the audience, we do not need any demonstrations, or visual, whatever their feelings on the matter, at least for the balance of the hearings.

Senator Moss. I so instruct them. I try to maintain order without suppressing anybody.

Senator DOMENICI. Mr. Chairman, I think you used the right word when you spoke to being incensed.

First of all, it appears to me, Mr. Chairman, at least as to this Senator, that for counsel, or anyone, to come here before us and make an accusation that we are out to get a person, and have no other motive at all, is more than incensing to me.

I have been a Member of the Senate only 2 years, and I think it is extremely presumptuous on his part to assume that we would not in

the process of investigating the nursing home problems in our country follow other leads, besides the evidence against Mr. Bergman that we presently have before us.

Second, I think a very basic, very basic authority of the U.S. Senate is at stake here. I do not think this lawyer, or lawyers for anyone, can tell us what procedures we should follow, what witnesses we should call, how we should go about the business of finding out the facts. It is our business, if we want to call four nursing home owners and read the records of 12 others.

I know of no rule of law that says that is in and of itself a denial of anyone's rights, whether we do that publicly, or privately, it appears to me that is our business.

One other observation, if he has a claim that there is a procedural deficiency in the subpoena process as it applies to his client, then let us get on with solving the procedure deficiency, but for him to sit here and talk about our function, being adequate, only if he cooperates, is indeed an insult to the U.S. Senate, an insult to the power of the subpoena. We have it. It is given to us. It is inherent to our right.

If they choose to cooperate, that is wonderful. That is the normal manner that the U.S. Senate and its subcommittees do business.

If they choose not to cooperate, that is absolutely no justification for us not finding out relevant facts that will fill in the literally hundreds of gaps about the nursing home care business here and in this country, and I am, as one Senator, not the least bit impressed with whether or not they intend to cooperate in the future, but I am deeply concerned about whether or not a committee of the U.S. Senate is going to be able to get the facts about a significant portion of the nursing home business in this country, if we start with Dr. Bergman's interests, and proceed with others or not.

This is our right, and I do not intend to carry on a dialog with counsel.

They have their legal rights and I certainly sympathize. I have been in their position defending people, but I want them to clearly understand this is not a court of law, this is not a friendly debating society.

There seems to be some very serious issues at stake, and if we cannot get to them then we have indeed lost a substantial portion of that which we need to be legislated.

Thank you, Mr. Chairman.

Senator Moss. May I fill in one little bit in the record. Mr. Lewin complained that he had some witnesses that we did not get to hear the last time.

I now read out of the transcript. I answered him by saying, "Now, I doubt we would have time to hear additional witnesses today, but I will be glad either to accept their written testimony, which could be notarized, or we will have a further hearing in which they will be entitled to speak," so no one was ever cut off. We heard all of the witnesses we could, and if you remember, we were even under great pressure at the end to get through in the time that had been allotted, and we are going to be in that problem today, because we have two more witnesses to go, who I hope do not fail to show up, or refuse to testify.

I think you have made your point, Mr. Lewin. You told us why Dr. Bergman is not here in your viewpoint. We stated what our position

is; and as Senator Domenici said, this has to be determined now, in a regularly procedural manner with the Senate.

Mr. LEWIN. I note that Senator Domenici is leaving.

I would like to make one personal point with regard to a reference made previously, which I understand was repeated on television at a break.

Senator Domenici asserted that I had made an allegation that there was some antisemitism afoot.

I had made no such allegation. The record will state I did not state that, and I certainly did not state that in the letter to the committee.

The letter of January 27, and I read it again, makes absolutely no reference to that, and I think the record should be made clear on that.

My statement was in answer to counsel's remark, asking why individuals were associated together by the department of health, and—

Senator Moss. But let me say every other witness that has been before us, has been under oath, and I would like to put you under oath, because the things you are saying just are not accurate.

Mr. LEWIN. I am just reading from the transcript, Your Honor.

Senator Moss. Do you want to be placed under oath?

Mr. LEWIN. I think it would be inappropriate. I am prepared to rely entirely on the transcript. We quoted that statement to you. I think it is important that the record be made clear.

It is in the record, and the reason I stated it in the record, and the letter is in the record—

Senator Moss. All right. You are excused.

Senator PERCY. Mr. Chairman, I would like to recommend Mr. Lewin read a copy of the hearing of April 1971, some 4 years ago, in Chicago; the procedures, the methods, the form of questioning of witnesses, the kind of information that was elicited was exactly the kind that we are attempting to elicit now.

Those hearings in Chicago resulted in major reform, people left the nursing home business, whose interest was not in people, but just in money, and what we are attempting to do through these hearings is serve notice on this industry. We will not and cannot tolerate the kind of conditions that parts of the industry have carried on.

We are proud indeed to cooperate with the Stein Commission. We have worked closely with them; we have exchanged information.

There is no use in duplicating information. That information that we obtained, which the chairman said would not be provided to them, was not provided to them. But to the extent that we can, we cooperate.

In all of my years in the Senate, 9 years now, I have never heard any witness, not any at any time, make the kind of allegations that you have made against the motives and intentions and objectives of Members of the U.S. Senate who are serving in this capacity, and I consider that very serious. I think Senator Domenici eloquently expressed his indignation which I think we all share.

Mr. LEWIN. I base that statement, Senator Percy, entirely on the record, as it has been made in a day and a half, and there have been references made here, I note, to Watergate, there are references in your letter, and I just think, Mr. Chairman, that the committee should be aware, and I think the public should be aware, that not every petty prosecution is a Watergate, and not every bit of scandalmongering is investigative reporting.

Senator Moss. We will stand in recess for 10 minutes.

[Whereupon, the subcommittee was in short recess.]

Senator Moss. Will you please come to order. We still have two very important witnesses to hear.

Our next witness will be Assemblyman Andrew Stein, whose name has come up here, and who has been investigating in this field for some time, who cooperated with our committee actually, and we do appreciate that cooperation, as I referred to it at the beginning of this hearing. We had an objection to his sitting on the stand the last time, so all day today he has sat in the audience, although he knows more about this problem, I am sure, than does the committee, because he has been working at it longer, and been working very diligently.

We do appreciate your cooperation, and I think I should swear you, since we have sworn all of the witnesses.

[Whereupon, Assemblyman Andrew Stein was duly sworn.]

Senator Moss. You may proceed, Mr. Stein. We do welcome you, and we are glad you are here today.

#### STATEMENT OF ASSEMBLYMAN ANDREW STEIN, CHAIRMAN OF THE TEMPORARY STATE COMMISSION ON LIVING COSTS AND THE ECONOMY

Assemblyman STEIN. Thank you very much, Mr. Chairman, Senator Percy, Senator Domenici, Congressman Koch, and members of the committee staff.

I thank you for the opportunity to testify before you at this second hearing on the problems of nursing homes in New York.

At your last hearing, members of the staff of the State Commission on Living Costs and the Economy described the workings of the New York reimbursement system and some of the irregularities we had uncovered during the course of our investigation.

We detailed the variances of costs reported by proprietary nursing homes; variances which could not logically be explained.

We analyzed the financial statements of 25 nursing homes chosen at random among proprietary homes and found 92 percent to be insolvent.

Finally, we presented a history of one nursing home which had experienced 36 sales, leases or mortgages in less than 20 years; resulting in a reimbursement far in excess of the true market value of the property.

This history was not unique, but was repeated in most of the older homes we surveyed.

Since January 21 the commission has held hearings of its own on the subject and because of the identity of our interests—that of saving taxpayer dollars and insuring the delivery of humane and proper care of the elderly—I would like to share with you some of the highlights of the testimony we heard.

Members of the State health department testified that they had discovered owners claiming items such as diesel fuel for a Florida yacht, college tuition for the owners' son, private maids, chauffeur-driven limousines, and alimony as nursing home expenses which were later reimbursed by medicaid.

They also reported that proprietary operators often made so-called reporting errors all of which tended to increase the reimbursement in tax dollars.

In one instance, errors were systematically incurred so that a higher profit would be insured every year until discovered by the department of health. None of these errors ever resulted in criminal prosecutions. Again, these were not isolated instances, but in the words of one auditor "occur in nearly all proprietary nursing homes in New York State."

One doctor testified that the emergency wards of this city which receive patients from nursing homes have a shorthand name for such patients—the nursing home syndrome.

Any doctor who hears "nursing home syndrome" automatically knows that the patient is a picture of neglect—dehydrated, infected bedsores, incontinent, in addition to being an old, weak human being.

In other testimony an ex-officer of the Metropolitan Nursing Home Association said that after a meeting another operator advocated the falsification of the cost-reporting forms—the HE-2's in order to show lower profits.

In the past both this subcommittee and the temporary State commission have heard from friends and relatives of nursing home patients, from administrators and employees of nursing homes, from health inspectors, and from doctors describing some of the conditions in the homes.

However, last week we had the extraordinary opportunity to hear from the elderly patients themselves; to hear the thoughts and fears that can only be described by one who has actually lived in an inferior nursing home 24 hours a day, 7 days a week.

The comments of these patients far better than I, express the sentiments and goals of investigations such as we are conducting.

Mr. Bogner, a former Towers Nursing Home patient, said:

I thought all nursing homes were like Towers. I had only a few years to live and thought that this is the way old people die. I tried not to bother anyone. I didn't want to make trouble, besides it wouldn't change anything.

When the newspapers and the television reported that Towers was getting \$11,000 for each patient I asked myself—what is worth \$11,000 in Towers? There must be some mistake. "Now I live in a voluntary Home and compared to Towers it's paradise. Towers was hell."

While I could go in and describe the testimony of other witnesses, detailing health code violations uncorrected year after year, inspectors telling about mistreated patients; vendors which never existed; and many other abuses, the time of this subcommittee could be much better spent in collecting direct testimony.

I will therefore enter into the record the transcripts of the commission's hearings so that this hearing can progress.

I would, however, like to quote Dr. Issa Goldman, who summarized the problems of nursing homes in New York, "If I took an old man, put him in a room, beat him, didn't give him any food or water, and he died, the State would put me in jail. If I did the same thing and owned a nursing home, the State would pay me."

That is the end of my direct prepared statement, Senator, and I will enter with your permission, all of our hearings we have had locally in New York here to the testimony, and I appreciate the chance to appear before you, and I would be glad to answer any questions that you may have.

Senator Moss. We would be very pleased to have the transcript of your hearings,\* and they will be a part of our committee files referred to in our printed transcript.

I do appreciate the fine work that you have been doing.

Assemblyman STEIN. Thank you very much.

Senator Moss. And we are anxious to find as much as we can.

Now, we have been accused here today of just concentrating on just one nursing home.

How many did you tell me your commission had examined?

Assemblyman STEIN. Well, we have examined dozens and dozens of homes, Senator, financially, and in terms of financial structure, title searches, and also dozens of homes in terms of patient abuse, and we have heard—incidentally this one doctor I quoted is just one doctor, he is the Chief Resident of Coney Island Hospital in Brooklyn, but we have also heard from many other chief residents in other hospitals around the city, who basically say the same thing, so we have examined dozens of homes in the New York area.

Senator Moss. How long have you been conducting this examination of the commission?

Assemblyman STEIN. Well, Senator, I was appointed chairman of the temporary commission on living costs in September 1973, and the commission started investigating nursing homes at that time.

However, as an assemblyman, before that, I had shown an interest in nursing homes, and investigated nursing homes that related to patient care particularly, for about a year or so previous to that.

Senator Moss. And is it correct your commission is due to expire at the end of March of this year?

Assemblyman STEIN. Yes, sir. April 1 of this year.

Senator Moss. Do you expect the health subcommittee of the assembly to be involved in nursing home issues after that?

Assemblyman STEIN. Well, I would expect that the health committee of the assembly, as well as of the senate. Governor Carey appointed the Moreland Commission, and the special prosecutor is appointed to examine criminal matters, and they will all be involved, and I suspect all of the committees in relation to health will be involved.

Senator Moss. Will you be able to continue your investigation; do you have any other avenue?

Assemblyman STEIN. Well, Senator, if I could answer that, I would be a political prophet.

I don't know. I suspect that after April 1, and I have talked this over with the Moreland Commission, and the special prosecutor—I think that after April 1, the commission will be writing a report, which we will submit to the Governor and the legislature around the middle of March, and I think by April 1, we will finish our investigation, and the temporary commission hopes to be renewed and re-funded, and to go on to other areas, and leave it to the Moreland Commission and the special prosecutor.

Senator Moss. Do you serve on the health committee of the assembly?

Assemblyman STEIN. I do.

Senator Moss. You do serve as a member of that committee?

Assemblyman STEIN. Yes, I am a member of that committee.

\*Retained in committee files.

Senator Moss. You had some discussion about relationships with Mr. Steingut, who is the speaker of the assembly, and that appeared in the press.

I have a copy of it here. Do you have any addition, or anything that you would like to say about that?

Assemblyman STEIN. No, Senator, no addition. I stand by what I said before. I stand by what I said in the past.

Senator Moss. Well, since you have confirmed this, I will put this in the record if there is no objection.

Assemblyman STEIN. Mr. Chairman, I have no objection to that going in the record.

[Press article follows:]

[From the *New York Times*, Jan. 2, 1975]

#### STEINGUT ACCUSED OF BAR TO INQUIRY

BUT HE DENIES URGING STEIN NOT TO INVESTIGATE NURSING HOMES BERGMAN OWNS

(By John L. Hess)

Assemblyman Andrew J. Stein said here yesterday that Stanley Steingut, the Democratic leader of the Assembly, asked him in 1973 not to investigate any nursing homes owned by Bernard Bergman, the central figure in allegations of fraud and political influence in the industry.

When told of the allegations, Mr. Steingut retorted "Assemblyman Stein is a God-damned liar."

Mr. Steingut was in Albany for the inauguration of Governor Carey, who pledged in his address:

"I will fight to change a system in which thousands of our older citizens live out their lives in misery. Those who mistreat our elderly for gain will feel the full force of an outraged people. And those institutions built to serve the elderly will be scrutinized and reshaped. With our support, we shall defend these citizens."

#### ABUSES ALLEGED

The Governor's words, which drew strong applause, followed demands that he name a special prosecutor to investigate alleged frauds under political protection in the Medicaid-financed nursing home industry. These demands, in turn, followed published reports of abuses in the industry and disclosures by the Temporary State Commission on Living Costs, of which Mr. Stein, an East Side Liberal-Democrat, is chairman.

The appointment of a special prosecutor would supersede the move by State Attorney General Louis J. Lefkowitz to impanel a special grand jury and take over prosecution of any crimes. Both Mr. Lefkowitz and Mr. Steingut are longtime friends of Mr. Bergman, whose nursing-home operations are being investigated by Mr. Stein's commission as well as by the United States Senate subcommittee on the aging.

A secret memorandum from State Health Department files, made public yesterday, alleged that Mr. Lefkowitz and Mr. Steingut had sought approval for a Bergman project. Both had denied such activity.

The Bergman nursing homes had insurance dealings with Mr. Steingut and, it was reported, illegally charged Medicaid for contributions to campaign funds he controlled. Mr. Steingut is expected to be elected Speaker of the Assembly, the second most influential post in the state, next week.

#### COMING VOTE CITED

In an interview yesterday, Assemblyman Stein said he had decided to make public Mr. Steingut's reported intervention "because on Jan. 8, members of the Assembly have to elect a Speaker, and before they vote, they should know all the facts."

He said that in January, 1973, as a member of the Assembly Health Committee, he began visiting nursing homes here to investigate alleged neglect of patients. A



few days later, he continued, Mr. Steingut, the minority leader of the Assembly, called him to his desk on the Assembly floor.

"He said Mr. Bergman was a close friend of his," Mr. Stein related, "and if I must investigate nursing homes, please stay away from Bergman's. I said I would see what happened."

Mr. Stein said he did not then know about "the Bergman empire" nor which homes belonged to it, but continue his visits and hit another one of Mr. Bergman's. Then, Mr. Stein said, Mr. Steingut telephoned him to say:

"I told you Bergman was a dear friend of mine, an outstanding man. Why are you continuing to go after him?"

#### NO OVERT THREATS

Mr. Stein said he had replied that he had not known it was a Bergman home, but had gone there "because it was horrible."

He said Mr. Steingut had made no overt threats, "but the fact that he was the head of my party in the Assembly was a threat in itself." He added that Mr. Steingut had not approached him on the matter since 1973, but that since his new inquiry began two months ago "I have received subtle suggestions from many people that Steingut's name be kept out."

Mr. Stein said the two Bergman homes involved were the Towers on the West Side and the Oxford both in Brooklyn, both in recent allegations of financial irregularities.

Steve Bauman, a reporter for WNEW-TV, said in a broadcast last evening that Mr. Stein told him in 1973 that "a powerful Democratic politician" had told him not to investigate Mr. Bergman's nursing homes.

Mr. Bergman, who has defied a subpoena of the Stein Commission, was last reported to be in Vienna. Associates of his said yesterday that he had moved on to Switzerland. Several attempts to locate or reach his lawyers here were unsuccessful.

#### BREAK IS EXPECTED

Mr. Steingut is expected to announce today that he will divest himself of his interests in Grand Brokerage, Inc., and the City Title Insurance Company, to devote full time to the Speakership. Investigators have turned up \$20,000 a year in premiums paid by Bergman nursing homes to Grand Brokerage, and \$4,000 in contributions by the homes and by the Bergman family to a campaign fund controlled by Mr. Steingut.

In addition, files of Dr. Andrew C. Fleck Jr., first deputy state health commissioner, made public on Tuesday show numerous interventions in behalf of Mr. Bergman by C. Daniel Chill, Mr. Steingut's legislative counsel. Mr. Chill has denied having served as Mr. Bergman's lawyer.

A letter last Jan. 28 from Mr. Chill to "Dear Andy" begins: "I am sorry to bother you but at the present juncture all that can be done for Dr. Bergman is with respect to Laconia."

Mr. Chill went on to challenge the state's contention that Mr. Bergman, owner of the Laconia Nursing Home property in the Bronx, and Moses Braunstein, a relative and associate of Mr. Bergman who is the nominal tenant-operator of the Laconia, were not dealing "at arm's length." If the state could not prove it, Mr. Chill contended, it should pay Medicaid rates based on Mr. Bergman's rental figure of \$1,800 per bed per year, plus all operating costs.

Several figures in the ongoing investigation of nursing homes contributed also to the successful campaign last year of Mr. Steingut's son, Robert, for Councilman-at-Large from Brooklyn. Along with many leading property owners, Eugene Hollander, operator of four nursing homes, gave \$1,000 to Robert Steingut, Mr. Chill gave \$500 and Irving P. Seidman gave \$100.

Mr. Seidman, a former assistant district attorney in Brooklyn, was engaged as Mr. Bergman's counsel in the current investigations.

Senator Moss. I want to make it as clear as I can that this committee does not intend to get involved in any local problems that you have, within the assembly or jurisdictionwise.

We hope to cooperate fully with all of the local organizations that exist, the health committee, the commission on which you have been chairman, the Moreland Commission, as it does its work, because our jurisdiction, of course, is nationwide.

We look at New York, we look at all of the other States, and we are just trying to find the pattern by ferreting out the information that we can gain in this State and elsewhere, and so I just ask you that point, because it keeps coming up, and I wanted to see if I could stop it there and find out what your position is.

I hope to ask the speaker what his position is, and then as far as our committee is concerned, that resolves any problems that may exist.

Senator Percy, do you have any questions?

Senator PERCY. I have only two questions.

Mr. Stein, the comments made in this article are quite strong.

The sum and substance of it is that Mr. Steingut apparently telephoned you and asked that you divert the attention of your commission from investigating nursing homes owned by Mr. Bergman, and when Mr. Steingut was advised of this, he said Assemblyman Stein is a goddamn liar. I hate to use that word, but I have to quote it.

Would you care to comment on that? I have not seen a comment since then. Do you certify, under oath, that that conversation did take place?

Assemblyman STEIN. I certainly do, Senator. Mr. Steingut called me, twice, and told me that Mr. Bergman was a close friend of his for over 20 years, a community leader of Brooklyn, and if I had to investigate the nursing home industry, he said why don't you investigate other nursing homes, and stay away from homes owned by Mr. Bernard Bergman, who, again he said, was a close and dear friend of his.

Senator PERCY. Do you, as a result of your work on the commission, your own commission, have reason to believe that political influence is important, in connection with the certification of nursing homes, in connection with the investigation of them, and in the certification originally of the need for them?

Is political influence an important factor?

Assemblyman STEIN. Senator Percy, I think it is a very important factor.

I think that realistically and frankly the conditions in nursing homes could not have existed in the last two decades in New York State if there was not a certain amount of political influence on their behalf.

I may point out, Senator, in 1960, there was a very comprehensive report by then Commissioner of Investigations Louis Kaplan, which documented a similar kind of thing, that our commission is finding, and that you probably found in other areas of the country.

It was called welfare fraud at the time, and we did not have medicare in New York until 1966.

You read that report, Senator, Mr Chairman, it documents, as Commissioner Kaplan said, there was prima facie evidence of massive fraud and terrible patient abuse.

The cast of characters in 1960 is very similar to the cast of characters that we find now. My commission is holding a hearing in February, and we are trying to find out what happened to that report, because we don't know, and it is certainly somewhat of a mystery here in New York, since there was all this prima facie evidence of fraud, given to officials in the city, nothing was done with it, so I don't think, and we have had testimony, Senator, at the hearings before, in which health inspectors of the New York City Health Department have told us

they were deliberately told by superiors—I think it was the deputy commissioner of health in New York—to falsify reports.

I think about five or six of them altogether, they said when they went to nursing homes, certain homes, that if these reports were too negative, they were told to make them more positive, they were told to change the reports, so I do feel, sir, political influence has played a large part in New York State.

Also, there was some memos by Commissioner of Health Fleck of the State health department, which talks about intercession on behalf of nursing home owners, by all kinds of appointed and elected officials of the State of New York.

Senator PERCY. Do you have, or did your commission develop any evidence that would cause you to suspect that organized crime had moved into the nursing home field, either through ownership, or through control over the vendors, or potential vendors of nursing homes? They felt that here was a place that money could be made?

Assemblyman STEIN. Senator, we feel that this is the case in New York.

We have a limited staff, and a limited budget, and we have not frankly been able to explore as deeply as we would like, these connections.

We have had to concentrate on the patient abuse, and the fraud areas, so our initial investigation tells us that this is the case, but we have not had the facility to pursue it far enough.

Senator PERCY. My last question just simply relates to the condition of nursing homes.

You have been in a dozen or so in New York?

Assemblyman STEIN. I would say a couple of dozen.

Senator PERCY. I think Mrs. Mendelson had visited 200 when she wrote her book.

I had a chapter in my own book on nursing homes. My conditions, the conditions I found were some excellent homes, particularly those related to religious groups, some excellent private homes, but for the most part I found rather sad conditions.

Would you want to see your parents in most of the homes that you visited, or would you want to see any parents that you know of living under those conditions, in nursing homes that today are sustained, and supported and paid for the by the Federal Government?

Assemblyman STEIN. Senator Percy, I would say that a large number of many of the nursing homes I have visited in New York, I would not like to see any human being, when they reach old age, be treated like they are treated in those homes.

Senator PERCY. Thank you very much, Mr. Chairman.

Senator MOSS. Thank you very much.

Senator WILLIAMS, do you have any questions of Mr. Stein?

Senator WILLIAMS. I just wondered if you have any generalized judgments on the base of which reimbursement is made, or compensation is made, this weighted cost, this has been the center of the abuses as I read the record of these hearings.

Do you have any generalized opinions?

Assemblyman STEIN. Senator Williams, our commission finds that the cost-plus system that you have in New York, and I believe you do not have the same system in New Jersey, but we feel this system in

New York has encouraged tremendous abuse of the system, and the problem is that the system, even if there were good auditors and good safeguards, it would be very hard to police the tremendous amount of fraud in the cost-plus system.

The problem we have in New York, Senator, is up until I think 2 months ago, we only had 15 auditors for over 800 nursing homes in health-related facilities in New York, so that some homes went for years without being audited.

My commission is working very hard on coming up with recommendations, which we will send to you and the committee by the middle of March, to try to change the system, but we found out the cost-plus system in New York has not worked. It has led to a gross amount of fraud.

Senator WILLIAMS. And is it true that in some of the revelations here, that because of the limitations of the staff people at the State level, that CPA certification would clear costs for reimbursement, as with the Bergman-Dachowitz situation?

Assemblyman STEIN. Repeat that, please?

Senator WILLIAMS. Mr. Dachowitz—are you familiar with his operation?

Assemblyman STEIN. Yes.

Senator WILLIAMS. The CPA, when he certified, that was it, it was not audited in some cases?

Assemblyman STEIN. Mr. Dachowitz I believe was not audited for quite a while, because of all of the revelations that have come out recently, the Towers has been under intensive audit, but there was some period of time, and for many years, Mr. Dachowitz' audits were not checked.

I do not know how many years that was, but due to the recent revelations that have come out by my commission here, and by the media, and the welfare inspector general, he has been audited recently, but I believe for several years Mr. Dachowitz' statements were not audited at all by the State.

Senator WILLIAMS. He was not inclined to boast about his product here today.

Assemblyman STEIN. I don't believe he should.

Senator MOSS. Senator Domenici.

Senator DOMENICI. You were here when counsel made an accusation about you.

I believe he said that he had some evidence that you took only testimony from those that had bad things to say, and as a matter of fact, he indicated that some that had good things to say, you did not want to hear what they had to say.

Would you tell us about that?

Assemblyman STEIN. Senator, this is just totally and utterly false.

I never spoke to any lady from Park Crescent, and I don't know how he characterized her as a health official or former employee.

I never spoke to anybody like that. I would never speak to anybody like that at all. It is totally false.

Senator DOMENICI. As a matter of fact, have you found that some nursing homes are being run well, and in analyzing those as well as those that are not run well, and attempted to come to some conclusion regarding recommendations?

Assemblyman STEIN. Senator, there are some homes in New York that are run well, and there are some proprietary homes that are run well, some voluntary homes that are run excellently.

We are coming up with recommendations now, which will be ready in the middle of March.

There are so many ingredients that will have to be gone into in making the system better in New York.

It is one thing, as I think one of the Senators said before, to have a law, and it is another thing to enforce it, and one big problem we have in New York, we just have terribly inadequate enforcement systems.

The State health department, as I said, had only 14 or 15 auditors for over 800 nursing homes, so that one thing you need is better enforcement.

I think we need in New York a change in the medicaid cost-plus system. We are working on legislation, and I do not want to talk on what those exact changes will be, but we will send you a copy of our report when it is finished.

I think that the system in New York has not worked well.

By and large, while there are some homes, proprietary homes that are good, I think it is fair to say that the industry is replete with fraud, replete with terrible patient care, and it needs a total overhauling, legislative, administrative, and as I said, it requires a lot of work.

We are working on the recommendations now, and we will forward them to you and the committee.

Senator DOMENICI. As far as the cost-plus system, I know that you have just described, the fact that it needs some major changes, in your opinion, and you are not prepared to describe them now, and I don't fault you for that, that is your work, and we certainly expect to get your report, but it appears to me from what I have read and been able to gather, that one of the serious faults with the cost-plus system is that it is apparently built into the entire system a series of non-arm's-length transactions that add to the costs.

It is almost built into itself. I do not use the word fraudulent, because that may or may not be the right word, but obviously peripheral and collateral profiteering by those who are tied together by family, or sometimes the same people who are raising the cost of operations so as to get more money from us, you, and local units, is that one of the major problems as to vendors, owners, lessors, services, and all of the others?

Assemblyman STEIN. That is one of the major problems, Senator. One executive director talked at length at the last hearing about that.

It is one of the big problems. For instance, on nursing homes, we find at least 25 different changes in leases, mortgages, and title, and each time though, many times this happens, and they are sold back and forth, between relatives, associates, and each time that happens, many times that happens, it changes the reimbursement formula, and makes it more, raises the rent, which is reimbursable by medicaid, so arm's-length agreements are one of the big problems, and it has resulted in, I believe, terribly inflated costs in medicaid paying for rent.

The vendor problem is a very big problem. We have found generally a pattern of sometimes vendors that do not exist, that are billing nursing homes several hundred thousand dollars.

We found several examples of that, and the problem is, as I said before, Senator, there is no policing of this vendor problem. It is a very loose system and just does not work.

Senator DOMENICI. It appears to me that since you use averages ultimately in compiling the bid, the maximum, that for this non-arm's-length transaction to be effective in terms of profiteering, it would have to be rather rampant, or at the bare minimum collusive.

Do you find that it is indeed kind of a symptom of the system that has grown up over the years and, therefore, is rampant?

Assemblyman STEIN. It is definitely symptomatic. It is definitely built into the system. We can show you title searches that our commission has done on over 20 nursing homes, and in those 20 nursing homes, you find the same names over and over, who have had the mortgages, and leases, back and forth, back and forth, in over 20 different homes, the same names, they sell it back to each other, 10 percent here, 10 percent there, and often these people are related, either businesswise or by blood.

Senator DOMENICI. One last question. It would appear to me, whereas in many parts of our free enterprise society, bigness and size, numbers of outlets, like McDonald's and the like, owned by the same person, may be a good way for service to be rendered at economic prices, but I am wondering, as I listen and think about this, if there is not a built-in danger of ownership by one entity of a large number of nursing homes, that makes all of these problems we are discussing here today far easier to take place. Do you have any opinions on that?

Assemblyman STEIN. Well, in this case in New York, I think what you said is true, Senator.

It does make it easier to work with certain vendors. We see a vendor, a meat vendor, who is supplying, when my investigators checked the particular address of the establishment, was a tiny little store in a particular section of town that hardly knew about meat, and they were getting several hundred thousand dollars of business from various nursing homes.

Some of the nursing homes totally different, in parts of the metropolitan area, it is not logical, this vendor had relationships to others, to people who owned these various homes, and we find that in New York State, there has been, I guess you could use the word "cartel," of people, who monopolize the industry over the last 20 years.

As I said, this investigation in 1960 basically shows the same thing, the same figures involved, the same people being charged with fraud as we are finding now, and they have thrived for 20 years, and to get down to answering your question, I think in this case in New York, it does make the practices, the bad practices of fraud easier.

Senator DOMENICI. Thank you, Mr. Chairman. Those are all of the questions that I have.

Senator Moss. Congressman Koch.

Congressman KOCH. First, Assemblyman Stein. I want to thank you for having the investigation, which is timely and very important, and I think you are doing an excellent job.

Assemblyman STEIN. Thank you.

**Congressman KOCH.** I want to ask you about an area that has been touched upon, and I think requires clarification, and that relates to the newspaper story, which the chairman put in the record, relating to your alleged conversations with Assemblyman Steingut, and because Speaker Steingut is going to testify, and is in the room, I think it is important for the record that you relate to us, you mentioned two conversations, I believe.

**Assemblyman STEIN.** True.

**Congressman KOCH.** Will you give us the times and the place, where he was, what was said by you, and what was said to you?

**Assemblyman STEIN.** Congressman, in 1972, as an assemblyman, I was not chairman of the temporary State commission at this time, I was investigating patient care in nursing homes.

We have had several complaints from people saying the care was terrible, many nursing homes throughout New York City, so at that time, as an assemblyman on my own, I started to look into this patient abuse.

In about the fall of 1972, is when I basically started this investigation. At the time I was also working pretty closely with channel 5 news, Steve Bowman at channel 5, who is also interested, and I went to several nursing homes in the metropolitan area, mostly all in New York City.

I received, and in going to a couple of them during that time, it probably was at least a dozen, more like 20 or so, to see what the patient care was, very often there would be confrontations, the owners would not let me in, the doorman, because I was an assemblyman. I was allowed to go in, and I did find a great deal of patient abuse.

At about the beginning of October—

**Congressman KOCH.** What year?

**Assemblyman STEIN.** 1972. I received a telephone call from Mr. Steingut who was minority leader of the State assembly at the time. Mr. Steingut asked if I was investigating the nursing homes.

I said I was. He said to me, if you are, if you have to continue to investigate nursing homes, try to stay away—it is not the exact words, but they are reasonably close, certainly of what he said. He said, as long as you have to investigate nursing homes, please don't investigate any owned by Rabbi Bernard Bergman.

He said Mr. Bergman is a very good friend of mine for 20 years, a leader of the Brooklyn Jewish community, and he said there are plenty of other places to go to, you don't have to go to Rabbi Bergman.

That is basically what he said, not word for word. I don't remember my exact response. I said I would continue to investigate nursing homes.

I did not make a big deal of it. At that time the name Rabbi Bergman did not mean anything to me. I did not hear of him. I was not aware of the large amount of fraud involved.

We had been to some nursing homes and saw in some of the nursing homes the patients were being treated very poorly, so I continued my investigation.

**Congressman KOCH.** Did you report that conversation to anybody?

**Assemblyman STEIN.** No; I did not.

**Congressman KOCH.** At anytime, to anyone?

Assemblyman STEIN. I don't remember if I reported that first conversation, but I did report on the first or second conversations. I told Steve Bowman of channel 5.

Congressman KOCH. Tell us about your second conversation?

Assemblyman STEIN. And I also told, the first and second conversations to Mr. Kramer. I think possibly to Mr. Baer. Mr. Kramer, and Mr. Robert Baer who worked for the commission, who were working for me at the time, were the two people doing the investigation of the nursing homes. I received another call, this is in New York City, I was in New York City, I received another call from Mr. Steingut, he was sort of perturbed.

He said, look, since I spoke to you, I asked you to stay from any—I don't remember the exact words—to stay away from any nursing homes owned by Dr. Bergman, he is a good friend of mine, a close associate of mine, something over 20 years, and of the Brooklyn community—the same thing he said before—and, you know, there are so many other nursing homes you can go to.

You can go upstate, you can go in the metropolitan area, the suburbs, other nursing homes, why do you have to continue to go to Dr. Bergman's. And, again, what I generally said, Dr. Bernard Bergman did not mean anything to me at the time.

I said that I will continue to look into nursing homes, and I will not make a point of going to this fellow's, Bergman's nursing homes, and will continue, when I get reports of bad patient care at nursing homes, I will go to them, but I am not going to concentrate on Bergman, because it did not mean anything to me at the time, and then as I continued—

Congressman KOCH. Did you ever have another conversation with Mr. Steingut, or the majority at that time?

Assemblyman STEIN. Concerning nursing homes?

Congressman KOCH. Yes.

Assemblyman STEIN. I will continue.

And about the beginning of January, or the middle of January, it was sometime in January, I think it was approximately the middle.

Congressman KOCH. This takes you into 1973?

Assemblyman STEIN. This takes me to January 1973, in Albany, Mr. Steingut asked me to see him, and I did, and he was pretty, you know, pretty perturbed.

He just said, look, I told you not to investigate. He did not use the word investigate. I told you not to go to homes owned by Bernard Bergman. He is a friend of mine, a wonderful man, he repeated those things, and he said, you know, can't you go to other places, why are you still persisting in doing this, and basically he said the same thing, and I said I am not insisting on going to Bergman's homes.

At that time, again, the name did not mean anything to me, and he said the same thing, and I said the same thing. I will not look to go to Bergman's homes, or anybody's homes, just the homes in which the people are being treated badly.

Congressman KOCH. Did you repeat any of these three conversations to anyone, and if so, to whom, when, and where?

Assemblyman STEIN. Over this period of time, Congressman, the people that I remembered definitely, Mr. Kramer—

Congressman KOCH. Mr. Kramer on your staff?



Assemblyman STEIN. On the assembly staff at the time, Mr. Kramer, and Mr. Baer, who was on my staff at that time, my assembly staff, and to Steve Bowman, a reporter for channel 5 television, who was also doing an exposé at that time, and who I had been working with on some of the things we were doing.

I definitely told them that to the best of my recollection, I don't think I told anybody else, I could have, but I know I definitely told those three people.

Congressman KOCH. That is all I have.

Senator Moss. Well then, that was as far as it went, back in 1973, but did not something come on later at the time, when Mr. Steingut was seeking the speaker's office in the assembly or something like that?

Assemblyman STEIN. No; nothing new happened, Senator.

I think what you may be referring to, at the time when Mr. Steingut was seeking the speaker's office at the beginning of January, I made public what had happened, simply as today, and told the facts of what simply happened, but nothing new happened. I just brought it out.

Senator Moss. You did not make it public until just shortly before that?

Assemblyman STEIN. No; I did not. And the reasons I did not, Senator, were, No. 1, as I said before, at the time that I was doing this inquiry, the investigating 2 years ago, I was looking at the patient care as an assemblyman, there was not any official investigation, I was not aware of any large amount of fraud.

We had looked into some petty fraud but it was based on bad patient care.

When Mr. Steingut said these things to me, I guess he was not happy with it, but it did not take on that great a significance. He was sort of talking like the man was a good friend of his, Dr. Bergman.

I never heard the name Rabbi Bergman. I never heard of the man before, and we had no evidence of any kind of fraud at that point.

It was just bad patient care. I was not happy with it. I did not see any reason to make any big fuss about it at the time. Then the *New York Times*, the *Village Voice*, and other media in the city in the last 6 months, started printing stories of Mr. Steingut's various connections that he had with Mr. Bergman. Our commission and the media started bringing out the facts that Mr. Bergman was not simply a rabbi but a man who had a great amount of wealth, a great amount of power, and owned large numbers of nursing homes. When these two things came out by my commission, by the press, that Mr. Bergman was a substantive figure engaged in what we believe was a large amount of medicaid fraud, and that he had connections, some business connections with Mr. Steingut, and Mr. Steingut was going to be elected, I think it was January 8, the Speaker of the New York State Assembly, and I, felt then in light of all of these things, that it was my duty simply to tell what happened to the members of the Democratic Party, and that is what I did.

Senator Moss. Well, as I said, we appreciate getting your version of this, and we are going to give Mr. Steingut an opportunity to tell his side of it.

We appreciate your testimony, and we appreciate especially the fine work you have done with your investigation.

Assemblyman STEIN. Thank you for this opportunity.

Senator MOSS. Senator PERCY.

Senator PERCY. I would like to join the chairman in commending your commission, and your fine staff, and for the cooperation with us.

Assemblyman STEIN. Thank you very much, Senator PERCY.

Senator MOSS. We will now hear from Stanley Steingut, Speaker of the New York State Assembly.

Mr. Steingut, please raise your right hand to be sworn.

[Whereupon, Speaker Stanley Steingut was duly sworn.]

**STATEMENT OF STANLEY STEINGUT, SPEAKER OF THE NEW YORK STATE ASSEMBLY; ACCOMPANIED BY PROF. CHARLES SELEXSON**

Speaker STEINGUT. Senator, with your permission I would like to introduce Prof. Charles Selexson, who is accompanying me here today.

Senator MOSS. We welcome you, Mr. Selexson, and we are glad to have you before the committee.

We welcome you, Mr. Speaker. We appreciate your coming here, and trying to help us as we delve into the nursing home problems.

You may go ahead and make any speech you want, any statement you want, and we may have a few questions in trying to clear up a narrow little point.

Senator DOMENICI. Mr. Chairman, before you proceed, being a professor, does not identify the man on your left. He could be a professor of anything. Is he your lawyer?

Speaker STEINGUT. He is a friend and a lawyer and a professor.

Senator DOMENICI. Is he here as a lawyer?

Professor SELEXSON. I am here as a friend and counsel, Senator.

Senator DOMENICI. I thank you.

Senator PERCY. Mr. Chairman, may I ask for the benefit of Mr. Steingut, because of allegations that have been made, and we would be anxious to have you take the opportunity to clarify for us, could you give us some idea as to how long your statement is, and will your statement include the direct response to the comments?

Speaker STEINGUT. It will be a short statement, Senator. I do not think it will take more than 10 minutes, and it will include many facets concerning this problem.

Senator PERCY. Thank you very much.

Senator MOSS. Thank you. You may proceed.

Speaker STEINGUT. Senator MOSS, and distinguished Senators, Congressman KOCH, as a member and the speaker of the State assembly, I appreciate your committee's visit to New York, for it will help focus public attention on what is, indeed, a serious and critical problem, the care and treatment of our elderly and infirm in nursing homes.

The situation cries out for remedial action. Wherever the responsibility lies, there appears to have been laxity in monitoring nursing home operations.

I can assure you that I will make every effort to enact appropriate State legislation in the light of the recommendations which will be made on the basis of studies and reports by this committee, the Stein Commission, those of the recently appointed Moreland Commission, as well as of a subcommittee of the assembly health committee dealing with institutional care, a committee I created when I became speaker.

My legislative record in the New York State Assembly is clear—my prime interests are and have been the human needs of the people of this State—from infant care to the aged.

Instituting whatever reforms are necessary in this State to guarantee the highest standards of nursing care in the Nation under strictest supervision and at a cost within the reach of every citizen will be the major goal of my legislative leadership.

I am deeply concerned, too, that the nursing home abuses described in the Fleck files have been buried in the State administrative bureaucracy, and have not surfaced until now.

Why was the legislature of the Senate of New York never advised of the abuses which seem now so clearly to have been documented by the State administrative agencies?

Why wasn't our governmental system of checks and balances given an opportunity to operate?

I can assure you that the legislators of the State of New York are as interested in the answers to these questions as you are.

I also appreciate this opportunity to set the record straight and to clarify my own relationship to the nursing home situation in this State, since I expect, as speaker, to be quite active in bringing about legislative and other reforms in this and other areas.

I am going to deal with the specific accusations which have been made about me.

More important, I will also deal with the baseless innuendo and inference which the media have been fed. I will then answer any questions that you may deem appropriate.

The only statements connecting me to the nursing home situation are these:

(1) Dr. Fleck's memorandum in 1971 which listed me among some prominent public officials who "apparently were interested in" Dr. Bergman, and who thought Bergman was a fine gentleman, and that one of his nursing home applications should be approved.

(2) Assemblyman Blumenthal's statement that some time ago I told him that Dr. Bergman's reputation was very good in the Orthodox Jewish community.

(3) An implication that I attended a meeting in March 1973 with then Governor Rockefeller and Dr. Bergman, among others.

(4) Assemblyman Stein's current and recent recollection that in January 1973, in a conversation on the floor of the assembly and in a subsequent telephone conversation, I threatened him, telling him not to investigate nursing homes owned by Dr. Bergman; and the recent statement of Mr. Kramer's that I had called him about Assemblyman Stein's investigation.

As to the Fleck memorandum, I do not recall calling Dr. Fleck about a Bergman nursing home application.

As to Assemblyman Blumenthal, I accept his statement—in 1971 Dr. Bergman's reputation was very good in the Orthodox Jewish community.

As to attending a meeting with Governor Rockefeller and Dr. Bergman. I did, at Sam Hausman's request, go to the Governor's office, but I was told the Governor would not receive me, and I left immediately.

As to Assemblyman Stein's statement, I continue to be shocked, for I have never threatened anybody, let alone a member of the assem-

bly, and I have absolutely no recollection of an alleged 1973 conversation on the floor of the assembly or on the telephone.

Indeed, the Stein Commission was not created until more than 6 months after the alleged conversations.

Assemblyman Stein's motivation in singling me out from the vast array of notables with whom Dr. Bergman associated, will, I hope, someday become clear.

As to Mr. Kramer, I have no recollection of the man, let alone having spoken to him on the telephone. That, then, deals with the specifics.

To lay to rest any implication of personal gain or profit to me from any relationship with Dr. Bergman, let me give you these salient facts: Neither I nor any member of my family now own nor have I or they ever owned a nursing home or any interest therein, directly or indirectly.

As a lawyer, neither I nor my firm ever represented Dr. Bergman or any nursing home.

Dr. Bergman, or one of his nursing homes, purchased tickets to a dinner given to raise funds for the committee for the election of a Democratic legislature; the amount involved did not exceed \$2,000; none of the funds went to me or to my personal campaign.

Moreover, my records indicate that Dr. Bergman has never contributed to any fund for any of my campaigns for election to the assembly and I have never been a candidate for any other public office.

The Grand Brokerage Corp. is a corporation which is engaged in the insurance brokerage business. This corporation, in which I had a one-third interest, is a successor to the business which was started by my father, a former speaker of the assembly, more than fifty years ago.

I am told that Grand Brokerage has turned over to this committee its records relating to its business dealings with Dr. Bergman, and any of his companies, and that these records show that the gross commissions paid to Grand Brokerage over the last 4 years aggregate from \$2,000 to \$2,500 annually of which my share of the net profit should have been \$85.

I have resigned as an officer and director of Grand Brokerage Corp. and have entered into an agreement for the disposition of my stock interest in that corporation; and I have also severed my connection with my law firm.

These decisions, incidentally, were made some months ago based on my determination to devote my full time to the speakership and preceded the current probe of the nursing home industry.

I cannot think of any other way to demonstrate my lack of any financial interest in the nursing home industry; but, again, if there is anything else you want to know, I, and my personal records, are available.

I know nothing about the details of Dr. Bergman's ownership of nursing homes, or of his other business activities. I am in no way associated with him in any of his business enterprises.

Now, let me tell you of Dr. Bergman's reputation. Nelson Rockefeller, Malcolm Wilson, Stanley Steingut, Robert Douglas, Norman Hurd, Louis Lefkowitz, among many others—all were of the same opinion: That he was a man of fine reputation in the community.

I knew, too, that he was associated with philanthropic causes and was extremely active in Zionist works such as the Mizrahi organization. In these activities, I saw him in the company from time to time of

men for whom I have the highest regard—for example, Sam Hausman, a man who gives of his time and money to Jewish causes, a gentle and quiet man who never has asked me for anything for himself.

In this connection, I should point out that I have never had a social relationship with Dr. Bergman.

I have never been in his home, nor has he been in mine, although, along with many distinguished members of the community, I was invited to, and attended the wedding of his daughter in March 1973.

One last point: I now know my legislative counsel, C. Daniel Chill, wrote several letters concerning Dr. Bergman.

I am also told that he attended a meeting in Dr. Hurd's office. Although I was generally aware that, because of Mr. Chill's longstanding personal relationship with Dr. Bergman, he may have been acting on Dr. Bergman's behalf, he had no authority to represent that his activities were at my specific direction—nor do I understand that he ever did so.

His ties with Dr. Bergman were personal and go back to his childhood.

As I stated earlier, I wanted to put these salient facts on the record, and then make myself available for all questions. Quite frankly, I welcome them.

Senator Moss. Thank you, Mr. Steingut.

Speaker STEINGUT. Thank you.

Senator Moss. We do appreciate your coming to clear up what have been allegations made and questions that have been raised.

At the wedding of Dr. Bergman's daughter, did you talk with him at that time anything about getting approval for a home that he had built?

Speaker STEINGUT. I do not recall talking with Dr. Bergman about any of his nursing home operations on that evening; however, Sam Hausman did talk to me, and told me that he had arranged a meeting with the Governor, and would like me to go with him. I told Sam that I thought there were two reasons why I should not go. No. 1, I knew very little about the problems, and I knew very little about medicaid reimbursement. I am not an expert, and do not pretend to be.

But more importantly, I told him the Governor and I were not on speaking terms, that we were having a bitter, bitter, bitter controversy concerning the harsh drug laws which I was opposed to in the legislature. He said, oh, don't worry about it, Stanley, he is a friend of mine, he is a good guy. He said, I know when he gets over this, he will be all right; but I think it would be a mistake.

Knowing Sam Hausman, it is very difficult to say no. I might say too, that I forgot how soon after the wedding this meeting took place, but I did go to the Governor's office at the appointed time.

Senator Moss. You did become aware—

Speaker STEINGUT. May I add, Senator, may I tell you that at the wedding, my counsel came to me, and told me he had been asked to go to this meeting, and was told that I had agreed to go. Should he go? I told Sam Hausman that I would go; and perhaps you know more about these problems than I do, it would not be a bad idea, and we will go to the Governor's office.

That is Mr. Chill, who I referred to.

Senator Moss. Mr. Chill?

Speaker STEINGUT. Yes. I went to the Governor's office at the appointed time. I arrived. Mr. Chill was waiting in the waiting room.

Within minutes, Sam Hausman came out of a door, white as a sheet. He said, Stanley, I was never so embarrassed in all my life. The Governor refuses to see you.

I said, well, the feeling is mutual. Mr. Chill and I then left the building, and on the way out, I ran into the State Republican chairman, who is Mr. Rosenbaum. I said, Dick, your boss just threw me out, and I don't know who was in the meeting, I don't know whether the Governor was there; and let me at this point, Senator, make it crystal clear, that I am not here today to attack anybody's motives, or any appropriateness, or disappropriateness of legalities or not, concerning anybody, because I am not that familiar with the problem.

I cannot sit here and tell you now, as I was asked in Albany yesterday, can you prove the Governor was there. I cannot. I did not see the Governor. I did not see anybody else but Sam Hausman and Dan Chill.

Senator Moss. Was Dr. Bergman in your district; did you represent him at any time?

Speaker STEINGUT. No. Let me tell you the kind of district I have.

I have a very highly concentrated Orthodox Jewish community located in my community.

Let me, too, point out to you that at one time I was the Democratic county chairman of Kings County, which is larger than 27 States in the Nation. I was a county leader for a period of 7 years, as well as being a member of the legislature; when elected minority leader, I resigned the position of county chairman.

Dr. Bergman's relationship with me did not emanate because he lived in my district. It emanated as a result of meeting him at many of the Orthodox Jewish functions that I attended all over the city of New York.

There are many people who do not live in my district who I know very well.

Senator Moss. You said that you knew that Mr. Chill had used your stationery, or had done something to help Dr. Bergman. Did you say that?

Speaker STEINGUT. No; I said I recently found out.

Senator Moss. I see.

Speaker STEINGUT. It has recently come to my attention.

I knew generally that Dan Chill was making inquiries, but I never knew any specifics.

Senator Moss. Dr. Bergman, when he did appear before the committee 2 weeks ago, said that his concern, I think was the Willoughby, which had been constructed, and never could get approval—excuse me the Danube—I have got the wrong name—the Danube, that he could not get approval, and he just passed the word to you that he would like a little help to see if he could not get them to listen to him up there at the department. Do you remember any incident like that?

Speaker STEINGUT. I don't recall any conversation concerning that in the State department. I recall seeing on television a discussion of a meeting in Dr. Hurd's office discussing it, in which Dan Chill was present, and which I did not know he was present at the time, and which I did not attend.

Senator Moss. I think he called it the bureaucracy that he could not get to move, and he was saying he wanted them to move.

Speaker STEINGUT. Well, Senator, may I with your permission point out the problems that all of us have, and I would like to relate it to this problem, and for 1 minute, if you think the nursing home problem in this State is the only critical problem we have concerning people, and the problems of the deprived, I would like to point out some others.

Our institutional care in this State is at its lowest ebb. Our mental health institutions, the care for our mentally retarded, the day-care program for the children, is under serious, serious criticism.

The Federal Government and the State have to share equally the blame for the problems that are going on.

I am so delighted and proud that you are here in New York, because without the Congress, and without the legislature, we are not going to cut through this maze.

Now, let me talk about bureaucracy, and of course, I don't relate to your positions, Congressman Koch knows better than anybody at this table, I believe, the problems of a public official in the city of New York, a member of the assembly is at the low end of the totem pole.

He is the closest to the people. I am in my community 2 nights a week, and lined up are people having problems in one fashion or another, and with the bureaucracy.

More time is spent by a member of the legislature to our solving these problems than the ability to devote to the legislative work.

In our case, a lot of it is because we are understaffed. I am trying to correct that as a speaker.

However, I am at the board of education. I am at the State university. I am at the department of motor vehicles.

My staff is with constant complaints from people concerning the bureaucracy, and in the fashion of we ombudsmen, and I propose as a result of all of this, to perhaps study the feasibility of establishing a legislative office to deal with this problem on behalf of legislators, and I propose consistent with our new Governor, of open government, that every inquiry made of any department, made of anybody, be available to the public and the press.

We are all vulnerable, and we, I think, must face the facts of life to correct this.

Senator Moss. Well, thank you for your response. I am sure it strikes a responsive chord with us, because we at the Federal level have the same thing.

Our people come to us, they think they cannot get a hearing, or they cannot get things moving in the Federal bureaucracy, and I do not feel any compunction in saying, give this fellow a hearing, hear his case, but there is that line as to whether when you say hear his case, whether or not that is influencing the outcome a little bit.

Speaker STEINGUT. Let me point out, Senator, that in our State, until this year—and incidentally, I have been a candidate for speaker since November 9, not January 1.

In this State, we have been in a weak minority position, and let me also point out to you that my record as leader of my party in the minority is one that has been in violent opposition to the policies of the Rockefeller-Wilson administrations, and I do not think in that administration I could get to first base with any influence.

Senator Moss. Well, I do appreciate your response. I am sorry our time is limited. I must turn to our colleagues. They have some questions, I am sure.

Senator Percy?

Senator PERCY. I have a few questions here that I think require short answers to clarify the record, Mr. Speaker.

I would like to say that as I ask these questions about Dr. Bergman, I do so knowing that I said some of the best nursing homes I have ever been in are religious-related homes, and that I can say without equivocation that among the tops have been those supported by the Jewish community, by Jewish charities. My mother is 83 years old and plays a concert violin. Last year, I believe, she played concerts in 30 nursing homes. She always feels the spirit engendered by people who have a great deal in common, and certainly feel deeply about the home that they are in, and the gratitude they have for it; I wish people who run poor homes could see and go into good homes.

Now, we are concerned obviously with Dr. Bergman. We are sorry that he is not here to testify, but I would like to ask you about your relationship with him. How long have you known him, how many years?

Speaker STEINGUT. It is strictly a guess. I would say in the neighborhood of about 20 years.

Senator PERCY. Do you know Judge Louis Kaplan, who was formerly the investigator?

Speaker STEINGUT. Yes; I know Judge Kaplan.

Senator PERCY. Were you familiar with the 1960 Kaplan report?

Speaker STEINGUT. No.

Senator PERCY. It is a well-known report.

When did you discover and learn, Mr. Speaker, that Dr. Bergman was one of the principal targets of that particular probe back in 1960?

Speaker STEINGUT. I read about it recently.

Senator PERCY. You have no knowledge of it prior to that?

Speaker STEINGUT. I don't recollect it at all.

Senator PERCY. Did Dr. Bergman or anybody on his behalf, on or about that time, 1958, 1959, 1960, at the time of the Kaplan report, ever solicit you for assistance, or come to you and ask you for help?

Speaker STEINGUT. No, sir.

Senator PERCY. Your financial relationships with Dr. Bergman you covered in your statement.

You mentioned fees of \$2,500, of which you have a third interest, which represents a net profit to you, you think of no more than \$85.

Could you give the committee some idea of how much business has been done by your insurance firm with Dr. Bergman and all nursing homes in which he is directly or indirectly associated over a period of years? How significant has that been?

Speaker STEINGUT. I think I pointed out the significance.

I have a representative here from Grand Brokerage, but to the best of my ability, I will stand corrected, that Grand Brokerage insures two nursing homes, now one, of Dr. Bergman's, and I might point out—

Senator PERCY. Do you know how many homes Dr. Bergman has?

Speaker STEINGUT. I have no idea. I read anywhere from 46 to 150.

Senator PERCY. Then how is it possible for you to assert only two homes?



Speaker STEINGUT. No; the records were submitted to this commission. The records were submitted to the Stein Commission. It is indisputable. These are the records, these are the facts.

We commenced doing business with Dr. Bergman, I believe, in 1971, and, as I said, we now insure one nursing home owned by Dr. Bergman. Up until the Towers Nursing Home was closed recently, we insured two, and the gross commissions averaged a little over \$2,000 a year, as I said, a profit of about 10 percent, which is a little over \$2,000, and if you project my interest in the company, it would amount to about that.

Senator PERCY. Mr. Speaker, have you or any members of your family, just for the record, at any time received any gifts, or any other things of value from Dr. Bergman?

Speaker STEINGUT. Not to my knowledge, no.

As a matter of fact, I asked my wife today if we received, when somebody was talking about Christmas gifts, I was watching television, I asked my wife did we ever get a Hanukka gift, and she said no.

Senator PERCY. What is the name of the insurance company?

Speaker STEINGUT. Grand Brokerage Corp.

Senator PERCY. Is there a Midland Insurance group with which you have any relationship?

Speaker STEINGUT. We may do business with them. I don't know.

Mr. Marcel, the executive vice president of Grand is here, and he can best answer that question.

Senator MOSS. What is your name?

Mr. MARCEL. Henry Marcel.

Senator MOSS. All right.

Senator PERCY. The question I was going to ask, that I was asking the speaker was whether he or his family has any interest in Midland Insurance?

Speaker STEINGUT. Oh, I can answer that question. I thought the question was whether Grand Brokerage had any interest in the business. The answer is no.

Senator PERCY. No interest whatsoever, there is no relationship between Midland and Grand Brokerage?

Mr. MARCEL. Only from the viewpoint of normal brokerage procedure. We place brokerage procedure with the Midland as well as any other insurance company.

Senator PERCY. Just again for the record, Mr. Speaker, does any insurance company, with which you have any relationship directly or indirectly, do business with other nursing homes, and, if so, to what extent?

Mr. MARCEL. Yes.

Senator PERCY. Will you tell the committee to what extent you do engage in business with nursing homes?

Speaker STEINGUT. I would be happy to. There are two other nursing homes, and you can correct me, Henry, two other nursing homes, known as the Lawrence Nursing Home and the Brookhaven Nursing Home, which are totally unrelated to Dr. Bergman, are owned by a fellow that I play golf with at the Old Westbury Country Club, a man by the name of Mr. Fover, and you can give the amount of business.

Mr. MARCEL. Approximately \$1,800 per annum, in commission income from those two nursing homes.

Senator PERCY. This is over how long a period of time?

Mr. MARCEL. I am talking annually.

Senator PERCY. Per annum?

Mr. MARCEL. That is correct, sir, and you must recognize these are commission incomes, that we market through the insurance industry, to get the best coverage we can for our clients.

It is a highly competitive business as you probably know.

Senator PERCY. And the very heavy insurance load that Midland has with nursing homes, will you tell the committee, Mr. Speaker, what effect that would have upon you, if any, financially?

Speaker STEINGUT. None whatsoever.

Senator PERCY. None whatsoever. No relation?

Speaker STEINGUT. No relationship, no connection, and as I pointed out, Senator, other than what Grand Brokerage does in the way of placing insurance, and I don't know the extent of that, but as I said, I would be very delighted to supply you with all of my personal records of whatever kind that you desire.

Senator PERCY. Could you identify the capacity in which you have known C. Daniel Chill?

Speaker STEINGUT. Yes. C. Daniel Chill originally was counsel to Assemblyman Cretner in the Assembly of the State of New York.

I met him, and I think he started in 1965. That was the first time I knew of C. Daniel Chill.

Don't hold me to these dates, but one of my dearest and closest personal friends, who lived two doors from me invited me to his home after that in 1965 to meet his prospective son-in-law, and that is where I again ran into C. Daniel Chill.

He married the daughter of a very dear friend of mine.

Senator PERCY. Were you aware that on occasion he was interceding on behalf of Dr. Bergman as early as 1971 with various State officials?

Speaker STEINGUT. I cannot place the date, Senator.

All I can say is that I was generally aware he was making inquiries, and I knew of no specifics, and I cannot place any date.

Senator PERCY. Specifically, were you aware that Mr. Chill asked Assemblyman Blumenthal to intercede on behalf of Dr. Bergman, who at the time had a problem, I believe, with the State health department.

Speaker STEINGUT. Am I aware of that?

Senator PERCY. Yes.

Speaker STEINGUT. I am a little confused on that. I understood that Stanley Lowell had asked Assemblyman Blumenthal, but it could very well be.

Senator PERCY. In other words, it could be possible that you did know. You cannot define it any closer than that?

Speaker STEINGUT. I have no recollection of it. Just most of this I just learned from the newspapers.

Senator PERCY. Did Mr. Blumenthal speak to you about Dr. Bergman in 1971?

Speaker STEINGUT. As I said in my statement, Assemblyman Blumenthal says I spoke to him, and I accept.

Senator PERCY. In the fall of 1972, were you aware that Assemblyman Stein was inquiring of nursing home conditions by visiting various nursing homes in New York City?

Speaker STEINGUT. I don't recollect that, Senator, and on that, I would like to point out a few salient factors, because on January 1 this year, in Albany my press representative came to me and said Assemblyman Stein just said you threatened him, and I gave the answer that you read which I prefer not to repeat.

Senator PERCY. But he clarified that by saying, as I recall, there was never any threat, it was just the fact that you were the Speaker—

Speaker STEINGUT. That is one of the problems, Senator, there are many things Assemblyman Stein has said that are not too clear, and some which are illogical, and I would like to point to February 1974, if there was anything that I was concerned about with nursing homes, it would not have had to have been me.

Senator PERCY. But at that time, did Dr. Bergman at any time come to you, explain his problems, and ask for any help in connection with that problem? I am asking this question, being a legislator myself, and having literally thousands of cases come to me, it is not an unusual thing.

Speaker STEINGUT. Of course it is not.

Senator PERCY. And I am not implying anything about it.

Speaker STEINGUT. But in connection, you are talking about in 1972?

Senator PERCY. In connection with the inquiry that was then being carried on by Mr. Stein in 1972. It was publicized as I understand it. It was reasonably well known. Obviously somebody in the business would know about it.

Can you tell the committee whether Dr. Bergman did or did not at any time come to you, and say he had a problem, and asked for your advice, counsel, guidance, or help?

Speaker STEINGUT. Problem with who, Senator?

Senator PERCY. With whatever problem he might have, any investigation that might be made.

Speaker STEINGUT. Concerning Mr. Stein?

Senator PERCY. Concerning Dr. Bergman, any investigation, has he at any time come to you and asked for your help?

Speaker STEINGUT. Senator, from time to time, he has told me of many problems that he has had.

I don't recollect ever talking it up with any State agency. I don't recollect talking to Assemblyman Stein, and I would like to go into, if I may, to 1974, February 1974, and I would like to point out that, or perhaps I should go to July 1973 first, and the creation of the commission, and leave it at that time, because I think you are fully familiar with that; but go to 1974 when there was a deficiency appropriation before the legislature, and it took the Democrats under my leadership to defend it, and to enact it.

Senator PERCY. Mr. Steingut, obviously, we are not interested in a particular case.

What this subcommittee is very much interested in, however, is what is the relationship, obviously of political influence in connection with nursing homes all across the country. The probing that we are doing here is in principle the same thing we did in my own State of Illinois. We are trying to determine what the pattern is, and by our questioning, and your responses, and your attitudes, I think we can inform and educate other legislators, other politicians, that this is an area that they

best stay out. We are trying to get them to stay out of it, but the very point, the very important question—

Speaker STEINGUT. Senator, may I, please—

Senator PERCY. Yes, of course.

Speaker STEINGUT. I think that if you take the volumes of memorandums, not the first memorandum that was leaked by the Stein Commission, but the entire volume of memorandums, that Dr. Fleck made public, because of the leak of the first one, you could see reams of involvement and, again, I want to repeat, for the purpose of emphasis only, not to burden you with time, that I do not sit here and accuse anybody of any improprieties.

I know of none, but when you talk of the possibility of political influence, I think that these volumes can spell it out more succinctly than I ever could and, Senator, I am concerned as you are.

Senator PERCY. Thank you.

The question really gets down to—and I suppose the \$64 question is—were these calls made, was the conversation actually held, and unfortunately it is not one, it is one apparent meeting in 1972, and it is at least two telephone calls alleged to have been made on behalf of Dr. Bergman.

Now, there are three occasions, can you categorically state to this committee, that you did not have such a conversation, and you did not make two such calls, at least two such calls regarding Dr. Bergman to Mr. Stein?

Speaker STEINGUT. Senator, if you are asking me to speculate, I don't think—

Senator PERCY. No; I am just asking for facts.

Speaker STEINGUT. Well then, the facts are that there are several reasons why I must say to you that I have no recollection of this.

Mr. Stein had no official position. He was not involved to my knowledge, and I might say I took the time and trouble to get the clippings of the *New York Times* during this period to try to refresh my recollection, and there was nothing in there.

Senator PERCY. But, Mr. Steingut, in this instance, where there are three occasions that we are talking about now, where Mr. Stein has been exceedingly explicit about them, I just do not feel I should let the occasion go by and have you precede your comment with a "I do not recollect."

It is such a familiar phrase and term. For you, sir, I would urge that you try as best you can to be able to say categorically no, or possibly they did occur them.

Speaker STEINGUT. Well, Senator, let me point out something that just came to my mind.

It was only a matter of days, within days of these alleged conversations, that a member of the Stein Commission called the chairmen and said, pursuant to that leaked first Fleck memorandum, "What is this with Stanley?" The answer was, "Oh, I don't know of anything involving Stanley. It is strictly the press."

Senator PERCY. Specifically to jog your memory—

Speaker STEINGUT. And, therefore, a sudden recollection by Assemblyman Stein shocks me as much as that statement.

Senator PERCY. Because we have a plane departure in less than an hour, this is going to bring the hearing to a very quick close. I think

I have just one last question regarding whether or not you recall Mr. Oran Kramer, and to ask the question, whether you did call Mr. Oran Kramer, a member of Mr. Stein's staff on behalf of Dr. Bergman?

Speaker STEINGUT. Well, Senator, may I say that when I came into this room for this hearing, I heard Mr. Oran Kramer being described as a member of Assemblyman Stein's staff.

When I read about this in the newspapers, first when I heard of it on radio, the name was Greek to me. Greek in New York, means I did not know the name.

Senator PERCY. Is it possible for you to say categorically that you did or did not make such a call?

Speaker STEINGUT. May I just finish, Senator?

Senator PERCY. Yes, of course.

Speaker STEINGUT. I took the trouble to check the legislative records of employment. I could not even find the name Kramer there.

Only the other day, somebody pointed out the New York Law Journal, that is where I saw the name.

Senator PERCY. Mr. Chairman, the speaker did say he had a very, very high opinion of Dr. Bergman.

As a result of all that has come out, have you had reason to reassess that, or do you still hold exactly the opinion that you previously held of Dr. Bergman? And as a friend of his, I want to give you an opportunity to comment.

Speaker STEINGUT. Senator, first of all, I talked to Dr. Bergman's reputation, and I am sorry that I have to go into my political philosophy.

Senator PERCY. Mr. Chairman, I will have to yield to my colleagues.

Speaker STEINGUT. In answer to this question, I would prefer to be able to answer this.

Senator PERCY. I will really withdraw the question then.

Speaker STEINGUT. Senator, may I, Mr. Chairman, with your permission, may I answer the question?

Senator MOSS. All right, if you will, please do so as concisely as you can.

Speaker STEINGUT. My record is one that I am a firm believer of civil liberties, and I think to characterize anybody as being subjected in this degree would be a mistake on anybody's part.

I believe in the civil liberties of every person in this country.

Senator MOSS. Thank you.

We will be glad to have your statement,\* and of course it will be printed in the record in full.

Senator DOMENICI, under the strictures of time, do you have any questions?

Senator DOMENICI. Mr. Chairman, I had some, but I will yield to the Congressman.

If I still have time, I will ask some questions.

Senator MOSS. Congressman Koch.

Congressman KOCH. Speaker Steingut, we are old friends, and it is unpleasant to be in this kind of situation, but I think it is important that the facts be cleared up for everybody's benefit, yours, maybe Mr. Stein's, and the people interested in this, so I want to get very specific.

Mr. Stein testified he had two telephone calls from you, one in September of 1972, one in the month of October 1972, and I am asking whether you made those calls, and in those calls, do you have any recollection of having taken up the matter of Dr. Bernard Bergman's nursing homes, to wit?

Speaker STEINGUT. If I might, the first thing I read or heard concerning this charge, originally, Mr. Stein said took place in January.

Now, it is October. Maybe next week it will be November. I have no recollection.

Congressman KOCH. That is very important, because when you testified in your statement, you said you never threatened him, and perhaps you never did, but the statement that he made here did not relate to threats, and so I want to be really specific about that question.

Speaker STEINGUT. What I said here—

Congressman KOCH. Let me finish.

The question is whether on or about the months of September and October, did you have any conversations with him, which you initiated, or which he initiated, in which you discussed with him Dr. Bernard Bergman, and his nursing homes, and the fact that Stein was evidently investigating him; do you have any recollection?

SPEAKER STEINGUT. This is probably the sixth time I have said the same thing.

Congressman KOCH. You have no recollection?

Speaker STEINGUT. I have no recollection of this, because the time, and everything else, and in addition to which—

Congressman KOCH. I understand.

Now, the question I have, Are you taking the position categorically that they did not occur?

Speaker STEINGUT. Do you want me to speculate?

Do you want me to go through this colloquy again?

Congressman KOCH. No. All I know is Andrew Stein said they did occur.

I am satisfied with that. You are not denying they occurred; you simply do not recall that they occurred?

Speaker STEINGUT. That is correct.

Congressman KOCH. In respect to January 1973, did you have a conversation with him concerning Dr. Bernard Bergman, and this was in person, not on the phone, and if you did, did you have such a conversation with respect to Dr. Bernard Bergman?

Speaker STEINGUT. First, I would have a very difficult time to remember ever seeing Assemblyman Stein on the floor of the assembly.

Congressman KOCH. Especially from this day on.

Speaker STEINGUT. No; from then on.

The absentee record, and everything else, is beyond me, and I would have a very difficult time, honestly, to recollect.

Congressman KOCH. Mr. Steingut, you said—what I am asking is whether or not you had such a conversation concerning Dr. Bernard Bergman in the assembly in January 1973 with Assemblyman Stein, or you do not recall?

Speaker STEINGUT. We have a little different body than does the House and the Senate of the United States.

We do not have the decorum. We are more of a parliamentary system rather than a committee system, which I am trying to change.

I don't know how many conversations a day I have on that floor, and I could not recall last week.

Congressman KOCH. I am not going to pursue this in any way, but remember, I am only asking about a conversation relating to Dr. Bernard Bergman, and you have no recollection?

Speaker STEINGUT. Absolutely.

Congressman KOCH. Let me go to another point.

As the Senator pointed out, and as you pointed out, as I know from personal experience, you get thousands of letters and telephone requests and do things on behalf of constituents.

I do, and I try to oblige my constituents, and I have obligations as a Member of the House of Representatives.

What I wish to ask you is, is it unique that there would be a meeting that you would go to with your chief counsel, Mr. Chill, involving the Governor, concerning a proprietary home, and a problem that some person, not a constituent of yours, but important in your community, is having a problem involving a license, a proprietary matter, is it unusual for you to make such a personal request with a personal appearance at a meeting of that kind?

Speaker STEINGUT. For me, it would be unusual.

Congressman KOCH. Has it ever happened before?

Speaker STEINGUT. Oh, I think I have attended meetings with community groups, but the only—

Congressman KOCH. Of course.

Speaker STEINGUT. Let me answer the question.

Congressman KOCH. I am not talking about community groups.

I am talking about matters involving constituents who have a profit motive, not community men.

Speaker STEINGUT. Let me point out to you, and I think I have to do it more succinctly than I did in my statement.

Sam Hausman is a very unique man in New York, philanthropically. He is a man I have known all my life and I have worked with him in many causes. He is a very difficult man to say no to.

Congressman KOCH. So this was unique?

Speaker STEINGUT. You may characterize it as unique. I went because Mr. Hausman requested that I go.

Congressman KOCH. But you do not have any recollection of having done that for anybody else in a similar situation?

Speaker STEINGUT. I would have to search; it is possible.

Senator PERCY. Mr. Steingut, do you think your language about characterizing Mr. Stein was a little strong, considering the difficulty you had in collecting this, to come out with an absolute, outright declaration that he is a damn liar?

Speaker STEINGUT. I thought I pointed that out quite clearly.

Senator PERCY. I would like to give you the opportunity on the record now.

Speaker STEINGUT. Yes. I was in the new minority leader's office on the January 1 inauguration, and I thought I had mentioned this before.

My pressman came running in, and it was a social gathering on inauguration, and he said "Andy Stein just accused you of threatening him", and I said, "He is a goddamn liar."

That was not strong enough, until I saw some retractions, and yet in following statements of Mr. Stein's, he then said I inferred that it was a threat.

I never threatened a soul in my life, Senator, and there are 148 members of that legislature.

Senator, could I—

Congressman KOCH. Could I ask one more question?

Senator Moss. It is now 6 o'clock, and we have got to be in Newark on an airplane at 6:50.

I am afraid that I have to terminate it, and I do thank you, Mr. Steingut, very much.

I have cut off my colleague here, and I am very sorry about that.

[The prepared statement of Speaker Steingut follows:]

#### PREPARED STATEMENT OF STANLEY STEINGUT

Senator Moss and members of the committee, as a member and the speaker of the State assembly, I appreciate your committee's visit to New York for it will help focus public attention on what is indeed a serious and critical problem—the care and treatment of our elderly and infirm in nursing homes. The situation cries out for remedial action. Wherever the responsibility lies, there appears to have been laxity in monitoring nursing home operations. I can assure you that I will make every effort to enact appropriate State legislation in the light of the recommendations which will be made on the basis of studies and reports by this committee, the Stein Committee, those of the recently appointed Moreland Commission, as well as of a subcommittee of the assembly health committee, dealing with institutional care—a committee I created when I became speaker. My legislative record in the New York State Assembly is clear—my prime interests are and have been the human needs of the people of this State—from infant care to the aged.

Instituting whatever reforms are necessary in this State to guarantee the highest standards of nursing care in the Nation under strictest supervision and at a cost within the reach of every citizen will be the major goal of my legislative leadership.

I am deeply concerned, too, that the nursing home abuses described in the Fleck files have been buried in the State administrative bureaucracy, and have not surfaced until now. Why was the legislature of the State of New York never advised of the abuses which seem now so clearly to have been documented by the State administrative agencies?

Why wasn't our governmental system of checks and balances given an opportunity to operate? I can assure you that the legislators of the State of New York are as interested in the answers to these questions as you are.

I also appreciate this opportunity to set the record straight and to clarify my own relationship to the nursing home situation in this State, since I expect, as speaker, to be quite active in bringing about legislative and other reforms in this and other areas. I am going to deal with the specific accusations which have been made about me. More importantly, I will also deal with the baseless innuendo and inference which the media have been fed. I will then answer any questions that you may deem appropriate.

The only statements connecting me to the nursing home situation are these:

(1) Dr. Fleck's memorandum in 1971 which listed me among some prominent public officials who "apparently were interested in" Dr. Bergman, and who thought Bergman was a fine gentleman, and that one of his nursing home applications should be approved;

(2) Assemblyman Blumenthal's statement that some time ago I told him that Dr. Bergman's reputation was very good in the Orthodox Jewish community;

(3) An implication that I attended a meeting in March 1973 with then-Governor Rockefeller and Dr. Bergman, among others;

(4) Assemblyman Stein's current and recent recollection that in January 1973, in a conversation on the floor of the assembly and in a subsequent telephone conversation, I threatened him, telling him not to investigate nursing homes owned by Dr. Bergman; and the recent statement of Mr. Kramer's that I had called him about Assemblyman Stein's investigation.



As to the Fleck memorandum, I do not recall calling Dr. Fleck about a Bergman nursing home application. As to Assemblyman Blumenthal, I accept his statement—in 1971 Dr. Bergman's reputation was very good in the orthodox Jewish community.

As to attending a meeting with Governor Rockefeller and Dr. Bergman, I did, at Sam Hausman's request, go to the Governor's office, but I was told the Governor wouldn't receive me and I left immediately.

As to Assemblyman Stein's statement, I continue to be shocked, for I have never threatened anybody, let alone a member of the assembly, and I have absolutely no recollection of an alleged 1973 conversation on the floor of the assembly or on the telephone. Indeed, the Stein Commission was not created until more than 6 months after the alleged conversations.

Assemblyman Stein's motivation in singling me out from the vast array of notables with whom Dr. Bergman associated, will, I hope, someday become clear.

As to Mr. Kramer, I have no recollection of the man, let alone having spoken to him on the telephone.

That, then, deals with the specifics.

To lay to rest any implication of personal gain or profit to me from any relationship with Dr. Bergman, let me give you these salient facts: Neither I nor any member of my family now own, nor have I or they ever owned, a nursing home or any interest therein, directly or indirectly.

As a lawyer, neither I nor my firm has ever represented Dr. Bergman or any nursing home.

Dr. Bergman, or one of his nursing homes, purchased tickets to a dinner given to raise funds for the Committee for the Election of a Democratic Legislature: the amount involved did not exceed \$2,000; none of the funds went to me or to my personal campaign. Moreover, my records indicate that Dr. Bergman has never contributed to any fund for any of my campaigns for election to the assembly and I have never been a candidate for any other public office.

The Grand Brokerage Corp. is a corporation which is engaged in the insurance brokerage business. This corporation, in which I had a one-third interest, is a successor to the business which was started by my father, a former speaker of the assembly, more than 50 years ago.

I am told that Grand Brokerage has turned over to this committee its records relating to its business dealing with Dr. Bergman. And any of his companies, and that these records show that the gross commissions paid to Grand Brokerage over the last 4 years aggregate from \$2,000 to \$2,500 annually of which my share of the net profit would have been \$85.

I have resigned as an officer and director of Grand Brokerage Corp. and have entered into an agreement for the disposition of my stock interest in that corporation, and I have also severed my connection with my law firm. These decisions, incidentally, were made some months ago based on my determination to devote my full time to the speakership and preceded the current probe of the nursing home industry.

I cannot think of any other way to demonstrate my lack of any financial interest in the nursing home industry but again, if there is anything else you want to know, I, and my personal records, are available.

I know nothing about the details of Dr. Bergman's ownership of nursing homes, or of his other business activities. I am in no way associated with him in any of his business enterprises.

Now let me tell you of Dr. Bergman's reputation: Nelson Rockefeller, Malcolm Wilson, Stanley Steingut, Robert Douglas, Norman Hurd, Louis Lefkowitz, among many others—all were of the same opinion: That he was a man of fine reputation in the community.

I knew, too, that he was associated with philanthropic causes and was extremely active in Zionist works such as the Mizrahi organization. In these activities, I saw him in the company from time to time of men for whom I have the highest regard—for example, Sam Hausman, a man who gives of his time and money to Jewish causes, a gentle and quiet man who never has asked me for anything for himself.

In this connection, I should point out that I have never had a social relationship with Dr. Bergman. I have never been in his home, nor has he been in mine, although, along with many distinguished members of the community, I was invited to, and attended, the wedding of his daughter in March of 1973.

One last point: I now know my legislative counsel, C. Daniel Chill, wrote several letters concerning Dr. Bergman, I am also told that he attended a meet-

ing in Dr. Hurd's office. Although I was generally aware that, because of Mr. Chill's longstanding personal relationship with Dr. Bergman, he may have been acting on Dr. Bergman's behalf, he had no authority to represent that his activities were at my specific direction—nor do I understand that he ever did so. His ties with Dr. Bergman were personal and go back to his childhood.

As I stated earlier, I wanted to put these salient facts on the record, and then make myself available for all questions. Quite frankly, I welcome them.

Senator Moss. This hearing will be in recess because we have more work to do, but it will reconvene at the call of the Chair, and all witnesses will be notified when they are to appear again.

Thank you very much.

[Whereupon, the subcommittee was recessed at 6:10 p.m.]

# APPENDIXES

## Appendix 1

### MATERIAL RECEIVED FROM AMERICAN BANK & TRUST CO. PURSUANT TO COMMITTEE SUBPENAS

## UNITED STATES OF AMERICA

### Congress of the United States

To Harold Michaels, Counsel or other Officer

American Bank and Trust Company, 70

Wall Street, New York, New York, Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to appear before the Special Committee on Aging of the Senate of the United States, on February 4, 1975, at 10:00 o'clock a.m., at their committee room New York County Lawyers Association, 14 Vesey Street, New York, New York, then and there to testify what you may know relative to the subject matters under consideration by said committee.

The Committee requests you provide copies of any loan agreements or secured instruments between your bank and Dr. Bernard Bergman,

Anne Weiss Bergman, Amram Kass, and Miriam Kass; along with balance sheets or certified statements of net worth supplied for purposes of establishing a line of credit with your bank.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To Patricia G. Oriol

to serve and return.

Given under my hand, by order of the committee, this

16th day of January, in the year of our

Lord one thousand nine hundred and seventy-five

Ted Moss

Chairman, ~~DO NOT PRINT~~ Subcommittee on Long-Term Care,  
U.S. Senate Special Committee on Aging.

**American Bank & Trust Co.,  
New York, N.Y., February 13, 1975.**

The attached are exact replicas of the statements which we have in our Credit File.

Stanley Kreitman, *President.*

**ITEM 1. LIST OF DOCUMENTS TURNED OVER TO THE SENATE SPECIAL COMMITTEE ON AGING BY THE AMERICAN BANK & TRUST CO.; DATED JANUARY 30, 1975**

1. Loan agreement dated September 12, 1974 among Bridgeport Realty Corp. (Bridgeport), Bernard Bergman (Bergman), and American Bank & Trust Co. (Bank).
2. Mortgage note dated September 12, 1974 made by Bergman.
3. Mortgage dated September 12, 1974 made by Bridgeport.
4. Security agreement dated September 12, 1974 made by Bridgeport.
5. Copies of UCC filings signed by Bridgeport.
6. Assignment dated September 12, 1974 and documents referred to in assignment attached herewith made by National Hospital and Institutional Builders Co.
7. Certificate of resolutions of Bridgeport dated September 12, 1974.
8. Opinion of counsel dated September 12, 1974 made by Amram Kass and letter of authorization of Bridgeport.
9. Unlimited guarantee of Bridgeport obligations to bank made by Dr. and Mrs. Bergman.
10. \$80,000, \$90,000, \$50,000 promissory notes made by Verrazano Realty Corp.
11. Unlimited guarantee of Verrazano obligations to bank dated December 27, 1973 signed by Dr. and Mrs. Bergman.
12. Corporate resolutions of Verrazano.
13. Certification of officers of Verrazano.
14. Verrazano balance sheet, September 30, 1973.
15. Statement of liabilities of Bergmans, June 30, 1974.
16. Contract of sale between home and hospital of Daughters of Israel and National Hospital and Institutional Builders Corp., June 13, 1974.
17. Insurance binder dated September 11, 1974 re Bridgeport.

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**ITEM 2. LETTER AND ENCLOSURES FROM SAMUEL DACHOWITZ, CPA;  
TO DR. AND MRS. BERNARD BERGMAN, DATED MAY 29, 1974**

DEAR DR. AND MRS. BERGMAN: Pursuant to your instructions, I have prepared the attached balance sheet as at February 28, 1974, taken from your books and records without verification by correspondence.

Yours very truly,

SAMUEL DACHOWITZ.

[Enclosure.]

*Bernard Bergman: Statement of assets and liabilities as at Feb. 28, 1974*

ASSETS	Amount
Cash and securities:	
Cash in banks.....	\$343, 518
Securities:	
244,706 shares of Medic-Home Enterprises, Inc.....	734, 118
Other securities.....	14, 263
Total cash and securities.....	1, 091, 899
Loans and mortgages receivable:	
Braden Realty Co.....	1, 100, 000
Cambridge Care Centers Corp.....	1, 583, 644

Elizabeth Nursing Home, Inc.....	100,000
Jackson Realty.....	900,000
148 Oxford Realty.....	1,944,789
Riviera Towers—notes receivable.....	214,711
Utica Nursing Home, Inc.....	55,250
<b>Total</b> .....	<b>5,898,394</b>

## Investments—at market value:

## Nursing homes:

Allentown Nursing Home: (75).....	\$420,000
Carlton Nursing Home: (100).....	100,000
Elizabeth Nursing Home: (100).....	525,000
Fredericksburg Nursing Home: (56).....	300,000
Genesee Nursing Home and Oneida House: (60).....	60,000
Irvington Nursing Home: (66%).....	650,000
Lakeview Convalescent Center: (75).....	600,000
North Shore Nursing Home: (50).....	300,000
Oxford Nursing Home Leasehold: (66%).....	300,000
Palms Nursing Home: (50).....	300,000
Park Crescent Nursing Home: (100).....	4,200,000
Rockville Nursing Home: (40).....	460,000
Targee Care Center: (40).....	1,600,000
Towers Nursing Home: (62½).....	25,000
Twin Oaks Nursing Home: (40).....	260,000
Utica Nursing Home: (60).....	150,000
Verrazano Nursing Home: (100).....	700,000
Willoughby Nursing Home: (100).....	685,000
Willowbrook Care Center: (40).....	520,000

<b>Total</b> .....	<b>12,155,000</b>
Nursing homes under construction: Bradley Care Center: (40) .....	450,000

## Real estate:

Atcon Corp. (11%).....	150,000
Colt Park Associates: (15).....	75,000
Condominium Apartment, Israel: (100).....	150,000
Co-op Apartments-Riviera Towers.....	3,864,000
La France Associates: (15).....	75,000
Sameth Realty: (65).....	216,000
Land, Canada.....	90,000
Land, Israel.....	90,000

<b>Total</b> .....	<b>4,710,000</b>
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<b>Total investments</b> .....	<b>17,315,000</b>
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<b>Total assets</b> .....	<b>24,305,293</b>
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## LIABILITIES AND NET WORTH

*Notes payable—Banks.....	236,000
Notes payable—Others.....	17,000

<b>Total liabilities</b> .....	<b>253,000</b>
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<b>Net worth</b> .....	<b>24,052,293</b>
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<b>Total liabilities and net worth</b> .....	<b>24,305,293</b>
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\*Contingent liabilities, \$630,000.

NOTE.—Figures in parentheses mean percent owned.

**ITEM 3. LETTER AND ENCLOSURES FROM SAMUEL DACHOWITZ, CPA;  
TO DR. AND MRS. BERNARD BERGMAN, DATED JULY 20, 1973**

*New York, N.Y., July 20, 1973.*

DR. AND MRS. BERNARD BERGMAN,  
New York, N.Y.

DEAR DR. AND MRS. BERGMAN: Pursuant to your instructions, I have prepared the attached balance sheet as at February 28, 1973, taken from your books and records without verification by correspondence.

Yours very truly,

SAMUEL DACHOWITZ.

[Enclosure.]

*Bernard Bergman: Statement of Assets and Liabilities as at Feb. 28, 1973*

ASSETS		Amount
Cash and securities:		
Cash in banks.....		\$410, 200
Securities:		
241,506 shares of Medic-Home Enterprises, Inc.....		845, 271
Other securities.....		2, 350
Total cash and securities.....		<u>1, 257, 821</u>
Loans and mortgages receivable:		
Braden Realty Co.....		660, 000
Cambridge Care Centers Corp.....		1, 174, 499
Elizabeth Nursing Home, Inc.....		100, 000
Jackson Realty.....		900, 000
Liberty House of New York.....		597, 994
148 Oxford Realty Co.....		1, 974, 429
Utica Nursing Home, Inc.....		55, 250
Total .....		<u>5, 462, 172</u>
Investments—at market value:		
Nursing homes:		
Allentown Nursing Home: (75).....		420, 000
Carlton Nursing Home: (100).....		100, 000
Elizabeth Nursing Home: (100).....		525, 000
Fredericksburg Nursing Home: (56).....		300, 000
Genesee Nursing Home & Oneida House: (60).....		60, 000
Irvington Nursing Home: (66 $\frac{2}{3}$ ).....		650, 000
Lakeview Convalescent Center: (75).....		600, 000
North Shore Nursing Home: (50).....		300, 000
Oxford Nursing Home Leasehold: (66 $\frac{2}{3}$ ).....		300, 000
Palms Nursing Home: (50).....		300, 000
Park Crescent Nursing Home: (100).....		4, 200, 000
Rockville Nursing Home: (40).....		460, 000
Targee Care Center: (40).....		400, 000
Towers Nursing Home: (62 $\frac{1}{2}$ ).....		200, 000
Twin Oaks Nursing Home: (40).....		260, 000
Utica Nursing Home: (60).....		150, 000
Verrazano Nursing Home: (100).....		700, 000
Willoughby Nursing Home: (100).....		685, 000
Willowbrook Care Center: (40).....		520, 000
Total .....		<u>11, 130, 000</u>
Nursing homes under construction: Bradley Care Center (40).....		250, 000
Real estate:		
Atcon Corp. (11 $\frac{2}{3}$ ).....		150, 000
Colt Park Associates (15).....		75, 000
Condominium Apartment, Israel: (100).....		150, 000
Co-op Apartments-Riviera Towers.....		5, 260, 200
La France Associates: (15).....		75, 000
Sameth Realty: (65).....		216, 000
Land, Canada.....		90, 000

Land, Israel.....	90,000
Total .....	6,106,200
Total investments.....	17,486,200
Total assets.....	24,206,193

## LIABILITIES AND NET WORTH

* Notes payable—Banks.....	250,000
Notes payable—Others.....	46,000
Total liabilities.....	296,000
Net worth.....	23,910,193
Total liabilities and net worth.....	24,206,193

\*Contingent liabilities, \$550,000.

NOTE.—Figures in parentheses mean percent owned.

AMERICAN BANK & TRUST Co.,  
New York, N.Y., February 13, 1975.

The attached are exact replicas of the statements which we have in our Credit File.

STANLEY KREITMAN,  
President.

**ITEM 4. LETTER AND ENCLOSURE FROM SAMUEL DACHOWITZ, CPA;  
TO DR. AND MRS. BERNARD BERGMAN, DATED JUNE 21, 1974**

DEAR DR. AND MRS. BERGMAN: In accordance with your request, I have prepared a cash flow report of your income producing properties for the year ended February 28, 1974.

Attached is a list of properties all of which, with the exception of Park Crescent Nursing Home and Genesee Nursing Home, are leased out to arms-length operators. For Park Crescent and Genesee, accrual figures were used with depreciation deducted because other methods were felt to be impractical.

Excluded from this report were monies received by you on sales of cooperative apartments of Riviera Towers and monies expended for projects under development and construction.

None of the figures herein were audited, and therefore no opinion is hereby expressed.

Very truly yours,

SAM DACHOWITZ.

Name of entity	Gross income or net rent	Exclusive of depreciation	Interest and amortization	Net cash flow income	Dr. Bergman's percentage
Braden Realty Co.—Mortgage.....	110,000			110,000	110,000
Cambridge Care Center Co.—Mortgage..	234,000			234,000	234,000
Jackson Realty Co.—Mortgage.....	45,000			45,000	45,000
148 Oxford Realty Co.—Mortgage.....	150,000			150,000	150,000
Allentown Nursing Home.....	135,000	750	79,050	55,200	41,400
Carlton Nursing Home.....	59,340	10,310	14,963	34,067	34,067
Elizabeth Nursing Home.....	168,000	44,460	78,136	45,404	45,404
Fredericksburg Nursing Home.....	135,600	500	78,136	56,964	31,899
Genesee Nursing Home and Oneida House.	1,045,294	1,017,430		27,864	16,718
Irrington Nursing Home.....	123,700	500	78,100	45,100	30,066
Lakeview Convalescent Center.....	180,000	15,800	86,664	77,536	58,152
Park Crescent Nursing Home.....	7,455,431	6,422,605	780,053	252,773	252,773
Utica.....	48,000	23,160		24,840	14,904
Verrazano Nursing Home.....	135,000	750	63,328	70,922	70,922
Willoughby Nursing Home.....	106,772	21,048	72,274	13,450	13,450
Willowbrook Care Center.....	480,000	1,250	359,210	119,540	47,816
Colt Park Associates.....	8,500			8,500	8,500
La France.....	6,525			6,525	6,525
Twin Oaks Nursing Home.....	134,400	500	89,100	44,800	17,920
Total.....	10,760,562	7,559,063	1,779,014	1,422,485	1,229,516
Total net cash flow income.....					1,229,516

AMERICAN BANK & TRUST CO.,  
New York, N.Y., February 13, 1975.

The attached are exact replicas of the statements which we have in our credit file.

STANLEY KREITMAN.

**ITEM 5. APPLICATION TO WITHDRAW SUBPENAS OF THE AMERICAN BANK & TRUST CO., BERNARD BERGMAN ET AL.**

In the Congress of the United States Senate Special Committee on Aging  
Subcommittee on Long-Term Care

IN THE MATTER OF SUBPOENAS TO THE AMERICAN BANK & TRUST CO.

BERNARD BERGMAN, ANNE WEISS BERGMAN, AMRAM KASS, AND MIRIAM KASS,  
APPLICANTS

APPLICATION TO INTERVENE AND TO WITHDRAW SUBPOENAS

Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass, through their undersigned counsel, hereby apply to this Subcommittee for permission to intervene in the matter of a subpoena issued by the Chairman on January 16, 1975, directed to the American Bank & Trust Co., 70 Wall Street, New York, N.Y., and a second subpoena served on February 3, 1975, and for a ruling by the Subcommittee withdrawing those subpoenas. As grounds for this application, movants show as follows:

1. The subpoenas (a copy of the first being attached hereto as Appendix I and a letter regarding the second as Appendix II) call for the production by the bank of copies of the following documents: "any loan agreements or secured instruments between your bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass; along with balance sheets or certified statements of net worth supplied for purposes of establishing a line of credit with your bank," and "any personal or corporate loan agreements or secured instruments between your bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass along with all personal or corporate balance sheets, financial statements or statements of net worth supplied to your bank by these persons from 1969 through the present." The subpoenas thus directly affect the interests of these applicants in the privacy of their personal financial affairs, and because the subpoenas were served upon the bank rather than on the applicants personally, their only avenue of redress is through intervention to seek withdrawal of the subpoenas.

Applicants plainly meet the test for intervention as of right in proceedings relating to subpoenas in Courts of the United States under Rule 24(a), Federal Rules of Civil Procedure, which grants the right of intervention where "the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest. . . ." Since this Subcommittee's subpoena is in all respects the equivalent of a grand jury subpoena (except that, unlike the case with respect to a grand jury subpoena, the records will not be subject to rules of confidentiality), the test for intervention applied by the Subcommittee should be no more strict than that applied in federal courts, and the application to intervene should be granted.

2. Bank records reflecting the personal financial dealings of individuals are protected by the Fourth Amendment from governmental intrusion except pursuant to legal process properly issued for a lawful purpose. *United States v. Miller*, 500 F.2d 751, 756-757 (5th Cir. 1974); see *Burrows v. Superior Court*, — Cal. — (Cal. Sup. Ct., December 27, 1974). A subpoena calling for the production of evidence for which a Senate Committee has a specific need in carrying out its lawful functions does not, of course, violate the Fourth Amendment. But, as was stated by the Supreme Court in *Watkins v. United States*, 354 U.S. 178, 187 (1957):

[B]road as is [Congress's] power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without



justification in terms of the functions of the Congress. . . . Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated are indefensible.

3. The Supreme Court in the *Watkins* case further observed, 354 U.S. at 201, 205:

It is the responsibility of the Congress, in the first instance, to insure that compulsory process is used only in furtherance of a legislative purpose. . . . Protected freedoms should not be placed in danger in the absence of a clear determination by the House or Senate that a particular inquiry is justified by a specific legislative need.

The question presented on this application is, then, whether the subpoena to the American Bank & Trust Co. for personal financial records of Dr. Bergman and members of his family is "justified by a specific legislative need."

4. As indicated by the Court in *Watkins*, that inquiry must begin with the authorizing resolution of the Committee, the latest expression of which, in this case, is S. Res. 267, 93d Cong., 2d Sess. That resolution defines the mandate of the Special Committee on Aging as follows:

The committee shall make a full and complete study and investigation of any and all matters pertaining to problems and opportunities of older people, including, but not limited to, problems and opportunities of maintaining health, of assuring adequate income, of finding employment, of engaging in productive and rewarding activity, of security proper housing, and, when necessary, of obtaining care and assistance.

That mandate does not, by any stretch of the imagination, authorize the Committee or this Subcommittee to investigate the personal financial affairs of those who own or operate nursing homes. The "problems and opportunities of older people" undoubtedly embrace matters of access to, conditions in, and public financing of nursing home care, but the Subcommittee cannot conceivably shed light on any of these matters by learning and disclosing the assets, liabilities, and personal financial transactions of the applicants or, for that matter, of others in the nursing home industry.

As for patient care, all nursing homes in which any of the applicants has any interest is available for inspection by representatives of this Subcommittee, and patients and employees are available to be interviewed or to testify. As for financing, every cent of public money paid to these homes is reflected in documents maintained by the New York State Department of Health and supported by voluminous documents provided your Subcommittee by the nursing homes themselves. To go beyond the affairs of the *nursing homes*, and into the personal affairs of the *operators*, is, we submit, plainly to exceed the mandate of the Committee and to invade the privacy of individuals without a legitimate legislative purpose.

5. At stake here is, however, an even more fundamental question than whether the Subcommittee's jurisdiction extends to the *type* of inquiry represented by this subpoena. For, as applicants have previously argued, in a series of letters to the Chairman, there is strong evidence that the proceedings of this Subcommittee have been diverted, and its powers misused, through an investigation designed—in the language of *Watkins, supra*—to "punish" Dr. Bergman and his family, to assume a "law enforcement" function without according due process of law, and to "expose for the sake of exposure."

6. Applicants incorporate, in this regard, the challenges to the legitimacy of the Subcommittee's investigation of Dr. Bergman made in correspondence with the Chairman since January 21, 1975.

WHEREFORE, applicants' motion to intervene should be granted and the instant subpoenas withdrawn.

Respectfully submitted.

MILLER, CASSIDY, LARROCA & LEWIN,  
By: NATHAN LEWIN,  
*Attorneys for Applicants.*

**ITEM 6. LAW SUIT OF BERNARD BERGMAN ET AL. v. SENATE SPECIAL COMMITTEE ON AGING ET AL., MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

75 Civ. 543 (LPG)

BERNARD BERGMAN, ANNE WEISS BERGMAN, AMRAM KASS, AND MIRIAM KASS.  
PLAINTIFFS

2.

SENATE SPECIAL COMMITTEE ON AGING, SUBCOMMITTEE ON LONG-TERM CARE

AND

THE HONORABLE FRANK E. MOSS, INDIVIDUALLY AND AS CHAIRMAN OF THE  
SUBCOMMITTEE ON LONG-TERM CARE, SENATE SPECIAL COMMITTEE ON AGING

AND

PATRICIA G. ORIOL, INDIVIDUALLY AND AS CHIEF CLERK, SUBCOMMITTEE ON LONG-  
TERM CARE, SENATE SPECIAL COMMITTEE ON AGING.

AND

AMERICAN BANK & TRUST Co., 562 FIFTH AVENUE, NEW YORK, N.Y., DEFENDANTS

Memorandum submitted on behalf of the Senate Special Committee, the Honorable Frank E. Moss, and Patricia G. Oriol in opposition to plaintiffs' motion for a temporary restraining order and preliminary injunction

**PRELIMINARY STATEMENT**

This memorandum is submitted in opposition to the plaintiffs' application for a Temporary Restraining Order and Preliminary Injunction enjoining the defendant American Bank & Trust Co. from turning over to the United States Senate Special Committee on Aging or its Subcommittee on Long-Term Care certain documents in its possession pursuant to subpoenas issued by the Senate Committee.

Plaintiffs are four individuals with interests in the operation and the construction of nursing homes (Complaint ¶ 13). Plaintiffs have been named in two subpoenas issued by the Senate Committee on Aging to the American Bank and Trust Co. The subpoenas request that the American Bank turn over certain financial statements, agreements and records pertaining to the plaintiffs.

The defendants are the Subcommittee on Long-Term Care of the Senate Special Committee on Aging, the Subcommittee Chairman, Senate Moss, the Subcommittee Chief Clerk, Patricia Oriol, and the American Bank & Trust Co.

This memorandum will set forth the facts and legal considerations which, it is believed, will demonstrate that plaintiff's complaint and motion are ill-founded. The memorandum will show that the Special Committee and Subcommittee have acted well within their authority in issuing the subpoenas and that there is no legal or factual basis for an injunction impairing their effectiveness. On this basis, the defendants request that these papers be treated as a motion to dismiss this action and that the complaint be dismissed.

**FACTS**

*Committee and Subcommittee Jurisdiction*

The Senate Special Committee on Aging ("Special Committee") was established by S. Res. 33, 87th Congress agreed to on February 13, 1961. The scope of the Special Committee's authorized purpose and responsibilities were outlined as follows:

"It shall be the duty of such committee to make a full and complete study and investigation of any and all matters pertaining to problems of older people, including but not limited to, problems of maintaining health, of assuring adequate income, of finding employment, of engaging in productive

and rewarding activity, of securing proper housing, and, when necessary, care or assistance."

S. Res. 33 also clearly foresaw and approved the establishment and use of one or more subcommittees of the Special Committee for the purpose of conducting the Committee business. (See Sec. 4, S. Res. 33)

The primary responsibility of the Special Committee was to coordinate all aspects of a review and inquiry into the problems of the elderly in the United States. While certain standing Senate Committees would retain jurisdiction to review and propose legislation affecting the elderly it was clearly spelled out in S. Res. 33 that the subject of aging and older Americans *in toto* required the special attention of a single committee.

Even the Report recommending the adoption of S. 33 frequently mentioned the subject of nursing homes. At page 10 of that Report printed on February 9, 1961, it is stated:

"Nursing homes: A thorough study and evaluation of nursing homes must be undertaken. This is one of the most vital means of obtaining necessary health care available to older citizens. We must learn how the quality of care of the Nation's nursing homes can be improved so as to restore disabled persons to independent living."

The Special Committee has been continued without hiatus from 1961 by the passage of various continuing resolutions. The most recent such resolution is S. Res. 267 (March 1, 1974, 93d Cong) which extended the existence of the Special Committee through February 28, 1975.

On May 22, 1963 a Subcommittee on Rules of the Special Committee recommended to the full committee that two subcommittees be established. One subcommittee on housing and residential environment was recommended with jurisdiction to,

"Inquire into and report on matters including but not limited to . . . relationship between housing for the elderly and the provision of nursing homes and other health facilities of importance to the elderly; methods of developing more effective cooperation between federal, state and local governmental units, voluntary organizations and private industry with respect to the development of optimum residential environments for the elderly."

The second recommended subcommittee related to the health of the elderly with jurisdiction to:

"Inquire into and report on any and all matters relating to the physical and mental health of our older people, including but not limited to such subjects as the availability and utilization of health facilities and services; the availability, quality of care and financing of nursing homes and other facilities primarily devoted to the care of the elderly; the costs and methods of financing health services for the elderly and their impact on the elderly and their families; the adequacy and efficacy of existing programs for financing the provision of health services for the elderly including . . . federal and other programs; proposals designed to replace, modify or expand on existing methods of providing and financing health facilities, personnel and services for the elderly. . ."

The recommendation for these two subcommittees including their above described jurisdiction was accepted by the full Special Committee on June 12, 1963. In September of 1963 the two subcommittees were consolidated into a Joint Subcommittee on Long-Term Care.

In 1965 Senator Wayne Morse moved before an Executive Session of the Special Committee to establish a full and permanent subcommittee on long-term care. This motion was passed by the full Special Committee on February 23, 1965 and the jurisdiction of the Subcommittee on Long-Term Care specifically encompassed the jurisdictions delegated to the prior subcommittees on health and housing and residential environment. That jurisdiction has remained the same since 1965.

#### *Inquiries, Investigations and Reports of the Subcommittee on Long-Term Care*

Since 1965 the Subcommittee on Long-Term Care has undertaken extensive inquiry into the subject of nursing homes in the United States.<sup>1</sup> This inquiry has resulted in legislative proposals which have been enacted into law despite the fact that the Special Committee has no power to consider and report on bills before the Senate. Hearings have been held throughout the country. Be-

<sup>1</sup> Even prior to that time nursing homes were considered a priority subject of inquiry. In 1961 the Special Committee chose nursing homes to be a subject of hearings. Minutes, Executive Session, Special Committee on Aging, May 4, 1961; See Cong. Record, May 4, 1961.

ginning in 1969 a series of hearings on "Trends in Long-Term Care" was instituted. The hearings in New York City held on January 21 and February 4, 1975 were part of this series. As part of a continuing inquiry the Subcommittee has undertaken the publication of a twelve volume report on the nursing home field in the United States.

In a statement at the commencement of the hearing held in New York City, Senator Moss outlined several areas of immediate concern to the Subcommittee's study of the nursing home industry. These concerns included the standards of care given to elderly residing in nursing homes, the financing of nursing home operations, the relationships between nursing home owners, and the question of political influence.

As part of this segment of the Subcommittee's inquiry the subpoenas at issue in this case were issued and served upon the American Bank & Trust Co. As set forth in Exhibit "B" to the Complaint, the Bank has indicated its willingness to comply with the subpoenas.

#### *Supoena Power*

S. Res. 33 (87th Cong.) clearly authorized the Special Committee to issue subpoenas in order to obtain evidence. (Sec. 3) S. Res. 267 (93d Cong.) continued the existence of the Special Committee through February 28, 1975 and concurrently authorized the continued use of subpoenas.

Under its rules the Special Committee has authorized each and every subcommittee to require the production of documentary evidence by the use of a subpoena (Rule 5, Rules of the U.S. Senate Special Committee on Aging, as amended February 28, 1973). These Rules were republished on February 26, 1974 in the Congressional Record as required by section 133B of the Legislative Reorganization Act of 1946 (Complaint, Ex. "E").

#### ARGUMENT

##### POINT I. THE SENATE'S DELEGATION OF AUTHORITY TO INVESTIGATE AND TO ISSUE SUBPOENAS TO THE SUBCOMMITTEE THROUGH THE COMMITTEE IS ENTIRELY PROPER

Plaintiffs argue that the Senate's delegation of authority to the subcommittee through the committee is tantamount to creating a roving committee and that this is proscribed by *Gojack v. United States*, 384 U.S. 702 (1966).

Delegation of powers by Congress is an approved method of efficiently doing business. As Mr. Justice Brennan wrote, concurring in *United States v. Robel*, 384 U.S. 258, 274-75 (1967) :

"Congress ordinarily may delegate power under broad standards. *E.g. Dakota Central Tel. Co. v. South Dakota*, 25 U.S. 163, 183; *FPC v. Hope Natural Gas Co.*, 320 U.S. 591; *NBC v. United States*, 319 U.S. 190. No other general rule would be feasible or desirable. Delegation of power under general directives is an inevitable consequence of our complex society, with its myriad, ever changing, highly technical problems. 'The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality . . . to perform its function. . . .' *Panama Refining Co. v. Ryan*, 293 U.S. 388, 421; *Currin v. Wallace*, 306 U.S. 1, 15. It is generally enough that, in conferring power on an appropriate authority, Congress indicate its general policy, and act in terms or within a context which limits the power conferred. See, *e.g. Arizona v. California*, 373 U.S. 546, 584-585; *FCC v. RCA Communications, Inc.*, 346 U.S. 86; *Yakus v. United States*, [321 U.S. 414] at 424; *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8; *FTC v. Gratz*, 253 U.S. 421; *Buttfield v. Stranahan*, 192 U.S. 420. . . ."

As we noted above, the Subcommittee on Long-Term Care resulted from the merger of two prior subcommittees (on housing and health). The jurisdiction of the surviving Subcommittee on Long-Term Care was specifically authorized to be the same as the prior two committees. The jurisdiction of both specifically provided for the health and financial aspects of nursing home operations. The Rules of the Committee specifically delegate its subpoena power to its subcommittees including the Subcommittee on Long-Term Care.

Thus, the Special Committee and the Subcommittee both have been abiding by the Rules of the Committee. For this reason alone the plaintiffs' citation of the *Gojack* case is misplaced since there the court noted on numerous occasions that the key was that HUAC and the subcommittee which issued the subpoena were violating HUAC's own rules by conducting the "major" investigation without first obtaining authorization from a majority of that Committee pursuant to its Rule I.

Additionally, *Gojack* is distinguishable on the ground that the Court's abiding interest was concerning the administration of criminal law regarding convictions for contempt of Congress and not passing judgment on "the justifications for an investigation by a committee of Congress as a matter of congressional administration. That is a legislative matter." (384 U.S. at 707) In *Gojack* the Court further stated:

"Neither the resolution nor any minutes or other records of the Committee stated the subject matter committed to the Subcommittee or otherwise described or defined its jurisdiction in terms of subject matter. Once again, we emphasize that we express no view as to the appropriateness of this procedure as a method of conducting congressional business. But, once again, we emphasize that we must consider this procedure from the viewpoint not of legislative process, but of the administration of criminal justice, and specifically the application of the criminal statute which has been invoked."

This case, however, is civil and does not arise in the context of the administration of criminal justice. It involves at this stage only the administration of legislative business. There is no reason for the Court to interfere.

Additionally, *Gojack* involved a *standing* committee with broad and rather vague limits—although not unconstitutionally so (see *Barenblatt v. United States*, 360 U.S. 109 (1959)) while here there is a *special* committee with a relatively narrow scope of inquiry regarding the efficacy and financing of various federal programs to benefit the aging.

As the Court in *Watkins v. United States*, 354 U.S. 178, 205 (1959) wrote: "It is of course not the function of this Court to prescribe rigid rules for the Congress to follow in drafting resolutions establishing investigating committees. That is a matter peculiarly within the realm of the legislature, and its decisions will be accepted by the courts up to the point where their own duty to enforce the constitutionally protected rights of individuals is affected."

POINT II. THE SENATE SUBCOMMITTEE'S SUBPOENA TO THE AMERICAN BANK AND TRUST CO. IS RELATED TO A VALID LEGISLATIVE PURPOSE AND OUTWEIGHS ANY EXPECTATION OF PRIVACY

Plaintiffs' next argue that even if the subpoenas were issued pursuant to a legitimate delegated authorization from the Senate through the full committee the subpoena should not be enforced because it impinges on plaintiffs' rights to privacy and rights to be secure from unreasonable searches and seizures as guaranteed by the Fourth Amendment. In support of this proposition, plaintiffs' rely upon *Watkins v. United States*, 354 U.S. 178 (1957). Plaintiffs allege no chill of First Amendment rights to free speech or free association. Cf. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Gibson v. Florida Legislative Investigative Comm.*, 372 U.S. 539 (1963). The issues therefore are whether the investigation is related to a legitimate interest and whether that interest outweighs any Fourth Amendment rights the plaintiffs may have.

The Supreme Court has consistently upheld governmental investigations which further legitimate interests. Thus, in *Watkins*, the Court noted that "The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our sound economic or political system for the purpose of enabling the Congress to remedy them."<sup>1</sup> (354 U.S. at 187). This "reasonably related" test was specifically applied in *Barenblatt v. United States*, 360 U.S. 109, 127 (1959) in upholding an investigation in the face of charges that First Amendment rights were being violated. "The first question is whether this investigation was related to a valid legislative purpose, for Congress may not constitutionally require an individual to disclose his political relationships or other private affairs except in relation to such a purpose."

The subpoenas herein are an integral part and within the scope of the powers and duties of the Special Committee and its Subcommittee on Long-Term Care. The subpoenas request the American Bank and Trust Co. to produce:

"loan agreements or secured instruments between [the] bank and Dr. Bernard Bergman [and other plaintiffs] along with balance sheets or certified statements of net worth supplied for purposes of establishing a line of credit with [the] bank." (Subpoena Jan. 16, 1975) and

<sup>1</sup> In this regard, plaintiffs' contention that the publicity attendant the hearings demonstrates bad motives vitiating the subpoena was raised and rejected in *Watkins* (at 200) if a legitimate purpose is present.

"any personal or corporate loan agreements or secured instruments between your bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass along with all personal or corporate balance sheets, financial statements or statements of net worth supplied to your bank by these persons from 1969 through the present." (Letter, Ex. "B", Complaint)

It is uncontroverted that Dr. Bergman and members of his family have interests in nursing homes. These interests extending over a period of time, the magnitude of these interests and the relationship of interests between family members is of utmost concern to the Subcommittee and well within the purview of its authority to inquire.

It is clear from the jurisdiction granted to the Special Committee and to the Subcommittee that it may inquire into the financing and operations of the nursing home industry. This jurisdiction includes not only how private industry affects the development of care for the elderly but how nursing homes are operated and financed and how these operations and finances affect (1) the elderly and (2) the federal state and local efforts to underwrite care for the aged.

One of the many programs which underwrite the financing of private nursing homes is Medicaid which in New York State includes federal, state and local monies. Medicaid provides for the financing of nursing homes and their services 42 USC § 1396d. It seems clear that the Subcommittee's jurisdiction includes inquiries into aspects of nursing home financing, procedures and operations which may have an effect on the proper utilization of tax revenues.

As pointed out recently in the press and touched upon by Senator Moss in his opening statement on January 21, 1975, various transactions involving the sale and lease of nursing homes may have a serious effect on the optimum utilization of government financing. The relationship between the corporate and personal interests in nursing homes held by persons with family relations is an integral aspect to any inquiry into the proper utilization of tax monies.<sup>2</sup>

Similarly since Medicaid finances nursing home operations on a cost plus basis in some states it is relevant, to inquire into the personal holdings and finances of persons who are concededly deeply involved in the nursing home industry.

As set forth in the remarks of Senator Moss on January 21, 1975, Congress has recently enacted legislation making the cost-plus method of Medicaid reimbursement a national program. As Senator Moss rightly points out the experience and the effects of that program on (1) the care provided to the elderly, and (2) the profits made by nursing homes is manifestly relevant to Subcommittee's authorized area of inquiry and report. In addition to Medicaid as many as 50 other federal programs provide financing, services or training which directly benefit the nursing home industry. Such other programs provide further basis for the legitimacy of the Subcommittee's inquiry.

To paraphrase the Supreme Court in *Uphaus v. Wyman*, 360 U.S. 72, 79 (1959) the nexus between Bernard Bergman's corporate and personal financial affairs and the finances of the nursing home industry and the adequacy of the care the industry gives to the elderly furnish adequate justification for the investigation here in issue. This is not the situation presented in *Gibson v. Florida Legislative Comm.*, *supra*, where the Court held the legitimate governmental interest in investigating membership party was in no way related to the subpoena of the Miami, Florida branch of the NAACP which the record reflected was against communism and had voluntarily taken steps to keep communists from becoming members.

Nor is the instant case akin to *Bates v. Little Rock*, 361 U.S. 516, 525 (1960) where the Court found "no relevant correlation between the power of municipalities to impose occupational taxes and the compulsory disclosure and publication of membership lists of local branches of the National Association for the Advancement of Colored People." Nor is *Shelton v. Tucker*, 364 U.S. 479, (1960) where the court was confronted with "The unlimited and indiscriminate sweep of a statute requiring all state teachers to list yearly without limitation every organization to which he has belonged as going "far beyond what might be justi-

<sup>2</sup> P. 2, Col. 3 of the *New York Post* for February 1, 1975: "Acting State Health Commissioner Robert T. Whelan announced a major change in state Medicaid policy. Whelan said that after a mandatory 21-day review by the legislature, the State Health Department would only consider the original cost of a nursing home in figuring Medicaid reimbursement." In other words, nursing home operators would no longer be able to use repeated resales of their property simply to jack up their Medicaid reimbursement.

fled in the exercise of the State's legitimate inquiry into the fitness and competency of its teachers." Similarly *Watkins* is inapposite because the Supreme Court there was concerned with an investigation into remote minutiae connected only historically to the present (354 U.S. at 204).<sup>3</sup>

The instant subpoenas concern corporate and personal data supplied to the bank to obtain loans by people concededly financially connected to the nursing home industry at a time when there is intensive public and legislative concern over the operation and funding of nursing homes. It is difficult to imagine documents more pertinent to a valid legislative committee's inquiry into profits of nursing home owners, the wisdom of the cost-plus method of reimbursement and existence of potential frauds or misuse of taxpayer moneys.

In this same vein, it is beyond doubt that under the balancing test of *Barenblatt*, *supra* the legitimate governmental interest outweighs any fourth amendment interest that might possibly be infringed in this case. It is plain that the subpoena will suitably further the legitimate need to know. *Cf.* Police Department of *Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

The Government does not believe, however, that the fourth amendment gives use to any expectation of privacy in this case. See *Couch v. United States*, 409 U.S. 322, 336 (1973) ; 2 USC § 193.

There is nothing in the record to demonstrate that the plaintiffs have an ownership or possessory interest in the documents subpoenaed from the bank. Indeed the documents appear to belong to the bank and pertain to commercial transactions with the bank. See In RE: Horwitz, 482 F. 2d 72, 85 (2 Cir. 1973). The data contained therein would appear to have been obtained by the bank for the bank's purposes and therefore the possessory interest is extremely weak, if there is any at all. Furthermore, some of the documents are corporate documents as to which these individual plaintiffs have no fourth amendment interests.

POINT III. A QUORUM OF THE SUBCOMMITTEE WAS WITHIN ITS AUTHORITY TO RULE ON THE APPLICATION TO INTERVENE AND "WITHDRAW" THE SUBPENAS

Plaintiffs contend that it was not within the power of the members of the Subcommittee sitting at the February 4, 1975 hearing to act on "a pleading entitled 'Application to Intervene and Withdraw Subpoena'". This contention is clearly refuted by the Rules of the Special Committee. Rule 3 states that "one member shall constitute a quorum for the receipt of evidence, the swearing of witnesses and the taking of testimony at hearings".

Thus with the presence of Senators Moss, Percy and Domenici on February 4 there were Senators present in excess of the required quorum. *United States v. Moran*, 194 F.2d 623 (2d Cir. 1952) *cert. denied* 361 U.S. 919. The presence of a quorum fixes the authority of the Subcommittee to rule on objections to the production of evidence pursuant to a subpoena. *Flaver v. United States*, 235 F. 2d 821 (DC Cir. 1956), *remanded on other grounds*, 354 U.S. 929 (1957).

CONCLUSION

For the aforesaid reasons and based upon the foregoing authorities, it is respectfully requested that the plaintiffs' motion for a Temporary Restraining Order and Preliminary Injunction be denied and that the complaint herein be dismissed.

Dated: New York, New York, February , 1975.

Respectfully submitted.

PAUL J. CURRAN,  
U.S. Attorney, Southern District of New York.  
FRANK E. MOSS,  
PATRICIA G. ORIOL.

TAGGART D. ADAMS,  
MEL P. BARKAN,  
JOHN S. SIFFERT,  
Assistant U.S. Attorneys.

<sup>3</sup> *Watkins* significantly was not read by the Supreme Court in *Barenblatt* to have held that HUAC's authority to investigate "un-American activities" was unconstitutionally broad and vague.

ITEM 7. COURT DECISION IN CASE OF BERNARD BERGMAN ET AL. v.  
SENATE SPECIAL COMMITTEE ON AGING ET AL.

75 Civ 543

BERNARD BERGMAN, ANNE WEISS BERGMAN, AMRAM KASS AND MIRIAM KASS,  
PLAINTIFFS, VS. SENATE SPECIAL COMMITTEE ON AGING ET AL., DEFENDANTS.

NEW YORK, NEW YORK, FEBRUARY 6, 1975, 4:30 P.M.

BEFORE: HON. LEE P. GAGLIARDI, DISTRICT JUDGE

Present: Mr. Thal, Mr. Youtt, Mr. Barkan, and Mr. Siffert.

The COURT. I am sorry that because of the urgencies of the situation, the exigencies of time, that I do not have for you a written copy of the decision that I am about to read. I also regret that the decision does not discuss in as great detail as I would like the cases involved but they have all been considered—at least the ones we have been referred to and the ones we found on our own—and, in view of the time limitations, I am not as proud of the language and the depth of this opinion as I would like to be but I think we have a deadline of somewhere around six o'clock tonight, so the decision will be read into the record.

The decision reads as follows:

Plaintiffs bring this action to declare invalid, and to enjoin compliance with, a subpoena issued by the Special Committee on Aging of the United States Senate, hereinafter referred to as Special Committee. The subpoena was served upon the American Bank and Trust Company, hereinafter referred to as American Bank, and was signed by The Honorable Frank E. Moss as Chairman of the Subcommittee on Long-Term Care, hereinafter referred to as the Subcommittee, of the Special Committee. Jurisdiction is predicated upon 28 U.S.C. Sections 1331 and 1346(a)(2). Plaintiffs have moved pursuant to Rule 65(b), Federal Rules of Civil Procedure, for a temporary restraining order enjoining American Bank from complying with the subpoena.

The Special Committee was created by Senate Resolution 33, 87th Congress, 1st Session (1961), and has been continued in existence by subsequent resolutions passed by each Congress. It was made a permanent special committee by Senate Resolution 267, 93rd Congress, 2nd Session (1974), with the following mandate:

"The committee shall make a full and complete study and investigation of any and all matters pertaining to problems and opportunities of older people, including but not limited to, problems and opportunities of maintaining health, of assuring adequate income, of finding employment of engaging in productive and rewarding activity, of securing proper housing and, when necessary, of obtaining care and assistance."

On May 22, 1963, the Subcommittee on Rules of the Special Committee recommended to the full committee that two subcommittees be established. The first, a Subcommittee on Housing and the Residential Environment of the Elderly, hereinafter referred to as Subcommittee on Housing, was empowered, inter alia, to:

"Inquire into and report on matters including but not limited to . . . the relationship between housing for the elderly and the provision of nursing homes and other health facilities of importance to the elderly; methods of developing more effective cooperation between federal, state and local governmental units, voluntary organizations and private industry with respect to the development of optimum residential environments for the elderly."

The second, a Subcommittee on Health of the Elderly, hereinafter referred to as Subcommittee on Health, was empowered, inter alia, to:

"Inquire into and report on any and all matters relating to the physical and mental health of our older people, including but not limited to such subjects as the availability and utilization of health facilities and services; the availability, quality of care and financing of nursing homes and other facilities primarily devoted to the care of the elderly; the costs and methods of financing health services for the elderly and their impact on the elderly and their families; the adequacy and efficacy of existing programs for financing the provision of health services for the elderly including . . . federal and other governmental programs;



proposals designed to replace, modify or expand on existing methods of providing and financing health facilities, personnel and services for the elderly."

On June 12, 1963, the recommendations of the Subcommittee on Rules relating to the establishment of the two subcommittees were accepted by the Special Committee.

It appears that the two subcommittees were consolidated into a joint subcommittee on Long-Term Care in September of 1963. On February 23, 1965, the Special Committee established the Long-Term Care Subcommittee as a full and permanent subcommittee with jurisdiction the same as originally delegated to the Subcommittees on Health and Housing.

The subpoena in question was issued in connection with a Subcommittee hearing held in New York City on February 4, 1975. It was served upon American Bank on February 3rd and called for the production of the following records on February 4th:

"Any personal or corporate loan agreements or secured instruments between your Bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass and Miriam Kass, along with all personal or corporate balance sheets, financial statements or statements of net worth supplied to your Bank by these persons from 1969 through the present."

An earlier subpoena, calling for essentially the same records and served upon American Bank on January 21st, has been withdrawn by the Subcommittee.

Plaintiffs contend that the request for these documents by the Subcommittee amounts to unauthorized action without valid legislative justification in violation of certain of their constitutional rights. On February 4th, when the subpoenaed documents were to be produced, plaintiffs submitted to the Subcommittee an application to intervene and withdraw the subpoenas. The application was denied by Senator Moss after conferring with Senators Percy and Domenici. However, compliance with the subpoenas was delayed for twenty-four hours to allow plaintiffs time to seek court relief. Senator Moss has agreed to a further delay until the evening of February 6th to give this Court time to consider and rule upon plaintiffs' motion.

The plaintiffs herein have standing to challenge the legality of the subpoenas on the ground that the forced disclosure of the materials requested would violate their constitutional rights under the First, Fourth and Ninth Amendments. *United States Servicemen's Fund v. Eastland*, 488 F. 2d 1252, 1261 (D.C. Circuit, 1973), cert. granted — U.S. — (1974); *United States v. Miller*, 500 F. 2d 751 (Fifth Circuit, 1974).

No other alternate means of challenging the subpoenas is available to the plaintiffs herein. They cannot force the American Bank & Trust Company to refuse compliance and risk a contempt citation, and their application to the Subcommittee to intervene and seek withdrawal of the subpoenas was denied on February 4, 1975.

Plaintiffs concede that if the Subcommittee has a specific need for the subpoenaed materials in order to carry out its lawful function, there is no violation of their constitutional rights. However, where the inquiry is not "justified by a specific legislative need," the threat of a violation of an individual's constitutional rights, including his or her "personal interest in privacy," requires that disclosure not be compelled. *Watkins v. United States*, 354 U.S. 178 (1957).

Materials subpoenaed by a Congressional committee in connection with an investigation must be produced in cases where (1) Congress has the power to investigate; (2) the committee or subcommittee has a proper grant of authority to conduct the investigation; and, (3) the materials sought are pertinent to the investigation and within the scope of the grant of authority. (Compare *United States v. Seeger*, 303 F. 2d 478 (Second Circuit 1962).)

From the documents submitted, it is clear that the Subcommittee has both the power and proper authority to conduct its investigation. It is further clear that the Subcommittee has subpoena power in connection with the investigation. However, as noted above, this subpoena power is not without limits. The wording of the subpoena in question is extremely broad. It calls for "any personal or corporate loan agreements or secured instruments" and "all personal or corporate balance sheets, financial statements of net worth." As worded, the subpoena is overbroad.

Plaintiffs allege in paragraph 12 of the complaint that they "are and have been for many years engaged in the business, inter alia, of constructing, financing and/or operating nursing home facilities in the State of New York and else-

where." Insofar as the Subcommittee subpoena seeks documents relating to plaintiffs' corporate or nursing home activities and dealings, it is valid and must be enforced. However, insofar as the subpoena calls for documents beyond this, it goes beyond the Subcommittee's power to investigate the matters in issue and beyond the scope of its authority to conduct its investigation. As drawn, the subpoena calls for "any" and "all" financial records from 1969 to date. This might include records relating to plaintiffs' purely personal financial affairs. While the Subcommittee may properly investigate plaintiffs' profits derived from their nursing home activities, a general inquiry designed to determine plaintiffs' personal wealth or general net worth is not pertinent to the investigation and plaintiffs are constitutionally protected from disclosure of this type of information.

Finally, plaintiffs contend that it was not within the power of the subcommittee sitting at the hearing on February 4, 1975 in New York to act on the "Application to Intervene and Withdraw Subpoena." Rule 3 of the rules of the Special Committee on Aging, which is applicable to the subcommittee by Rule 4 of the same rules, provides: "one member shall constitute a quorum from the receipt of evidence, the swearing of witnesses, and the taking of testimony at hearings."

Present at the hearing were three members of the subcommittee, and thus, under such authorization a quorum existed. *United States v. Moran*, 194 F. 2d 623 (2d Cir.) 1952.

Rule 4 further provides that each subcommittee ". . . is authorized . . . (c) to require by subpoena or otherwise . . . the production of documentary evidence." Accordingly, the subcommittee's denial of plaintiffs' application was within the scope of its authorization. See *Flaxer v. United States*, 235 F. 2d 821 (D.C. Cir. 1956), remanded on other grounds, 354 U.S. 929 (1957).

For the reasons stated, American Bank is enjoined from complying with the subpoena in question to the extent that it encompasses documents totally unrelated to plaintiffs' nursing home activities. To the extent that there may be records reflecting both purely personal financial matters and nursing home related matters, these documents must be produced—the justified needs of the subcommittee in any instances of this type outweigh any private rights which plaintiffs might claim are being violated.

"The two fold requirement for a preliminary injunction is a demonstration of probability of success on the merits and a showing that irreparable harm will result if such relief is denied." *Gulf & Western Industries v. Great A. & P. Tea Co., Inc.*, 476 F. 2d 687, 692 (2d Cir. 1973).

The Court concludes that the plaintiff has met this burden only to the extent of the relief granted herein. The foregoing constitutes the findings of fact and conclusions of law in accordance with Rule 52(a), Federal Rules of Civil Procedure.

Plaintiffs' motion for a preliminary injunction is granted in part and denied in part in accordance with this decision.

It is so ordered.

Gentlemen?

Mr. BARKAN. May I just speak to a portion of the Court's order? The question of the determination of whether or not it is purely personal in the case of certain documents is obviously a discretionary one. There may be some differences of opinion on that and, in so far as those differences cannot be resolved, perhaps the Court's instruction at this time might be appropriate.

The COURT. I would suspect that what you probably should do is to go through all the records to see, at least in the first instance, what records can be readily furnished. I think they ought to be furnished as promptly as they can. The Subcommittee has seen an urgency, an urgent need for the records, and I think that those ought to be furnished forthwith and I think you can do that.

After that has been done, then, if necessary, as was done in the case of *In re Horowitz*, which Judge Friendly wrote on which was an appeal from a decision of Judge Pollack, in which the Court of Appeals said where there was any difficulty about that, it probably should go back to the district court for in camera inspection to see whether or not the questions could be resolved.

Mr. BARKAN. Very well. Thank you.

The COURT. I would think it would take you some time, first of all, to get through the records that have to be furnished; would it not?

Mr. THAL. We imagine we can do it within a day or two. I mean, we don't expect this to be a matter of weeks but a matter of a couple of days, at most.

Mr. BARKAN. We would, needless to say, contact the Bank immediately and inform them of your Honor's decision and expect production tomorrow, if possible.

The COURT. Well, whatever. Whatever you gentlemen do. Certainly the decision here will be typed up sometime. My chambers will have, I suppose, a polished copy of it perhaps sometime late tomorrow.

Mr. BARKAN. All right, your Honor.

The COURT. But the Bank has not appeared here and I assume that they have agreed to abide by the decision that I rendered.

Mr. THAL. We have that representation, sir.

The COURT. All right. Thank you, gentlemen.

#### OPINION

On February 6, 1975, this court read into the record of this case an opinion and order on plaintiffs' motion for a preliminary injunction providing, in part, as follows:

... American Bank is enjoined from complying with the subpoena in question to the extent that it encompasses documents totally unrelated to plaintiffs' nursing home activities. To the extent that there may be records reflecting both purely personal financial matters and nursing home related matters, these documents must be produced—the justified needs of the Subcommittee in any instances of this type outweigh any private rights which plaintiffs might claim are being violated.

Of the documents which American Bank has determined are producible under this order, plaintiffs take issue with the production of three of them. The three documents in question have been produced for an *in camera* inspection. These documents are as follows: (1) "Dr. and Mrs. Bernard Bergman, Statement of Assets and Liabilities as at February 28, 1974;" (2) "Dr. and Mrs. Bernard Bergman, Statement of Assets and Liabilities as at February 28, 1973;" (3) a cash flow report of Dr. and Mrs. Bergman's income producing properties for the year ended February 28, 1974. Attached to each of these documents is a letter, addressed to the Bergmans, signed by Samuel Dachowitz, C.P.A. The court has examined these documents and concludes that they are "records reflecting both purely personal financial matters and nursing home related matters." As such, these documents must be produced pursuant to the court's order of February 6.

In the alternative, plaintiffs move to modify the February 6 order to require the redaction of these documents prior to their production pursuant to the Subcommittee subpoena. As stated in the order of February 6, "the justified needs of the Subcommittee in any instances of this type outweigh any private rights which plaintiffs might claim are being violated." The bulk of the entries contained in the financial statements in question clearly relate to nursing homes. To delete the few entries which appear not to relate to nursing homes would render these very pertinent documents incomplete. Moreover, while these entries appear to reflect personal financial matters, plaintiffs have made no showing that they are in fact not nursing home related. For these reasons, plaintiffs' application to modify the February 6 order is denied.

So Ordered.

LEE P. GAGLIARDI.

February 12, 1975.

#### TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Upon the complaint and the affidavit of Harry E. Youtt, together with all proceedings before this Court in this action; and

It appearing that defendant American Bank and Trust Co. has been served with two subpoenas by the Special Committee on Aging of the United States Senate and/or its Subcommittee on Long-Term Care requiring the production of copies of certain designated personal financial statements and papers relating to plaintiffs and that compliance with said subpoenas that said documents be turned over to said Committee at 10:00 a.m., February 5, 1975; and

It further appearing that plaintiffs will suffer injury to their rights to privacy under the Fourth Amendment of the United States Constitution and will further suffer unjust exposure of their personal affairs by Congressional Committee action without valid legislative justification in the event that the subpoenas referred to above are complied with; and

It further appearing that due to the fact that plaintiff Bernard Bergman and members of his family, including the other plaintiffs in this action are presently

the focus of continuing public investigation and massive media publicity in connection with the investigation of nursing homes in the New York area, release of plaintiffs' financial information in compliance with the Senate subpoenas would result in irreparable injury to plaintiffs.

*It is ordered*, That defendant American Bank and Trust Co., its agents, servants, employees and attorneys be temporarily restrained from producing to the Special Committee on Aging of the United States Senate, its Subcommittee on Long-Term Care, or any of its agents or representatives, the documents demanded by the subpoenas referred to above for a period of ten days from the date of this Order, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure; and

*It is further ordered*, That the defendants show cause before this Court at Room —, on February —, 1975, at — o'clock —.m., or as soon thereafter as counsel can be heard, why a preliminary injunction should not be issued herein pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining defendant American Bank and Trust Co., its agents, servants, employees and attorneys and all persons in active concert and participation with it, pending the final hearing and determination of this action, from producing to the Special Subcommittee on Aging of the United States Senate, its Subcommittee on Long-Term Care, and/or any of its agents or representatives, the documents demanded by the subpoenas referred to above; and

*It is further ordered*, That service of a copy of this Order, together with a copy of the papers attached hereto and the Summons and Complaint, be served by counsel for plaintiffs on or before February 6, 1975, upon counsel for the United States Senate Special Committee on Aging and the American Bank and Trust Co. be deemed sufficient service.

Dated: New York, N.Y.

February 1975.

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION

One of the issues presented by this case is whether specific authority has been properly delegated to the Senate Subcommittee on Long-Term Care in order to establish the validity of investigation subpoenas which it has issued. This issue has been recently dealt with by the United States Supreme Court in *Gojack v. United States*, 384 U.S. 702 (1966). In *Gojack*, the Court reversed the contempt of Congress conviction of a witness who disputed the delegation of authority to a subcommittee of the House Un-American Activities Committee. The Government argued that the Court, in the absence of specific delegation of authority should "infer" Committee approval of the Subcommittee inquiry. The Court disapproved the Government's argument and reversed the contempt conviction. Quoting Justice Frankfurter's observation in *United States v. Rumely*, 345 U.S. 41, that the resolution defining the subject of the Committee's inquiry is the Committee's "controlling charter" and delimits its "right to exact testimony", (See 384 U.S. at 708), the Court held that the issue of authority

"... must be determined by reference to the authorizing resolutions of an investigation."

The Court found that neither the general resolution authorizing the Committee function:

"... nor any minutes or other records or the Committee stated the subject matter committed to the Subcommittee or otherwise described or defined its jurisdiction in terms of subject matter." (348 U.S. at 713).

The Court therefore held that:

"Courts administering the criminal law cannot apply sanctions for violation of the mandate of an agency—here, the Subcommittee—unless that agency's authority is clear and has been conferred in accordance with law." (384 U.S. at 714).

The Court went on to hold that even if authority would have existed in the Committee to conduct such an investigation, the prosecution would similarly fail, observing that:

"The jurisdiction of the courts cannot be invoked to impose criminal sanctions in aid of a roving commission." (See 384 U.S. at 715).

Similarly, see the opinion of Judge Weinfeld in *United States v. Lamont*, 18 F.R.D. 27 (S.D.N.Y. 1955), *aff'd*, 236 F. 2d 312 (2d Cir. 1956):

"No Committee of either the House or Senate, and no Senator and no Representative, is free on its or his own to conduct investigations unless author-

ized. Thus it must appear that Congress empowered the Committee to act, and further that at the time the witness allegedly defied its authority the Committee was acting within the power granted to it."

This case differs from the fact situation in *Gojack* only in so far as this is not a criminal prosecution. However, this Court is called upon to evaluate the validity of subcommittee authority as an element of determining whether plaintiffs' privacy rights are being invaded by an unreasonable seizure under the Fourth Amendment. Therefore, as in *Gojack*, although this Court is not being called upon to interfere with the Senate's internal administration, plaintiffs contend that subcommittee authority is a proper matter for judicial evaluation as it bears upon the Constitutional issue of whether compliance with the subpoenas will result in an unreasonable seizure of protected documents.

Respectfully submitted.

THAL & YOUTT,  
*Attorneys for Plaintiffs.*

Of Counsel.

HARRY E. YOUTT.

#### MOTION FOR TEMPORARY RESTRAINING ORDER

Now come plaintiffs, by and through their attorneys, Thal & Youtt, and upon the complaint in this action, and the annexed affidavit of Harry E. Youtt with exhibits move this Court for an Order, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure granting them a temporary restraining order restraining defendant American Bank and Trust Co. from turning over to the Special Committee on Aging of the United States Senate or any of its members, or staff members or members or staff members of its Subcommittee on Long-Term Care personal financial documents of plaintiffs in compliance with subpoenas issued by said Committee on February 3, 1975 and January 16, 1975 upon the grounds that compliance with said subpoenas will result in irreparable harm, injury and damage to plaintiffs' constitutional rights to privacy, all for reasons more fully set forth in the papers annexed.

Yours, etc.

THAL & YOUTT,  
*Attorneys for Plaintiffs.*

#### AFFIDAVIT IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

HARRY E. YOUTT, being duly sworn, deposes and says:

1. I am an attorney at law duly admitted to practice in this District and a member of the firm of Thal & Youtt, 666 Fifth Avenue, New York, New York, attorneys for plaintiffs in the instant action. I make this affidavit in support of plaintiffs' application for a temporary restraining order enjoining the defendant, American Bank and Trust Co. from turning over certain personal financial records of plaintiffs now in its possession pursuant to subpoenas issued by the United States Senate Subcommittee on Long-Term Care, a Subcommittee of the Senate Special Committee on Aging.

2. This action arises out of the issuance by the Senate Special Committee on Aging of two subpoenas upon the defendant American Bank and Trust Co. on January 16, 1975 and February 3, 1975, calling for the production, on February 4, of the following records:

"copies of any loan agreements or secured instruments between your bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass; along with balance sheets or certified statements of net worth supplied for purposes of establishing a line of credit with your bank."

"Any personal or corporate loan agreements or secured instruments between your Bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass along with all personal or corporate balance sheets, financial statements or statements of net worth supplied to your Bank by these persons from 1969 through the present."

3. The basis of plaintiffs' action is that the subpoenas call for the production of documents over which plaintiffs have a reasonable expectation of privacy, based upon rights under the Fourth Amendment to the Constitution of the United States and that acquisition of the documents by the Senate Committee would constitute unwarranted governmental intrusion into that privacy. Further, plaintiffs contend that they will also suffer unlawful exposure of their personal affairs by unauthorized action of a Congressional Committee without valid

legislative justification. Plaintiff's counsel have sought for several weeks to obtain from the United States Senate resolutions enabling, empowering or delegating to the Subcommittee on Long-Term Care of the Special Committee on Aging authority to carry on its activities and conduct its investigations. Without such a document, the Senate Subcommittee cannot succeed in justifying any activities which it has undertaken, including the issuance of subpoenas. Without proof of such authority, this Court cannot presume that the subpoenas have been lawfully issued or is within the scope of the Subcommittee's powers.

4. On February 4, 1975, when an attorney for the defendant, American Bank and Trust Co. appeared at the scheduled hearing of the Senate Subcommittee, prepared to comply with the subpoenas, counsel for the plaintiffs, Nathan Lewin, submitted an application to intervene and to withdraw the subpoenas to the Subcommittee upon the same grounds as are set forth here. A copy of the written application which was submitted at that time is attached hereto as Exhibit 1.

5. After presenting his argument in support of quashing the subpoenas, Mr. Lewin requested that the Subcommittee defer taking action on the application until the matter would be presented to the entire Subcommittee on Long-Term Care as called for by Senate Rule S-2212 which requires a vote of a quorum of the Subcommittee for the conduct of business. Such quorum was not present at the hearing on February 4, 1975. That request was denied by Subcommittee Chairman, Senator Frank E. Moss, after conferring with Senators Percy and Domenici for approximately one minute, on the ground that matters of evidence could be ruled on by one member of the Subcommittee.

6. Thereupon, Mr. Lewin requested that compliance with the subpoenas be delayed for 48 hours in order that he could proceed in the courts. In response to that request, Senator Moss granted Mr. Lewin a 24-hour delay. That delay expires at approximately 10:00 a.m. this morning, February 5, 1975.

7. It is submitted that, once the subpoenas are complied with, plaintiffs' rights to privacy in the personal financial documents which are sought and their rights to be free from unwarranted exposure of their personal affairs by unauthorized legislative activity will have been invaded, and plaintiffs will have suffered immediate and irreparable injury, loss, and damage as a result. Such injury, loss and damage is especially acute in this case in light of the fact that plaintiff Bernard Bergman, along with other members of his family including other plaintiffs, have been the subject of a continuous process of public investigation and front page news coverage as central figures in the so-called "nursing home scandal."

9. This application for temporary restraining order is made in light of the critical time limitations which have been placed upon the parties by virtue of the 24-hour delay which Senator Moss granted yesterday. In view of this limitation, I have been unable to arrange a hearing time with notice to counsel for the Senate Special Committee and the American Bank and Trust Co. I have advised Mr. Harold Michaels, counsel to the American Bank and Trust Co., by telephone at approximately 6:00 o'clock p.m. on February 4, 1975, of my intention to file this action. Mr. Michaels at that time advised me that he did not wish to appear at any proceedings this morning and requested that I advise him of the outcome.

10. In seeking this application, I wish to stress that balanced against the potential harm to plaintiffs which would result from denial of this application, the potential harm to defendants resulting from the granting of this relief is negligible. The Subcommittee has already obtained vast quantities of documents. Its investigation is ongoing. And there is no immediate urgency requiring prompt production of the documents. The Subcommittee recessed its February 4th hearing to an unspecified later date, probably in March, and a delay of a few days in receiving these documents will cause no injury to defendants whatsoever. No other proceedings are planned by the Subcommittee at this time.

11. In order to prevent the unwarranted invasion of plaintiff's privacy which would be occasioned by compliance with the subpoenas at issue in this law suit, I request that the Court enter a temporary restraining order for a period of ten days and that the Court fix a time within that period at its convenience for a hearing on the merits of plaintiffs' claim for preliminary and permanent injunctive relief. No prior request for such relief has been made.

HARRY E. YOUTT:

Sworn to before me this 5th day of February, 1975.

STEVEN H. THAL.

## COMPLAINT (DECLARATORY JUDGMENT; INJUNCTION)

## JURISDICTION

1. This is an action arising under the Constitution and laws of the United States to declare invalid, and to enjoin compliance with, subpoenas issued by the Special Committee on Aging of the United States Senate.

The matter in controversy exceeds the sum of \$10,000 as to each of the named plaintiffs.

2. This Court has jurisdiction pursuant to 28 U.S.C. 1331 and 1346(a)(2). The power to issue a declaratory judgment is conferred on this Court by 28 U.S.C. 2101.

## PARTIES

3. Plaintiff Bernard Bergman is a citizen and resident of the State of New York, and is one of the persons named in the *duces tecum* portion of the subpoena to the American Bank & Trust Co., a copy of which is attached to this complaint as Exhibit A, and in a second subpoena referred to in a letter attached to this complaint as Exhibit B.

4. Plaintiff Anne Weiss Bergman is the wife of plaintiff Bernard Bergman, is a citizen and resident of the State of New York, and is named in the *duces tecum* portions of Exhibits A and B.

5. Plaintiff Amram Kass is the son-in-law of plaintiffs Bernard and Anne Weiss Bergman, is a citizen and resident of the State of New York, and is named in the *duces tecum* portions of Exhibits A and B.

6. Plaintiff Miriam Kass is the daughter of plaintiffs Bernard and Anne Weiss Bergman, is a citizen and resident of the State of New York, and is named in the *duces tecum* portions of Exhibits A and B.

7. On information and belief, each of the named plaintiffs is a party to personal or corporate loan agreements or secured instruments in the possession of the defendant American Bank & Trust Co., or has submitted corporate balance sheets, financial statements or statements of net worth to that bank in the period from 1969 to the present.

8. The defendant Subcommittee on Long-Term Care is a subcommittee of the Special Committee on Aging of the United States Senate. This Committee was created by S. Res. 33, 87th Cong., 1st Sess. (1961), was continued in existence by subsequent resolutions passed by each Congress, and was made a "permanent special committee" by S. Res. 267, 93d Cong., 2d Sess. (1974).

9. Defendant Frank E. Moss is a United States Senator from the State of Utah, and is Chairman of the Subcommittee on Long-Term Care.

10. Defendant Patricia G. Oriol, on information and belief, is a resident of the State of Maryland and is Chief Clerk of the Senate Special Committee on Aging. Defendant Oriol is named in Exhibit A as the person directed to serve and return the subpoena upon the American Bank & Trust Co.

11. The defendant American Bank & Trust Co. is, on information and belief, a corporation having its principal offices and residence in the City of New York, and is the address of the subpoena attached hereto as Exhibit A and of the subpoena referred to in Exhibit B.

## BACKGROUND OF THE SUBPOENAS

12. Plaintiffs are and have been for many years engaged in the business, *inter alia*, of constructing, financing and/or operating nursing home facilities in the State of New York and elsewhere. Since at least October, 1974, plaintiff Bernard Bergman has been the primary target of an investigation and other activities conducted by the New York Temporary State Commission on Living Costs and the Economy and by Andrew Stein, a New York State Assemblyman, both in his capacity as chairman of the Commission and in his individual capacity. In a series of statements and actions prior to January 9, 1975, Assemblyman Stein, acting alone or in conjunction with others, publicly charged that plaintiff Bernard Bergman was the head of a "syndicate" of over 100 nursing homes, all owned by members of his family or close associates; that he and his homes had engaged in massive fraud in connection with medicaid payments by the State of New York; that his nursing homes abused and mistreated patients; that he had been linked with known figures in organized crime; and that he had corruptly used the influence of political figures in the State of New York to

secure special favors from State and City authorities. In addition, Assemblyman Stein publicly called for criminal investigations of Dr. Bergman's affairs and predicted that he would be sent to jail.

13. Assemblyman Stein has been charged in complaints filed in state and federal courts with abusing his powers as Chairman of the Temporary State Commission on Living Costs and the Economy by, *inter alia*, obtaining and releasing to the press information on nursing home operators for his own personal and political ends; by making false and inflammatory charges against plaintiff Bergman in order to secure his indictment on criminal charges; and by issuing overbroad subpoenas for documents having no reasonable relevance to the legitimate subject matter of his Commission's mandate. On January 28, 1975, a state court, on motion of plaintiff Bergman, among others, quashed subpoenas issued by the Commission to nursing homes on the ground that there was "strong evidence" to support the contention that the Commission's investigation was "not a proper inquiry," and that to allow enforcement of the subpoenas without a "preliminary showing" of "authority, relevancy, and some basis for inquisitional action" might violate individual rights of privacy and due process.

14. On December 20, 1974, the defendant subcommittee released information that it was, according to the report contained in the *New York Times* of December 21, "joining the investigation of alleged large-scale fraud among New York nursing homes now being conducted by the State Temporary Commission on Living Costs; that, "on the suggestion of Representative Edward I. Koch," it would "convene an unusual federal-state public hearing here on January 21," and that at this hearing "Assemblyman Andrew J. Stein, Democrat of Manhattan, the Chairman of the Commission, will preside." The Subcommittee also announced, according to the same *New York Times* article, that its chairman, defendant Moss, had issued documentary subpoenas for nursing home records "addressed to, among others, Mr. Bergman, his wife, and all 26 of the homes that had defied Mr. Stein's subpoenas and had challenged the jurisdiction of the state commission." On January 9, 1975, Assemblyman Stein announced, according to an article in the *New York Times* dated January 10, that he had personally "engaged two former Assistant United States Attorneys, for the Southern District . . . as special counsel for the hearings" to begin January 21. One of those "special counsel" was identified as Gary P. Naftalis, Esq.

15. On January 14, counsel for plaintiffs delivered to defendant Moss a letter protesting the apparent delegation of the Subcommittee's powers to Assemblyman Stein and his Commission, and requesting, *inter alia*, that defendant Moss ensure "that the Subcommittee's subpoena power is not simply used to substitute for authority which Mr. Stein may wish to have but does not now possess. . . ." Defendant Moss replied in a letter dated January 15 that while the Subcommittee "originally hoped to have joint hearings with Mr. Stein, or otherwise to secure their assistance in our continuing investigation," he had subsequently been advised that "a Senate Committee or a representative unit, and we have notified Mr. Stein accordingly."

16. At the Subcommittee hearing in New York City on January 21, 1975, Assemblyman Stein sat on the dais next to the Chairman at all times except when he himself was testifying. Assemblyman Stein also made an opening statement, along with Senator Moss and Representative Koch, and participated in questioning witnesses. Gary P. Naftalis also participated in questioning witnesses as a "special assistant" to the Subcommittee. Plaintiff Bergman appeared pursuant to subpoena and answered all questions put to him. Two nursing homes owned by plaintiff Bergman complied in full with Subcommittee subpoenas for their financial records. No nursing home operators were called to testify other than Dr. Bergman, and nursing homes other than the ones in which he has an interest were permitted to comply only in part, only after a delay, or not at all with the documentary subpoenas. The witnesses other than Dr. Bergman who appeared on January 21 gave no specific testimony as to nursing homes other than those publicly associated with Dr. Bergman and his family. The hearings were adjourned until February 4, 1975.

#### THE SUBPOENAS FOR PERSONAL BANK RECORDS

17. On or about January 16, 1975, defendant Moss issued a subpoena (attached hereto as Exhibit B) to the defendant American Bank & Trust Co. requesting the production, on February 4, of:

copies of any loan agreements or secured instruments between your bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam



Kass; along with balance sheets or certified statements of net worth supplied for purposes of establishing a line of credit with your bank. The subpoena contained a direction at the bottom, "To Patricia G. Oriol to serve and return." On information and belief, the subpoena was served upon the defendant Bank on or about January 21, 1975, by or at the direction of the defendant Oriol.

18. On January 29, 1975, plaintiff Bergman's counsel delivered a letter to defendant Moss requesting *inter alia*, that the Subcommittee consider whether this subpoena is consistent with the Committee's mandate, and whether it had been misused by Assemblyman Stein or others. On January 31, the defendant Moss replied by a letter stating, *inter alia*, as follows:

"The reason for seeking such documents is that your client himself has put in issue the question of the extent of his financial interest in nursing homes by reading at length from an unofficial working paper of the New York State Department of Health and disclaiming interest in numerous facilities."

The testimony referred to by defendant Moss was given on January 21, 1975. The subpoena was dated January 16, 1975. The reason given by defendant Moss for seeking the personal financial records of the plaintiffs is not the true reason for the issuance of the subpoena.

19. On information and belief, a second subcommittee subpoena was served upon the defendant American Bank & Trust Co. on February 3, 1975, calling for the production, on February 4, of the following records:

"any personal or corporate loan agreements or secured instruments between your bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass along with all personal or corporate balance sheets, financial statements or statements of net worth supplied to your bank by these persons from 1969 through the present."

On information and belief, this second subpoena was issued by the defendant Moss and served or caused to be served by the defendant Oriol.

20. On February 3, plaintiffs Bernard Bergman and Anne Weiss Bergman received from the defendant American Bank & Trust Co. a letter (a copy of which is attached hereto as Exhibit B) advising that this second subpoena had been served and stating as follows:

Please be advised that the Bank intends to fully comply with the subpoena unless you obtain and properly serve upon us a court order restraining compliance.

21. On February 4, 1975, at a hearing of the defendant Subcommittee, the plaintiffs, through counsel, filed with the Subcommittee a pleading entitled "Application to Intervene and to Withdraw subpoena," a copy of which is attached to this complaint as Exhibit C. The motion was not presented to or considered by the full Subcommittee or the Special Committee on Aging, but was orally denied *in toto* by defendant Moss in his capacity as Chairman of the Subcommittee, after a consultation of approximately one minute with Senators Percy and Domenici. The Chairman stated, however, that the return date of the subpoena would be continued for 24 hours to permit plaintiffs to seek a remedy in federal court.

22. On information and belief, the defendant Bank has not yet complied with either subpoena but will do so on February 5, 1975, unless restrained by this Court.

#### BASIS FOR THE CLAIM

23. The documents sought by the two subpoenas which are the subject of this complaint reflect personal information concerning the plaintiffs and their financial affairs as to which the plaintiffs have a reasonable expectation of privacy from unwarranted governmental intrusion. This reasonable expectation of privacy is protected by, *inter alia*, the Fourth Amendment to the Constitution of the United States.

24. The plaintiffs have a right under the Constitution of the United States, and specifically the First, Fourth, Fifth, and Ninth Amendments thereto, to be free from exposure by Congressional Committees or Subcommittees, without valid legislative justification, of their personal affairs.

25. The subpoenas described in paragraphs 17 and 19 of this complaint violate the rights of the plaintiffs in that:

(a) The subpoenas constitute an unlawful search and seizure under the Fourth Amendment.

(b) The subpoenas constitute an effort to expose the personal financial affairs of the plaintiffs without legislative justification and in excess of the power of the Congress.

(c) The subpoenas exceed the power of the Senate Special Committee on Aging in that their purpose and their subject matter are outside the scope of the Committee's mandate, expressed in S. Res. 267, 93d Cong., 2d Sess. (1974), as follows:

The committee shall make a full and complete study and investigation of any and all matters pertaining to problems and opportunities of older people, including, but not limited to, problems and opportunities of maintaining health, of assuring adequate income, of finding employment, of engaging in productive and rewarding activity, of securing proper housing, and, when necessary, of obtaining care or assistance.

Copy attached hereto as Exhibit D.

(d) The subpoenas exceed the power of the Subcommittee on Long-Term Care and its Chairman, defendant Moss, in that the Subcommittee has not been entrusted, in compliance with the Rules of the United States Senate and of the Special Committee on Aging, with authority to undertake any investigation in which the documents called for by the subpoena are relevant or material.

(e) On information and belief, the Subcommittee has no formal delegation of power from the full Committee whatever. Counsel's efforts to secure a copy of such delegation from the Senate over the course of the past three weeks have met with no success.

26. The subpoenas are further invalid in that the defendant Moss erroneously and in excess of his powers under the Rules of the Senate Special Committee on Aging, which require a quorum of a majority of the membership of any Subcommittee for the conduct of business. A quorum of the Subcommittee was not present on February 4, 1975, and defendant Moss, as Subcommittee Chairman, is given no power by the rules to act on matters presented by applicants to the full Subcommittee. See Exhibit D.

27. Plaintiffs will suffer immediate and irreparable injury through compliance by the defendant Bank with the subpoenas described in this complaint, and plaintiffs have no adequate remedy at law.

#### RELIEF REQUESTED

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

1. That this Court declare the subpoenas issued by the defendant Moss under the purported authority of the defendant Subcommittee invalid, void and of no effect;
2. That this Court temporarily and permanently restrain the defendant Subcommittee and the defendant Oriol from seeking to enforce the subpoenas described in this complaint and from serving upon any bank further subpoenas for personal financial information concerning the plaintiffs;
3. That this Court temporarily and permanently enjoin the defendant American Bank & Trust Co. from producing to the defendant Subcommittee or any of its agents or representatives the documents demanded by the subpoenas described in this complaint; and
4. That this Court grant such other and further relief as may appear warranted.

THAL & YOUTT,  
*Attorney for Plaintiffs.*

#### SUMMONS

You are hereby summoned and required to serve upon

Thal and Youtt

plaintiff's attorneys, whose address is 666 Fifth Avenue, New York, New York 10019

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon American Bank and Trust Co. and 60 days after service upon the United States, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

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*Clerk of Court.*

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*Deputy Clerk.*

**ITEM 8. LETTER FROM HARRY E. YOUTT, ATTORNEY, TO KENNETH FEINBERG, ASSISTANT U.S. ATTORNEY, DATED JANUARY 29, 1975**

DEAR MR. FEINBERG: Pursuant to the request made by telephone this afternoon from Mr. Val Halamandaris, chief counsel of the Subcommittee on Long-Term Care of the Senate Special Committee on Aging, to Mr. Lewin, we consent, on behalf of the Towers Nursing Home, to the release by you of the cancelled checks and bank statements (item 3 of the subpoena of the U.S. Attorney for the Southern District of New York dated January 20, 1975) delivered to you on January 28, pursuant to grand jury subpoena, to the Senate subcommittee.

Our consent is limited to examination of those records by members of the subcommittee and its staff, and does *not* include any members or staff of the Stein Commission, whether they are in the full or part-time employ of the said commission or of Mr. Stein personally. We believe that disclosure of such records to any person other than a full-time employee of the Senate subcommittee or of the General Accounting Office would be a violation of Rule 6(e) of the Federal Rules of Criminal Procedure.

Sincerely yours,

HARRY E. YOUTT.

**ITEM 9. LETTER FROM HAROLD MICHAELS, AMERICAN BANK & TRUST CO.; TO DR. AND MRS. BERNARD BERGMAN, DATED FEBRUARY 3, 1975**

DEAR DR. AND MRS. BERGMAN: Please be advised that we have been served with a second subpoena issued by the U.S. Senate Subcommittee on Long-Term Care ordering us to produce the following:

"any personal or corporate loan agreements or secured instruments between your bank and Dr. Bernard Bergman, Anne Weiss Bergman, Amram Kass, and Miriam Kass along with all personal or corporate balance sheets, financial statements or statements of net worth supplied to your bank by these persons from 1969 through the present."

The subpoena is returnable at 10:00 A.M., February 4, 1975 at The New York County Lawyer's Association, 14 Vesey Street, New York, New York.

Please be advised that the Bank intends to fully comply with the subpoena unless you obtain and properly serve upon us a court order restraining compliance.

Very truly yours,

HAROLD MICHAELS.

**ITEM 10. LETTER FROM HAROLD MICHAELS, VICE PRESIDENT, AMERICAN BANK & TRUST CO., NEW YORK, N.Y.; TO ERIC NELSON, LAW CLERK TO JUDGE LEE P. GAGLIARDI, DATED FEBRUARY 11, 1975**

DEAR SIR: We understand from Mr. Steven H. Thal, attorney for Dr. Bernard Bergman and from Mr. John Siffert, representing the U.S. Senate Special Committee on Aging, that they have been unable to agree as to whether certain documents marked A, B, and C from the Bank's credit files (which designations were agreed upon by such counsel) should be turned over to the Senate committee pursuant to the subpoena dated January 30, 1975.

Accordingly, we are delivering said documents A, B, and C to you for Judge Gagliardi's review in accordance with his decision dated February 6, 1975, and in accordance with the arrangement agreed upon by counsel for Dr. Bergman and the Senate committee.

We would appreciate your acknowledging receipt of the enclosed documents by signing the enclosed copy of this letter.

Very truly yours,

HAROLD MICHAELS.

**ITEM 11. LETTER FROM PAUL J. CURRAN, U.S. ATTORNEY; TO JUDGE LEE P. GAGLIARDI, DATED FEBRUARY 11, 1975**

DEAR JUDGE GAGLIARDI: We wish to respond briefly to Mr. Thal's letter dated February 11, 1975. We cannot comment specifically on the content of the three

documents submitted to the court since we have not been permitted to inspect them. In accordance with the direction of the Court of February 6, we believe we should have such an opportunity. We, of course, cannot know whether copies of any of the three documents are presently in the possession of the subcommittee. Our best information is that the subcommittee may have part of one of the documents or a similar document. But that is not the point, and whatever the subcommittee may have should not have any effect on the enforceability of the subpoena or the immediate production of the documents in compliance with the court's direction.

The subcommittee has not agreed to a settlement regarding the three documents which, judging only from the tenor of Mr. Thal's letter, appear to be subject to production under the Court's opinion. Nor is there any "mystery" about this. As a courtesy to plaintiffs' counsel this office consented to their request that they be permitted to evaluate their position with respect to the three disputed documents over last weekend and report their position to us by 1:00 p.m. on Monday. Apparently, in the interim plaintiffs' counsel, who should know better began direct discussions with our client without our knowledge or consent. These discussions, as shown by Mr. Thal's own letter, were inconclusive and neither the Subcommittee nor its staff were ever of the opinion that a settlement had been reached. Plaintiff's counsel were so informed on February 10.

The special committee's position in this litigation is that all the disputed documents in their entirety should be turned over pursuant to the subpoena and the Court's order of February 6, 1975. All issues now raised by plaintiffs with respect to redaction were previously argued by counsel at the hearing on February 6 and decided by the court in favor of production (p. 9). Immediate production is made necessary by the fact hearings are presently scheduled to continue in Washington before the full committee on February 19, 1975, at which time Mr. Bergman has been subpoenaed to testify.

Since plaintiffs have not made any motions such as those described in their letter we limit our response to stating that there are no grounds for such motions except to delay the production of the documents and deprive the Senate of relevant information.

Respectfully yours,

PAUL J. CURRAN.  
TAGGART D. ADAMS.

**ITEM 12. LETTER FROM VAL J. HALAMANDARIS, ASSOCIATE COUNSEL, SENATE SPECIAL COMMITTEE ON AGING; TO TAG ADAMS, CHIEF OF CIVIL DIVISION, NEW YORK, N.Y., DATED FEBRUARY 17, 1975**

DEAR TAG: Thank you for sharing with me a copy of the February 11, 1975, letter addressed to the Honorable Lee Gagliardi, U.S. district judge, in which Mr. Steven Thal advises the court his intention to seek the return of his client's property, which he claims was obtained unlawfully.

Mr. Thal writes: "The basis of our claim is that as a result of the unlawful seizure of the documents in issue by the subcommittee, the subcommittee issued the subpoena in question in order to acquire the identical documents in a legitimate manner, and thereby launder the documents and purge their taint."

In response to this charge the following points should be made:

1. The subcommittee's subpoena to the American Bank & Trust Co. was dated January 16, 1975, long before we had seen any financial documents relating to Dr. Bergman. It was not served only for lack of time.

2. The subpoena was served by this committee's chief clerk, Patricia G. Oriol, on the bank's counsel, Harold G. Michaels, on January 24, 1975.

3. Also on January 24, 1975, Patricia G. Oriol received from the Temporary State Commission on Living Costs and the Economy a statement of assets and liabilities for Dr. and Mrs. Bernard Bergman dated February 23, 1973, certified by Samuel Dachowitz, CPA.

4. This document is described in the January 23, 1975, edition of the *New York Post* (copy attached) as "subpoena bank records in the commission's possession." The committee has no reason to believe the records were derived illegally.

This is the first and only such statement in our possession until we received the documents under the terms of our subpoena to the American Bank & Trust Co. subject to court order.

In short, it is clear that the committee sought to obtain financial statements relating to Dr. Bergman's involvement in nursing homes because of the assertion by the Office of Welfare Inspector General, the New York Department of Health, and others claiming of his substantial interest coupled with Dr. Bergman's profound denials which appeared in the public press and which were later given under oath before the subcommittee. Moreover, the subcommittee sought such data long before its January 21 hearing at which Dr. Bergman appeared and long before it received such financial statements from any source. Finally, of the 20 documents received from the bank, the committee had only one in its possession—the 1973 statement of assets and liabilities referred to above. The committee did not have a 1974 statement or more importantly the June 21, 1974, cash flow statement which tends to corroborate Dr. Bergman's testimony that he has an operating interest in only two nursing homes.

With best wishes,

Sincerely,

VAL J. HALAMANDARIS.

**ITEM 13. LETTER AND ENCLOSURE FROM PAUL J. CURRAN, U.S. ATTORNEY; TO REX E. LEE, ASSISTANT ATTORNEY GENERAL, DATED JULY 14, 1975**

DEAR MR. LEE: Enclosed please find copies of the District Court's three opinions in the above-captioned case. The case involves an action by Bergman to enjoin the Bank from turning over documents to the Senate subcommittee pursuant to subpoena. The action was brought on by order to show cause.

After initially enjoining the bank from turning over documents relating only to personal wealth without bearing on nursing homes (Opinion dated February 6, 1975), the court inspected *in camera* three contested documents which plaintiff asserted fell into this category. By order dated February 12, 1975, the court directed the bank to turn over these three documents on the ground they did relate to nursing home matters. Subsequently, we moved to vacate the injunction and dismiss for mootness, all documents in the Bank's possession relating to plaintiffs having been turned over. On July 2, 1975, the court granted the motion to dismiss for failure to state a claim and mootness.

Since nothing further remains to be done on this case, we are closing our files on this action.

Very truly yours,

PAUL J. CURRAN.  
By JOHN S. SIFFERT.

[Enclosure.]

75 Civ. 543

MEMORANDUM DECISION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

BERNARD BERGMAN, ANNE WEISS BERGMAN, AMRAM KASS, AND MIRIAM KASS,  
PLAINTIFFS

v.

SENATE SPECIAL COMMITTEE ON AGING, SUBCOMMITTEE ON LONG-TERM CARE

AND

THE HONORABLE FRANK E. MOSS, INDIVIDUALLY AND AS CHAIRMAN OF THE SUBCOMMITTEE ON LONG-TERM CARE, SENATE SPECIAL COMMITTEE ON AGING,

AND

PATRICIA G. ORIOL, INDIVIDUALLY AND AS CHIEF CLERK, SUBCOMMITTEE ON LONG-TERM CARE, SENATE SPECIAL COMMITTEE ON AGING,

AND

AMERICAN BANK & TRUST CO., 562 FIFTH AVENUE, NEW YORK, N.Y. DEFENDANTS.

GAGLIARDI, D. J.

On February 6, 1975 this court preliminarily enjoined the defendant American Bank & Trust Co. ("American Bank") from complying with a subpoena issued by the defendant Special Committee on Aging of the United States Senate ("Special Committee") to the extent that the subpoena called for documents totally unrelated to plaintiffs' nursing home activities. The government moves to vacate the injunction and dismiss the complaint on the ground that the action is moot.

It should be noted that both sides seem to misconstrue the scope of the preliminary injunction. With one exception, the relief requested in the complaint relates only to the subpoena in question. The injunction related only to this subpoena, and only the American Bank was enjoined. Inasmuch as the return date of the subpoena has passed and there are no longer any documents subject to the subpoena in the custody or control of the American Bank, the action is moot insofar as plaintiffs seek relief relating to the subpoena in question.

Although plaintiffs also seek a judgment restraining the Special Committee "from serving upon any bank further subpoenas for personal financial information concerning plaintiffs," the allegations of the complaint do not support this prayer for relief. To state a claim for a permanent injunction, a threatened violation of some right must be alleged. See *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506 (1958); *C. Tennant & Sons, Inc. v. New York Terminal Conference*, 299 F. Supp. 796, 799 (S.D.N.Y. 1969). The allegations of the complaint specifically relate only to subpoenas already issued and served; there is no mention of any threat that further subpoenas will be issued. With regard to "further subpoenas," therefore, the complaint fails to state a claim upon which the equitable relief requested can be granted. Rule 12(b)(6), Fed. R. Civ. P.

For the reasons stated, the complaint is dismissed.

So ordered.

(S) LEE P. GAGLIARDI, U.S.D.J.

Dated: New York, New York, July 2, 1975.

## Appendix 2

### LETTER AND ENCLOSURES FROM AMRAM KASS, ATTORNEY; TO FRANK T. CICERO, ASSISTANT COMMISSIONER, NEW YORK DEPARTMENT OF HEALTH, DATED DECEMBER 23, 1971

DEAR DR. CICERO: In reply to your letter to me of September 3, 1971, on the above application, I am pleased to set forth herein the requested information.

1. Anne Weiss' net worth statement as at February 28, 1971, is enclosed herewith.

2. The confirmation of Anne Weiss' cash balance as of the date of the statement is enclosed herewith.

3. Medic-Home Enterprises, Inc., is a publicly held company trading over the counter and its shares have a readily ascertainable price. Financial statements for this corporation for fiscal year 1971 will be available shortly and I shall be glad to forward these to you upon request.

4. An explanation of the values for Anne Weiss' nursing home interests is enclosed herewith.

5. I am informed that Dr. Yellin will be withdrawing from this application. Therefore, his financial information will no longer be required.

I sincerely hope that you will find the foregoing information complete and satisfactory in all respects and that Anne Weiss will be spared the substantial delays and expenses of formal appraisals. If you have any questions or if you require any additional information at this time, please do not hesitate to contact me.

Your kind cooperation in the processing of this application is greatly appreciated.

Sincerely,

[Enclosures.]

AMRAM KASS.

(3205)

# ROYAL NATIONAL BANK of NEW YORK

STATEMENT PERIOD	NUMBER OF DEPOSITS - CREDITS	DEPOSITS (\$)	NUMBER OF CHECKS - DEBITS	DATE OF THIS STATEMENT
JAN 29	9	20	23	FEB 26, 1971
STATEMENT PERIOD	TOTAL AMOUNT OF DEPOSITS AND OTHER CREDITS	TOTAL AMOUNT OF CHECKS AND OTHER DEBITS	BALANCE FORWARD FROM PREVIOUS STATEMENT	
0,127.49	292,568.75	16,192.83	282,503.41	

DR. BERNARD BERGMAN  
 250 WEST 57 STREET  
 NEW YORK, N Y 10019

10

ACCOUNT NO.  
 613-1038-9

NOTE TO OUR ANY  
 CHANGE OF ADDRESS



SAMUEL DACHOWITZ,  
New York, N.Y., December 1, 1971.

Mrs. ANNE WEISS BERGMAN,  
New York, N.Y.

DEAR MRS. WEISS: As requested, I have prepared the enclosed explanation of the nursing home values in your financial statement as at February 28, 1971.

Yours very truly,

SAMUEL DACHOWITZ.

EXPLANATION OF NURSING HOME VALUES IN ANNE WEISS BERGMAN, STATEMENT OF ASSETS AND LIABILITIES AS AT FEBRUARY 28, 1971

The respective values of Anne Weiss' nursing home interests are based on conservative estimates based on income, replacement costs and market value as reflected in current nursing home transactions. More specifically:

(a) Oxford Nursing Home is a 320 bed facility subject to a \$750,000.00 mortgage. The annual net rent to Anne Weiss, as landlord, is \$137,000.00 while the annual mortgage interest and amortization payments are approximately \$65,000.00, resulting in a net annual cash flow income of approximately \$72,000.00. Capitalizing this income at a 10% rate of return results in a value of \$720,000.00 for the realty alone. An additional \$350,000.00 has been allocated to the  $\frac{2}{3}$  interest in the operation. This is not much more than the value of the furniture and equipment in the nursing home. Based on the foregoing values, the entire value of the facility would be \$450,000.00 for the operation (based on \$300,000.00 for a  $\frac{2}{3}$  interest) plus \$1,470,000.00 for the realty (\$720,000.00 plus \$750,000.00 mortgage) or a total of \$1,920,000.00. This is approximately \$6,000 per bed, much less than either replacement cost or market value for comparable facilities.

(b) Lakeview Convalescent Center is an ultramodern 120 bed facility in Wayne, one of New Jersey's finest communities. It is subject to a mortgage of approximately \$800,000.00. Anne Weiss' \$750,000.00 equity value (for 75%) is based on a total equity value of \$1,000,000.00 so that, together with the mortgage, the total value for the facility is \$1,800,000.00. A similar facility in Wayne but somewhat smaller in size, with only 100 beds, was recently being offered on the market for approximately \$2,000,000.00.

(c) Rego Park Scharf Nursing Home, a 200 bed facility under construction in Queens, New York, will have a \$1,300,000.00 mortgage when completed. Based on prevailing market value and replacement costs in the area, the total value of this facility should be in the area of \$3,200,000, or \$16,000 per bed. Subtracting \$1,300,000.00 (the mortgage) results in an equity value of \$1,900,000.00 or approximately \$600,000.00 for Anne Weiss' 30% interest. The value in the statement assigned to this interest is \$300,000.00.

(d) Towers Nursing Home is a 360 bed facility of which Anne Weiss owns two thirds of the operation. The value of \$350,000.00 assigned to this interest is, again, not much more than the value of the furniture and equipment. The same comment applies to Anne Weiss' 60% interest in Genesee Nursing Home (a 116 bed facility).

SAMUEL DACHOWITZ,  
New York, N.Y., April 12, 1971.

Mrs. ANNE WEISS BERGMAN,  
280 Riverside Drive,  
New York, N.Y.

DEAR MRS. BERGMAN: Pursuant to your instructions, I have prepared the attached balance sheet as at February 28, 1971, taken from your books and records without verification by correspondence.

Yours very truly,

SAMUEL DACHOWITZ.

Anne Weiss Bergman, Statement of Assets and Liabilities as at February 28, 1971

ASSETS	
Cash and securities:	
Cash in banks-----	\$141,251.70
Securities:	
Joint interest in 176,306 shares of Medic-Home Enterprises, Inc-----	837,453.50
Total cash and securities-----	<u>978,705.20</u>

## Investments:

Oxford Nursing Home (realty and two-thirds of operation) 144-48 South Oxford Street, Brooklyn, N.Y.-----	\$1,070,000.00
Towers Nursing Home (two-thirds) 2 West 106th Street, New York, N.Y.-----	350,000.00
Genesee Nursing Home (60 percent) 1634 Genesee Street, Utica, N.Y.-----	60,000.00
Lakeview Convalescent Center (75 percent) 130 Terhune Drive, Wayne, N.J.-----	750,000.00
Rego Park Scharf Nursing Home under construction (30 percent) -----	300,000.00
<b>Total investments</b> -----	<b>2,530,000.00</b>
<b>Total assets</b> -----	<b>3,508,705.20</b>

## LIABILITIES AND NET WORTH

Notes payable—Banks-----	75,000.00
Notes payable—Others-----	1,000.00
<b>Total liabilities</b> -----	<b>76,000.00</b>
<b>Net worth</b> -----	<b>3,432,705.20</b>
<b>Total liabilities and net worth</b> -----	<b>3,508,705.20</b>

State of New York Department of Health  
 DIVISION FOR APPROVAL-MEDICAL INSTITUTION  
 ONLY FOR PARTNERS OR INDIVIDUAL OWNER ONLY

1. Name and Location of Institution  
 PARK CRESCENT NURSING HOME  
 150 Riverside Drive  
 New York, New York

2. PROVIDE THE FOLLOWING INFORMATION FOR EACH APPLICANT INCLUDING ALL PARTNERS (Use a separate sheet if necessary)

EDWARD BERGMAN

Age 59

3. Business or Profession  
 Nursing Homes

250 West 57th Street, New York, New York 10019

4. Applicant's experience in medical institutions or other related activities. (Use extra sheets if necessary.)

Licensee of Park Crescent Nursing Home with 25 years experience in the financing, construction and operation of nursing homes.

ASSETS	Amount	A. LIABILITIES	Amount
Cash .....	\$ 148,899.15	a. Accounts Payable .....	\$
U.S. Bonds (Total of item 9d) .....	12,392,000.00	b. Notes Payable .....	
Real Estate (Total of item 10b) .....	585,000.00	c. Mortgages Payable (Total of item 9e) ..	3,613,000.00
See attached		d. Other (specify) .....	
Schedule	6,225,000.00		
TOTAL ASSETS	19,350,899.15	e. TOTAL LIABILITIES	3,613,000.00
NET WORTH (Assets-item 5e, less Liabilities-item 5e)	\$10,737,899.15		

6. NET PERSONAL INCOME (after taxes)  
 for last calendar year \$ 150,000.00

7. REAL ESTATE OWNED BY APPLICANT

a. Location of Real Estate	b. Title in Name of	c. Cost and Year Purchased	d. Estimated Value	e. Mortgage	f. Name of Mortgagee
Rockville, Md. (Land)	Institutional Builders	51,200 1968	112,000	13,000	Englander
100-0 1st St. East	Roosevelt Tower Co.	12,280,000 1967	12,280,000	8,600,000	John Hancock

8. SECURITIES OWNED BY APPLICANT

250,000 shares of Medico-Home Enterprises Inc. (Joint owner)	585,000
--	---------

9. RECORD OF LEGAL ACTIONS

10. a. Except for minor traffic violations, were you ever convicted of any violation of the law?  
 b. Are there any criminal actions pending against you?  
 c. Have you ever been involved in a hearing before an official body in relation to the operation of a home or institution caring for people?  
 d. Have you ever been denied approval to operate a home or institution, or have you ever had such approval withdrawn?

If the answer to any of these questions is Yes, give full details on separate sheet. Include date and type of action, location, parties involved, and outcome.

I hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief, and I am not aware of any information which would cause me to believe that the information furnished herein is false or misleading in any material particular.

*Bernard Bergman: Schedule of other assets*

(Notations in parentheses represent percentages or parts owned)

Allentown Nursing Home (75 percent), 17th and Allen Streets, Allentown, Pa.....	\$420,000
Elizabeth Nursing Home (100 percent of realty), 456 Rahway Avenue, Elizabeth, N.J.....	525,000
Fredericksburg Nursing Home (46 percent), Route 3, P.O. Box 154A, Fredericksburg, Va.....	230,000
Irvington Nursing Home ( $\frac{2}{3}$ ), 609-631 Irvington Avenue, Newark, N.J.....	250,000
North Shore Nursing Home (50 percent), 9380 N.W. 7th Avenue, Miami, Fla.....	200,000
Palms Convalescent Center (50 percent), 14601 N.E. 16th Avenue, Miami, Fla.....	200,000
Park Crescent Nursing Home (cost above first mortgage), 150 Riverside Drive, New York, N.Y.....	3,000,000
Twin Oaks Nursing Home (40 percent), 606 Habana, Tampa, Fla.....	200,000
Verranzano Nursing Home (100 percent of realty), 100 Castleton Avenue, Staten Island, N.Y.....	700,000
Willoughby Nursing Home (100 percent of realty), 949 Willoughby Avenue, Brooklyn, N.Y.....	500,000
<b>Total .....</b>	<b>6,225,000</b>

APPENDIX 3

SUBPENA AND ATTACHED AFFIDAVIT, NATIONAL BANK  
OF NORTH AMERICA, ISSUED BY FRANK E. MOSS,  
DATED JANUARY 16, 1975

UNITED STATES OF AMERICA  
Congress of the United States

To Officer, National Bank of North America, 44 Wall Street, New York,  
New York

Greeting:

Pursuant to lawful authority, YOU ARE HEREBY COMMANDED to  
appear before the Special Committee on Aging  
of the Senate of the United States, on January 21, 1975,  
at 10 o'clock a.m., at ~~XXXXXXXXXXXXXXXXXXXX~~ New York County  
Lawyers Association, 14 Vesey St., New York, New York, then and there  
to testify what you may know relative to the subject matters under con-  
sideration by said committee.

Committee requests that you provide all books, records, papers, checks and  
documents in Bank's possession or control dealing with, or in regard to:  
Medic-Home Enterprises, Inc.; Bernard Bergman; Samuel Klurman; Sissel Klurman;  
Amram Kass; Anna Weiss Bergman

Hereof fail not, as you will answer your default under the pains and pen-  
alties in such cases made and provided.

To Thomas E. Ferrandina, United States Marshal  
to serve and return.

Given under my hand, by order of the committee, this  
16th day of January, in the year of our  
Lord one thousand nine hundred and seventy-five

*Frank E. Moss*

Chairman, ~~Subcommittee~~ Subcommittee on Long-Term  
Care, U.S. Senate Special Committee on Aging

AFFIDAVIT FROM LEON P. CIFERNI, VICE PRESIDENT, NATIONAL  
BANK OF NORTH AMERICA

LEON P. CIFERNI, being duly sworn, deposes and says:

I reside at 31 Runnymede Road, Berkeley Heights, New Jersey.

I am Vice President and Resident Counsel of National Bank of North America, a national banking association, having its principal office at No. 44 Wall Street, in the City, County and State of New York.

On January 21, 1975, the Bank was served with a subpoena issued by the United States Senate Special Committee on Aging, which subpoena required the Bank to provide, on January 21, or February 4, 1975, certain records pertaining to the Towers Nursing Home. The material requested consisted of 56 checks, drawn on the Towers Nursing Home's checking account numbered 001-1-3892-5, from January 1, 1971 through November 1, 1974. The subpoena annexed a memorandum identifying the checks sought, setting forth the amounts in which such checks were drawn and the dates upon which such checks were paid.

The gathering of the data requested was done by the Bank's Adjustment Department, at my request. Rolls of film containing copies of checks drawn on the account between the relevant dates were scanned. When checks were located on the film, copies were made thereof and are available. Of the 56 checks requested, we were able to obtain copies of 31.

There are several problems which caused the remaining checks to be unavailable. In some cases, the checks could not be found on the film in the place where they should have been located. To understand this, one must understand the system utilized in the reproduction of the checks. All checks drawn on a particular branch are initially batched. They are then "fine sorted" by computer, utilizing the magnetic ink account number pre-encoded on the check, so that, ideally, all checks on a given account are copied in sequence. Accordingly, when one locates the first check drawn on a given account on the film, all other checks paid on the same date should follow it in sequential order. This simplifies the task of retrieval. Unfortunately, it is possible that errors take place in the sorting process and that isolated checks may be copied out of sequence. Many of the checks sought in connection with the subpoena were "not in place", i.e., when that portion of the film pertaining to Towers Nursing Home was scanned, the checks sought were not in the sequence. One can speculate that copies of these checks may be located in other places on the roll or rolls of film covering the date in question (each roll containing some 10,000 checks).

In the time available to us since the service of the subpoena, it has only been possible for us to scan the portions of the film where Towers Nursing Home checks should have been located. It is possible that the missing checks are located elsewhere. To date, approximately 60 man hours have been spent in attempting to locate the checks in question, and it is estimated that an additional 300 to 400 man hours would be necessary to scan all the relevant film. The Bank is reluctant to undertake this task, as it will be extremely expensive and burdensome, and may prove negative. However, it will do so, if the Special Committee so desires.

In addition to the foregoing, there are other reasons that certain of the checks could not be found. On occasion, an error causes the film roll to be overexposed. This was responsible for the Bank's inability to retrieve some of the 1971 copies.

In the case of two items (the checks requested paid on January 10, 1973 and September 9, 1973), the rolls of film pertaining to those dates are missing. It may be that they were taken out of their place in the files in connection with an earlier research for records, and were later misfiled. I have instructed the Adjustment Department to make every effort to locate these rolls of film so as to have the copies for the scheduled return date.

LEON P. CIFERNI.

## Appendix 4

### STATEMENT AND ATTACHMENT OF MARY YANKAUER, DIRECTOR, BURDEN CENTER FOR THE AGING, NEW YORK, N.Y.

What is wrong with our nursing homes and what needs to be done about them? That is a large order and, being a bit cynical, I am not sure that the wrong will indeed be righted.

What is wrong essentially is the attitude of all of us about the aged, the sick, and the poor. If one reads history, it is a long, sad litany of neglect and carelessness of those who cannot defend themselves. Perhaps the saddest litany is that of the old who usually are poor and almost always sick or on their way to being sick. History tells us also that they are regarded rather like a cheap commodity which must be merchandised to produce the greatest profit—in this case dollars to individuals, in the end given by all of us unthinking, uncaring citizens. We do not realize we are contributing to our own demise. This is one thing wrong—our attitudes. Changing attitudes is a long, difficult and expensive procedure.

Until government—Federal, State, and local—bend continuing efforts in this regard, the elderly will continue being dumped on proverbial ash heaps and left to rot away. I say "government" because the term means a body of persons whose words spread and penetrate the minds of citizens. It is the body which both leads and is led by the electorate.

When individuals age and need the care of others, one of the means of such care is by institutionalization. The facts have been documented that this is not the best nor the least expensive means of providing care. Care in the homes of the old as long as possible is what is truly needed. Only when an individual can no longer function in that setting should institutionalization be considered. We know that for the most part home care is not available, not sufficiently broad in scope when it is provided, and that there are insufficient workers and insufficiently trained workers to provide it. Therefore, one thing that is wrong is the lack of such care and when attempts are made to provide it, those attempts fall afoul of various conflicting rules of Federal, State, and local government—see attached statement on Medicaid spend downs—how to remedy this situation is a subject of another long discussion.

When institutionalization is required, we have in this country two types—non-profit and for-profit institutions—subdivided into numerous categories, each giving a portion of care and a few giving a continuum of care. Among these are congregate care facilities, foster homes, small homes (division of institutional proprietary homes for adults), homes for aged with or without chronic sick care facilities, health related facilities. The old are shuffled about from one to the other according to laws, regulations, and financial means. By the time they need chronic care they have been stripped of dignity, hope and money. This is wrong.

It is also known that the nonprofit homes by their very nature provide in the worst of them, TLC (tender, loving care). Usually they also provide and it is a part of TLC, a respect for the person, mentally and physically, that contributes so much to the well being of individuals.

On the other hand, the for-profit homes have in general that overriding motive of making money. Unfortunately, far into the future, there will be a need for beds for chronic care and the nonprofit groups do not have the money to provide them. We have in this country unfortunately encouraged not the philanthropic home but the proprietary home. They have with our money—yours and mine—built beautiful edifices and have been able to manipulate and obtain means to operate old and new buildings to warehouse the worn out older person. This is wrong. Our government aid programs—for construction, rehabilitation, and re-

pair of the physical plants and for the training and maintenance of staff—must be aimed toward the not-for-profit sponsors including carefully chosen community sponsorship and not to real estate developers and speculators or business for-profit corporations.

It is in large measure the overwhelming desire for money that cause the horror stories that some of us know so well. I have never known a proprietary home that admitted they were making money (quite the contrary), but I also have never known an owner who lived poorly or who did not have more than enough to live the way many of us would like to live. Times have not really changed since Dickens wrote of his work houses and Sairy Gamps, or since our county poorhouses were in flower.

Since we are stuck with the proprietaries, what must be done to improve them? One suggestion would be a limitation on profits. Another is a set of uniform nationwide base rules, with mandated, supported, adequate enforcement procedures.

Frequent and unannounced inspections must be made by a team of doctors, nurses, social workers, dieticians, etc., and quick followup inspections for violations made.

Audits must be regular and means by which medicaid dollars are used to reimburse for legal defense, for real-estate deals, and for personal expenditures must be eliminated.

The poor care is attributable to the desire for profit which causes minimal staffing, poor staffing (good nurses and good supervision cost money), lack of adequate therapy, both physical and recreational, and poor food. Greed is responsible for reports which are not, to put it charitably, quite accurate or complete. Greed causes carelessness and meanness in the handling of patients. True we know that nursing homes are not the most pleasant of places to work but they do not have to be hellholes. There *are* good proprietaries. The patients are happy as they can be, the care and food is good, and this applies as well to the dying bed-bound incontinent as to those who can manage on their own or in wheelchairs. There is no excuse whatever for bedsores or for dehydration or malnutrition. They are easily prevented by proper medical and nursing supervision. There is no excuse for aides who shove a tray at a helpless person or who refuse to make a dying woman's death easier. There is no excuse for leaving a corpse in the room with living helpless patients for 24 hours. I do not want to recite the horror stories. They could be prevented.

I attach a copy of "Health Perspectives." While this deals with hospitals primarily the situation with respect to nursing homes is worse. Hence the investigation now in motion. But we have had uproars before and they died down—so did the patients.

It is time, it appears, for the community to act in the interest of the patients. Why not have compulsory community boards for each proprietary home—members of which cannot be connected directly or indirectly to the ownership? If some one is connected to the food supplier for the home, that person could not be on the board. These boards should be mandated to meet regularly, to inspect without announcement, and might influence many aspects of care. If a tight rein were kept on profits and adequate communication was mandated between the professional government inspectors and the auditors, then improvement in care might result. It also appears that there is some correlation between the person or corporation that owns or controls large numbers of homes and the quality of care provided. It appears that in many ways the smaller owner gives better care and, of course, his profits are less.

There is also the need for some changes in professional attitudes. Why should a doctor be paid for one quick visit and if he goes back, not be paid? Why should a doctor be paid when he spends so little time with a patient or is not available when needed? Why should a nurse be tolerated who refuses to look at a patient's swollen ankle when asked to do so by a relative or friend? Why should no one know how that ankle was hurt? The entire attitude of staff when it encourages theft, insolence, and sheer cruelty can be changed—but only if the owners are willing to obtain competent help and back them up. A good supervisor can work wonders but not if staff is aware that the owner is interested only in a fast turnover and an equally fast buck. If a patient has money, that patient pays extra for simple service. If the patient has no money, that patient goes thirsty and unattended. This can be prevented.

What is the difference between child abuse and geriatric abuse? None—except that there are some legal remedies for the former. The latter has none.



If a patient is sent to the hospital from the nursing home with sores, dehydrated, malnourished, and with bruises, the nursing home gets paid and the patient often is ill and he or she dies.

It boils down, it seems, to attitude—our attitude. If our regard for age is low, then the aged might well commit suicide in despair. If we obey the commandment "Honor thy father and thy mother," then our aged may see their future in better terms and have, as far as we may grant them, a peaceful and easy end.

[Attachment]

[From "Health Perspectives" published by the Consumer Commission on the Accreditation of Health Services, Inc., September-October 1974]

#### HOSPITAL INSPECTION—ITS IMPORTANCE TO THE CUSTOMER

In the United States today, conditioned as we are by television's Marcus Welby and Medical Center, we think of our hospitals as life-saving institutions where hearts are transplanted and severed limbs reattached in a gleaming white atmosphere of futuristic sterilized technology. It is difficult for us to appreciate that not very long ago the term pest-house was synonymous with hospital and few patients expected to, or did, leave the premises alive.

This change in perspective is indeed related to fact. The modern hospital is often the setting for medical miracles, as well as a place where babies are born, tonsils and appendixes are removed, and a wide variety of diseases are treated, most often successfully. This admirable record is maintained only by constant vigilance and rigorous adherence to standards. When these standards are relaxed the hospital is an ideal breeding ground for infection or disaster, since its patients are already weakened by the effects of illness. There are too many examples of miniature epidemics in hospital wards and nurseries, brought about by faulty or sloppy techniques, for any of us to be casual about the performance of our hospitals.

One of the ways in which a measure of control is exercised over the quality of a hospital is through licensing. Licensing is, by definition, a governmental process, which has the purpose of setting a minimum standard to which all licensed hospitals must adhere. Typically, the licensing agency prepares and reviews regulations, develops and carries out procedures for inspection of facilities covered by the law, and issues licenses to those facilities in substantial compliance with the law and regulations. Where the facility does not live up to the minimum standards, the agency should inform the violator of the deficiencies, supply expert consulting services to help remedy the lacks, and take proper steps to close the facility if no action to comply can be, or is, taken.

A hospital inspection is one important way to ensure that Federal, State, and local health standards are being met. In New York State, hospital inspectors review hospital structure, staff and facility. Some of the areas they review are:

1. The Medical Staff; the organization of the medical and dental staff; how their qualifications are determined, what arrangements they have for self-policing (tissue committees to reduce unnecessary surgery, reviews of all in-hospital deaths), functioning of the laboratory and other services (such as operating and recovery rooms), and special medical or surgical services (pediatric, psychiatric, etc.).

2. The Nursing Department; how the nurses' time is spent (bedside or clerical), control of medications, training and skill for special services (recovery room, operating room, etc.).

3. Social Service; is there qualified staff to meet the inpatient and ambulatory needs of the patient, how does the service function?

4. Dietary Service; the qualifications of the staff needed for preparation of special diets, as well as the physical facilities of the hospital kitchen (similar to restaurant inspection with at least the same minimum attention to cleanliness and food contamination).

5. Hospital Administration; review the occupancy rates (a measure of efficiency in utilization of facilities), supervision of personnel (physical examinations required to prevent spread of diseases, such as tuberculosis, to weakened hospital patients).

6. Physical Plant; fire and safety (fireproofing, adequate egress, etc.), general sanitation, and environmental health (control of infection through adequate facilities for disposal of dirty linens, air circulation, etc.).

## STATUTORY REQUIREMENT TO INSPECT

The New York State Health Department is required by Public Health Law to inspect all hospitals in the State, and the State Health Commissioner is legally responsible to watch over hospital performance. Chapter 795 of the New York State Public Health Law gives the Commissioner ". . . power to enquire into the operations of hospitals and conduct periodic inspections of facilities with respect to the fitness and adequacy of the premises, equipment, personnel . . . (and) standards of care . . ." Article 28 requires the Commissioner to find the services and facilities fit and adequate before an operating certificate can be issued to a hospital. Operating certificates are issued for a period of up to two years. A hospital cannot legally open or remain in operation without a certificate.

Until September, 1973, the New York City Health Department had the legal power to make full inspections of proprietary (for profit) hospitals and nursing homes in New York City. The State Health Department was responsible for inspecting all voluntary and municipal hospitals. City administrative procedures required each proprietary hospital to be inspected at least four times each year. These surveys, however, could not be considered comprehensive. Often these inspections were *unannounced*, or made at night or on weekends, which gave some assurance that the institution was not presenting a falsely favorable picture.

Effective September 1, 1973, however, a State law transferred the City's inspection responsibility to the State Health Department. In effect, the City was prevented from continuing its survey program. The City's proprietary hospital and nursing home inspectors were assigned to other duties and the State Health Department took over the responsibility for inspection of proprietary hospitals and nursing homes in New York City.

At that time, the State Health Department lacked personnel to perform adequate inspections. The State also had not inspected any voluntary hospitals in New York City for more than two years, in violation of Article 28. In spite of this personnel shortage, the State indicated its willingness and ability to perform the additional surveys of proprietary institutions in the City. The failure of the State to inspect hospitals was exposed in "A Comparison of Hospital Surveyors in New York State," CCAHS Quarterly, Winter, 1974.

Because the State was unable to perform complete inspections, temporary operating certificates were issued to all proprietary hospitals in September, 1973. These certificates expired January 31, 1974, but were automatically renewed. In October, 1973, the State Health Department performed limited spot surveys of proprietary hospitals and nursing homes in New York City. Verbal follow-up replaced the customary enforcement letter listing deficiencies, violations, and a request for a written timetable for corrections. Many deficiencies were corrected by careful follow-up.

## STATE SURVEY SCHEDULE LAGS

There are approximately 123 voluntary, proprietary, and municipal hospitals in New York City. Between January 1, 1974, and September 1, 1974, the State Department of Health completed thirteen inspections of proprietary hospitals. Five more inspections (one voluntary and four proprietary hospitals), were almost complete, but the plans of deficiency correction from the institutions are not yet available. One additional inspection was started but not complete as of September 1, 1974. *At this rate of inspection it will take five or six years for the State Department of Health to inspect all New York City hospitals*, even if no follow-up inspections are made which can further delay re-inspection. Without aggressive follow-up, there can be no effective enforcement of standards or assurance that violations are corrected.

## SAFETY DOWN—COSTS UP

This lag in hospital inspection poses real problems for New York City health consumers. The most important, of course, lies in the danger that a hospital may pose to the health and safety of its patients. Few images are as frightening as that of a fire in a hospital, where bed-ridden patients may be unable to escape. But, if a hospital's physical plant is in violation of the fire codes, this danger is real and ever present.

There are documented instances in the United States of mini-epidemics in hospitals: some due to inadequate physical facilities which promote the spread of infection, and some due to personnel inadequately screened to eliminate carriers of diseases such as tuberculosis.

A second problem arises from lack of inspection when costs are added to the medical care bill by insufficient control of hospital operations. One measure of the adequacy of a hospital's operations is the level of occupancy. When the occupancy (rate) is not kept artificially high by admitting patients who do not need to be in the hospital, the occupancy rate can be a measure of how well the institution is utilized. The State Health Department has set a minimum sliding occupancy rate by type of service (i.e., 80 percent for medicine and surgical beds, 70 percent for pediatric beds and 60 percent for obstetrics-gynecology) as the point at which, it begins to withhold Medicaid funds as a penalty for underutilization of facilities. The effect of the establishment of this type of rate is to encourage hospitals to close underutilized services. Unfortunately, however, unless the need for admission is carefully monitored, hospital beds will be inappropriately filled, so that the hospital can avoid a penalty in its reimbursement rate. Without a constant program to audit and verify the statistical reports it receives, the State cannot know when sufficient numbers of a hospital's beds are remaining empty over a period of time in order to impose the legal fiscal sanctions. A survey or monitoring program that ensures the adequate review of occupancy (as a measure of utilization) and the clinical need of the patient to be admitted to a hospital (to prevent inappropriate use of hospital beds) is vitally needed.

Of the Article 28 surveys undertaken on or before September 20, 1974, by the State, at voluntary and proprietary hospitals the reports for Royal, Kew Gardens, Whitestone, Madison Avenue, Parsons, Astoria, Lefferts, Terrace Heights, Interboro, Midwood, Prospect and Boulevard Hospitals were complete and available to the public. The reports for Interboro, Midwood, Brooklyn Women's, Prospect and Boulevard Hospitals did not contain a Plan of Correction for the deficiencies (since the plans were not received by the Health Department within the deadline) and the survey for Wadsworth Hospital has been sent to the State Health Department Offices in Albany and is not now available.

Recent disclosure laws (see *Freedom of Information—The Right of the Public to Know*, CCAHS Health Perspectives, Vol. 1, No. 6, July-August, 1974) make the State Health Department survey reports of hospitals available to the public. A review of these reports performed by the State Health Department during the first nine months of 1974 reveals the existence of many serious deficiencies and violations.

Hospital surveys, if properly conducted and rigorously enforced, can be mutually beneficial to the public, the hospitals, and every patient.

#### RECOMMENDATIONS

The Consumer Commission recognizes the need to improve present hospital inspection surveys and enforcement. The Commission recommends that:

1. all hospitals in the City have *thorough, unannounced* Article 28 surveys no less than once every year, to be performed by a qualified team (i.e., physician, nurse, hospital administrator, and other health workers and consumers),

2. adequate follow-up inspections be made every three months, to ensure that violations and deficiencies are corrected, and that new violations are immediately identified,

3. the State or City Health Department expeditiously use due process to selectively close inefficient or unsafe services or deny licensure to those hospitals where major or uncorrectable deficiencies and violations pose a clear danger to patients,

4. there be full disclosure of inspection reports by the hospital to all medical and nursing staff, consumer advisory boards and community planning agencies,

5. that the full report be posted in the main lobby and other public areas of the hospital and printed in the local news media by the State,

6. the survey teams review occupancy rates and need for admission to prevent inappropriate use of expensive hospital beds,

7. adequate, qualified personnel be hired by the State (and City) to properly perform these inspections and subsequent enforcement, and

8. the State withhold Medicaid reimbursement to hospitals in an amount equal to the costs to improve facilities, purchase equipment or hire staff, and apply those withheld funds to the costs of correction of deficiencies.

## Appendix 5

### LETTER FROM ARYEH NEIER AND IRA GLASSER, EXECUTIVE DIRECTORS, NEW YORK CITY CIVIL LIBERTIES UNION, ACLU; TO SENATOR FRANK E. MOSS, FEBRUARY 4, 1975, AND REPLY FROM SENATOR MOSS, FEBRUARY 6, 1975

DEAR SENATOR MOSS: We write to protest your Subcommittee's treatment of Bernard Bergman.

As you know, Mr. Bergman faces the possibility of criminal prosecution for the practices of the nursing homes with which he is associated. It is unfair and, we believe, unconstitutional to compel Mr. Bergman to appear before your Committee and to require him to answer questions which might tend to incriminate him while he is undergoing criminal investigation by a grand jury. And, if Mr. Bergman should choose to avail himself of his Fifth Amendment privilege to refuse him to engage in the ritual invocation of that privilege in public hearings and, thereby, prejudice potential jurors in a criminal trial.

As we understand, counsel for Mr. Bergman has asked that he be allowed to call witnesses and present evidence on behalf of Mr. Bergman and that he be permitted to cross-examine witnesses hostile to Mr. Bergman. Even if these rights were granted, they would not overcome the basic unfairness in whipping a witness between a legislative investigation and a possible criminal prosecution. But the denial of these rights exacerbates the abuse of Mr. Bergman and is itself a violation of due process in an accusatory hearing.

We do not question the value which could be served by your Committee's hearings. Certainly, the aged have been greatly abused and legislative attention to their problems is welcome. But we are disturbed by newspaper accounts which attribute to you the view that the major purpose of the hearing is to put on record Bernard Bergman. We hope such reports are in error and that your real purpose is to facilitate legislative action on behalf of the aged. Unhappily, the purpose attributed to you in the press appears inquisitorial as does your treatment of Mr. Bergman. It is improper for a legislative hearing to be used as a device for prosecutorial discovery.

We hold no brief for Mr. Bergman and, in fact, we condemn his efforts in court to restrict the press from publishing critical information about him. But, like everyone else, he is entitled to fair treatment and we hope your Committee will provide it.

Sincerely,

ARYEH NEIER,  
IRA GLASSER,  
*Executive Directors,*  
*New York City Civil Liberties Union.*

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DEAR MR. NEIER: Thank you for your startling letter which protests *newspaper accounts* of Dr. Bergman's treatment before my Subcommittee. I must say that I am distressed to have our hearings characterized as "inquisitorial" or "prosecutorial". These are serious charges and are not to be taken lightly even if they are inaccurate. I have long supported the objectives of ACLU and indeed I am a recipient of a citation from a local chapter for my efforts to protect civil liberties. Consequently the tone of your letter disturbs me.

In any event, I am pleased to inform you that the Subcommittee's hearings in New York City have been intended to facilitate legislative action. Any reasonable review of the hearing record will support this view. For example, the issues being examined include the profitability of the nursing home industry particularly as it relates to nursing home chains; the adequacy of existing ownership

disclosure requirements for nursing home operators and the wisdom of requiring cost-related reimbursement for nursing homes under the Medicaid program.

With respect to the first issue, I introduced a bill S. 1960 in 1973 to require operators to file CPA audited financial statements and to provide penalties for fraud or misrepresentation. Secondly, I am the author of the ownership disclosure requirement enacted in 1967 and as amended in 1972; despite such enactments it is still impossible to tell who owns nursing homes in most states. Thirdly, the Congress enacted section 249 of Public Law 92-603 requiring all states to adopt "cost-related" reimbursement formulas for nursing homes under the Medicaid program by January 1977. Our experience in New York, which has had such a formula since 1971, indicates that we may be moving 180 degrees in the wrong direction.

Knowing of your particular concern for the plight of the aged and infirm, I should like to point out that the Subcommittee—and Senator Percy in particular—was instrumental in insuring that a patient's bill of rights was included in Medicare-Medicaid Nursing Home regulations last year.

These are but a few of the developments which grow out of the Subcommittee's more than 37 hearings and 5,000 pages of testimony taken since 1963. A 12-volume report, now being released on a one-a-month basis, has been prepared—drawing largely on those hearings—and it has been described by the U.S. Department of Justice as the "most comprehensive study of the nursing home industry ever undertaken."

In none of these hearings, nor indeed in all of the thousands of hearings that I have conducted nor in my 10 years as Municipal Court Judge, has anyone ever questioned the fairness of the proceedings or suggested that I violated anyone's constitutional rights. I am proud of this report.

Speaking generally, I am sure you are aware of the doctrine of separation of powers which sets forth that the Senate and House as the Legislative branch have a coequal right, indeed an obligation to investigate matters within their scope and jurisdiction. I am sure you do not question the right of the Subcommittee on Long-Term Care of the Senate Committee on Aging to investigate nursing homes. Nor can you have much objection to our investigation of specific nursing home operators or nursing home chains.

It is in this context that we have called for testimony by Dr. Bernard Bergman. We have had reason to follow his activities at least since 1964. His association until last month, as the Chairman of the Board of Medic-Home Enterprises, along with his personal holdings in nursing home real estate, certainly make him one of the most prominent nursing home owners in the country. The consistent allegation of poor care that we have received from various State Health departments as well as individuals and the allegations of fraud and abuse currently in the press certainly deserve investigation.

It is true that Dr. Bergman is under investigation for possible criminal violations being conducted in the State of New York. He has not, however, presented testimony before any Grand Jury, and of course there is no absolute certainty that current investigations will lead to indictments. In any event, possible criminal violations are not the primary focus of our investigation. Our primary concern is poor care. We look for generic examples of what may be symptomatic of the industry in general. In this connection, there is no other agency with the resources or willingness to follow issues across state lines. At present we have investigations underway in Illinois, Minnesota and Florida. I emphasize that Dr. Bergman is not the only operator under investigation. Nor is Medic-Home the only chain operation under surveillance. If you would care to check our hearings and reports you will note our deep and continuing concern with issues and industry practices.

Your suggestion that Dr. Bergman may appear before our Subcommittee and be forced to plead his rights under the Fifth amendment is startling. Dr. Bergman has testified under oath that he is innocent of all charges, including the criticism that his nursing home provides poor care. Dr. Bergman, in fact, promised me that he would reappear and answer any questions growing from our analysis of his books and records. I presume his innocence. I do assert, however, that the Subcommittee has a legitimate legislative and oversight function which is being served by our current hearings.

Even if we were examining possible evidence of criminal wrong-doing (which we are not the Courts have consistently sustained the right of Congressional Committee to proceed with their lawfully constituted inquiries. For example in *Delaney v. United States*, 199 F. 2d 107 (1st. cir. 1952) the Court sustained the right of a legislative Committee to conduct a hearing involving a witness who had been indicted because of the "overriding consideration of public interest."

The Court then commented that in a situation where no indictment had yet been brought the circumstances might be significantly altered, and went on to state:

"In such a situation the investigative function of Congress has its greatest utility; Congress is informing itself so that it may take appropriate legislative action; it is informing the Executive so that existing laws may be enforced; and it is informing the public so that democratic processes may be brought to bear to disclose any disclosed executive laxity."

I would also like to commend to your attention the opinion of Justice Harlan for the Court in *Hutcheson v. United States*, 369 U.S. 599 (1962), where it was stated:

"But surely a Congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, 279 U.S. 263 (1929) at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135 (1927), 179-180."

Justice Harlan then goes on to say:

"Moreover, it does not lie with this Court to say when a congressional committee should be deemed to have acquired sufficient information for its legislative purposes . . . The Committee's interrogation was within the express terms of its authorizing resolution. If the Committee was to be at all effective in bringing to Congress' attention certain practices . . . which should be subject to federal prohibitions, it necessarily had to ask some witnesses questions which, if truthfully answered, might place them in jeopardy of state prosecution. Unless interrogation is met with a valid constitutional objection 'the scope of the power of congressional inquiry . . . is as penetrating and as far-reaching as the potential power to enact and appropriate under the Constitution.' *Barenblatt v. United States*, 360 U.S. 109, 111. And it is not until the question is asked that the interrogator can know whether it will be answered or will be met with some constitutional objection. To deny the Committee the right to ask the question would be to turn 'option of refusal' into a 'prohibition of inquiry.' *Wigmore, Evidence* (3rd ed.) sec. 2268, and to limit congressional inquiry to those areas in which there is not the slightest possibility of state prosecution for information that may be divulged. Such a restriction upon congressional investigatory powers should not be countenanced."

On the matter of Mr. Lewin's request for cross-examination and calling of witnesses, you should know that I invited all parties to supply notarized statements which will be entered in full. My staff has interviewed witnesses with views favorable to Dr. Bergman and will call some at future hearings. I have agreed to contact employees who have worked for Dr. Bergman if and when I am given a list of their names and addresses. To date no list has been presented to the Committee and no statement has been received.

Once again, I am grateful for your expression of concern. I am happy to tell you that your fears are without foundation. I might add that I will welcome your support when I introduce a wide series of nursing home reforms sometime later this year.

With best wishes,

Sincerely,

FRANK E. MOSS.

*Chairman, Subcommittee on Long-Term Care.*

