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In the Matter of a Public Hearing Conducted in Furtherance of an Investigation Pursuant to Executive Order of the Governor with Regard to the Conflicts of Interest in Local Government

New York State Commission on Government Integrity

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DOCUMENT NO. 11

IN THE MATTER OF A PUBLIC HEARING
CONDUCTED IN FURTHERANCE OF AN INVESTIGATION
PURSUANT TO EXECUTIVE ORDER OF THE GOVERNOR
WITH REGARD TO CONFLICTS OF INTEREST IN
LOCAL GOVERNMENT
[JUNE 26, 1989]

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STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

In the Matter of

A Public Hearing conducted in furtherance of an investigation pursuant to Executive Order of the Governor with regard to conflicts of interest in local government.

Justice Building, Courtroom #1
Empire State Plaza
Albany, New York
Monday, June 26, 1989

The above entitled matter came on before the Commission commencing at 9:00 a.m.

BEFORE: JOHN D. FEERICK, Chairman
RICHARD D. EMERY, Commissioner
JAMES L. MAGAVERN, Commissioner
BERNARD S. MEYER, Commissioner

APPEARANCES: KIM E. GREENE, ESQ.
Deputy Counsel
Commission on Government Integrity
330 Broadway
Albany, New York 12207

THOMAS A. McSHANE, ESQ.
Staff Counsel
Two World Trade Center
New York, New York 10047

REPORTED BY: BETH S. GOLDMAN, RPR
Certified Shorthand Reporter

(INTRODUCTION)

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P R O C E E D I N G S

CHAIRMAN FEERICK: This hearing is now in session. I would like to note for the record the presence to my far left of Commissioner Richard Emery, to my immediate left, James Magavern, to my immediate right, Commissioner Judge Meyer; to his right, special counsel Thomas Schwarz, to his right Executive Director of the Commission Peter Bienstock, and to his right Deputy Counsel Kim Greene.

I have a brief statement to read at the outset of this hearing following which we will proceed to the examination of witnesses.

The Commission on Government Integrity was created by Executive Order of the Governor with approval of the Legislature on April 21, 1987. The Commission is directed by the executive order to investigate weaknesses in laws and procedures that create the potential for corruption and create the appearance of impropriety in state and local government and to make recommendations for improvement in those laws.

More specifically, the Commission was

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1 directed to investigate whether the laws
2 prohibiting conflicts of interest and providing
3 for disclosure of potential conflicts are strong
4 enough to assure the highest ethical standards
5 in local government and to maintain the public's
6 faith that government business is conducted
7 without favoritism, undue influence or abuse of
8 official position.

9 Since its inception, the Commission
10 has been working to develop a new ethics law
11 governing the conduct of municipal public
12 officials and employees. We have proposed a
13 code that provides for more stringent
14 prohibitions against actions by municipal public
15 officials that give rise to conflicts of
16 interest. Under our proposed law a municipal
17 official would be required to abstain from
18 taking an action on any transaction with or
19 matter before the municipality that would
20 personally benefit the official. Disclosure of
21 the official's interest would also be required.

22 As part of its inquiry into the
23 efficacy of the ethics laws governing
24 municipalities and its work to develop this new

(INTRODUCTION)

1 code, the Commission commenced an investigation
2 last year into the operation of the government
3 of the City of Albany. In particular, the
4 Commission has examined the issues that arise
5 when a public official, in this case Mayor
6 Thomas M. Whalen, III is involved in a law firm
7 that represents clients and business dealings
8 with the city.

9 Today, we will examine through
10 testimony and documents some of the official
11 actions taken by the Mayor with respect to his
12 law clients. We will also examine some of the
13 issues or conflicts engendered by the city's use
14 of not-for-profit corporations, public benefit
15 corporations, and public authorities to carry
16 out city business and award state and federal
17 funds to private entities. These quasi-
18 governmental entities which were directed and
19 staffed by Mayoral appointees and associates are
20 exempt from the Freedom of Information Law, and
21 the Open Meetings Law, as well as the conflict
22 of interest prohibitions contained in the
23 current General Municipal Law. In drafting its
24 proposed municipal ethics law, the

(INTRODUCTION)

1 Commission deferred decision pending the
2 conclusion of certain investigations, including
3 the one in Albany, on whether to recommend that
4 coverage be extended to these entities.

5 I want to emphasize that it is not the
6 Commission's function to uncover evidence of
7 criminality or other wrongdoing. That is the
8 job of prosecutors. In fact, some of the events
9 we have investigated in Albany have already been
10 the subject of a criminal investigation that
11 resulted in the conclusion that criminal laws
12 were not broken. However, the Commission's
13 investigations are guided by the principle that
14 public servants are properly held to a higher
15 standard. And it is the Commission's legal
16 mandate to investigate conduct which may be
17 entirely permissible under current law, but may
18 fail to reach those higher standards and which
19 may illustrate the need for legislative reform.

20 With the exception of Mayor Whalen,
21 all witness who will testify have been served
22 with a subpoena by the Commission. All of the
23 witnesses who testify and all persons who are
24 mentioned during the testimony of any witness

(INTRODUCTION)

1 have certain rights under the New York Civil
2 Rights Law Section 73. For example, a witness
3 has the right at the conclusion of his or her
4 testimony, to file a brief sworn statement for
5 incorporation into the record of the hearing.
6 Any person whose name is mentioned or who is
7 specifically identified during the testimony of
8 another and who believes that he or she has been
9 adversely affected by the testimony has the
10 right to likewise submit a sworn written
11 statement for incorporation into the record of
12 this hearing. Witnesses may be accompanied by
13 counsel, and counsel may advise the witness of
14 his or her rights, as long as there is no
15 obstruction or interference with the ordinary
16 conduct of this hearing. Counsel may submit
17 proposed questions to be asked of a witness, and
18 the Commissioners shall ask any such questions
19 they deem appropriate.

20 The Commission calls as its first
21 witness Mr. Jack Fox.

22 JOHN FOX,
23 called herein as a witness before the
24 Commission, and being duly sworn by the

(FOX, JOHN - FOR THE COMMISSION)

1 Chairman, testified as follows:

2 CHAIRMAN FEERICK: Please be seated.

3 We recognize Commission Deputy Counsel Kim
4 Greene.

5 MS. GREENE: Thank you, Mr. Chairman.

6 EXAMINATION BY MS. GREENE:

7 Q Good morning Mr. Fox. Are you ready to
8 begin?

9 A Yes, I am.

10 Q Mr. Fox, could you tell me what is your
11 occupation?

12 A I am a staff investigator with the
13 Commission on Government Integrity.

14 Q What was your prior occupation?

15 A I was an investigator with the state police
16 for twenty-one years.

17 Q What were your duties and responsibilities
18 with the state police?

19 A I conducted all aspects of felony
20 investigations.

21 Q And as an investigator for the Commission
22 on Government Integrity, did you participate in the
23 investigation concerning the City of Albany?

24 A Yes, I did. I was the lead investigator.

(FOX, JOHN - FOR THE COMMISSION)

1 I interviewed witnesses, collected and reviewed and
2 analyzed documents provided by the City of Albany and
3 other sources. I also assisted the Commission
4 attorneys in all stages of the investigation.

5 Q Mr. Fox, if I could ask you to keep your
6 voice up a little, please.

7 A Certainly.

8 Q Thank you. When did the investigation
9 begin?

10 A The investigation began in January of 1988.

11 Q And how did the Commission gather
12 information in the course of the investigation?

13 A We conducted informal interviews, and
14 analyzed records and documents supplied by the City
15 of Albany and other sources. Subsequent to that, the
16 staff attorneys took sworn private testimony from the
17 witnesses.

18 Q And what was the focus of the Commission's
19 investigation?

20 A The investigation examined the dual role of
21 Mayor Whalen as a public officer and attorney in
22 private practice.

23 Q And what period of time did the
24 investigation cover?

(FOX, JOHN - FOR THE COMMISSION)

1 A 1982 to March 1988.

2 Q Did Mayor Whalen hold public office in
3 1982?

4 A Yes, he did.

5 Q And what office did he hold?

6 A He was President of the Common Council, I
7 believe.

8 Q And did he subsequently become Mayor of the
9 City of Albany?

10 A Yes, in 1983 upon the death of Mayor
11 Corning.

12 Q Was the Mayor affiliated with the law firm
13 of Cooper, Erving & Savage in 1982?

14 A Yes. He was a partner in the firm, and
15 also a partner in the successor firm until -- 1988, I
16 believe it was, when he resigned from the firm, March
17 of 1988.

18 Q Okay. If I could remind you again just to
19 keep your voice up.

20 A I'm sorry.

21 Q Had Mayor Whalen held public office prior
22 to '82?

23 A Yes. In 1969 he was elected city court
24 judge for a six-year term.

(FOX, JOHN - FOR THE COMMISSION)

1 MS. GREENE: Mr. Chairman, for the
2 record, I would like to identify the chart that
3 is Exhibit 1. And it is here to my right. The
4 chart lists municipal entities on which Mayor
5 Whalen holds or has held a position and has
6 appointment powers with respect to each of these
7 entities. The sources of the information
8 contained on the chart is legal research by the
9 staff of the Commission. On testimony before
10 the Commission, we will be hearing testimony
11 throughout the day that relates to this chart.

12 And it is reproduced again as Exhibit 1.

13 Q Mr. Fox, I would now like to ask you to
14 look at Commission Exhibit 2, and would you please
15 identify this for me.

16 A Exhibit 2, which is on the easel to my
17 right in front of me, is a chart to describe the
18 examples of instances where the Mayor's law practice
19 and his public position intersected.

20 Q I would like at this time to discuss in
21 succession each of these examples listed on the chart
22 beginning with the first one. The first one is the
23 bond issue by the Albany IDA for the benefit of First
24 Realty of Albany in 1982. Could you explain the

(FOX, JOHN - FOR THE COMMISSION)

1 significance of this event?

2 A Yes. First Realty received an IDA bond
3 issue. It was represented at that time by a former
4 partner of Mayor Whalen, Mr. Drislane.

5 Q Did Mr. Drislane serve as counsel to the
6 company before the agency?

7 A He did.

8 Q And did your investigation determine
9 whether Mayor Whalen took official acts on this bond
10 issue?

11 A Yes. He cast a vote in favor of the
12 project and took other official acts concerning it.

13 Q And what was his position on the IDA at
14 that time?

15 A He was Vice-Chairman and a voting member.

16 Q Was the law firm paid a fee for the work?

17 A Yes, it was.

18 Q And how much was that fee?

19 A \$5,150.

20 Q Did Mr. Whalen share in that fee?

21 A Our investigation revealed that the
22 partners shared in all of the fees with the executor
23 and guardian fees paid into the firm.

24 Q I would like to move to the second item on

(FOX, JOHN - FOR THE COMMISSION)

1 the chart and address your attention to the Albany
2 Local Development Corporation. Can you tell me what
3 this corporation is?

4 A The Albany Local Development Corporation is
5 a private not-for-profit corporation established by
6 the city. It distributes the funds supplied by state
7 and federal housing development and industrial
8 development grants.

9 Q Have those funds been granted officially to
10 the City of Albany?

11 A Yes.

12 Q And who is the staff; who comprises the
13 staff of the Albany Local Development Corporation?

14 A Let's see. I want to refer to my notes.
15 It was staffed by city employees.

16 Q Where are the offices located?

17 A They occupy city office space.

18 Q Did your investigation reveal what the
19 total assets of the corporation are?

20 A In 1988 an annual report of the corporation
21 indicates assets of twenty-five million dollars.

22 Q And what is the structure of the
23 corporation?

24 A The corporation is run by a board of

(FOX, JOHN - FOR THE COMMISSION)

1 directors.

2 Q Does the corporation also have members?

3 A It does, approximately fifty.

4 Q What role do the members play?

5 A According to the by-laws the members elect
6 the directors of the corporation.

7 Q Did your investigation disclose how the
8 voting members have been selected since 1983?

9 A A review of the minutes and other documents
10 from the city, four voting members have been added to
11 it since 1983. Their names are Harold Joyce, Marvin
12 Alphonso, James DiNapoli and Raymond Kinley, Jr.

13 Private testimony to the Commission from Charles
14 Newland indicated that Mayor Whalen selected each of
15 these.

16 Q Do the directors receive any compensation,
17 to your knowledge?

18 A They receive \$225 per meeting.

19 Q How do you know that?

20 A From the financial records of the
21 corporation.

22 Q On average, how many board meetings are
23 held each year?

24 A Eleven.

(FOX, JOHN - FOR THE COMMISSION)

1 Q Did Mr. Whalen represent any clients from
2 the Albany Local Development Corporation?

3 A Yes, he did.

4 Q And could you tell me the names of the
5 clients, please.

6 A In 1983 he represented Neenan's Garage,
7 which was for the purpose of a low interest mortgage.

8 Q Is this matter reflected on the Commission
9 chart?

10 A Yes, on line two.

11 Q Did Mayor Whalen receive a fee for this
12 representation?

13 A Two hundred dollars.

14 Q What was his role with respect to the
15 Albany Local Development Corporation at that time?

16 A He was a member of the corporation.

17 Q And did he also hold public office?

18 A Yes. He was President of the Common
19 Council.

20 Q I would like to move now to the third item
21 on the chart. And first, I would like to ask you to
22 look at Commission Exhibit 3. Can you identify this
23 document for me?

24 A Exhibit 3 is a license agreement between

(FOX, JOHN - FOR THE COMMISSION)

1 Phillip C. Curley and the City of Albany. It is an
2 agreement to operate a restaurant known as the Tap
3 Room, which is located on the Albany municipal golf
4 course.

5 Q By whom was this agreement executed?

6 A It was executed by Thomas M. Whalen, III
7 the Mayor and Phillip C. Curley.

8 Q When was it executed?

9 A October 31, 1983.

10 Q Do you know whether the law firm played a
11 role in this matter?

12 A Yes. Mayor Whalen's law partner Michael
13 Kornstein represented Mr. Curley to obtain that
14 liquor license for the Tap Room.

15 Q Did the firm secure the liquor license for
16 Mr. Curley?

17 A Yes, it did.

18 Q Did Thomas take official action on this
19 matter after Mr. Curley retained the Mayor's law
20 firm, to your knowledge?

21 A Yes. From the information provided to us,
22 he set the terms and signed the agreement.

23 Q And did Mr. Kornstein have dealings with
24 the City of Albany on behalf of Mr. Curley in

(FOX, JOHN - FOR THE COMMISSION)

1 connection with this matter?

2 A Yes. He dealt with Corporation Counsel to
3 work out the agreement, the licensing agreement.

4 Q And when you refer to a licensing
5 agreement, you are referring to the license to
6 operate the concession at the tavern; is that
7 correct?

8 A Yes.

9 Q I would now like to move to Exhibit 4. I
10 would like to ask you to identify this document for
11 me.

12 A Exhibit 4 is page 1465 dated October 19,
13 1983 of the Albany City Record.

14 Q And what does the resolution on that page
15 provide, Mr. Fox?

16 A "Resolved, that the Mayor of the City of
17 Albany be, and he hereby is, authorized and empowered
18 to enter into an agreement with Phillip C. Curley to
19 maintain the food, liquor and bar facilities located
20 in and on the Albany municipal golf course.

21 Q Does the resolution specify the terms or
22 conditions of the agreement such as the amount of
23 rent to be paid to the city?

24 A No.

(FOX, JOHN - FOR THE COMMISSION)

1 Q I would like to move now to Exhibit 5,
2 please. Can you identify this exhibit for me?

3 A Exhibit 5 is a memorandum from Paul
4 Collins, the Deputy Corporation Counsel to Mayor
5 Whalen dated October 18, 1983, the subject matter
6 being Albany municipal golf course license agreement.

7 Q I would like to direct your attention to
8 the second paragraph of the letter and ask you to
9 read it for the record.

10 A "The terms and conditions are those as set
11 forth in your instructions as superseded by our
12 recent discussion to reflect a period of operation
13 without a liquor license."

14 Q Mr. Fox, on October 31, 1983 when Mayor
15 Whalen executed the lease agreement, was Mr.
16 Kornstein representing Mr. Curley on this matter

17 A Yes.

18 Q Did the law firm receive a fee from Mr.
19 Curley?

20 A Yes, one thousand two-hundred fifty
21 dollars. Did the Mayor share in that fee?

22 A He did.

23 Q I would now like to move to the fourth item
24 on the chart. Did the Commission investigate a

(FOX, JOHN - FOR THE COMMISSION)

1 project known as 80 State Street Partners?

2 A Yes.

3 Q Could you tell me what this project is?

4 A An office building that was originated by
5 Lewis and Edward Swyer.

6 Q Did this project receive a bond issue from
7 the Albany Industrial Development Agency?

8 A Yes.

9 Q By the way, are those the same developers
10 who sponsored the First Realty of Albany project?

11 A They are.

12 Q Did the law firm of Cooper, Erving & Savage
13 represent any of the parties involved in this
14 project?

15 A Yes, Mr. Drislane, the law partner
16 represented the Swyers.

17 Q Did he serve as the counsel to the company
18 before the agency?

19 A He did.

20 Q Did the Mayor serve on the Albany IDA at
21 this time?

22 A Yes.

23 Q And what was his position on the agency?

24 A He was chairman.

(FOX, JOHN - FOR THE COMMISSION)

1 Q In that capacity did Mr. Whalen take
2 official actions on the bond issue?

3 A he signed all of the documents necessary
4 for the bonds issue.

5 Q Did he cast any vote on this bond issue?

6 A No.

7 Q I'm sorry. Can I ask you to repeat the
8 answer?

9 A No, he didn't.

10 Q Did Mayor Whalen's law firm receive a fee
11 for acting as counsel to this company?

12 A Yes.

13 Q Do you know the amount of the fee?

14 A It was approximately ten thousand dollars.

15 Q What is the source of your information on
16 that?

17 A That was obtained from Edward Swyer's
18 testimony to the Commission.

19 Q Did any other Swyer projects come before
20 the Albany IDA awhile Mayor Whalen was chairman?

21 A In 1984 there was a project called the
22 State Street Center Garage, another project by the
23 Swyers, and it received a bond issue from the IDA.

24 Q Was this matter reflected on the chart
which is Exhibit 2?

(FOX, JOHN - FOR THE COMMISSION)

1 A No, it is not.

2 Q Why is it not there?

3 A Cooper, Erving & Savage the law firm, did
4 not provide any direct legal counsel to the producers
5 of the project.

6 Q Did the Commission's investigation reveal
7 any relationship between this project and the Mayor's
8 law firm?

9 A One of the partners in the project was
10 Stuyvesant Plaza, Inc. James Drislane served on the
11 board of directors of Stuyvesant Plaza, Inc. and he
12 was also counsel for that corporation.

13 Q And was Mr. Drislane a law partner of the
14 Mayor's at that time?

15 A He was.

16 Q Did Stuyvesant Plaza pay fees for
17 representation on other matters to Cooper, Erving &
18 Savage during the period that the bond issue was
19 pending?

20 A Yes.

21 Q How do you know this?

22 A That was provided to us in a letter from
23 Mr. Swyer's attorney where he advised us what fees
24 were paid at that time.

(FOX, JOHN - FOR THE COMMISSION)

1 Q I would like to direct your attention to
2 Commission Exhibit 6. Is this a copy of the letter
3 that Mr. Swyer's attorneys provided to us?

4 A Yes, it is.

5 Q At the time of the State Street Center
6 Garage project, Mr. Fox, was Mayor Whalen a voting
7 member of the Albany IDA?

8 A Yes, he was.

9 Q Did he vote on any aspect of the State
10 Street Garage application for the bond issue?

11 A I am unable to determine that. The vote
12 tallies provided to us by the city were blank.

13 Q Do we have documentation of the fact that
14 he was at the meeting at which the inducement
15 resolution was considered?

16 A Yes, we do. Exhibit 7.

17 MS. GREENE: Mr. Chairman, for the
18 record, we have requested a copy of the vote
19 tallies for all resolutions, and our request is
20 reflected in Exhibit 8. Exhibit 9 is a document
21 provided to the Commission in response to the
22 letter listing all the vote tallies provided by
23 the city. As you can see, the city did not
24 supply the vote for the resolution on May 17,

(FOX, JOHN - FOR THE COMMISSION)

1 1983 as requested, we have subpoenaed a vote
2 tally. And that subpoena is currently the
3 subject of litigation.

4 Q Mr. Fox, I would next like to direct your
5 attention to another aspect of the investigation.
6 Did your investigation reveal union negotiations with
7 the City of Albany in which union members were
8 represented by the Mayor's law firm?

9 A Yes.

10 Q And what did you learn from that
11 investigation?

12 A Our line five of the chart, in 1984 the
13 Construction and General Labor Local 190 was
14 represented by Eugene Devine in the negotiation with
15 the City of Albany.

16 Q How many union members were represented in
17 this transaction?

18 A We believe there were four or five.

19 Q I would now like to direct your attention
20 to another area. Are you familiar with First
21 American Bank and Bankers Trust?

22 A Yes.

23 Q What is the relationship between those
24 banks?

(FOX, JOHN - FOR THE COMMISSION)

1 A Bankers Trust was purchased by First
2 American Bank in 1985.

3 Q Do you know whether these banks were ever
4 represented by Cooper, Erving & Savage?

5 A Bankers Trust was a long-time client of
6 Cooper, Erving & Savage. And upon the takeover by
7 First American Bank, they also became a client of the
8 firm.

9 Q Did the Commission investigate examples of
10 the interaction between the City and First American
11 Bank?

12 A Yes.

13 Q I would like to discuss with you one of the
14 examples investigated by the Commission. And I refer
15 you to line six of the chart. Could you tell me what
16 this matter refers to?

17 A This was a matter of a potential
18 reassessment of the properties purchased by First
19 American Bank by the Albany City Assessor.

20 Q In what year did this transaction occur?

21 A That occurred in '85.

22 Q On whose behalf did the Mayor contact the
23 assessor?

24 A On behalf of the First American Bank.

(FOX, JOHN - FOR THE COMMISSION)

1 Q And what was the assessor's response to the
2 Mayor?

3 A The assessor gave the Mayor two options.
4 One, to leave the assessment as it was, and the
5 second was a raise.

6 Q Which option did the Mayor choose?

7 A To leave it as it was.

8 Q I would like to turn now to Exhibit 16 and
9 ask you if you can identify Exhibit 16 for me.

10 A Exhibit 16 is a memorandum to Bruce
11 McDonald, the city assessor, from Mayor Whalen
12 concerning the First American Bank.

13 Q I would like to turn to Exhibit 7 and ask
14 you to identify that.

15 A This is a memorandum dated June 4, 1985 to
16 Mayor Whalen from Bruce McDonald, again concerning
17 First American Bank.

18 Q Is this in response to the Mayor's
19 memorandum which is Exhibit 16?

20 A Yes.

21 Q And can you read for me the last line of
22 that document for the record, please?

23 A The last paragraph on Exhibit 17, "For your
24 information, if we applied the 19.77 percent

(FOX, JOHN - FOR THE COMMISSION)

1 tentative equalization rate, the revised assessment
2 would be based on sales price, which would be one
3 million sixty-five --" over one million dollars.

4 Q Would you read the last line beneath that?

5 A I would appreciate your advice on the
6 above."

7 Q Now, I would like you to turn to Exhibit
8 18, and I ask you to identify this document.

9 A A memorandum dated June 5, 1985 to Bruce
10 McDonald, an assessor, from Mayor Whalen, the subject
11 matter being the First American Bank of New York.

12 Q And for the record, could you read the text
13 of that memorandum?

14 A "In view of the fact that the sales price
15 for the First American transfers only related to a
16 merger transaction between Bankers Trust Company into
17 First American Bank, I believe we should leave the
18 matter alone until such time as we conduct an entire
19 review of the assessments on banking properties."

20 Q Thank you. Did the firm of Cooper, Erving
21 & Savage represent First American Bank with respect
22 to the question of the tax assessment of the
23 properties purchased by the bank in the City of
24 Albany?

(FOX, JOHN - FOR THE COMMISSION)

1 A Yes, they did.

2 Q Do you know which members of the firm were
3 involved?

4 A Eugene Devine, Freling Smith and Thomas
5 Whalen.

6 Q Was the firm paid a fee for this matter?

7 A Yes. They were.

8 Q Was this part of the monthly retainer paid
9 to the firm?

10 A Yes, it was.

11 Q What did the Commission's investigation
12 disclose with respect to the next item on the chart,
13 the Albany Ventures project?

14 A Albany Ventures in 1985 received an
15 industrial revenue bond issue. They were represented
16 by the Mayor's former law partner James Drislane.

17 Q Was this bond issued by the Albany
18 Industrial Development Agency?

19 A It was.

20 Q And did Mayor Whalen hold a position on the
21 Albany IDA at the time of the bond issue?

22 A He was chairman through December 15, 1985.
23 He resigned on December 15th and the bond issue was
24 finalized on December 30, 1985.

(FOX, JOHN - FOR THE COMMISSION)

1 Q Who replaced Mayor Whalen as the chairman
2 of the agency?

3 A Charles Hemingway.

4 Q Who elected Charles Hemingway to be
5 Chairman of the agency?

6 A Mayor Whalen.

7 Q Was this selection confirmed by the Common
8 Council?

9 A Yes, it was.

10 Q Did the Mayor's law firm play a role with
11 respect to this bond issue?

12 A Yes. They represented the company.

13 Q Was the law firm paid a fee for this
14 representation?

15 A Twelve thousand five hundred dollars.

16 Q I would like to direct your attention next
17 to the matter of V. F. Conner. Did the investigation
18 disclose a connection between this company of the law
19 firm and official actions by the Mayor?

20 A Yes. The V. F. Conner Company was
21 represented personally by Mayor Whalen in the
22 purchase of a piece of city property.

23 Q In what year did this transaction occur?

24 A 1985.

(FOX, JOHN - FOR THE COMMISSION)

1 Q Did your investigation determine what the
2 purchase price for the property was?

3 A The purchase price was \$14,000.

4 Q How do you know this?

5 A From the deed, Exhibit 19.

6 Q For the record, did you say the deed,
7 Exhibit 19?

8 A Yes.

9 Q What is the location of the property that
10 was the subject of the transaction?

11 A 283-285 Sheridan Avenue.

12 Q Who signed the deed for the city?

13 A Mayor Whalen.

14 Q When was it signed?

15 A The 17th day of April, 1985.

16 Q I would like to refer you now to Exhibit
17 20. Can you identify this document for me, please?

18 A Exhibit 20 is page 127 dated January 28,
19 1985 of the Albany City Record.

20 Q And in this document did the city list the
21 value of the property later sold to V. F. Conner
22 Company?

23 A Yes. It listed 283 to 285 Sheridan Avenue
24 as having a land value of fifteen thousand dollars.

(FOX, JOHN - FOR THE COMMISSION)

1 Q Did Mayor Whalen receive a fee for his
2 representation of V. F. Conner?

3 A Yes, \$410.

4 Q I would like to turn now to the
5 Tricentennial Commission. Did you investigate the
6 Tricentennial Commission?

7 A We did.

8 Q What was the Tricentennial Commission?

9 A The Tricentennial Commission was a private
10 not-for-profit corporation established by the City of
11 Albany to celebrate its three hundredth birthday.

12 Q Did the City of Albany and State of New
13 York provide funding to this Commission?

14 A They did.

15 Q What did your investigation disclose with
16 respect to this Commission?

17 A It disclosed that the Tricentennial
18 Commission was a client of Cooper, Erving & Savage
19 during its existence.

20 Q Did the Tricentennial Commission pay fees
21 to the law firm?

22 Q They did.

23 Q I would like to ask you to move to Exhibit
24 21 now. Can you identify this document for me?

(FOX, JOHN - FOR THE COMMISSION)

1 A Yes. Exhibit 21 is a copy of three checks
2 paid by the City of Albany Tricentennial Commission
3 to Cooper, Erving & Savage.

4 Q What is the total amount of these checks?

5 A \$1,593.08.

6 MS. GREENE: Mr. Chairman, before we
7 move away from this chart, I would like to note
8 for the record that the chart contains a column
9 on the far righthand listing campaign
10 contributions to Mayor Whalen by individuals and
11 entities who have a direct relationship with the
12 matters listed on the chart. The campaign
13 contributions were compiled by Commission staff
14 members from records of the Albany County Board
15 of Elections for contributions to the Mayor's
16 campaigns from the years 1983 through 1988.

17 Q Mr. Fox, I would like to turn now to some
18 matters that are not listed on the charts.
19 During the course of the investigation, did the
20 Commission investigate an industrial revenue
21 bond issue on behalf of Crisafulli Brothers food
22 warehouse?

23 A We did.

24 Q I would like to ask you to turn to Exhibit

(FOX, JOHN - FOR THE COMMISSION)

1 22. Can you tell me what this document is?

2 A Exhibit 22 is a closing memorandum from the
3 industrial development agency concerning an
4 industrial development revenue bond granted to the
5 Crisafulli project; the price on it being five
6 hundred thousand dollars, dated March 24, 1983.

7 Q Who executed this closing memorandum for
8 the agency?

9 A On page five, Thomas M. Whalen, III,
10 Vice-Chairman.

11 Q Who is listed as the purchaser of this bond
12 issue?

13 A Bankers trust.

14 Q Did the Commission's investigation reveal
15 who represented Banker's Trust for the purpose of
16 this bond issue?

17 A Yes, Cooper, Erving & Savage.

18 Q I would like to ask you now to look at
19 Exhibit 23. Can you identify this document for me?

20 A Exhibit 23 is an invoice from Cooper,
21 Erving & Savage to Vincent Crisafulli. It is for
22 "Review of the City of Albany Industrial Development
23 Agency, 1983; five hundred thousand dollar industrial
24 revenue bond (the Crisafulli project) in behalf of

(FOX, JOHN - FOR THE COMMISSION)

1 Banker's Trust Company of Albany, North America."

2 Q What is the amount of the fee?

3 A \$3,750.

4 Q That fee includes total services and
5 disbursements?

6 A That is correct.

7 Q Were you able to determine the amount of
8 fees paid to Cooper, Erving & Savage for the matters
9 you have testified to?

10 A Yes.

11 Q And what is that total amount?

12 A \$34,853.08.

13 Q Does that total exclude the two matters
14 listed on the chart as covered by monthly retainers?

15 A No.

16 Q Mr. Fox, I would like to repeat the
17 question again. Does this total exclude --

18 A I'm sorry. I thought you said "include."
19 it is excluded, yes, I'm sorry.

20 Q I would like to turn now to another matter
21 not on the chart. During the course of the
22 investigation did you learn anything about the
23 relationship between a company known as Maiden Lane
24 Auto Park and the law firm?

(FOX, JOHN - FOR THE COMMISSION)

1 A Maiden Lane is a long-time client of
Cooper, Erving & Savage.

2 Q And did Maiden Lane Auto Park have any
3 dealings with the Albany Parking Authority?

4 A Yes. They were awarded a contract twice.

5 Q Was this the same contract that was awarded
6 twice?

7 A It was..

8 Q What was the purpose of the contract?

9 A It was to operate the municipal parking
10 lot.

11 Q When did the first contract award occur?

12 A 1986.

13 Q Did Mr. Whalen hold a position on the
14 Parking Authority at the time of the first contract
15 award?

16 A He did.

17 Q And what was his position?

18 A He was the chairman of it until October 1,
19 1987.

20 Q Did Mayor Whalen resign from the Parking
21 Authority before the second contract award was made?

22 A Yes.

23 Q Did he vote to award the first contract
24 award to Maiden Lane Auto Park in 86?

(FOX, JOHN - FOR THE COMMISSION)

1 A Yes.

2 Q How do you know this?

3 A That information was provided to us, to the
4 Commission by Mayor Whalen and Mr. LaJoy, who is the
5 executive director of the parking lot.

6 MS. GREENE: Mr. Chairman, I would
7 like the record to reflect that we subpoenaed
8 the record of this vote along with other
9 documents of the Parking Authority. In response
10 to that subpoena, the Parking Authority turned
11 over a number of things. They provided the
12 meeting of December 6th at which Mayor Whalen
13 testified he voted to have awarded contracts to
14 Maiden Lane Auto Park were not included in the
15 records turned over to the Commission.

16 Q What happened after the Authority voted to
17 award the contract to Maiden Lane Auto Park in 1986?

18 A That original contract was rescinded.

19 Q And how was this rescission accomplished?

20 A I don't know. The information supplied to
21 us by the Parking Authority wasn't clear; it didn't
22 indicate.

23 Q But the records do show that the contract
24 was awarded a second time?

(FOX, JOHN - FOR THE COMMISSION)

1 A A second time, yes.

2 Q With respect to the first contract award in
3 1986, how many proposals did the city receive in
4 response to the request for proposal?

5 A Two.

6 Q Was Maiden Lane Auto Park proposal's less
7 expensive than the other company's?

8 A No, it was not.

9 Q I would like to direct your attention to
10 Exhibit 24 and ask you to identify this document for
11 me.

12 A This document is a memorandum to Vincent
13 McArdle, Corporation Counsel, from Joseph H. LaJoy,
14 Director of the Parking Authority. It is dated
15 November 25, 1986.

16 Q And what does Mr. LaJoy recommend?

17 A In the second paragraph, and I quote:
18 "Although in total, the price of CitiPark seems to be
19 less expensive, this does not seem to be in the best
20 interest of the facility operations."

21 Q And on page two of the memorandum, does Mr.
22 LaJoy recommend that Maiden Lane Auto Park being
23 selected as the operator of the Parking Authority
24 facility?

(FOX, JOHN - FOR THE COMMISSION)

1 A Yes.

2 Q I would like to turn to an office building
3 project known as 39 North Pearl Street. Did the
4 Commission investigate this office building project?

5 A It did.

6 Q And what did the Commission's investigation
7 disclose?

8 A It disclosed that the Mayor's law firm
9 considered renting space and investigated this
10 project back in April '83.

11 Q Investing in the project back in April '86?

12 A Yes.

13 Q And did the law firm subsequently enter
14 into a lease for space in this office building?

15 A Yes, on August 8, 1986.

16 Q Did the lease give the firm the option to
17 purchase up to forty percent of the project for four
18 hundred thousand dollars?

19 A Yes.

20 Q Did your investigation reveal whether Mayor
21 Whalen took any official actions with respect to this
22 project during the period April through August, 1986?

23 A It did; he took official actions.

24 Q Did the Mayor and others subsequently form

(FOX, JOHN - FOR THE COMMISSION)

1 an investment partnership and invest in the project?

2 A They did.

3 Q When did that occur?

4 A I believe that was in December of 1986.

5 Q Did the Mayor subsequently leave the
6 investment partnership?

7 A Yes, in January of 1987.

8 Q And did this project continue to receive
9 funds and other benefits from the city subsequent to
10 January '87?

11 A Yes, it did.

12 MS. GREENE: Thank you very much. Mr.
13 Chairman, I have no further questions of this
14 witness.

15 CHAIRMAN FEERICK: Thank you. Are
16 there any questions from the Commissioners or
17 Special Counsel?

18 (No response noted)

19 CHAIRMAN FEERICK: Thank you, Mr. Fox.
20 (The witness was excused.)

21

22

23

24

(FOX, JOHN - FOR THE COMMISSION)

1 CHAIRMAN FEERICK: Is Mr. Curley here?

2 MR. BRESLIN: I am his attorney. I
3 just walked in and saw that he was scheduled for
4 10:30.

5 CHAIRMAN FEERICK: The schedule did
6 not contemplate Mr. Curley's appearance until a
7 little later. That's correct.

8 MR. BRESLIN: I spoke to him and he
9 said he would be here prior to ten. And he
10 said, "I am going to go out and get a cup of
11 coffee," and he will return, Mr. Chairman.

12 CHAIRMAN FEERICK: I would suggest we
13 take a brief recess until he is able to come
14 back.

15 (A brief recess.)

16 CHAIRMAN FEERICK: The hearing
17 is now in session. Mr. Curley, would you stand,
18 please, to swear you in.

19 PHILLIP C. CURLEY,
20 called herein as a witness before the
21 Commission, and being duly sworn by the
22 Chairman, testified as follows:

23 CHAIRMAN FEERICK: Please be seated.
24 I would like to ask counsel to identify himself

(CURLEY, P. - FOR THE COMMISSION)

1 for the record.

2 MR. BRESLIN: Thomas Breslin, 151
3 Chestnut Street, Albany, New York.

4 CHAIRMAN FEERICK: I recognize
5 Commission staff counsel Thomas McShane. for
6 questioning.

7 MR. McSHANE: Thank you, Mr. Chairman.
8 May I inquire?

9 CHAIRMAN FEERICK: Yes, please.

10 EXAMINATION BY MR. McSHANE:

11 Q Mr. Curley, would you please state your
12 full name for the record.

13 A Phillip C. Curley, C-u-r-l-e-y.

14 Q Thank you. Mr. Curley, what is your
15 current occupation?

16 A I operate a nineteenth hole restaurant and
17 tavern at the Albany Municipal Golf Course.

18 Q For how long have you done that?

19 A Approximately five and a half years.

20 Q Is the facility you run part of an Albany
21 city facility?

22 A The facility I run is my own business. I
23 lease from the City of Albany.

24 Q It is on city property; is that correct?

(CURLEY, P. - FOR THE COMMISSION)

1 A That's correct.

2 Q Prior to 1983, Mr. Curley, what did you do?

3 A I was the owner, co-owner of a restaurant
4 in White Plains, New York.

5 Q Mr. Curley, can you tell us how you first
6 learned that the concession to operate the tap room
7 which you now operate was available in 1983?

8 A Yes. I was at the family camp in the
9 Adirondacks, and my brother John informed me that the
10 business at Albany muni(cipal) was becoming
11 available. And it would seem, since my business was
12 dissolving, that it would be a great idea for me to
13 try to get it.

14 Q Did your brother work for the city of
15 Albany at the time?

16 A Yes.

17 Q Do you know what his position was with the
18 city at that time?

19 A I can't be sure. I think he was a foreman
20 in the Public Works Department.

21 Q I'm sorry, with the Public Works
22 Department?

23 A Yes. I am not quite sure what his actual
24 position was or job title was.

(CURLEY, P. - FOR THE COMMISSION)

1 Q Does he still work for the Albany Public
2 Works Department?

3 A He does.

4 Q What did you first do all after hearing
5 about the possibility of your operating that
6 concession in your attempt to secure the concession?

7 A What did I first do? Well, as I said, I
8 consulted with my brother as to, you know, what to
9 do. He said, "Let's draft a letter and submit it to
10 the city, a proposal, a bid, if you will, whatever
11 you want to call it. And this is what we did.

12 Q You submitted a letter to the city?

13 A Yes.

14 Q Mr. Curley, I will ask you at this point,
15 if you would, to take a look at Commission Exhibit
16 25. And it is in the black book right in front of
17 you.

18 A Can we move this microphone? (Indicating)
19 There it is, yes.

20 Q Do you recognize that?

21 A Yes, I do.

22 Q What do you recognize that exhibit to be?

23 A This is the letter of my proposal to the
24

(CURLEY, P. - FOR THE COMMISSION)

1 City of Albany to operate the concession at the golf
2 course.

3 Q What is the date of that letter, Mr.
4 Curley?

5 A September 8, 1983.

6 Q To whom is it addressed?

7 A Commissioners Harry Maikels, Commissioner
8 of the Department of Public Works, City of Albany.

9 Q How did you know to send the letter to Mr.
10 Maikels?

11 A I got help on that from my brother.

12 Q Now, did there come a time after you sent
13 that letter that you met with Mr. Maikels?

14 A Yes. There was a time that I met with Mr.
15 Maikels.

16 Q Can you tell me where you met him?

17 A My first meeting with Mr. Maikels was in
18 front of City Hall. I don't know the date.

19 Q It was after September 8th; is that
20 correct?

21 A Oh, yes.

22 Q How was that meeting with Mr. Maikels
23 arranged?

24 A I was told by my brother who worked under

(CURLEY, P. - FOR THE COMMISSION)

1 Maikels to meet the Commissioner in front of City
2 Hall. And this, I did.

3 Q At the time when you met with Mr. Maikels
4 had you been informed by anyone that you would, in
5 fact, get the concession to operate the Tap Room on
6 the golf course?

7 A Yes.

8 Q Who told you that?

9 A My brother.

10 Q And did you ever receive written
11 notification of that fact before your meeting with
12 Mr. Maikels?

13 A I can't recall if I did or not. I don't
14 recall getting anything, but I don't want that to
15 mean that I didn't. I can't recall.

16 Q Do you know whether you ever received
17 written notification of your receipt of this
18 concession award after you met with Mr. Maikels?

19 A No. That is basically the same question
20 that you are asking me.

21 Q No. I asked you whether or not you had
22 written notification before you met with Mr. Maikels.
23 I am now asking you whether after the meeting --

24 A Before or after the meeting, I don't recall.

(CURLEY, P. - FOR THE COMMISSION)

1 Q You don't recall written notification. You
2 were informed by your brother as far you can recall;
3 is that true?

4 A Yes.

5 Q At the time you met with Mr. Maikels, did
6 you then subsequently meet with anyone else?

7 A We met at that time after meeting cordially
8 with Mr. Maikels, we went into the Mayor's office in
9 City Hall.

10 Q When you say "we," to whom are you
11 referring?

12 A Commissioner Maikels and myself.

13 Q Your brother did not come with you into
14 City Hall; is that it?

15 A No. He did meet us in front of City Hall
16 and introduced me to the Commissioner. And he had
17 duties to attend to, he said, and then he left.

18 Q And did you have a conversation with the
19 Mayor at that time?

20 A Yes.

21 Q In City Hall?

22 A Oh, yes.

23 Q That is Mayor Whalen; is that correct?

24 A That's correct.

(CURLEY, P. - FOR THE COMMISSION)

1 Q Can you tell us what you spoke to Mayor
2 Whalen about at that time?

3 A If I understand your question -- Are you
4 asking me the purpose of the meeting; is that what
5 you are asking me?

6 Q Yes, I am. I am asking you the purpose of
7 the meeting, and I am also asking you, I guess, what
8 it is you discussed once you were in the meeting.

9 A The purpose of the meeting was for the
10 Mayor to meet me and instruct me to the fact that the
11 improprieties that had been going on out at the golf
12 course concession in past years were not to continue;
13 that it should be run for an orderly and businesslike
14 manner. And I assured him that it would be.

15 Q Did you have any conversation with the
16 Mayor at that time about what the rent would be?

17 A We had a conversation about the rent, but
18 it was pretty much decided beforehand, seeing as how
19 they accepted my proposal in the letter. But we did
20 discuss it. He wanted to reiterate that there would
21 be a minimum payment, a monthly payment to the city.

22 Q Mr. Curley, are you saying that the terms
23 of the rent were established before your meeting with
24 the Mayor?

(CURLEY, P. - FOR THE COMMISSION)

1 A Well, I submitted a letter and I was told
2 that it was accepted and that I would be the
3 concessionaire. So, I would have to assume that the
4 answer to that would be yes. It would be reasonable
5 to assume that that would be yes.

6 Q But did you have a conversation with
7 Commissioner Maikels outside of City Hall concerning
8 your rent payment?

9 A I don't believe so. I don't recall that I
10 did, no.

11 Q So, it would be fair to say that the first
12 person from the City of Albany that you had occasion
13 to actually discuss a rent payment with was the
14 Mayor; is that correct?

15 A Face to face, I would have to say yes to
16 your question.

17 Q Was there any discussion at that meeting
18 concerning the length of the agreement between
19 yourself and City Hall or the City of Albany?

20 A No.

21 Q Mr. Curley, were you represented by an
22 attorney at that meeting?

23 A No I was not.

24 Q Did you sign any formal agreement at that

(CURLEY, P. - FOR THE COMMISSION)

1 meeting?

2 A No, I did not.

3 Q Did you subsequently sign a formal
4 agreement with the City of Albany?

5 A Yes. A lease agreement, if that is what
6 you mean, I subsequently did.

7 Q Do you recall the date of that lease
8 agreement?

9 A No, I don't recall.

10 Q At this time, Mr. Curley I would ask you to
11 take a look at Commission Exhibit 13 which is in the
12 black binder in front of you again. Do you recognize
13 that document?

14 A Yes.

15 Q What do you recognize that document to be,
16 Mr. Curley?

17 A I recognize this to be the lease agreement
18 between myself and the City of Albany. And I see
19 that my signature appears on the third page.

20 Q Mr. Curley, I would ask you to look at the
21 first page of the document. Do you notice at the top
22 of this documents that a date is indicated?

23 A Yes. It is written in where the rest is
24 typed, and says 31st of October, 1983.

(CURLEY, P. - FOR THE COMMISSION)

1 Q Does that refresh your recollection
2 regarding the date of the agreement that you signed
3 with the City of Albany?

4 A Are you asking me if I signed this on the
5 31st of October; is that your question?

6 Q I am asking whether or not this document
7 with the date indicated refreshes your recollection
8 as to the date when you signed the agreement.

9 A No, it doesn't.

10 Q I would ask you to turn to the third page.

11 A In other words, I don't know the date I
12 signed it. If you tell me I signed it on the 31st, I
13 will take your word for it.

14 Q Mr. Curley, you are testifying; I am not.
15 I want to make sure we understand exactly when you
16 signed this document.

17 A I will accept that I signed it on the 31st
18 of October, 1983. I mean it is a point we don't have
19 to argue about.

20 Q You did sign it --

21 A What I am saying is that I don't recall
22 that that was the day, but it appears by this
23 document that that was the day.

24 Q Thank you, Mr. Curley. By that date, the

(CURLEY, P. - FOR THE COMMISSION)

1 31st of October, Mr. Curley, had you hired an
2 attorney?

3 A I believe so.

4 Q And who was the attorney that you hired?

5 A I hired Michael Kornstein.

6 Q Were you aware when you hired Mr. Kornstein
7 that he was a partner of the Mayor's in the Mayor's
8 law firm?

9 A I was aware of the fact that he worked in
10 the Mayor's law firm. I wasn't aware of the fact
11 that he was a partner.

12 Q Were you aware of the fact that Mr.
13 Kornstein and the Mayor were part of the same law
14 firm when you met with the Mayor?

15 A No.

16 Q When did you learn that Mr. Kornstein was a
17 member of the law firm with which the Mayor was
18 associated?

19 A When I hired him.

20 Q Do you recall when that was?

21 A I don't know the exact date, but it would
22 have to be somewhere between -- somewhere in
23 September or October of 1983.

24 Q Did you believe that it might be helpful to

(CURLEY, P. - FOR THE COMMISSION)

1 you to have an attorney associated with the Mayor's
2 law firm represent you on this matter?

3 A Did I believe that it might be helpful? I
4 don't know what you mean by "helpful." Helpful, no.
5 It was my understanding that -- I believed it would
6 be helpful for me to acquire a liquor license, which
7 is the reason I hired him, yes.

8 Q Did you believe it would help you in your
9 dealings with the city to have Mr. Kornstein
10 represent you?

11 A My dealings with the city, as far as the
12 agreement was concerned, was already, in my mind, was
13 already over. So that is not the reason that I hired
14 Mr. Kornstein, no.

15 Q Mr. Curley, do you recall testifying before
16 the Commission at a private session on August 19,
17 1988?

18 A I recall testifying before the Commission,
19 yes.

20 Q And do you recall at that time -- and I am
21 referring to page 31 of your testimony, do you recall
22 at that time being asked the following questions and
23 giving the following answers. And I am turning to
24 page 31 here.

(CURLEY, P. - FOR THE COMMISSION)

1 A (Pause) Okay, go ahead.

2 Q Question: when you asked your brother,
3 "Hey, I want to do the right thing, what did you
4 mean?" Answer: "Well, what I meant was, you know, I
5 want to -- I have got a city concession and I want to
6 -- I don't want to go out to Schenectady somewhere
7 and get some lawyer that way." Question: "Like
8 paybacks?" Answer: "I don't think so, no. I just
9 wanted to do business -- if you are doing business in
10 the city of Albany, I wanted to get people that knew
11 people in the city of Albany. You know, I did not
12 find anything wrong with that. I just wanted to do
13 it that way. I didn't want to bring in -- at the
14 last meeting with you, the man asked me why didn't I
15 bring the lawyer up from White Plains. It is a very
16 prestigious firm, and they charged us a fortune to
17 dissolve the business. Can you imagine him driving
18 up here to meet about how much for the fryolater?
19 Now, that wouldn't make sense."

20 A I am down in White Plains for twelve years.
21 So when I went up, I said, "John, in picking the law
22 firm what do you think I should do and what
23 insurance?" But, again, those decisions were mine,
24 absolutely. And yes, I recall that.

(CURLEY, P. - FOR THE COMMISSION)

1 Q Again, I ask you the question now -- at the
2 time when you hired Mr. Kornstein was it your
3 motivation to hire somebody that knew people in the
4 City of Albany?

5 A That wasn't my motivation for hiring Mr.
6 Kornstein, no.

7 Q Mr. Curley, do you recall the Mayor
8 suggesting to you that you contact Mr. Kornstein to
9 represent you?

10 A I don't recall specifically him mentioning
11 that, no.

12 Q Do you recall him generally mentioning
13 that?

14 A I did get a business card from the Mayor.

15 Q When did you receive the business card?

16 A At that meeting, when the meeting was
17 breaking up.

18 Q Who gave you the business card?

19 A The Mayor.

20 Q What was on the business card?

21 A His name, and on the back was Mike
22 Kornstein's name.

23 Q And do you recall how it came about that
24 the Mayor handed you his business card with Mr.

(CURLEY, P. - FOR THE COMMISSION)

1 Kornstein's name on the back?

2 A Well, our business had been concluded and
3 we were breaking up. And I was going over in my own
4 mind what I needed to do at this point to get things
5 rolling. And one of the things I needed to get was a
6 liquor license. And I believe I said that out loud
7 to nobody in particular. We were on our way out, and
8 he said, "If you need a liquor license, there is a
9 man in my office that does liquor licenses and this
10 is his name." And I thanked him. That was at the
11 end of the meeting when it was breaking up. I want
12 to emphasize that that wasn't the reason for the
13 meeting.

14 Q I'm sorry; what was not the reason for the
15 meeting?

16 A What I just said.

17 Q Your obtaining a lawyer through the Mayor
18 wasn't the reason for the meeting; is that what you
19 are saying?

20 A That is what I am saying.

21 Q After the meeting and after you retained
22 Mr. Kornstein, Mr. Curley, did you have further
23 discussions with the city concerning the length of
24 your agreement with the City of Albany?

(CURLEY, P. - FOR THE COMMISSION)

1 A Yes. The length of the lease, I would
2 assume you are talking about?

3 Q Yes.

4 A Yes. When you say "with the city" you mean
5 anybody that was -- any official of the city?

6 Q I am referring specifically to your lease
7 agreement with the city.

8 A Yes.

9 Q And you had further discussions concerning
10 the term of that lease?

11 A About the length, yes. We -- okay.

12 Q I'm sorry?

13 A I don't want to get ahead. You go ahead
14 and ask the questions.

15 Q Did the term of the lease change from a
16 two-year lease to a three-year lease?

17 A Yes. When we applied for a liquor license
18 it was about that time that the state had gone from a
19 one-year liquor license to a three-year liquor
20 license for more revenue for the state. So, in order
21 to obtain a liquor license the State Liquor Authority
22 informed us -- informed my lawyer that we had to have
23 a three-year lease; that they were not going to give
24 a three-year license on a two-year lease. So we had

(CURLEY, P. - FOR THE COMMISSION)

1 to conform that lease, to conform that to the state
2 regulations.

3 Q When you received the formal document, the
4 lease agreement from the City of Albany, did you
5 discuss that with your attorney Mr. Kornstein?

6 A Yes. I received it in his office, I
7 believe.

8 Q And you discussed this matter with him, the
9 matter of your lease with the City of Albany; is that
10 correct?

11 A I didn't discuss the lease; we discussed
12 the two-year and three-year. He said, "We have to
13 make it three years in order to conform with the
14 state laws."

15 Q Mr. Curley, if you would, again, I would
16 like to refer you to your testimony before the
17 Commission on August 19, 1988. Can you turn to page
18 28. Do you recall being asked the following question
19 and giving the following answer: Question: "When did
20 you first find out about the lease, if you recall?"
21 Answer: "I got myself a lawyer and sat in his office.
22 And he told me that they are making up a lease and --
23 was it Paul -- what the hell was his name? And we
24 secured a copy of it, and I read it over. And there

(CURLEY, P. - FOR THE COMMISSION)

1 were things that I didn't feel comfortable with. We
2 discussed it, and I remember talking to Paul -- what
3 was his last name? He is no longer with the city."

4 A Yes, Paul Collins. It was my understanding
5 that Paul wrote the lease.

6 Q Is it your testimony today that you then
7 discussed that lease with your lawyer Mr. Kornstein
8 after you received it from the city?

9 A If I could clarify -- when I said there
10 were things I wasn't comfortable with, if you have a
11 copy of the license agreement, I will tell you
12 exactly what I was talking about. The front page of
13 the license agreement, about the fourth paragraph
14 down, during the month of October '83, a license fee
15 of one hundred twenty-five dollars plus one fourth of
16 the utility bills. The month of November, \$250 plus
17 half of the utilities. Now, I didn't get my liquor
18 license -- and we opened December 1, 1983. And I
19 objected to paying \$375 rent on a place that I wasn't
20 in, open or operating. Also, there is a passage in
21 there about the days I had to be open. I think it
22 was seven days a week. And I was -- if I wanted to
23 take Christmas off or Easter off, I didn't want to be
24 in violation of their -- it's Section 15 on the last

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1 page: "seven days a week for at least the following
2 hours." Now, when I say "the things I objected to,"
3 it was those three things. And I called Paul Collins
4 personally and objected to those things. I said to
5 him, "If I lease from the city and I operate a
6 business, why should you tell me the hours to open
7 and everything, you know, if I am a businessman."
8 And he said, "We just don't want you to open for the
9 cocktail hour and close the rest of the time. And I
10 mentioned to Paul Collins about the \$375 rent. I
11 said, "Why should I pay rent on something that I am
12 not even in?" And he said, basically, it was -- "That
13 is the way it is." It was not negotiable; sort of a
14 take it or leave it thing. I also discussed it with
15 my brother, and he said, "Don't worry; just pay the
16 money." And I complained to my brother about it. It
17 was very helpful to me. But basically, that was the
18 way it was going to be.

19 Q My question to you now, Mr. Curley, is
20 whether or not it is your statement that you
21 discussed the lease which you received from the city
22 with your attorney, the statement you made during
23 your testimony on August 19, 1988.

24 A "I got myself a lawyer and sat in his

(CURLEY, P. - FOR THE COMMISSION)

1 office, and he told me they were making up a lease."

2 Q If you read further down it says, "We
3 discussed it." Are you correcting that testimony
4 today or do you stand by that testimony?

5 A Well, I am correcting it. I don't recall
6 specifically discussing sections of the lease with
7 him, although I may have. The purpose of my hiring
8 the attorney was two reasons; to help me secure a
9 liquor license -- and that was the main thrust of his
10 business -- and to help me to deal with the tenants
11 that were in the golf course at the time as to what
12 would be required in payment to them. And that was
13 the purpose of hiring that attorney. Now, whether we
14 discussed the lease was secondary. It was not -- I
15 didn't hire him to negotiate a lease with the city.
16 That is not the reason I retained him. And I want to
17 make that perfectly clear. And that is the reason
18 that I called Paul Collins myself and objected to
19 these things.

20 Q Okay. My question to you, Mr. Curley, is
21 not the reason why, the main reason why you hired Mr.
22 Kornstein to represent you. My question is whether
23 or not you discussed --

24 A Well, it should be a main question.

(CURLEY, P. - FOR THE COMMISSION)

1 Q If you would let me finish my question, Mr.
2 Curley. The question it is whether or not you
3 consulted your attorney concerning that lease.

4 A Now, you have called me down here four
5 times and --

6 MR. McSHANE: Mr. Chairman, I would
7 ask the witness --

8 CHAIRMAN FEERICK: I would like to ask
9 the reporter -- I have lost the last question.

10 And would you go back and see if we can
11 reconstruct the last question and what the
12 witness's response is to it.

13 (Testimony was read by the reporter)

14 CHAIRMAN FEERICK: Let me see if I can
15 cut through this a little bit. I take it, it is
16 your testimony today that you don't recall
17 whether you discussed the terms of the lease
18 when you met with your attorney?

19 THE WITNESS: I don't recall. If I
20 did, it was so minute. That wasn't foremost in my
21 mind.

22 Q So you have no recollection at this point
23 of any precise discussion with your attorney on that
24 subject?

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1 A I don't have any.

2 Q I take it from what you said, you did
3 discuss certain provisions of the proposed lease with
4 an official in the government?

5 A Yes. I called him on the phone.

6 Q Who was that person you called?

7 A His name was Paul Collins.

8 Q What was his position at the time, if you
9 know.

10 MR. BRESLIN: I can help. He was
11 Deputy Corporation Counsel, one of the attorneys
12 in the city's law office that did the leases.

13 CHAIRMAN FEERICK: How did you know to
14 call him?

15 THE WITNESS: That is a good question.
16 I believe that my brother told me that Paul
17 Collins was the one doing the leases. I am not
18 sure how I got his name.

19 CHAIRMAN FEERICK: Can counsel go to a
20 new area of questioning?

21 MR. McSHANE: Yes, Mr. Chairman.

22 Q Mr. Curley, you have indicated that at the
23 time of your meeting with Mr. Whalen you received a
24 business card of the Mayor's with Michael Kornstein's

(CURLEY, P. - FOR THE COMMISSION)

1 name written on the back by the Mayor; is that
2 correct?

3 A That's correct.

4 Q Mr. Curley, I would like you to take a look
5 at page thirty of your testimony before the
6 Commission on August 19, 1988. And I am going to ask
7 you whether you recall being asked the following
8 questions and giving the following answers: "In what
9 direction did he steer you?" Answer: "He steered me
10 toward Mike Kornstein in the office of Cooper, Erving
11 & Savage." Question: "And did you know that the
12 Mayor's -- that that was the Mayor's law firm?"
13 Answer: "I did, yes. Also, he steered me to,
14 insurance-wise, to Albany Associates. And I had said
15 John, who do you think I should use? And he said I
16 should use these people. Go see -- I can't remember
17 his name either -- the man that ran the office, a big
18 guy, a nice guys. Basically, I told John, 'I want to
19 do everything right. What do you think I should do?
20 I want to emphasize that at no time were any of these
21 people were suggested by any of the city
22 administration. And that is the God's truth.'" Mr.
23 Curley are you correcting that testimony here this
24 morning?

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 A Not really. What I want to say is I
2 checked with my brother as to the law firm and this
3 gentleman Kornstein. And he said, "Yes, he is a good
4 man," and also with the insurance -- Otto Fossil
5 (phonetic). I use him; he is a good man.

6 Q I want to direct your attention
7 specifically to the last sentence, last two sentences
8 which we had; "You know, I want to emphasize that at
9 no time were any of these people suggested by any of
10 the city administration. And that is the God's
11 truth." And my question to you, again, is: are you
12 correcting that testimony here this morning, when you
13 say the Mayor handed you a business card with Michael
14 Kornstein's name on the back?

15 A The answer is yes.

16 MR. McSHANE: Thank you, Mr. Curley.

17 I have no further questions.

18 BY COMMISSIONER EMERY:

19 Q Mr. Curley, maybe I misunderstood your
20 testimony. I want to be clear on it. I thought you
21 testified that at some point, there came a time when
22 you originally, at least orally, negotiated a
23 two-year lease. And because the State Liquor
24 Authority required a three-year license, you needed a

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 three-year lease. Did you testify as to that?

2 A Not specifically. I said that the lease,
3 as written, was written as two years. I didn't say
4 we negotiated a two-year lease.

5 Q I see. Now, Exhibit 3, is that a two- or
6 three-year lease that you are referring to there?

7 A Let's read it over. What is it saying --
8 it is three years.

9 Q It is a three-year lease; is that correct?

10 A Yes.

11 Q There was a prior lease to that that was a
12 written lease?

13 A Oh, yes. A two-year lease.

14 MR. BRESLIN: The Commission asked for
15 it and we couldn't find it. I said we don't
16 know where it is at. I think it was a prior
17 draft. I am trying to help you along.

18 Q This is a lease you negotiated with the
19 city, and ultimately the three-year version was
20 signed by Mayor Whalen; is that correct? If you look
21 at the last page of that --

22 A Yes. It was signed. It seemed to be, yes.

23 Q During the period prior to the signing of
24 this lease you were negotiating or trying to get your

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 liquor license using Mr. Kornstein as your attorney;
2 isn't that correct?

3 A That's right.

4 Q And in using Mr. Kornstein as your attorney
5 you had to secure a three-year lease from the city in
6 order to meet the requirements of the State Liquor
7 Authority; is that correct?

8 A That's right.

9 Q So you discussed it with Mr. Kornstein; did
10 you not, your lease with the city?

11 A Yes, I did.

12 Q Relevant to the three years; is that right?

13 A I already testified to that fact.

14 Q That is what I am trying to make sure. You
15 testified that you did discuss with Mr. Kornstein a
16 lease with the city that had to be changed from a
17 two-year original to the three-year that would comply
18 with the State Liquor Authority requirements?

19 A That's right.

20 Q Now, in your discussions with him, if you
21 wish to reveal it -- and you may consider these as
22 privileged discussions; I don't know your position on
23 that -- did you discuss how that lease was to be
24 changed, who was going to do that work, how it was

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 going to get done to change the lease from a two-year
2 lease to a three-year lease?

3 A No. I didn't discuss how that was going to
4 be done.

5 Q Did he tell you what measures he might take
6 to accomplish such a change?

7 A No.

8 Q Well, how was it left when you said to him
9 -- or he told you, "We need a three-year lease." How
10 did that occur?

11 A You will have to ask him. We left it
12 pursuant to our application to the State Liquor
13 Authority. They won't accept anything less than a
14 three-year lease.

15 Q How did you get a three-year lease?

16 A I left it up to him. He must have done
17 what he had to do to make it three years. But that
18 is consistent with what I testified as to getting me
19 a liquor license. You can't get a liquor license if
20 they don't accept it.

21 Q You testified just now, you testified that
22 Mr. Kornstein took care of the matter dealing with a
23 two-year to three-year lease as part of his work in
24 getting you the liquor license?

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 A Yes.

2 Q I believe you testified that prior to the
3 meeting with Mayor Whalen that there was no
4 negotiation whatsoever on the rent; that you had
5 proposed a certain rent in your Exhibit 25, I
6 believe, in your letter to Mr. Maikels, and that you
7 assumed that that might have been accepted when you
8 were informed by your brother that you had the
9 concession?

10 A That's correct.

11 Q Do you know of anybody else seeking this
12 concession? Did you ever hear?

13 A Not at that time. After I was in business
14 I had people come up to me and say, you know, "I
15 tried to get it," or, "I tried to get it for my son,"
16 or something of that nature. But that was after I
17 was in business.

18 Q Do you know how you got this concession; do
19 you know where the information came from that caused
20 your brother to tell you that you had received the
21 concession?

22 A It was my understanding that the decision
23 was made by Commissioner Maikels. At that time
24 Public Works ran the Parks Department also. It has

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 since changed.

2 MR. BRESLIN: You mean which ran the
3 golf course.

4 THE WITNESS: The golf course, yes.
5 And Commissioner Maikels had the say as to who
6 was going to be in on -- who was going to be the
7 concessionaire at the golf course. That was my
8 understanding, anyway.

9 Q Did you know if your brother had any
10 relationship with Commissioner Maikels?

11 A He worked closely with Commissioner
12 Maikels, and I know that we were personal friends.

13 Q Is it your understanding that your brother
14 vouched for you and that is how you got the
15 concession?

16 A I think that was a very, very big part of
17 it, yes.

18 Q How was it that you got the information
19 proposed in Exhibit 5 to set a rent based on the
20 revenues, I take it that you somehow learned, in the
21 first paragraph, were forthcoming from that
22 concession?

23 A When I say John -- my brother said that he
24 believed this is what it was going to take to get the

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 concession.

2 Q So he advised you on those amounts?

3 A Oh, yes.

4 Q And when you met with Mr. Maikels,
5 Commissioner Maikels out in front of the City Hall, I
6 believe you testified --

7 A Yes.

8 Q -- your testimony is that you did not
9 discuss the rent at that point?

10 A I don't believe I did, no.

11 Q Had your brother told you that the rent had
12 been settled?

13 A My brother told me that this letter was
14 accepted and that I was going to get the concession
15 based on the information in this letter. And that
16 was already decided, that was done.

17 Q At any point in your discussion with Mayor
18 Whalen subsequently when you met with him in the
19 office, did he indicate to you words to the effect
20 that he had seen this letter?

21 A No. He didn't indicate it to me. I had no
22 knowledge of whether he had seen the letter or not.

23 COMMISSIONER EMERY: That is all I
24 have.

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 BY CHAIRMAN FEERICK:

2 Q Can I just get your best recollection of
3 the time period? I take it that when you met
4 Commissioner Maikels at that particular point, it was
5 your understanding that you essentially had been
6 accepted for the concession; correct?

7 A It was my understanding, yes.

8 Q Can you put a date on that meeting, if the
9 lease was signed hypothetically on October 31st?

10 A It would have to be at the end of September
11 1983. I don't recall the specific date.

12 Q I take it that when you met Commissioner
13 Maikels, that was the first time you met him;
14 correct?

15 A Yes.

16 Q And is it that very same day that your
17 meeting with Mayor Whalen occurred?

18 A Yes, that was the purpose. John introduced
19 me to the Commissioner out in front of City Hall.
20 Then the Commissioner and I went into the Mayor's
21 office.

22 CHAIRMAN FEERICK: Thank you.

23 BY COMMISSIONER MAGAVERN:

24 Q Mr. Curley, to your knowledge, was there

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 ever an RFP to operate this concession?

2 A I don't understand the question. Can you
3 clarify it a little better?

4 Q Did you ever become aware of any -- to your
5 knowledge, were there ever any competing proposals
6 that had been submitted to the city in competition
7 with yours?

8 A Not to my knowledge.

9 Q And you never received any formal
10 invitation to submit a proposal in writing?

11 A No, I didn't.

12 Q What was the basis of your fee rate with
13 Mr. Kornstein? Was an hourly fee rate discussed at
14 all before the arrangement?

15 A We discussed the rate, and he had to work
16 on a liquor license and negotiate with the tenants
17 there at the golf course. He gave me a number. Do
18 you want to know what that was?

19 Q Was that before or after he submitted the
20 bill?

21 A That was before; that was in his office.
22 That was at our first meeting, I think, when he told
23 me what the fee would be.

24 Q Was it a fixed fee in advance?

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 A What do you mean; pay in advance, is that
2 what you mean?

3 Q No. In your conversation with him before
4 he did the work, you agreed upon what the fee would
5 be?

6 A We agreed on a fee, yes. Well, we had --
7 at my first meeting with him, I don't know if we had
8 done some work and then talked about the fee. I
9 think that is the way it was. We had gone over some
10 information as to what was needed to be done for the
11 liquor license, and at the end of that meeting is
12 when we had discussed this fee.

13 Q How much did he tell you it was at that
14 time?

15 A He said it would be between one thousand
16 and fifteen hundred dollars.

17 COMMISSIONER MAGAVERN: Okay, thank
18 you.

19 CHAIRMAN FEERICK: Special Counsel Tom
20 Schwarz.

21 BY MR. SCHWARZ:

22 Q Sir, you had already had a liquor license
23 in connection with another premise; had you not?

24 A I held a license in a restaurant I had in

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 White Plains. That's correct.

2 Q And at the time that you met with
3 Commissioner Maikels, did you still hold that
4 license?

5 A No. We terminated our business down there.
6 I remember the last day of business was the last day
7 of August 1983. And the very next day or very
8 shortly after that, we turned our license in because
9 you do get -- you are entitled to a little bit of a
10 refund.

11 Q You didn't have any reason to believe that
12 you would have any difficulty in obtaining the liquor
13 license; did you?

14 A No. I have a pretty good reputation down
15 there.

16 Q You didn't have suspensions or revocations
17 of your license, sir?

18 A No, I didn't.

19 Q Just so the record is clear, when you
20 received the business card from the Mayor with Mr.
21 Kornstein's name written on it, do you recall what
22 the business card reflected with respect to the
23 Mayor? Did it reflect that he was the Mayor, or did
24 it reflect that he was a member of the firm of

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 Cooper, Erving & Savage?

2 A I am not sure if I understand your question
3 about the reflection.

4 Q You had a business card. What business did
5 it reflect?

6 A He was the man in that firm that did liquor
7 licenses.

8 Q No, no. My question --

9 MR. BRESLIN: Did the card say Cooper,
10 Erving & Savage or Mayor on it? That was the
11 question, I think.

12 Q Yes. That was the question.

13 A Gee, I can't recall. I don't know.

14 Q And lastly, Exhibit 25, your letter to
15 Commissioner Maikels refers -- at the bottom it says,
16 "Reference: Mr. Harold Joyce."

17 A Yes.

18 Q Who is Mr. Harold Joyce?

19 A He is a good friend of my brother John's in
20 the Sixth Ward in Albany.

21 Q In the Sixth Ward?

22 A He is a member of the Albany County
23 Legislature --

24 Q I'm sorry, sir?

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 A -- and the head of the electricians' union.

2 Q And a member of the Albany County
3 Legislature, did you say?

4 A That's correct.

5 Q And he is a member of the Democratic
6 political organization; is that what you knew at the
7 time?

8 A Yes.

9 MR. SCHWARZ: I have no further
10 questions.

11 CHAIRMAN FEERICK: I would like
12 to ask counsel to show the witness -- I am not sure if
13 the document was presented before, Exhibit 36.
14 For the record, document 36 appears to be a
15 license agreement between the witness and the
16 city dated October 20, 1983, eleven days in
17 advance of the final license agreement. That, I
18 believe, is Exhibit 3.

19 THE WITNESS: Here is the one with two
20 years, okay.

21 BY CHAIRMAN FEERICK:

22 Q If the witness would examine Exhibit 36,
23 and particularly the signature page on page three, I
24 will ask whether, Mr. Curley, that is your signature

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 on the page.

2 A This is exhibit 36, the third page. And
3 that is my signature.

4 Q Does that document in any way refresh your
5 recollection as to the events that took place with
6 respect to you and your attorney following the
7 meeting with Mayor Whalen?

8 A Yes. This is consistent with, you know,
9 with everything. I guess the other one, the amended
10 one for three years we discussed was October 31st.

11 So you can see it was eleven days later. And it
12 would be interesting to compare the two documents.

13 To my recollection, the only thing that would be
14 changed would be from two years to three years to
15 conform with the State Liquor Regulations. So, how
16 much negotiation had to be done there is, you know,
17 ridiculous. All you have to do, I think -- I didn't
18 compare the two. But I think if you do, you will
19 find that they are the same except with respect from
20 two years to three years.

21 CHAIRMAN FEERICK: I just wanted to
22 make sure the record was complete.

23 MR. BRESLIN: I'm sorry. We might
24 have been better able to respond if you had

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 given it to us. We had asked for it and staff
2 attorney refused to give us --

3 CHAIRMAN FEERICK: Counsel, when you
4 have had an opportunity to examine the exhibits
5 in entirety, we would be happy to accept any
6 additional written statement the witness might
7 have following this hearing.

8 BY COMMISSIONER EMERY:

9 Q Do you know now or recollect what the
10 reasons were or the reason for the two-year term
11 initially?

12 A No. As opposed to on a one-year?

13 Q As opposed to a one-year or two-year term.

14 MR. BRESLIN: The city attorney who
15 did it never did a license for a premises
16 wherein you have liquor. Cities are not usually
17 in the business of renting out businesses that
18 have liquor licenses. While the city does many
19 leases, they don't lease premises wherein you
20 serve liquor. So he was unaware of the fact --

21 THE WITNESS: And that was new, too.
22 They had just gone to a three-year license when
23 Cuomo was elected. That was one of the first
24 things he did.

(CURLEY, P. - EXAM. BY THE COMMISSION)

1 Q Mr. Curley, my question is: do you know the
2 reason they fixed on a two-year term for your lease?

3 A No, I don't.

4 CHAIRMAN FEERICK: You don't know
5 whether it was "ridiculous" or any degree of
6 negotiating, or how difficult the negotiations
7 were to change it to a three-year term; do you?

8 THE WITNESS: No. I don't know if it
9 was difficult to change it from a two-year.

10 COMMISSIONER EMERY: That's all. That
11 is my question.

12 CHAIRMAN FEERICK: Thank you very
13 much.

14 (The witness was excused.)

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(DEVINE, E. - FOR THE COMMISSION)

1 CHAIRMAN FEERICK: The Commission
2 calls as its next witness Eugene Devine.

3 EUGENE DEVINE,
4 called herein as a witness before the
5 Commission, and being duly sworn by the
6 Chairman, testified as follows:

7 CHAIRMAN FEERICK: Please be seated.
8 I would like to ask counsel to identify himself
9 for the record, please.

10 MR. TROMBLY: Edward J. Trombly, Key
11 Corp. Plaza.

12 CHAIRMAN FEERICK: I recognize Thomas
13 McShane.

14 MR. McSHANE: Thank you, Mr. Chairman.

15 BY MR. McSHANE:

16 Q Mr. Devine, would you please state your
17 full name and spell your last name.

18 A Eugene P. Devine, D-e-v-i-n-e.

19 Q Now, Mr. Devine, where are you presently
20 employed?

21 A I am a partner in the firm of Devine,
22 Piedmont & Rutnik.

23 Q For how long have you been with that firm?

24 A Since September, 1985.

(DEVINE, E. - FOR THE COMMISSION)

1 Q Prior to your association with the current
2 firm, were you associated with another law firm?

3 A Yes. I was a partner in the law firm of
4 Cooper, Erving & Savage.

5 Q For how long were you a partner in that
6 firm?

7 A Approximately from 1981 or 1980 to when I
8 left in September '85.

9 Q And prior to being a partner in the firm,
10 were you an associate in the firm?

11 A I was an associate in the firm from '75
12 until I became a partner.

13 Q And when did you leave the firm?

14 A September of 1985.

15 Q During the time when you were a partner,
16 Mr. Devine, how many other partners were there in the
17 firm?

18 A I believe there were eight. Seven other
19 partners, eight partners total.

20 Q Were any of those other partners senior
21 partners?

22 A Yes. There were three senior partners.

23 Q Who were they?

24 A James Drislane, Tom Whalen and Jim Brennan.

(DEVINE, E. - FOR THE COMMISSION)

1 Q Mr. Devine while you were with the firm of
2 Cooper, Erving & Savage did the firm have dealings on
3 behalf of clients with municipalities?

4 A Yes.

5 Q And did the firm have dealings with the
6 City of Albany on behalf of clients?

7 A Yes.

8 Q In 1982, Mr. Devine, Thomas Whalen, a
9 partner in the firm, became President of the Common
10 Council; is that correct?

11 A I believe so.

12 Q And did he subsequently become Mayor?

13 A Yes.

14 Q And do you recall when he became Mayor?

15 A He became Mayor upon the death of Mayor
16 Corning. I am not sure what year that was. I think
17 it was in the spring, maybe May. But I don't recall
18 the year.

19 Q When Mr. Whalen became a member of the
20 Common Council he remained a partner in the firm of
21 Cooper, Erving & Savage; is that correct?

22 A That's correct.

23 Q And when he later became Mayor he remained
24 a partner in the firm; is that correct?

(DEVINE, E. - FOR THE COMMISSION)

1 A That's right. That's correct.

2 Q As a partner in the firm he shared in the
3 profits generated by the firm's business?

4 A Yes.

5 Q Mr. Devine, did the members of the firm
6 address the issue of Mr. Whalen's serving as an
7 official in the City of Albany while remaining a
8 partner in the firm?

9 A Yes.

10 Q And in what context did those issues get
11 raised?

12 A I believe sometime subsequent to his
13 becoming Mayor, it was raised at a partnership
14 meeting. And we discussed the pluses and minuses and
15 whether it would be feasible.

16 Q What were the concerns of the members of
17 the firm, Mr. Devine?

18 A I think, basically, not in terms of
19 governmental ethics, but in terms of the legal
20 ethics; that there were possible conflicts of
21 interest, things like how much time would be spent in
22 the office, how much time would be spent in the
23 Mayor's office, those types of things.

24 Q Were these concerns raised directly with

(DEVINE, E. - FOR THE COMMISSION)

1 Mayor Whalen?

2 A Yes.

3 Q Do you recall what his position was?

4 A I think Tom felt that he could at least
5 temporarily stay as Mayor and stay in the law firm,
6 and that we could deal with the conflicts of interest
7 on a case by case basis, and deal with them as fairly
8 as we could.

9 Q Did you ever hear the Mayor make reference
10 to the fact that his position as Mayor would be a
11 benefit to the firm?

12 A Yes. I think at that same meeting, in
13 discussing the pluses and minuses and pros and cons
14 of his position, I think Tom felt, and others in the
15 firm felt that the exposure would be beneficial to
16 the law firm.

17 Q Do you recall the Mayor ever making
18 reference and comparing his situation to Mayor
19 Corning's regarding this matter?

20 A Yes. As I say, we were discussing a lot of
21 different things. And I think that Tom felt that the
22 Mayor, the former Mayor had been able to assist
23 certain other law firms in the city. But again, that
24 was something that was discussed. And there was a

(DEVINE, E. - FOR THE COMMISSION)

1 difference in that Tom was a partner in the law firm
2 and we felt, and he did too, that he certainly
3 couldn't be as helpful because we would run into
4 conflict situations.

5 Q Did he make specific reference to the other
6 firms in the city that he was speaking about?

7 A I would have to clarify that. I don't know
8 whether he did or someone else did. But yes, mention
9 was made.

10 Q Which firms were those?

11 MR. SCHWARZ: Can we clarify which
12 firms those were to which reference was made in
13 connection with Mayor Corning when he was Mayor?

14 THE WITNESS: I can recall at least
15 two, I think, among several. Rutnik & Rutnik
16 and Richard Meyers were mentioned as having been
17 known as involved in politics when Corning was
18 Mayor, and that it was beneficial, we felt it
19 was beneficial to their business.

20 Q Mr. Devine, if you would, I would ask you --
21 first of all, do you recall testifying before a
22 private Commission hearing on November 1, 1988?

23 A Yes.

24 Q I would ask you, if you could, to take a

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1 look at page 30 in the transcript of that testimony.
2 And I would ask you whether or not you recall being
3 asked the following question and giving the following
4 answer: "Did the Mayor ever give any specific
5 examples of how, as Mayor, he might be able to assist
6 the law firm? Answer: "Well, I think that Tom at
7 that point was still not sure of his political
8 career, where it was going. At one particular
9 meeting he used an example. And he said that, 'Look
10 what Mayor Corning has done for the Noonans and
11 Rutniks.' And you know, I think a lot of business
12 was generated by close political ties."

13 A The problem that I felt with that was that
14 Mayor Corning wasn't a partner in those two law
15 firms, and I didn't think that business would be as
16 easily referred because of the conflict.

17 Q My question, Mr. Devine, is: does that
18 refresh your recollection as to who made the comment
19 with reference to the Noonans and Rutniks in the
20 firm?

21 A That refreshes your recollection that that
22 is what I said that day, yes. But I think I am
23 clarifying it now.

24 Q Thank you, Mr. Devine. Mr. Devine, did the

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1 law firm of Cooper, Erving & Savage handle tax
2 protest matters on behalf of clients?

3 A Yes.

4 Q Are those referred to as tax certiorari
5 matters?

6 A Ultimately, yes.

7 Q After Mayor Whalen assumed office, did the
8 law firm continue to handle those cases for a time?

9 A Which office?

10 Q I'm sorry?

11 A After he assumed which office?

12 Q Office of President of the Common Council.

13 A I believe so.

14 Q And can you explain how the firm handled
15 those matters?

16 A Well, basically, if we had a client who
17 requested us to handle tax protest matters, normally
18 we would file a tax protest. And if that were
19 denied, we would file a certiorari proceeding.

20 Q Did the firm continue to handle those
21 matters after Mr. Whalen became Mayor?

22 A Once.

23 Q Can you describe how it was handled on that
24 one occasion?

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1 A To the best of my recollection -- and I am
2 a little unclear on this -- I believe that Corning
3 died sometime in the time of -- sometime in May.
4 That is around the time when you are doing tax
5 protest work. And my understanding was -- and I
6 received this information from Jim Drislane sometime
7 after the fact, that we were in the process of
8 preparing tax certioraris when the Mayor died. At
9 that point, apparently Jim Drislane realized that
10 there was a conflict there with Tom now being the
11 Mayor as opposed to President of the Common Council.
12 And the matters were referred to a Joseph Yavanditti,
13 an attorney in town in our office. He was not
14 associated with our office, but rented space. And he
15 proceeded from there.

16 Q Is it your recollection that the work,
17 substantive work on the matter was performed by
18 Cooper, Erving & Savage, and subsequently the papers
19 were submitted by Mr. Yavanditti?

20 A Yes. My recollection is that we had the
21 bulk of the work done when we referred the files
22 over. All that remained to be done was for them to
23 be submitted.

24 Q Mr. Devine, while you were with the firm of

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1 Cooper, Erving & Savage was First American Bank a
2 client of the firm's?

3 A Yes.

4 Q And do you recall what percentage of the
5 firm's billings were generated by the work performed
6 for First American Bank?

7 A I recall we would discuss it from time to
8 time; probably twenty-five percent.

9 Q Do you recall in 1984 First American Bank
10 becoming concerned about the real estate -- real
11 property tax consequences of its purchase of Banker's
12 Trust?

13 A I think the acquisition by first American
14 was in 1984. I think it was the spring of '85. That
15 is the period you are referring to.

16 Q I'm sorry. Spring '85 rather than 1984?

17 A Yes.

18 Q Do you recall at that time First American
19 Bank being concerned about the tax consequences of
20 that?

21 A Yes.

22 Q Could you explain exactly what the concerns
23 were in this regard?

24 A My recollection is that one of the -- there

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1 were several branches, a main office and several
2 branches. One of the local towns where a branch was
3 located sent a notice of an early or tentative
4 reassessment. And I received a phone call, I
5 believe, from John Burn asking me what the bank could
6 do to alleviate this. Freling Smith who was with our
7 office primarily handled the bank work, and I got the
8 call because Freling was out, or I told John that
9 Freling was out, and I would have him look into it.

10 And subsequently, when Freling returned we discussed
11 this. I went in to discuss this one particular
12 problem with him.

13 Q Do you recall discussing with Mr. Smith
14 your concerns about a possible conflict with the City
15 of Albany on this tax matter?

16 A What happened then is in discussing the one
17 particular problem, we realized that there were
18 transfers in the City of Albany and in the other
19 towns, and that the ones in the City of Albany could
20 be a problem because Tom had now become Mayor.

21 Q Was this issue raised within the firm at a
22 partnership meetings?

23 A Yes. Freling Smith and I thought that the
24 best way to do it was to discuss it at a partnership

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1 meeting and get everyone's thoughts on the matter.

2 Q Was the Mayor present at that partnership
3 meeting?

4 A Yes.

5 Q Do you recall what he said about the
6 matter?

7 A Yes. After -- I don't recall whether
8 Freling bought the matter up or I did. And there was
9 some discussion, and Tom said, "Let me take a look at
10 it. Let me look into the matter, and I will get back
11 to the law firm." And he said, "Let me talk it over
12 with Freling after the meeting and we will see what
13 happens."

14 Q Did the Mayor subsequently comment on the
15 matter at another partnership meeting?

16 A Approximately two or four weeks later, Tom,
17 I think in his capacity as Mayor, after having
18 learned that there was a possible tax problem, had
19 investigated the matter and came back and informed us
20 that it was taken care of, there was no problem;
21 meaning that there is no conflict, that there was no
22 problem.

23 Q Was it your understanding that the Mayor
24 had personally looked into the matter?

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1 A That is what I thought, yes.

2 Q Mr. Devine, are you familiar with the
3 Tricentennial Commission?

4 A Yes.

5 Q What is the Tricentennial Commission?

6 A It was a not-for-profit corporation set up
7 to do many things, I think, in celebrating Albany's
8 three hundredth birthday.

9 Q Did there come a time when you represented
10 the Tricentennial Commission?

11 A Yes.

12 Q And what did you do for the Tricentennial
13 Commission?

14 A I incorporated it.

15 Q Can you tell us how you ended up
16 representing the Tricentennial Commission?

17 A Yes. Tom came in, and I said, "Tom -- " he
18 either called from the Mayor's office, and asked if I
19 would go up and see him, or came into my office down
20 at the law firm, and asked me if I would like to work
21 on it.

22 Q And as a result of the work that you did on
23 behalf of the Tricentennial Commission was the firm
24 paid a fee?

(DEVINE, E. - FOR THE COMMISSION)

1 A Yes, I believe so.

2 Q And at that time Mr. Whalen was a member of
3 the firm?

4 A Yes.

5 Q And he shared in that fee; is that correct?

6 A Yes.

7 Q By the way, do you know who the chairman of
8 the Tricentennial Commission was?

9 A I think it was Lew Swyer.

10 Q And did you ever have any conversation with
11 him about your being retained for the Tricentennial
12 Commission?

13 A No.

14 Q In your view, was it the Mayor's decision
15 to hire you for that purpose?

16 A He asked me. I don't know whose decision
17 it was.

18 Q Mr. Devine, during the time when James
19 Drislane was a partner with the Cooper, Erving &
20 Savage firm, you were aware, were you not, of the
21 fact that he represented Maiden Lane Auto Park in its
22 dealings with the Albany Parking Authority and other
23 city agencies when Mayor Whalen was Mayor; is that
24 correct?

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1 A Yes.

2 Q And did you ever bring this matter to the
3 attention of any of the partners?

4 A No, I didn't. It was brought to my
5 attention.

6 Q Who brought it to your attention?

7 A Jim Drislane.

8 Q Did you have a conversation with him
9 regarding this matter?

10 A Yes.

11 Q Can you tell us what the conversation was?

12 A I knew that Jim represented Maiden Lane. I
13 didn't know the particulars of what they were doing
14 at that point in time. And I was in Jim's office on
15 something else one day, and he informed me as to what
16 was going on, and thought that it would be a problem
17 but felt, at least in his opinion, that it would be a
18 problem -- not be a problem for the law firm, but
19 maybe a problem for Tom, and that he would speak to
20 him about it.

21 Q Did he ever discuss the conversation that
22 he had with the Mayor concerning this matter with
23 you?

24 A No.

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1 Q Again, I would like you to refer to the
2 private testimony that you gave before the
3 Commission, to page 52 at the bottom of the page. Do
4 you recall being asked this question and giving this
5 answer: "Do you have any knowledge of any
6 discussions with Mr. Drislane regarding the clients
7 that he represented in front of city agencies or city
8 related entities such as the Albany Parking
9 Authority?" Answer: "I had a discussion with Jim
10 Drislane once in his office in regard to Maiden Lane,
11 that it is a problem. And he said to me, 'Maiden
12 Lane has been a client of mine. I have a
13 relationship with them and I intend to service them.
14 I have told Tom it is a problem with his being Mayor.
15 But as far as I am concerned it is his problem and
16 not mine, and I intend to continue servicing them.'"
17 Do you recall giving that testimony?

18 A Yes.

19 Q Does that refresh your recollection
20 regarding your conversation with Mr. Drislane about
21 his conversation with the Mayor?

22 A I don't think that that differs too much
23 with what I just said. Maybe I should clarify it. I
24 am not sure whether he said, "I have told Tom," or "I

(DEVINE, E. - FOR THE COMMISSION)

1 will tell him." And if that needs clarification, I
2 will clarify it. But his basic thing was that it
3 wasn't a problem for the law firm and he would
4 continue to service them. And there were some
5 discussions with Tom.

6 Q Thank you. By the way, the firm continued
7 to represent Maiden Lane Auto Park; is that correct?

8 A I think -- I can't answer that, I don't
9 think, because I think I left shortly thereafter.

10 Q Mr. Devine, while you were at Cooper,
11 Erving & Savage did there come a time when you
12 represented the members of the union local in
13 discussions with the City of Albany?

14 A Yes.

15 Q Can you describe how that took place?

16 A Yes. I received a call from my client who
17 informed me that the contract for the four or five
18 laborers who work at the city landfill was up for
19 renewal. And what he told me was that, basically,
20 the laborers historically waited for the other city
21 workers to settle, and whatever percent raise they
22 got, the laborers were willing to accept. So, I
23 called corporation Counsel's office and had a very
24 short discussion with Vincent McArdle who told me he

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 didn't see any reason why that practice shouldn't
2 continue. This was in between the former Mayor
3 passing away and Tom taking over. And I was told
4 that that would be the practice in the future, and
5 that has been.

6 Q That was the extent of your negotiation
7 with the city with regard to that matter?

8 A I object to "negotiation," but that was the
9 extent of my discussions, yes.

10 MR. McSHANE: Thank you, Mr. Devine.

11 I have no further questions, Mr. Chairman.

12 CHAIRMAN FEERICK: Thank you.

13 Commissioner Magavern?

14 BY COMMISSIONER MAGAVERN:

15 Q Mr. Devine, considering whether your firm
16 might have any problem of conflict after Mr. Whalen
17 first became Council President and when he became
18 Mayor, did you personally do any research on that?
19 Did you happen to take a look at Article 18 of the
20 General Municipal Law, for example?

21 A I don't recall specifically looking at
22 Article 18, no.

23 Q One of our concerns is whether Article 18
24 is sufficiently clear to the people to work

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 effectively with it. Do you recall forming an
2 opinion on that, as to whether Article 18 gave you
3 sufficient guidance?

4 A I don't recall what Article 18 says.

5 Q Was it your opinion that the firm should
6 not handle tax certiorari proceedings after Mr.
7 Whalen became Council President?

8 A I think it was everyone's opinion,
9 including Tom Whalen's.

10 Q What did you base that opinion on?

11 A Well, a tax certiorari is, in actuality, a
12 lawsuit brought against the city by an aggrieved
13 taxpayer, with corporation counsel's office. And the
14 attorney for the aggrieved taxpayer oftentimes will
15 conference and settle the matter like any other
16 lawsuit. And, as I say, the Corporation Counsel is
17 the city attorney. We thought it would be a problem
18 in continuing to do this.

19 Q That was because it was a direct
20 adversarial relationship?

21 A Correct.

22 Q In your opinion, would it be appropriate
23 for someone in the firm to deal with the city, not in
24 litigation, but rather in negotiations?

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 MR. TROMBLY: I object, Mr. Chairman,
2 to the question. You are calling for a
3 conclusion on the part of the witness, and no
4 foundation has been laid. His opinion is not
5 any more valid than anyone else's in this room.

6 CHAIRMAN FEERICK: I will direct the
7 witness to answer the question.

8 THE WITNESS: What was the question?

9 Q I will rephrase it. In your opinion, by
10 extension of the same policy which precluded your
11 firm from handling matters on behalf of private
12 clients in a direct adversarial relationship against
13 the city, by extension, would that same principle
14 apply to negotiations on behalf of a private client
15 with the city?

16 MR. TROMBLY: May I have a minute to
17 confer with my client?

18 CHAIRMAN FEERICK: Sure.

19 (Attorney client conference)

20 THE WITNESS: I think I have answered
21 that I have not reviewed Article 18 and,
22 therefore, I don't know the answer to your
23 question.

24 Q Let me phrase the question in terms of

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 policy making. Within your own firm, did you ever
2 consider it in your own firm as to whether it would
3 be appropriate for members of your firm to represent
4 private clients with the city or with city related
5 agencies in which Mayor Whalen served as an official
6 to negotiate business transactions?

7 A To my knowledge, nothing specifically was
8 discussed.

9 Q Did you become aware at any time that
10 members of your firm were representing private
11 clients before the IDA at a time when Mr. Whalen sat
12 as a member of that agency?

13 A Yes.

14 Q Did you ever consider whether that was
15 within proper guidelines of your firm?

16 A On the several occasions that I learned
17 about it, it was after the fact; it was a fait
18 accompli at that point.

19 Q Did you ever express an opinion as to
20 whether your firm ought to adopt guidelines to
21 prohibit such representation?

22 A Yes.

23 Q What was your opinion that you expressed?

24 A Well, I didn't think that I -- several

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 people didn't think that we should, and I would
2 include Tom in this. I think we tried to avoid that.

3 Q Do you know what steps he took to prevent
4 that in the future?

5 A Nothing, other than we would look at a case
6 when it came in on a case by case basis and examine
7 it and see if we saw any conflict at all.

8 Q When is the first time they expressed the
9 view that members of your firm should not represent
10 private clients before the IDA?

11 A I don't recall. Did you ask me if he did
12 or if anyone did?

13 Q If any member of the firm did.

14 A I don't recall, but I thought you just
15 asked me when is the first time that he did. And I
16 don't know who brought it up.

17 Q What I want to know is -- let me state my
18 question, and maybe I can clarify it. Apparently,
19 you misunderstood it. Mr. Whalen expressed the
20 opinion that members of the firm should not represent
21 private clients in transactions of the IDA; is that
22 right?

23 A That opinion was expressed at the law firm,
24 and I think he concurred in it. I am certain that he

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 did.

2 Q Was that opinion expressed at the law firm
3 soon after he became Council President?

4 A I don't recall when it was.

5 Q Did you subsequently become aware that, in
6 fact, members of the firm did handle matters before
7 the IDA?

8 A Yes.

9 Q And that was after the opinion had already
10 been expressed within the firm that the firm should
11 not to do so; is that right?

12 A No. I don't know when it was.

13 Q You don't know one way or the other?

14 A No, that's right.

15 COMMISSIONER MAGAVERN: That is all.

16 BY COMMISSIONER EMERY:

17 Q Mr. Devine, I believe you testified that
18 there were two meetings at which the issue of the
19 bank, the FAB reassessment of property values came
20 up, where a question of conflict came up. The first
21 one, Mayor Whalen was present and he said he would
22 look into it; is that correct?

23 A That's correct.

24 Q And then two or four weeks later, you said

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 in his capacity as Mayor he did something. That is
2 what I didn't understand. What do you mean by "in
3 his capacity as Mayor"?

4 A My understanding of the situation is that
5 the Mayor oftentimes will receive a letter or
6 complaint from an aggrieved taxpayer stating why they
7 think their taxes are out of proportion to the others
8 in the neighborhood, or whatever, and that he will
9 then look into the matter. That is what I think he
10 did.

11 Q In other words, it was your understanding
12 that after the first meeting, after he had been
13 alerted by his law firm that there was this issue of
14 these reevaluations, and that it also presented a
15 potential for conflict, he came back to you in the
16 second meeting even though he was sitting in the
17 partnership and he was acting in his capacity as
18 Mayor when he told you it has been taken care of?

19 A Yes.

20 Q And that it was no problem?

21 A Yes.

22 Q Now, he was at that time your partner; was
23 he not?

24 A Yes.

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 Q Did you ask him what he meant by that, how
2 could it be "taken care of"?

3 A Well, it could be taken care of if the
4 taxes were not raised. Then there would be no need
5 for a certiorari. And then there would be no need
6 for a lawsuit and there would be no conflict on our
7 part. I assumed it to mean that he had looked into
8 the matter and it was not going to be a problem for
9 the law firm.

10 Q It was not a problem for the law firm. And
11 the considerations at that partnership meeting were
12 not concerned with his duties as Mayor to the people
13 of the City of Albany with respect to maximizing
14 appropriately under legal limits the tax base of
15 property there?

16 A I think we were concerned with our own
17 professional ethics.

18 Q And with your clients?

19 A Yes.

20 Q Now, when Mr. Drislane said to you in a
21 meeting with respect to Maiden Lane and you had the
22 discussion you testified to, do you remember whether
23 that was before or after the FAB issue?

24 A My recollection is that it was after,

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 because I think it was shortly before I left the law
2 firm.

3 Q And I believe in your testimony, the
4 testimony that Mr. McShane read, you had testified
5 previously words to the effect that James Drislane
6 said to you, "I told --" or "I will tell Mayor Whalen
7 that it is his problem, and I intend to continue to
8 service Maiden Lane." Now, did you detect on his
9 part some frustration with the situation that he had
10 been put in by this problem?

11 A No.

12 Q Simply that, "It is his problem; it is not
13 a problem for me"?

14 A Yes.

15 Q Did you ever hear expressions to that
16 effect by other members of the law firm with respect
17 to these issues that apparently by that time had come
18 up on a number of occasions?

19 A Yes. I think we discussed from time to
20 time different issues.

21 Q Well, what I am asking you is: was there
22 some sense in the law firm that this was a problem,
23 and it was a continuing problem and it was not going
24 away and the Mayor wasn't doing anything about it?

(DEVINE, E. - EXAM. BY COMMISSIONERS)

1 A Up until the last part of your -- the last
2 part of your statement, yes, it was a problem. And
3 it came up from time to time, and we tried to deal
4 with it on a case by case basis. I am not saying
5 that he is not -- that he didn't do anything about
6 it. He attempted to deal with the situation.

7 Q Perhps you could tell me, to your
8 knowledge, was there any occasion on which the law
9 firm did anything to deal with it?

10 A Yes.

11 Q What measures did the law firm take on any
12 occasion to deal with this problem, other than the
13 time that you handed over the certiorari that you
14 testified to?

15 A We handed over the certiorari. There were,
16 I believe, a couple of false arrest suits which we
17 felt we couldn't take on because they were involved
18 with suing the city. There was another situation --
19 and forgive me because I don't recall. I think we
20 referred out some IDA work that we felt we couldn't
21 do. And there may have been others.

22 Q Do you remember any actions that Mayor
23 Whalen took in his capacity as Mayor to avoid the
24 problems that you perceived prior to your leaving in

(DEVINE, E. - EXAM. BY SPECIAL COUNSEL)

1 1985?

2 A I don't know what he did in his capacity as
3 Mayor to alleviate the problem, no.

4 Q You didn't become aware of anything that he
5 did other than, I guess, on the one occasion that
6 that he said at the partnership meeting that it was
7 "taken care of"?

8 A No.

9 COMMISSIONER EMERY: That is all I
10 have.

11 BY MR. SCHWARZ:

12 BY MR. SCHWARZ:

13 Q Just to go over a couple of questions that
14 Mr. Emery asked you; was there ever a time in
15 connection with your firm's representation of a
16 client that some public disclosure was made, as far
17 as you know, that the firm represented a particular
18 client?

19 A Other than which time; did you say "other
20 than" --

21 Q I said other than the time that you
22 mentioned with respect to the tax certioraris where
23 you handed the matter over, in connection with any
24 other matter where the firm did continue to represent

(DEVINE, E. - EXAM. BY SPECIAL COUNSEL)

1 a client in some negotiations with the city, was
2 there any disclosure made by the firm, as far as you
3 are aware?

4 A To the best of my recollection, in the
5 laborers' situation, I sent a letter to the city.

6 Q That would have been a letter written by
7 you to whom?

8 A Corporation Counsel, I believe.

9 Q Aside from that, was there anyplace where
10 any public filing was made by your firm? And by
11 public filing, I don't mean something that might be
12 subject to the Freedom of Information Law.

13 A I have no knowledge.

14 Q Was the FAB -- First American Bank on
15 retainer at the time of this assessment issue?

16 A I believe when first American came in, that
17 is when we went to an hourly basis.

18 Q And last, with respect to the sharing of
19 fees in your firm, without getting into the specifics
20 of who had what percentage interest which I am not
21 interested in, is it correct that the revenues would
22 be deposited in the account, the expenses would be
23 paid, and then over the course of a year there would
24 be distributions in accordance with the net profit

(DEVINE, E. - EXAM. BY SPECIAL COUNSEL)

1 participation of the partners?

2 A Yes.

3 Q Were all fees treated equally in that
4 respect?

5 A Except those of a fiduciary nature.

6 Q Like guardianship?

7 A Yes.

8 Q And how were those treated?

9 A Those were the property of the partner who
10 was appointed guardian, trustee, receiver, what have
11 you.

12 Q If the check in connection with one of
13 those fiduciary matters was made out to a firm -- to
14 the firm, would that then be deposited but an equal
15 amount given to the partner?

16 A I don't recall any instance where it would
17 ever be made out to the firm.

18 Q In other words, it was just maintained
19 separately from the firm's revenues?

20 A Yes.

21 Q Was there any reason why that could not
22 have been done with respect to a check that came to
23 the firm in connection with the work done in
24 connection with negotiations for the city on behalf

(DEVINE, E. - EXAM. BY SPECIAL COUNSEL)

1 of a client? Is there a technical reason why that
2 could not have been done?

3 A What?

4 Q For example, if the firm received a ten
5 thousand dollar fee from a client in connection with
6 the negotiation with the city, was there any reason
7 why that amount could not have been subtracted from
8 any particular partner's account; it was just an
9 accounting mechanism; wouldn't it have been?

10 A I don't understand the question.

11 Everything came in. And after overhead, everything
12 was split, other than fiduciary, Any formal day to
13 day legal work. I don't understand the question.

14 Q In other words, was there anything
15 inconsistent with the accounting mechanism of your
16 firm that would have made it impossible to separate
17 out any fee that the firm thought it was
18 inappropriate, for example, for Mayor Whalen to
19 participate in?

20 A Oh, not to my knowledge, not before I left.

21 Q In other words, that could have been done?

22 A Yes.

23 MR. SCHWARZ: Nothing further.

24 CHAIRMAN FEERICK: Thank you very

(BELL, G. - FOR THE COMMISSION)

1 much.

2 (The witness was excused.)

3 COMMISSIONER FEERICK: The Commission
4 calls before the luncheon break the final
5 witness, Mr. Bell.

6 GORDON C. BELL,
7 called herein as a witness before the
8 Commission, and being duly sworn by the
9 Chairman, testified as follows:

10 CHAIRMAN FEERICK: I would ask counsel
11 to identify himself for the record.

12 MR. HAYES: Yes. Harry H. Hayes,
13 H-a-y-e-s, 350 Northern Boulevard, Albany 12204.

14 CHAIRMAN FEERICK: Thank you. I
15 recognize Kim Greene for questioning.

16 MS. GREENE: Thank you, Mr. Chairman.

17 BY MS. GREENE:

18 Q Good morning Mr. Bell. Could you state
19 your full name for the record, please.

20 A Gorrdon C. Bell.

21 Q What is your current occupation, Mr. Bell?

22 A I run a sheetmetal fabricating shop in
23 Albany.

24 Q And what is your position with that

(BELL, G. - FOR THE COMMISSION)

1 organization?

2 A I am President of the company.

3 Q Mr. Bell, do you own property known as
4 283-85 Sheridan Avenue?

5 A The company does, yes.

6 Q When did the company purchase this
7 property?

8 A I guess in 1985. I am not sure. Could I
9 have a look at that, counselor?

10 MR. HAYES: (Offering)

11 A 1985, yes.

12 Q Thank you. And who did the company
13 purchase this property from?

14 A From the City of Albany.

15 Q Were you represented by an attorney for the
16 purpose of purchasing this property?

17 A Yes, I was.

18 Q And who was your attorney?

19 A Thomas Whalen.

20 Q Why did you want to purchase this property?

21 A Why did I want to purchase it? Well, it
22 was near my business, and I had seen it vacant for a
23 long time. And I made inquiries, and that is -- I
24 needed it for warehouse and parking.

(BELL, G. - FOR THE COMMISSION)

1 Q What was the first step you took in buying
2 this property?

3 A I went to a real estate agent.

4 Q What did you ask the real estate agent to
5 do?

6 A To find out who owned the property and see
7 if we could buy it.

8 Q And did he report back to you with that
9 information?

10 A Yes, he did.

11 Q And who was the owner of the property at
12 that time?

13 A The City of Albany.

14 Q What did you do next, Mr. Bell?

15 A I wrote a letter with the instructions from
16 my real estate man to somebody in the city to make
17 inquiries as to buying it.

18 Q I would like to refer your attention to
19 Exhibit 48 which is in the book in front of you on
20 the table.

21 A Okay.

22 Q Mr. Bell, can you identify Exhibit 48 for
23 me, please?

24 A Yes.

(BELL, G. - FOR THE COMMISSION)

1 Q What is it?

2 A It is a letter that I wrote to Paul M.
3 Collins asking if -- what did I do -- I was
4 interested in purchasing a piece of property.

5 Q What was the date of your letter to Mr.
6 Collins?

7 A November 28, 1984.

8 Q What was Mr. Collins' position?

9 A Well, office of Corporation Counsel, but I
10 didn't know Mr. Collins from Adam. I did what I was
11 told.

12 Q Did you receive any response to this
13 letter?

14 A Not for months.

15 Q What happened next, Mr. Bell?

16 A I think that I was told by the real estate
17 man that the property that I was -- that I was to get
18 the property or I was to be considered if I pay the
19 price. So, I think I put a call in to Cooper, Erving
20 & Savage and asked for the Mayor to call me.

21 Q Mr. Bell, do you recall when you testified
22 privately to the Commission on June 21, 1989?

23 A Yes, I do.

24 Q Is it correct that you testified to the

(BELL, G. - FOR THE COMMISSION)

1 Commission at that time -- let me refer you to the
2 document.

3 A Now?

4 Q Yes, if you will, please. Here is a copy
5 of your deposition. And I would like you to turn to
6 page six, please. I would like to ask you if you
7 recall being asked the following question and giving
8 the following answer. Question: "Did you receive a
9 response to this letter?" Answer: "I don't think I
10 did. When is that dated?" Question: "The letter is
11 dated November 28, 1984"

12 A Wait a minute. I am not following you.
13 I'm sorry. (pause) Okay, all right.

14 Q Question: "The letter is dated November
15 28, 1984." Answer: "I didn't receive any response to
16 that letter."

17 A I think months went by, possibly three
18 months. And I don't know how it happened, but I
19 think -- I kept calling Larner, and I was getting
20 nowhere. And I think I get a call from Tom Whalen,
21 from Mayor Whalen, and he told me at that time that
22 if I were interested in the property, I would have to
23 remove the tanks. Essentially, I don't know whether
24 I called him or whether I got it through Larner. But

(BELL, G. - FOR THE COMMISSION)

1 anyway, I did get a call from Mr. Whalen saying that
2 was I aware that if I purchased the property that I
3 would have to remove tanks that were left in the
4 ground and contaminants. Yes, that is exactly -- but
5 how we we got there, months went by and I don't know.

6 Q During the course of this conversation, Mr.
7 Bell, did Mayor Whalen indicate to you how he knew
8 that you were interested in purchasing this property?

9 A No, he didn't. No -- no.

10 Q Did Mayor Whalen discuss the purchase price
11 for the property with you at this time?

12 A No, he did not.

13 Q Did you tell Mayor Whalen who your real
14 estate broker was in this matter?

15 A Yes, I would think so because he had acted
16 for me before with the same real estate broker.

17 BY MR. SCHWARZ:

18 Q Who is "he"?

19 A The real estate broker.

20 Q You said in your answer, "He had acted for
21 me before"?

22 A The Mayor had acted for me before with the
23 same real estate broker.

24 Q He had been your counsel before?

(BELL, G. - FOR THE COMMISSION)

1 A Before, oh, yes.

2 MR. SCHWARZ: Will you tell bring that
3 out please, counsel.

4 BY MS. GREENE:

5 Q Mr. Bell, had Mayor Whalen previously
6 represented you on other matters?

7 A Yes, he had.

8 CHAIRMAN FEERICK: Over what period of
9 time?

10 THE WITNESS: It is now twenty-two
11 years, so it was seventeen years then.

12 Q Mr. Bell, at the conclusion of your
13 conversation with Mayor Whalen, was it your
14 understanding that Mayor Whalen would represent you
15 with respect to this property transaction?

16 A Yes, it was. Yes, it was.

17 Q Did you then have a conversation with your
18 real estate broker regarding the price for the
19 property?

20 A Yes, I did.

21 Q What was that price?

22 A Fourteen thousand dollars.

23 Q Do you know how your broker had gotten this
24 price?

(BELL, G. - FOR THE COMMISSION)

1 A No, I don't. I just suppose he -- I don't
2 know.

3 Q Did you have any other conversation with
4 Mayor Whalen concerning the purchase of this
5 property?

6 A Yes, I did. Sometime after that, he called
7 me and said that he didn't like the deed that I was
8 getting and that -- he asked me if I was in a hurry
9 to get it, and I said not really -- that he was going
10 to get a title guarantee or something, and it would
11 take about three weeks. And that was the other
12 conversation that I had.

13 MR. SCHWARZ: I'm sorry. Would you go
14 back? You said he didn't like the deed. Could
15 you explain that for the record, please?

16 THE WITNESS: I'm sorry. I didn't
17 hear you.

18 MR. SCHWARZ: You said he didn't like
19 -- something about he didn't like the deed?

20 THE WITNESS: He said he d

(BELL, G. - FOR THE COMMISSION)

1 A No, I don't. I just suppose he -- I don't
2 know.

3 Q Did you have any other conversation with
4 Mayor Whalen concerning the purchase of this
5 property?

6 A Yes, I did. Sometime after that, he called
7 me and said that he didn't like the deed that I was
8 getting and that -- he asked me if I was in a hurry
9 to get it, and I said not really -- that he was going
10 to get a title guarantee or something, and it would
11 take about three weeks. And that was the other
12 conversation that I had.

13 MR. SCHWARZ: I'm sorry. Would you go
14 back? You said he didn't like the deed. Could
15 you explain that for the record, please?

16 THE WITNESS: I'm sorry. I didn't
17 hear you.

18 MR. SCHWARZ: You said he didn't like
19 -- something about he didn't like the deed?

20 THE WITNESS: He said he didn't like
21 the deed I was to receive. Whether it was a tax
22 deed, I don't know anything about it.

23 MR. SCHWARZ: He wanted you to wait
24 and get a better deal?

(BELL, G. - FOR THE COMMISSION)

1 THE WITNESS: Oh, sure. The deed, as
2 I understand it, the title insurance.

3 Q Mr. Bell, if I may refer you to Exhibit 19
4 in the book in front of you. Mr. Bell, can you
5 identify this document for me?

6 A No, I can't.

7 Q I understand; it is a poor copy. If I may
8 read the top. "This indenture made the 17th day of
9 April, 1985 between the City of Albany, a municipal
10 corporation organized under the laws of the State of
11 New York, having its principal place of business at
12 City Hall, Eagle Street, Albany, New York, party of
13 the first part, and V. F. Conner Co., Inc., residing
14 at 67 Northern Boulevard, Albany, New York 12210, the
15 party of the second part."

16 A I don't recognize it, but it is --

17 Q Have you ever seen this deed before, Mr.
18 Bell?

19 A I must have, yes.

20 Q And if you would turn to the third page of
21 the document, and can you tell me who executed this
22 deed on behalf of the City of Albany?

23 A Thomas M. Whalen, III, Mayor.

24 Q Mr. Bell, did there come a time when the

(BELL, G. - EXAM. BY COMMISSION)

1 purchase for this property was completed?

2 A Yes.

3 Q I would like to ask you to turn to Exhibit
4 49. Mr. Bell is this the invoice -- a copy of the
5 invoice you received from Cooper, Erving & Savage for
6 Mr. Whalen's representation of you in the purchase of
7 the property for you from the city?

8 A Yes.

9 Q What was the amount of the fee for the
10 services rendered in this transaction?

11 A \$410.

12 Q Did you also receive a letter from Mr.
13 Whalen concerning this transaction?

14 A Yes, I did.

15 Q Would you turn to Exhibit 50, please. Is
16 this the letter that you received from Mayor Whalen
17 regarding the transaction?

18 A Yes.

19 Q And did you subsequently pay the bill for
20 the services to Cooper, Erving & Savage?

21 A Yes. I did, yes.

22 MS. GREENE: Thank you. Mr. Chairman,
23 I have no further questions.

24 BY COMMISSIONER EMERY:

(BELL, G. - EXAM. BY COMMISSION)

1 Q Just a quick question. Mr. Bell, when you
2 thought about buying the property in the first place
3 and went through the real estate broker, at that
4 point did it ever cross your mind to call your long-
5 time attorney Tom Whalen?

6 A No, because I thought that Mobil Oil owned
7 it.

8 Q When did you find out that the city owned
9 it?

10 A Through the real estate man.

11 Q Was there a period after you found out that
12 the city owned it that took some time until you came
13 in contact with Mr. Whalen?

14 A Yes. But the ways of the real estate
15 people are mysterious, and I didn't know why it took
16 so long. But it did take a long time, and I just
17 waited. I was busy and --

18 Q You were just going to let him handle it
19 instead of calling your long-time attorney?

20 A Yes.

21 BY COMMISSIONER MAGAVERN:

22 Q Just for the record, you referred to a
23 Larner or Mr. Larner?

24 A Yes.

(BELL, G. - EXAM. BY COMMISSION)

1 Q Was that the agent?

2 A Yes.

3 BY MR. SCHWARZ:

4 Q Can you just go over please, again, sir,
5 how the price was set.

6 A You know, I never knew.

7 Q Did someone just tell you that the price
8 would be fourteen thousand?

9 A Yes. When you go -- when you are buying
10 something, you get a figure in your mind, what will I
11 pay for this thing. After I found out I had to
12 remove the tanks and I was told it would cost me six
13 thousand dollars, at least, to do it, and fourteen
14 thousand -- I was figuring I would have to pay
15 between twenty and twenty-five thousand, and it was
16 -- it sounded all right to me.

17 Q So, you might have paid \$25,000 for this?

18 A Yes.

19 Q And did you ever become aware during the
20 course of the -- from the time you wrote the letter
21 to some other time, that there was any public
22 announcement or any ad or anything that this property
23 was for sale and that bids would be taken?

24 A I did not, no.

(BELL, G. - EXAM. BY COMMISSION)

1 MR. SCHWARZ: Nothing further.

2 MR. HAYES: If I am not aware, please
3 tell me, sir -- if I could ask that the witness
4 be asked if the witness knew either before or
5 after that the property had been the subject of
6 a prior agreement to sell to some third party
7 for fourteen thousand dollars and that the buyer
8 had backed out when he found out he would have
9 to incur the additional expenses to remove the
10 tank?

11 CHAIRMAN FEERICK: Do you understand
12 the question that was just raised?

13 THE WITNESS: The very first part, was
14 I aware either before or after -- either before
15 or after, no, I was not aware.

16 MR. HAYES: Thank you, Mr. Chairman.

17 CHAIRMAN FEERICK: Thank you. We will
18 now break for lunch and resume at one o'clock.

19 (The luncheon recess)
20
21
22
23
24

(KORNSTEIN, M. - FOR THE COMMISSION)

AFTERNOON SESSION

1
2 CHAIRMAN FEERICK: The hearing is now
3 in session. And the commission calls as its
4 next witness Michael Kornstein.

5 MICHAEL KORNSTEIN,
6 called herein as a witness before the
7 Commission, and being duly sworn, testified as
8 follows:

9 CHAIRMAN FEERICK: Will counsel
10 identify himself for the record, please.

11 MR. BUCKLEY: James Buckley, lawyer,
12 Albany, New York at 39 North Pearl Street.

13 CHAIRMAN FEERICK: I would like to
14 recognize Thomas McShane, Commission staff
15 counsel for questioning.

16 MR. McSHANE: Thank you, Mr. Chairman.

17 BY MR. McSHANE:

18 Q Mr. Kornstein, could you please state for
19 the record your full name, and spell your last name.
20 My full name is Michael Alan Kornstein.
21 K-o-r-n-s-t-e-i-n.

22 Q Thank you. Mr. Kornstein, what is your
23 current occupation?

24 A I am an attorney.

Beth S. Goldman, CSR, RPR
(518) 439-6772

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Q And are you associated with a law firm?

2 A Yes, I am.

3 Q With which law firm are you associated?

4 A Cooper, Erving & Savage, Nolan & Heller.

5 Q For how long have you been associated with
6 that firm?

7 A Since 19 -- well, that particular law firm
8 came into existence in January 1987. Prior to that I
9 was with Cooper, Erving & Savage since I graduated
10 from law school in 1977.

11 Q Are you a partner in the law firm of
12 Cooper, Erving & Savage, Nolan & Heller?

13 A Yes, I am.

14 Q Had you been a partner in the law firm of
15 Cooper, Erving & Savage?

16 A Yes.

17 Q When did you become a partner in that firm?

18 A January '83.

19 Q Mr. Kornstein, you remember the law firm
20 Cooper, Erving & Savage when the merger with the law
21 firm of Nolan and Heller took place; is that correct?

22 A That's correct.

23 Q When did that merger take place, again?

24 A January 1, 1987.

Beth S. Goldman, CSR, RPR
(518) 439-6772

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Q Mr. Kornstein, I would ask you just to
2 speak up a little more loudly because the people in
3 the back are having difficulty hearing you.

4 Were you part of a committee that was
5 established to find suitable office space for the
6 merged firms?

7 A Yes, I was.

8 Q And who else was on that committee?

9 A Howard Nolan.

10 Q Was that referred to as the real estate
11 committee in the firm?

12 A That's correct.

13 Q Do you recall when that committee was
14 formed?

15 A That committee was formed in April of 1986.

16 Q And when did that committee complete its
17 work, Mr. Kornstein?

18 A The committee completed its work by making
19 a recommendation to the two firms probably at the end
20 of July in 1986. And shortly thereafter, we
21 negotiated a lease, probably the first week in August
22 of 1986.

23 Q When the real estate committee was
24 searching for space for the merged firms did it

(KORNSTEIN, M. - FOR THE COMMISSION)

1 periodically report to the partners of the
2 representative firms regarding its progress?

3 A I would say that it possibly did.

4 Q And was Mayor Thomas Whalen a member of the
5 firm during that period?

6 A Yes, he was.

7 Q He was a partner in the firm?

8 A He was a partner in Cooper, Erving &
9 Savage.

10 Q Mr. Kornstein, I would like now to refer
11 you to Commission Exhibit 26 which is in front of you
12 in the black binder. Do you recognize that document?

13 A Yes, I do.

14 Q What do you recognize that document to be,
15 Mr. Kornstein?

16 A I recognize this document to be a memo from
17 Mark Heller to the other partners of the merging
18 firms reporting on the executive committee meeting
19 held the day before the date of this memo.

20 Q The date of the memo is what?

21 A July 28, 1986.

22 Q You have referred to the executive
23 committee, Mr. Kornstein. Can you tell me what that
24 is?

(KORNSTEIN, M. - FOR THE COMMISSION)

1 A That was a group of people from the two law
2 firms who were handling some of the merger details.

3 Q Was Mr. Whalen a member of the executive
4 committee?

5 A My recollection is that he was.

6 Q Mr. Kornstein, I would like now to direct
7 your attention to the second paragraph in the memo
8 which is Exhibit 26 where reference is made to the
9 fact that on July 28th at a meeting of the executive
10 committee, Howard Nolan presented proposals for the
11 Vulcan building as well as 100-110 State Street; is
12 that correct?

13 A That is my recollection.

14 Q That is what is contained in this memo; is
15 that correct?

16 A That is correct.

17 Q Is the Vulcan Building 39 North Pearl
18 Street?

19 A Yes, it is.

20 Q I would also like to direct your attention
21 in Exhibit 26 to the first paragraph. Reference is
22 made in the first paragraph to the executive
23 committee meeting held July 28th. Absent were
24 Kristina Burns and Terrance Christenson. Do you see

(KORNSTEIN, M. - FOR THE COMMISSION)

1 that?

2 A Yes, I do.

3 Q Would it be fair to say that that reflects
4 the members of the executive committee not present
5 for the meeting on July 28th?

6 A I wasn't a member of the executive
7 committee. I might have been present at that
8 meeting. I don't have any other independent
9 recollection.

10 Q But the indication here is that those two
11 people were absent from that meeting; is that
12 correct?

13 A That is what the memo says.

14 Q There is no reference to anybody else being
15 absent; is there?

16 A No.

17 Q Mr. Kornstein, did the Vulcan company offer
18 the law firms as prospective tenants at 39 North
19 Pearl Street an opportunity to invest in the
20 property?

21 A There was the possibility of an investment
22 because the building was going to be owned by a
23 limited partnership. And the answer to your question
24 is yes.

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Q I would like now to direct your attention
2 to the third paragraph again in Exhibit 26 where
3 reference is made to the fact that a consensus was
4 reached at the July 28th executive committee meeting
5 that, "no law partner should be forced to be an
6 investor in the building, but all should be invited
7 to participate." Do you see that language?

8 A Yes.

9 Q Would it be fair to say that the equity
10 facet of the 39 North Pearl Street property was
11 discussed in that July 29th meeting?

12 A Again, I have no independent recollection
13 of whether or not it was discussed. But let me add
14 that at that point if it was discussed, it was only
15 discussed in very general terms, as we hadn't
16 received any financial data from the owner of the
17 building at that point in time.

18 Q But the equity possibility was, according
19 to this memo, at least presented to the executive
20 committee at that time; is that correct?

21 A The memo speaks for itself.

22 Q Thank you. Mr. Kornstein, did the firms
23 eventually decide to invest in that property?

24 A Yes, we did.

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Q When was that decision made?

2 A I would say in the fall of 1986.

3 Q How was that investment handled?

4 A Could you be a little bit more specific?

5 Q Did the individual members of the firms
6 invest independently of one another in the property
7 or was another arrangement made?

8 A As I recall, the individual partners of the
9 combined firms, or the then two firms each received
10 their own prospectus from the developer of the
11 building. Subsequent to that, there was a decision
12 made by our law firm to make the investment, which we
13 intended up doing by establishing a separate
14 partnership.

15 Q Was Mr. Whalen a member of the separate
16 investment partnership that you have just referred
17 to?

18 A He was for a period of about two weeks.

19 Q Did he subsequently resign that position?

20 A Yes, he did.

21 Q Do you know for what reason Mr. Whalen
22 resigned the investment partnership?

23 A Shortly after the investment partnership
24 was organized we learned that there was a federal

(KORNSTEIN, M. - FOR THE COMMISSION)

1 regulation, I believe, which prohibited a city
2 official from having an ownership interest in a
3 building where I believe it was -- where JDA funds
4 were used as part of the financing package.

5 Q Do you recall the date when he resigned
6 from the investment partnership?

7 A I believe it was early January, 1987.

8 MR. SCHWARZ: Would you have him
9 identify this?

10 Q Could you please identify a little bit more
11 specifically the federal that you have just referred
12 to in your testimony?

13 A I don't have any other knowledge of that.
14 My understanding was that they were JDA. I don't
15 know if they were federal funds or state funds
16 controlled by federal purse strings.

17 Q Would it be fair to say that there were
18 federal moneys involved in the project at 39 North
19 Pearl Street that were provided by HUD?

20 A I would be speculating. I have not -- I
21 wasn't involved in the financing of it, nor went out
22 looking at the prospectus which may contain that
23 information. I have no independent knowledge.

24 Q Mr. Kornstein, during the period between

(KORNSTEIN, M. - FOR THE COMMISSION)

1 April 1986 when the real estate committee first began
2 looking for suitable space for the merged firms, and
3 January, when you have testified Mr. Whalen resigned
4 his position with the investment partnership, did Mr.
5 Whalen ever advise you that he had taken any official
6 actions as Mayor regarding the property at 39 North
7 Pearl Street?

8 A No, he did not.

9 Q Were you aware of that fact independently?

10 A No, I wasn't.

11 Q Are you aware of Mr. Whalen's having

12 mentioned that fact to anyone else in the firm?

13 A No, I am not.

14 Q But no member of the firm ever came to you
15 as a member of the real estate committees and told
16 you that Mr. Whalen had mentioned it to him?

17 A No.

18 Q Was the matter of a potential conflict
19 regarding 39 North Pearl ever raised at partnership
20 meetings by either Mr. Whalen or other members of the
21 firm?

22 A Potential conflict -- in what manner are
23 you speaking?

24 Q I am asking whether the potential for a

(KORNSTEIN, M. - FOR THE COMMISSION)

1 conflict involving that property was ever raised at a
2 partnership meeting.

3 A No, not until this came to light in early
4 January 1987.

5 Q Mr. Kornstein, I would like now to direct
6 your attention to another topic. Did there come a
7 time in 1983 when you were retained by Mr. Phillip
8 Curley?

9 A Yes, I was.

10 Q And for what purpose did Mr. Curley retain
11 you?

12 A He retained me to represent him in securing
13 a liquor license for a restaurant, and also to
14 negotiate the purchase of some assets from the people
15 who formerly operated the particular restaurant.

16 Q Did Mr. Curley tell you how he had chosen
17 you to represent him?

18 A He made mention of the fact that -- the
19 answer to your question is yes.

20 Q What did he say to you about that decision
21 that he made?

22 A He told me he had met with city officials
23 regarding the negotiation of an agreement to run the
24 restaurant at the Albany Municipal Golf Course. He

(KORNSTEIN, M. - FOR THE COMMISSION)

1 said he needed a liquor license. My recollection is
2 that he knew of our firm and he asked the Mayor if he
3 could use our firm to obtain that liquor license.
4 The Mayor and I had worked previously together on
5 several similar transactions, and I had some
6 familiarity with liquor license applications and the
7 purchase of assets.

8 Q Did Mr. Curley clearly indicate to you that
9 he discussed your representation of him with the
10 Mayor, or the fact of your representation of him with
11 the Mayor?

12 A He mentioned that I was recommended.

13 Q By the Mayor?

14 A That's correct.

15 Q All right. Now, Mr. Kornstein, you have
16 stated that the main reason that Mr. Curley retained
17 you was to handle his application for a liquor
18 license from the State Liquor Authority; is that
19 correct?

20 A Can you repeat the question? I'm sorry.

21 Q You have stated that the main reason that
22 Mr. Curley retained you was to handle his application
23 for a liquor license with the State Liquor Authority;
24 is that correct?

(KORNSTEIN, M. - FOR THE COMMISSION)

1 A That was the only reason he retained me, as
2 well as negotiating the purchase of the assets from
3 the former owners.

4 Q Yet, Mr. Kornstein, not all matters
5 concerning Mr. Curley's lease with the city had been
6 completed when you entered the picture; isn't that
7 correct?

8 A My understanding when I entered the picture
9 is that he had negotiated the terms of agreement with
10 the city.

11 Q But there was no final agreement signed
12 when you entered the picture; was there?

13 A No, there wasn't.

14 Q In fact, you corresponded with the city and
15 with the law department of the city concerning that
16 lease; did you not?

17 A There was a certain amount of
18 correspondence going both ways. Yes, there was.

19 Q I would ask you at this time, Mr.
20 Kornstein, to look at in front of you again Exhibit
21 -- Commission Exhibits 28 through 35 on the table.
22 Starting with Commission Exhibit 28, do you recognize
23 that document?

24 A Yes, I do.

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Q What is that document?

2 A It is a letter from Paul Collins, then
3 executive Deputy Corporation Counsel, to myself.

4 Q And what is the date of that letter?

5 A October 11, 1983.

6 Q Could you tell me in sum and substance what
7 that letter refers to?

8 A It refers to a license agreement which Mr.
9 Collins drafted in reference to the municipal golf
10 course agreement between the city and Mr. Curley.

11 Q There is a sentence in there: "I think you
12 should look it over in accordance with our
13 conversation before Mr. Curley comes in to execute
14 same."

15 A There is a sentence that says that.

16 Q Mr. Kornstein, I would like you now to take
17 a look at Commission Exhibit 29. Do you recognize
18 Commission Exhibit 29?

19 A Yes, I do.

20 Q What do you recognize that to be?

21 A That is a letter from myself to Paul
22 Collins enclosing copies of the agreement executed by
23 Mr. Curley.

24 Q What is the date of that letter, Mr.

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Kornstein?

2 A October 14, 1983.

3 Q Is there a sentence in this letter that
4 reads: "You will note that I have attached a rider to
5 the agreement to clarify what I perceive as the
6 understanding you reached with Mr. Curley as to when
7 rent will become due."

8 A Yes, there is.

9 Q I would like you now to take a look at
10 Commission Exhibit 30, Mr. Kornstein. Do you
11 recognize Commission Exhibit 30?

12 A Yes, I do.

13 Q What do you recognize that to be?

14 A A letter from myself to Paul Collins.

15 Q What is the date of that letter?

16 A October 24, 1983.

17 Q And is there a sentence contained in that
18 letter which reads as follows: "I have accordingly
19 prepared a second rider to the agreement and would
20 request that you have the Mayor sign same at his
21 earliest convenience"?

22 A Yes.

23 Q I'm sorry?

24 A Yes.

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Q Thank you. I would ask you now to take a
2 look at Commission Exhibit --

3 MR. SCHWARZ: Counsel, can you
4 identify that handwriting for the record,
5 please.

6 Q I'm sorry. Mr. Kornstein, there is on
7 Exhibit 30, handwriting in the margin which I will
8 represent to you was on the document when it was
9 received by the Commission. Do you recognize the
10 handwriting at all?

11 A No, I don't.

12 Q Is it yours?

13 A No.

14 Q Mr. Kornstein, again, I would like you to
15 take a look at what is marked as Commission Exhibit
16 31.

17 COMMISSIONER EMERY: I want to ask him
18 a question. We are going back to Commission
19 Exhibit 30. Reference is made to "Bill, the way
20 to do this is to redraw --" This is on a note
21 to Bill on the letter of October 24th. Have you
22 any idea who Bill is?

23 THE WITNESS: No, I don't.

24 Q Once again Exhibit 31, Mr. Kornstein, do

(KORNSTEIN, M. - FOR THE COMMISSION)

1 you recognize Exhibit 31?

2 A Yes, I do.

3 Q What do you recognize Exhibit 31 to be?

4 A It is a letter from Paul Collins to myself
5 apparently delivering signed copies of the license
6 agreement to me for signature by Mr. Curley.

7 Q What is the date on that letter?

8 A November 1, 1983.

9 Q Mr. Kornstein, I would like you to take a
10 look at Commission Exhibit 32. Do you recognize that
11 document?

12 A Yes, I do.

13 Q What do you recognize that to be?

14 A It is a letter from myself to Mr. Collins
15 enclosing a fully executed copy of the license
16 agreement.

17 Q What is the date of that letter?

18 A November 4, 1983.

19 Q I would like you to turn now to Exhibit
20 33. Do you recognize that document?

21 A Yes, I do.

22 Q What do you recognize that document to be?

23 A It is a letter from myself to Paul Collins.

24 Q And what does that letter concern?

(KORNSTEIN, M. - FOR THE COMMISSION)

1 A That letter advises the city that Mr.
2 Curley's liquor license application has been approved
3 and he is now open for business. There was also a
4 second paragraph which makes reference to a
5 conversation that Paul and I had regarding the proper
6 or the actual ownership of certain restaurant
7 equipment. There was some thought at one time that
8 the city owned the restaurant equipment that my
9 client was intending to purchase from the previous
10 licensee. And, in fact, I believe it was Mr. Collins
11 who made that initial suggestion. I asked him to
12 clarify that. I didn't want to have to buy equipment
13 twice.

14 Q And you were attempting to clarify that
15 matter with the city on behalf of your client; is
16 that correct?

17 A That's correct.

18 Q Mr. Kornstein, on Exhibit 33, again, there
19 is handwriting and a note which appears to be to
20 Bill. Do you recognize that handwriting at all?

21 A No, I don't.

22 Q Mr. Kornstein, I would like you now to take
23 a look at Commission Exhibit 34. Do you recognize
24 that document?

(KORNSTEIN, M. - FOR THE COMMISSION)

1 A It is a letter from Paul Collins to myself.

2 Q What is the date of that letter?

3 A December 7, 1983.

4 Q And what does that letter concern, Mr.
5 Kornstein?

6 A It concerns the payment of rent by Mr.
7 Curley to the city and the apportionment of certain
8 utility bills.

9 Q And would it be fair to say that Mr.
10 Collins is attempting to settle with you a payment
11 schedule that your client Mr. Curley might abide by?

12 A I am not sure that would be fair to say.
13 He merely advised me of what was outstanding and what
14 he proposed to do.

15 Q With regard to the payment of rent; is that
16 correct?

17 A That's correct.

18 Q Mr. Kornstein, I would like you now to take
19 a look lastly at Commission exhibit 35. Do you
20 recognize that document?

21 A Yes, I do.

22 Q What do you recognize that document to be?

23 A A letter from Paul Collins to myself
24 advising that, in fact, the city did not own the

(KORNSTEIN, M. - FOR THE COMMISSION)

1 restaurant equipment.

2 Q What is the date of that letter?

3 A December 9, 1983.

4 Q Thank you, Mr. Kornstein. I would like you
5 now to take a look, if you would, at Commission
6 Exhibit 3. Do you recognize that document?

7 A Yes, I do.

8 Q What do you recognize that document to be?

9 A This is a license agreement for this
10 restaurant executed by the city and by Mr. Curley.

11 Q And is the document notarized?

12 A The document is notarized.

13 Q Who notarised the document?

14 A Mr. Collins and myself.

15 Q And who signed the document on behalf of
16 the City of Albany, Mr. Kornstein?

17 A Thomas M. Whalen III, Mayor.

18 Q Now, Mr. Kornstein, at that time Mr. Whalen
19 was a law partner of yours; is that correct?

20 A That's correct.

21 Q Mr. Kornstein, did you ever inform the
22 members of your law firm at that time that you had
23 been retained by Mr. Curley?

24 A Yes, I did.

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Q And can you tell me how that disclosure was
2 made to your firm?

3 A Formally, by opening up a new file with a
4 four-part label. One of those four parts was
5 circulated to each attorney as is our normal
6 practice, or as was our normal practice in Cooper,
7 Erving & Savage.

8 Q Did any of the members of the firm ever
9 suggest that there might be a problem with your
10 representation of Mr. Curley in this matter?

11 A Well, as I said, the purpose of the
12 engagement was to represent the client in connection
13 with the liquor license application which is what the
14 subject matter of the engagement was labeled on that
15 particular label.

16 Q Did you ever discuss your representation of
17 Mr. Curley with the Mayor?

18 A Only to the extent in passing, I may have
19 mentioned that Mr. Curley came in to see me about
20 obtaining a liquor license.

21 Q Did the Mayor indicate at any time that
22 measures should be taken to keep him insulated from
23 the matter?

24 A I have no such specific recollection.

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Q By the way, you made reference to a
2 four-part system. When the two firms merged was that
3 system continued?

4 A No. There is a similar system in place.
5 There is still -- all files, all new files are
6 circulated to all attorneys in the office.

7 Q So, the purpose for the new system is
8 essentially the same?

9 (Attorney client conference)

10 MR. BUCKLEY: Excuse me.

11 Q I said the purpose for the new system in
12 the merged firm is essentially the same as the old
13 system; that is, to apprise the firm of new business
14 that comes in and the clients represented?

15 A That's right, to make sure that there are
16 no conflicts of interest.

17 Q By the way, Mr. Kornstein, was the law firm
18 paid a fee for your representation of Mr. Curley?

19 A Yes, it was.

20 Q And did the Mayor share in that fee?

21 A The Mayor shared in all fees of the firm.
22 There was an exception in that the Mayor credited the
23 other partners with a certain dollar amount off of
24 his earnings after he became Mayor.

(KORNSTEIN, M. - FOR THE COMMISSION)

1 MR. SCHWARZ: Excuse me. Could I have
2 that answer read back?

3 (The answer was read by the reporter.)

4 Q Mr. Kornstein, could you explain that
5 policy to me, please?

6 A Yes. The Mayor was a partner in the
7 partnership. And as a partner in the firm, he was
8 entitled to compensation based on his percentage
9 interest in the firm. When he became Mayor, shortly
10 after he became Mayor -- I don't know the exact date
11 -- because of his reduced involvement in the daily
12 activities of the firm, he thought that it would be
13 unfair to continue to take his full draw from the
14 firm. And my recollection is that at about that
15 time, he took all of his draw except the sum of two
16 thousand dollars per month. So, in effect, he gave
17 up what was at the very beginning two thousand
18 dollars a month of what he would have been entitled
19 to as a partner in the law firm.

20 MR. SCHWARZ: He reduced the draw by
21 two thousand dollars; he didn't reduce his
22 percentage?

23 THE WITNESS: That's correct.

24 Q Mr. Kornstein, do you recall the issue of

(KORNSTEIN, M. - FOR THE COMMISSION)

1 Mayor Whalen's holding official position as Mayor of
2 the City of Albany and remaining a partner in the law
3 firm ever being discussed at partnership meetings?

4 A Yes, it was.

5 Q Can you tell me what the nature of that
6 discussion was?

7 MR. BUCKLEY: Excuse me. Can we have
8 a time frame?

9 Q During the time after Mr. Whalen became
10 Mayor prior to the time when he resigned his position
11 with the law firm.

12 A There were several discussions.

13 Q Can you tell me what those discussions
14 entailed?

15 A Well, there was some concern about the
16 ability of the Mayor to continue to practice law in
17 the firm, about the time he would be able to devote
18 to the law practice. There was concern about the
19 appearance of impropriety, about the firm which had
20 traditionally done certain types of business prior to
21 his becoming Mayor not being able to continue to do
22 that kind of business because of the potential
23 conflicts that might arise. As I say, there were
24 numerous discussions over an extended period of time.

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 Q How did the Mayor respond to these
2 discussions about this matter?

3 A Well, my recollection is that he felt he
4 could still make a significant contribution to the
5 firm and that his duties as Mayor would not prevent
6 him from continuing to practice law with our firm.

7 Q Do you recall the Mayor ever making
8 reference to the fact that his position as Mayor
9 would enhance the visibility and, thereby, the
10 reputation of the firm?

11 A I believe he probably made a statement like
12 that.

13 MR. McSHANE: I have no further
14 questions of the witness, Mr. Chairman.

15 CHAIRMAN FEERICK: Thank you.

16 BY MR. MAGAVERN:

17 Q Mr. Kornstein, at any time -- let me first
18 ask, when a customer of the Industrial Development
19 Agency, potential customer of the IDA has to borrow
20 from the IDA and asks a member of the firm to
21 represent it in connection with that borrowing, would
22 that create a new file within the firm?

23 A If the person became a client of the
24 office, that would create a new file.

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 Q If it was an existing client but with a new
2 transaction; that is, the borrowing from the IDA,
3 would that generate one of those four-part slips that
4 you referred to that would be passed around?

5 A Generally, any transaction would require a
6 new file to be opened.

7 Q Did you become aware that the firm was
8 representing borrowers from the City of Albany IDA?

9 A At what point in time?

10 Q At any time after -- at any time after
11 1982?

12 A I am not certain that I am aware of a
13 particular client who was a borrower. In a few
14 instances, we represented a bank which was the
15 lending institution in connection with a transaction
16 of this sort. And in that particular case I believe
17 a file would have been opened up in the name of the
18 bank client.

19 Q Do you know -- does the name First Albany
20 mean anything to you?

21 A I have heard that name before.

22 Q Was that a client of the office?

23 A I have no specific recollection of that.

24 Q How about Crisafulli warehouse; is that a

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 client of the office?

2 A To my knowledge, that wasn't a client of
3 the office.

4 Q Is that a case where the firm represented a
5 bank in a borrowing by Crisafulli?

6 A That is my understanding.

7 Q How about 80 State Street Center; was that
8 a client of the office?

9 A I believe that that was a client of the
10 office.

11 Q Do you know whether or not a member of the
12 firm represented that client before the IDA?

13 A I have no independent knowledge of that.

14 Q At any time was the question raised within
15 your firm, to your knowledge, of whether it would be
16 proper for a member of the firm to represent a
17 borrower from the IDA or a bank that was purchasing a
18 bond from the IDA?

19 A I don't recall any specific discussions
20 about the matter.

21 Q Was there any general discussion that would
22 contain that subject?

23 A Again, I don't have any independent
24 recollection.

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 Q Did you become aware of a discussion within
2 the firm as to whether the firm could represent
3 clients in tax certiorari proceedings after Mr.
4 Whalen became Mayor?

5 A Yes, I do.

6 Q Did you participate in those discussions
7 yourself?

8 A I am not certain that they came in in the
9 context of a formal partnership meeting or not, or
10 whether they came up informally.

11 Q Do you know whether anyone researched the
12 law to determine what could and what could not be
13 done by the firm in representing clients in
14 transactions in which the city was affected?

15 A I know that the law was researched at some
16 point in time. I don't know what specific point in
17 time that was looked at.

18 Q Do you know who did the research?

19 A I am sure that on occasion there may have
20 been several people who may have looked at it
21 independently or collectively.

22 Q Let me -- I don't want to be mysterious
23 about this, but one of our concerns is whether
24 existing law is adequately clear to give guidance to

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 people who are in the position your firm was in at
2 the time. And with that as introduction, do you
3 recall any expressions of opinion within your firm as
4 to ambiguities in the law or uncertainties in the
5 law?

6 A Again, there was a lot of discussion; most
7 of it informal. And I don't have any specific
8 recollection of what you are asking me.

9 Q Do you know if the question was ever raised
10 whether it would be appropriate for members of the
11 firm to represent clients before city agencies or
12 city related agencies in matters other than
13 litigation?

14 A Yes, it was.

15 Q What was the answer?

16 A The answer was that we were not going to
17 represent clients before city agencies.

18 Q Would that include representing clients
19 before the IDA?

20 A I am not sure if that is a city agency.

21 Q What was the reason for that policy of not
22 representing clients before city agencies?

23 A To avoid conflicts of interest and
24 appearances of impropriety.

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 Q Would the same reasoning apply to the IDA
2 at a time when the Mayor was a member of that agency?

3 A I would guess that it would.

4 Q Would the same reasoning apply to
5 representing clients in transactions with the Local
6 Development Corporation at a time when the Mayor was
7 a member of that corporation and influential in
8 determining who the directors of that corporation
9 were?

10 A The answer would be yes.

11 Q Did you ever become aware of any time in
12 which that policy you just described was violated by
13 any member of your firm?

14 A I understand there have been allegations
15 that it might have been violated at the time of the
16 transaction. I wasn't personally aware of them.

17 Q Can you tell me on what basis you set your
18 fee to Mr. Curley?

19 A The basis was based on what I felt the
20 number of hours involved in the project would
21 probably require, as well as my experience in
22 handling other matters of a similar nature.

23 Q Did you keep track of the hours that you
24 spent working for him?

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 A Yes, I did.

2 Q Did you review those hours before you
3 submitted a bill to him?

4 A Initially, I had quoted a fee to him. And
5 Mr. Curley paid approximately one half of that fee
6 quotation as an advance retainer to the firm.

7 Q What was the fee quotation?

8 A Excuse me?

9 Q What was the fee quotation; how much?

10 A The fee was approximately \$1,500.

11 Q I believe there is an exhibit that shows a
12 statement for the amount of \$1,250. And would that
13 statement have included the amount paid in advance?

14 Well, let me ask you this. Was that the total
15 amount, including the initial payment and the final
16 payment?

17 A I don't recall what the amount Mr. Curley
18 finally paid to our firm was. And I don't know what
19 exhibit you are referring to.

20 Q When you submitted your final bill to him,
21 did that bill cover all hours you spent working for
22 him?

23 A There was a bill that was outstanding for
24 some time. The final bill -- or the final fee wasn't

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 received until approximately two years after the date
2 that the liquor license was acquired and he was in
3 operation.

4 Q Let me ask you this. Did the bill include
5 the work you spent in discussing and corresponding
6 with Mr. Collins about the lease?

7 A The bill included all the time I spent on
8 the transaction I was handling for Mr. Curley.

9 COMMISSIONER MAGAVERN: Okay. Thank
10 you. That's all.

11 BY COMMISSIONER EMERY:

12 Q Mr. Kornstein, when you were representing
13 Mr. Curley, you testified, I believe, that you
14 initiated representation to get a liquor license and
15 to negotiate with some property holders on the golf
16 course in relation to his restaurant there; is that
17 correct?

18 A That's correct.

19 Q And at some point the representation
20 expanded to include the matters that are reflected in
21 exhibit -- I believe it was Exhibits 28 through 35
22 which you reviewed earlier?

23 MR. BUCKLEY: Excuse me?

24 Q The correspondence between you and Mr.

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 Collins --

2 MR. BUCKLEY: Could we have a second,
3 please?

4 COMMISSIONER EMERY: Sure.

5 (Attorney/client conference)

6 A When Mr. Curley first contacted me, he had
7 already met with city officials and made a proposal
8 to them regarding the operation of the golf course
9 restaurant. When Mr. Curley came to me, my
10 understanding was that those negotiations had already
11 taken place, as witnessed by the letter which is
12 Exhibit 28 from Paul Collins to myself. Paul Collins
13 sent me over a draft of the license agreement which I
14 assume contains the terms and representations that
15 had been negotiated between him and Mr. Curley. My
16 involvement thereafter with Collins was tangential to
17 the securing of the liquor license, in that when we
18 filed the liquor license, one requirement of the
19 State Liquor Authority was that the initial term of
20 the agreement be two years from the date of approval
21 of the license agreement. As originally drafted, the
22 -- as a matter of fact, as the first license
23 agreement was initially drafted, my recollection was
24 that it was a two-year term. When we went to file

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 the license, I may have mentioned that to Mr. Collins
2 saying we need a three-year term. I believe that is
3 reflected in the license agreement which is annexed
4 hereto as Exhibit 36 -- I'm sorry. That exhibit
5 number 36 is the license agreement for a two-year
6 term. I think there is another exhibit which shows
7 the license agreement to expire in September 1986.
8 That wasn't sufficient for SLA requirements. And
9 thereafter, I mentioned that to Mr. Collins in this
10 letter to the State Liquor Authority. You don't seem
11 to have that here. But I believe Mr. Collins
12 directly corresponded with the State Liquor Authority
13 agreeing to amend the license agreement to reflect a
14 termination date of three years from the date of
15 approval of the license.

16 Some of the other matters that are
17 reflected in my correspondence came as a result of
18 conversation I had with Mr. Curley indicating to me
19 what his agreement was with the city. And I was
20 trying to clarify that for the record because the
21 agreement initially did not have that spelled out.

22 Q When you received the referral of Mr.
23 Curley, had you ever spoken with Mr. Curley before;
24 had you ever known him?

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 A No, I had not.

2 Q And the referral came to you from the
3 Mayor?

4 A No. Mr. Curley had previously operated a
5 restaurant in White Plains, New York. And the first
6 contact I had with Mr. Curley is that he placed a
7 call for me from his White Plains restaurant, and I
8 returned the call.

9 Q And at some point you learned that the
10 Mayor recommended you as an attorney to handle

11 various matters with the liquor license; is that

12 correct?

13 A Yes.

14 Q At what point was that?

15 A I think in my first telephone conversation
16 with Mr. Curley he indicated that.

17 Q Did he indicate that the Mayor gave him a
18 card with your name on the back of it?

19 A No.

20 Q He indicated that the Mayor referred the
21 matter to you?

22 A He indicated that he met with the Mayor.

23 Q At what point did you receive a copy of
24 Exhibit 36, the license agreement which had been

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 executed for two years in the sequence of events?

2 A My recollection is that I received the
3 agreement which is identified as Exhibit number 36
4 along with Mr. Collin's letter to me of October 11,
5 1983.

6 Q And that was what triggered your activity
7 in seeking a three-year agreement, so that you could
8 satisfy the requirement of the SLA; is that correct?

9 A I think that came a little bit -- maybe
10 sometime later when I discovered that the
11 requirements of the SLA were a three-year agreement.

12 Q So, you received this document, Exhibit 36,
13 prior to having done the work that is exhibited --
14 what work there was exhibited in Exhibits 28 through
15 35?

16 A No. I don't think -- No. I am not sure
17 that I follow your question.

18 Q What I am trying to find out is when you
19 received Exhibit 36, when you became aware of Exhibit
20 36 or saw for the first time Exhibit 36 in this
21 sequence of events in relating to negotiating the
22 liquor license or executing a liquor license.

23 A My recollection is that I received an
24 unsigned copy of this license agreement along with

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 the letter of October 11, 1983. My recollection is
2 also that the dates on the first page of that license
3 agreement were not penned in at the time I initially
4 received that agreement.

5 Q And at some point, the two-year agreement
6 was executed?

7 A My recollection is that Mr. Curley signed
8 this. I notarized it and sent it back to Mr.
9 Collins. Just to further answer your question, Mr.
10 Curley contacted me in mid September. And as I said,
11 he contacted me from White Plains. I believe he came
12 up to Albany the following week and we met in my
13 office, at which point we immediately started the
14 preparation of the liquor license application. Mr.
15 Curley had, as I said, operated the restaurant in
16 White Plains which had gone out of business. He was
17 eager to get the liquor license application underway
18 and have the license approved so that, hopefully, he
19 could open the restaurant prior to the end of the
20 fall golf season and get back to work, if you will.

21 Q And when you sent back the executed Exhibit
22 36, the license agreement that was with the letter
23 which is exhibit 30, I believe, is it not -- I'm
24 sorry. It must be 29, your letter of October 14,

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 1983, Exhibit 29?

2 A That letter accompanying -- Exhibit 29,
3 that's correct.

4 Q So, at that time, as of the date of Exhibit
5 29 you sent back this agreement executed by Mr.
6 Curley where the agreement on its face was to be
7 executed on behalf of the city by Thomas M. Whalen,
8 your partner; is that correct?

9 A That's correct.

10 Q Did bells go off in your head? What
11 happened when you saw an agreement that you were
12 negotiating on behalf of a client was being executed
13 by your partner on behalf of the city?

14 MR. BUCKLEY: Object to the form of
15 the question.

16 COMMISSIONER EMERY: I am asking what
17 his response was to that.

18 MR. BUCKLEY: I object to your
19 characterization that he was "negotiating" this
20 on behalf of his client.

21 COMMISSIONER EMERY: I didn't say the
22 word "negotiate."

23 MR. BUCKLEY: I believe you did.

24 Q "Just tell me what your reaction was, how

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 you responded to the notion that you are sending an
2 agreement signed by your client, which is to be
3 executed by the city by your law partner.

4 MR. BUCKLEY: Can we have a moment?

5 (Attorney/client conference)

6 A I earlier testified that at the time Mr.
7 Curley came to me, the deal had been made, or the
8 agreement had been negotiated. What I perceived that
9 I was doing, I was not negotiating an agreement but
10 witnessing my client's execution of an agreement that
11 he had already made with the city. My involvement in
12 terms of the rider attached to that agreement was
13 based on my client's representation to me that the
14 city had agreed that he would not pay rent, or the
15 license agreement, if you will, would not take effect
16 until he received his liquor license from the State
17 Liquor Authority. Obviously, without that, he wasn't
18 about to go into the restaurant business at this
19 location.

20 Q What I am asking you is when you saw that
21 your client, for whatever reasons you were
22 representing him, was executing a document which you
23 were notarizing that was executed by the opposing
24 parties, by the opposite parties, by your law

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 partner, did that cause you any pause? Did you think
2 about conflict of interest? Did you do anything to
3 deal with what I would consider to be quite frankly a
4 very strange situation?

5 A Well, let me say two things. First of all,
6 I did not -- I think when Mr. Curley came to see me,
7 I advised him that I could not specifically represent
8 him in the actual negotiation of the lease or the
9 license agreement with the city. He advised me that
10 that already took place.

11 Secondly, I didn't see it as an adversarial
12 situation. Perhaps in hindsight, given the amount of
13 the fee involved here, it would have been better had
14 we not been involved in this. But at the time, I
15 didn't consider myself to be in negotiation with the
16 city or bargaining with the city on behalf of my
17 client.

18 Q Now, when you testified earlier you said
19 that your firm had a system of notification for new
20 cases that had four -- maybe you can review it --
21 that had four items that went --

22 A I believe it was four or five.

23 Q Excuse me?

24 A I believe it was four or maybe five

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 carbonless copies of the same label.

2 Q How was that distributed within the firm?

3 A One copy went in the file, one copy went in
4 the lawyer's personal card catalogue, one file went
5 in the firm-wide catalogue, one copy probably went to
6 the lawyer's secretary. And then one copy was
7 circulating with all filed labels on a weekly basis
8 throughout the firm.

9 COMMISSIONER EMERY: I have nothing
10 further.

11 BY COMMISSIONER MEYER:

12 Q At the time that this transaction with Mr.
13 Curley's lease was involved, were you aware of
14 section 805-a of the General Municipal Law;
15 specifically, subdivision (c). And I will read it to
16 you: "No municipal officer or employee shall: (c)
17 receive or enter into any agreement, express or
18 implied, for compensation for services to be rendered
19 in relation to any matter before any municipal agency
20 of his municipality of which he is an officer, member
21 or employee of any municipal agency over which he has
22 jurisdiction or to which he has the power to appoint
23 any member, officer or employee."

24 A I am not sure that I was specifically aware

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 of that specific section.

2 COMMISSIONER MEYER: No further

3 questions.

4 BY MR. SCHWARZ:

5 Q At any time, did anyone from the city
6 acting on behalf of the city give you any opinion of
7 the city, or did city corporation counsel, as to what
8 was appropriate or not appropriate for your law firm,
9 given the Mayor's partnership?

10 A I believe that Mr. Collins and I may have
11 had a discussion about that. And we both agreed that
12 we would be careful not to negotiate the terms of the
13 license agreement.

14 Q I am not talking about this situation
15 specifically, but in general. When your partner
16 became Mayor of the City of Albany, at any time from
17 that point forward did you ever receive any advice
18 from anyone representing the city in connection with
19 what a proper role would be for your law firm?

20 A I don't believe that the law firm received
21 any formal advisement from the city.

22 Q Did you ever look at the city ethics code?

23 A I have not formally looked at the city
24 ethics code. I might have had -- I might add that on

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

1 one or two occasions, one of the city court judges
2 advised that he did not want our firm appearing in
3 city court because of the potential conflict issue
4 that was raised by virtue of the fact that the Mayor
5 had appointed that city court judge. I am not sure
6 that that was an actual conflict of interest, but we
7 did refrain from appearing in city court.

8 Q Aside from that situation, am I correct
9 that you never received any advice from any ethics
10 board or the corporation counsel as to what was, if
11 anything, a limitation on your law firm?

12 A I personally don't recollect that, although
13 I do understand that the city corporation counsel may
14 have advised the Mayor on that at some point in time.

15 Q I am not asking that, sir. I am asking you
16 as a private lawyer whose partner is the Mayor of the
17 city whether, to your knowledge, you as a private
18 lawyer ever received any advice from the city by way
19 of a code, an opinion, or anything else as to what
20 the role of your law firm could or could not do?

21 A No. I answered that no.

22 Q You mentioned before that you were not
23 bargaining with the city on behalf of a client in
24 connection with the Curley matter. Do you recall

(KORNSTEIN, M. - EXAM. BY COMMISSIONERS)

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that?

A Yes, I do.

Q And why did you express that opinion to Mr. Curley?

A Well, by virtue of the fact that I didn't want to be caught in the situation that I find myself caught in today. I didn't think it was appropriate for myself as a partner of the Mayor's to be negotiating directly with the City of Albany.

MR. SCHWARZ: Nothing further. Thank

you.

CHAIRMAN FEERICK: Thank you.

(The witness was excused.)

(NEWLAND, C. - FOR THE COMMISSION)

1 CHAIRMAN FEERICK: The Commission
2 calls as its next witness Charles Newland.

3 CHARLES NEWLAND,
4 called herein as a witness before the
5 Commission, and being duly sworn by the
6 Chairman, testified as follows:

7 CHAIRMAN FEERICK: Please be seated.
8 I recognize Kim Greene, Commission Deputy
9 Counsel. But before proceeding to the
10 questions, I would like to ask counsel for the
11 witness to identify themselves for the record,
12 please.

13 MR. McARDLE: Your Honor, I am Vincent
14 J. McArdle, Jr., Corporation Counsel for the
15 City of Albany.

16 MR. MUMFORD: My name is Brian
17 Mumford. I am of counsel to Mr. McArdle. I am
18 from the firm of Harvey, Harvey & Mumford here
19 in Albany. Mr. Chairman, may I pass something
20 up to Mr. Bienstock that I promised?

21 CHAIRMAN FEERICK: Surely.

22 MR. MUMFORD: (Offering)

23 MS. GREENE: Thank you, Mr. Chairman.

24 EXAMINATION BY MS. GREENE:

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(NEWLAND, C. - FOR THE COMMISSION)

1 Q Mr. Newland, for the record, would you
2 state your full name and spell your last name.

3 A My name is Charles E. Newland,
4 N-e-w-l-a-n-d.

5 Q What is your current occupation?

6 A I am now retired.

7 Q What was your previous occupation?

8 A I was the erstwhile Commissioner of the
9 Economic Development Department for the City of
10 Albany.

11 Q Who were you appointed by to this position?

12 A I was appointed by Mayor Whalen.

13 Q Did you serve at the pleasure of Mayor
14 Whalen?

15 A I did.

16 Q Was the Office of Economic Development
17 created by Mayor Whalen?

18 A Yes, it was.

19 Q Why did the Mayor establish this entity?

20 A If I may, he initially established a Bureau
21 of Economic Development primarily to focus on the
22 redevelopment on the city's downtown.

23 Q And what year was this bureau established?

24 A I believe 1983 at the time he assumed the

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1 responsibility of Mayor.

2 Q I would like to turn now to the Albany
3 Local Development Corporation, if I may. In 1982 did
4 you hold a position with this corporation?

5 A Yes, I did.

6 Q And what was your position?

7 A Secretary.

8 Q And were you also a voting member of this
9 agency?

10 A I was.

11 Q Are you familiar, Mr. Newland, with the low
12 interest mortgage loan granted by the Albany Local
13 Development Corporation to a company known as
14 Neenan's Garage?

15 A I am.

16 Q And what was your role with respect to this
17 mortgage?

18 A I was the officer in charge of the day by
19 day operations of the Albany Local Development
20 Corporation, and would have generally overseen the
21 process of receiving the application, seeing to the
22 process and its ultimate review by the board of
23 directors and, once approved, its closing. And
24 following its closing, its maintenance during the

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1 terms of the contract.

2 Q Did Thomas Whalen represent Neenan's Garage
3 for the purpose of obtaining this mortgage?

4 A Yes.

5 Q Is it correct that you initially determined
6 that Neenan's Garage should submit an appraisal of
7 the property that was the subject of this mortgage as
8 a precondition to receiving the mortgage?

9 A If I may, counsel, I need to better define
10 that question. It was determined that an appraisal
11 of the property which was being sold by Neenan as
12 part of the consideration for the new property that
13 was to be used as security for the lending of the
14 Albany Local Development Corporation. The board of
15 the Local Development Corporation did not require an
16 appraisal of the property originally owned by
17 Neenan's Garage and to be used as part of the
18 consideration. That determination and that
19 requirement was one that I made as the officer in
20 charge. And it was based upon my some twenty years
21 experience in mortgage lending across various sectors
22 of the country in which I recognized and had assumed,
23 as a personal discipline, a thorough investigation of
24 transactions where swaps were involved. This is not

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1 to say I suspected that there was a problem, but this
2 was a discipline that I had adopted based upon years
3 of experience.

4 Q Did there come a time when Thomas Whalen
5 asked you to waive the appraisal requirement on
6 behalf of his client?

7 A He did.

8 Q And did Thomas Whalen offer to supply an
9 affidavit at all concerning the property in lieu of
10 this appraisal?

11 A He did.

12 Q And did he supply such an affidavit?

13 A He did not.

14 Q Why not?

15 A I preferred to satisfy the lending criteria
16 by reviewing and analyzing the value of the Neenan
17 property personally. And I felt I was adequately
18 equipped to do that by virtue of some twenty years
19 experience in direct real estate lending. And it was
20 also an attempt on my part to recognize the fact that
21 two thousand dollars represented a considerable
22 amount of money, and that it was my management style
23 while functioning as the operating head of the Local
24 Development Corporation to put deals together and,

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1 where feasible and possible, to mitigate those
2 restrictions or those constraints that would be
3 resistant to putting deals together. So, I undertook
4 to satisfy myself that the transaction was
5 appropriate. I did, and I was able to conserve the
6 two thousand dollar fee.

7 Q Mr. Newland, you made reference to a figure
8 of two thousand dollars in your statement. Can you
9 tell me what that figure refers to?

10 A I believe that during the course of our
11 previous testimony, it was determined that there was
12 a fee of two thousand fifty dollars, I believe, that
13 was represented to me which would have been the fee
14 to be charged for that appraisal that I was
15 requiring.

16 Q I would like to ask you to look at Exhibit
17 55 which appears in the black book that is directly
18 in front of Mr. Mumford and Mr. McArdle.

19 A Exhibit 55?

20 A Yes.

21 Q Do you recognize this document, Mr.
22 Newland?

23 A Yes, I do.

24 Q And what do you recognize this to be?

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1 A This is a file note that I composed for the
2 file to cover the details of what had transpired.

3 Q Mr. Newland, at the time of this
4 transaction was Mayor Whalen a member of the Local
5 Development Corporation?

6 A He was a member.

7 Q And during your tenure at the Albany Local
8 Development Corporation were you involved in other
9 transactions similar to this one in which properties
10 were swapped for each other?

11 A I don't recall any specifics where that was
12 part of a transaction involving a property swap.

13 A There may have been, but I don't recall.

14 Q Were there other instances in which you
15 waived the appraisal requirement and substituted your
16 personal inspection of the property for it?

17 A It it is not unlikely, but I cannot
18 specifically remember such an occasion.

19 Q Mr. Newland, to your knowledge, while this
20 mortgage transaction was pending before the Albany
21 Local Development Corporation, did Thomas Whalen
22 disclose to the corporation that he was representing
23 Neenan's Garage for the purpose of obtaining this
24 mortgage?

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1 A Would you please repeat that question?

2 Q At any time while this mortgage transaction
3 was pending before the Albany Local Development
4 Corporation, to your knowledge, did Thomas Whalen
5 disclose to the corporation at any time that he was
6 representing Neenan's Garage for purposes of
7 obtaining this mortgage?

8 A Well, in the process of submitting the
9 application and, I dare say, when he called advising
10 me as to his desire to submit a personal affidavit on
11 the part of his client, he would have de facto

12 advised the corporation. The lines of communication
13 into the corporation consisted primarily through the
14 board of directors, and even more specifically to me
15 as the secretary who was the officer with the day by
16 day operational responsibilities for the corporation.

17 Q Other than the fact that his name appeared
18 as the attorney on the application for the mortgage,
19 are you aware of any disclosure of any kind to the
20 corporation regarding Mr. Whalen's role in this
21 transaction?

22 A No.

23 Q I would like to turn now to the Maiden Lane
24 Triangle Project, if I may. Are you familiar with

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1 this project?

2 A Yes, I am.

3 Q Did this project include an office building
4 known as 39 North Pearl Street?

5 A Yes.

6 Q What was your role with respect to this
7 project?

8 A I need to take to moment to answer that.

9 (Pause) At the time of the Mayor's appointment of me
10 as the Director of the Bureau of Economic
11 Development, the primary purpose was the
12 redevelopment of downtown. There were several
13 advantages that we had. Namely, we had some raw
14 material by way of a goodly number of properties
15 which were owned by the city. We had developed some
16 expertise in accessing funds from both the federal
17 government and the state government, and so we had
18 that resource, the financial resource very necessary
19 to participate in the redevelopment of the basic city
20 raw material which, as I mentioned, consisted of a
21 number of disabled properties.

22 Q Mr. Newland, if I may ask you what your
23 role was with respect to this project?

24 A I am getting to that. My role was to put

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1 together a program to, in effect, cause the
2 redevelopment and rehabilitation of those properties
3 owned by the city, bringing to bear as much federal,
4 state and other financing as I could to make it
5 possible, to contact the public at large to induce
6 them to look again at downtown Albany which had
7 become extremely blighted, and to engage however we
8 could in the redevelopment of downtown. I think that
9 is it.

10 Q And to your knowledge, what was the Mayor's
11 role with respect to this project?

12 A Well, that was one of our advantages also,
13 because the bureau which he had created had the
14 Mayor's full support and backing to accomplish that
15 which we were trying to accomplish. And, so, he gave
16 us every encouragement and, when necessary, provided
17 us with the necessary administrative machinery
18 required to accomplish the task.

19 Q Did you ever report to Mayor Whalen on your
20 office's progress on this project?

21 A Yes. But when you say "this project," this
22 project consisted of a number of properties, not just
23 39 (North Pearl). There was an entire city block
24 plus some additional properties that were involved,

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1 virtually simultaneous with redevelopment through
2 individual and separate and distinct parties.

3 Q Mr. Newland, which city agency or entities
4 were involved in the financing of this project?

5 A The Albany Local Development Corporation,
6 the city's Community Development Agency, the Albany
7 Industrial Development Agency. Those were the major
8 ones. There may have been others.

9 Q To your knowledge, did the 39 North Pearl
10 Street project receive Urban Development Action Grant
11 Funds?

12 A Yes, it did. And, if I may, that was the
13 nature of the funds involved that induced, as will be
14 discussed, I am sure, my advising the Mayor that he
15 had to divest himself from participation, because of
16 the UDAGs. In other words, it was not JDA funds..

17 Q What are the restrictions to which you are
18 referring that HUD places on UDAG funds?

19 A They are found in the assurances that the
20 city and Mayor makes to the federal government.

21 Q Mr. Newland, if I could ask you to turn to
22 Exhibit 44 in the book, please. Can you identify
23 this document for me, Mr. Newland?

24 A It is a list of assurances produced and

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1 promulgated by HUD and used by cities who desire to
2 and do, in fact, utilize federal funds for community
3 development.

4 Q Are those the UDAG assurances to which you
5 just made reference?

6 A I would assume so, although I am not sure.
7 I am not trying to be evasive here. The assurances
8 can and have been known to change over the years.
9 Generally speaking, they are the ones. These are the
10 ones. If they are not exactly the ones, they are
11 very close to it.

12 Q If you would turn to the last page of the
13 document, I would like to direct your attention to
14 paragraph ten. Are you familiar with this provision,
15 Mr. Newland?

16 A Yes, I am.

17 Q And is this one of the restrictions that
18 HUD places on the UDAG loans that you referred to
19 earlier?

20 A Yes.

21 Q Are you aware of any other restrictions
22 that the UDAG loans carry with them concerning
23 conflicts of interest?

24 A Concerning --

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1 CHAIRMAN FEERICK: Conflicts of
2 interest.

3 A No.

4 Q Mr. Newland, if you would move down to the
5 bottom of the page, could you tell me who executed
6 the assurance document?

7 A It is executed by Thomas W -- Thomas M.
8 Whalen, III.

9 Q What is the date on which it is executed?

10 A November 28, 1984.

11 Q As a Director of the Economic Development
12 Bureau and later the Office of Economic Development,
13 what steps did you take to ensure that this
14 requirement contained in the UDAG agreement was
15 followed with respect to the 39 North Pearl Street
16 project?

17 A As projects are processed by the Department
18 of Economic Development, the projected and proposed
19 financing is generally defined conceptually as
20 so-much private financing, so-much conventional
21 financing, so-much subsidized financing. And
22 generally, there are some indications up front as to
23 who is going to be participating in what. If at that
24 period of time or at any sequential period of time

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1 during the processing stage and as the UDAG
2 particularly is finally approved, those elements of
3 financial participation are ultimately pinned down
4 specifically. And at that particular point in time
5 it becomes possible to identify any potential
6 conflict of interest that may exist. If I may
7 comment that the nature of the problem in 39 North
8 Pearl Street involves a limited partnership, the
9 limited partners of which were sequentially secured
10 long after or considerably after the approval of the
11 financing, the completion of the project, and while
12 the project was well into its existence.

13 Q Mr. Newland, I would like to refer you
14 again to the language of paragraph ten. And for the
15 record, it reads: "It will establish safeguards to
16 prohibit employees from using positions for a purpose
17 that is or gives the appearance of being motivated by
18 a desire for private gain for themselves or others;
19 particularly those with whom they have family,
20 business or other ties." And I would like to ask you
21 if you took any affirmative steps to establish such
22 safeguards.

23 A They would be virtually impossible to
24 establish when you consider that some projects are

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1 very major projects which involve syndication.
2 Syndication takes place on a national basis. And it
3 seems to me that somebody participating in a
4 syndication could be acquiring syndicated units from
5 a broker and never know what is involved in the
6 property that is being syndicated. It would be
7 virtually impossible to pin down except, you know, we
8 are alert and we -- to the extent that we can be --
9 on the local scene, we recognize conflicts when we
10 see them and attempt to do something about them.

11 Q Did the city impose any requirement that
12 individuals or syndications, as you have referred to
13 them, who subsequently invest in projects that
14 receive these types of funds disclose their
15 investment to the city?

16 A Not to my knowledge.

17 Q Mr. Newland, did there come a time when you
18 learned that the Mayor's law firm was occupying or
19 planning to occupy space at 39 North Pearl Street?

20 A Yes.

21 Q And when did you learn this?

22 A It would have been in late fall, I believe,
23 of 1986.

24 Q And how did you learn that?

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1 A I believe through media.

2 Q Did you take any steps in response to
3 learning this news at the time?

4 A Yes, I did.

5 Q What did you do?

6 A I had occasion to have breakfast with the
7 Mayor at the annual meeting of the membership of the
8 Albany Local Development Corporation on January 13, I
9 believe, of the following year. And I advised him at
10 that time that if, in fact, he had as an individual
11 participated, in effect, in connection with this
12 option that he was aware the developer was making
13 available to lessees, that he should either not or,
14 if he has, he should dispose of it because it would
15 conflict with the constraints imposed by the federal
16 government in their UDAG assurances.

17 Q Mr. Newland, how did you learn in the fall
18 of '86 that the Mayor --

19 A I believe through public media, newspaper.
20 It was late fall. I am thinking of December as fall.
21 (Pause) Counsel suggested that when I say late fall,
22 I mean late fall. And this probably is in December
23 sometime.

24 Q Mr. Newland, how did you arrive at the

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1 conclusion that the Mayor's actions violated the UDAG
2 regulations?

3 A How did I come to the conclusion? It is
4 one thing to lease property, pay fair market rent.
5 It is another thing to make an equity investment in
6 real estate which, hopefully, has appreciative
7 potential. And given the circumstances as to the
8 existence of the UDAG funds and, for that matter,
9 other funds that were invested in the property, in my
10 opinion this represented a potential problem that the
11 Mayor should extricate himself from. And I believe
12 that he immediately did so.

13 Q What other funds were you referring to for
14 this project?

15 A They are -- in addition to the UDAG funds,
16 there was an element of community development funds.

17 Q Did those community development funds carry
18 the same kind of restrictions on them concerning the
19 appearance of --

20 A As a matter of fact, administratively from
21 HUD's point of view, UDAG funds and CD funds are
22 inseparable.

23 Q So, then, is it correct that the CD funds
24 are constrained by the same kind of restrictions that

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1 the UDAG fund are?

2 A Yes.

3 Q Mr. Newland, at any time did you consult
4 with an attorney regarding the interpretation of
5 these regulations?

6 A No. Although, if I may, I may have
7 reviewed it with in-house counsel. But I don't
8 recall that specifically.

9 Q Who is the in-house counsel to which you
10 refer?

11 A James Aiello.

12 Q What was Mr. Aiello's position?

13 A As I say, I don't recall specifically. I
14 may have discussed it with him, but I don't recall.

15 Q Is it correct that it was your
16 determination that the Mayor's investment in this
17 project violated the UDAG regulations but the leasing
18 of the space by the law firm did not?

19 A Surely.

20 Q In January 1987 after you informed the
21 Mayor that you believed that his action violated
22 these regulations, what did the Mayor say to you?

23 A I don't recall him saying anything really.
24 He took what I told him under advisement. And then I

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1 learned subsequently, quite shortly subsequently,
2 that he had acted upon my advice and had divested
3 himself of the investment.

4 Q With respect to any of the other
5 development projects that you have worked on during
6 your tenure in the Office of Economic Development, to
7 your knowledge did Mayor Whalen ever decline to
8 participate in any of the projects of your office
9 because of his law firm's involvement with it or with
10 any party to it?

11 A No.

12 MS. GREENE: Thank you. Mr. Chairman,
13 that is all the questions I have.

14 BY COMMISSIONER MAGAVERN:

15 Q Mr. Newland did you take steps to ascertain
16 whether or not the rent being paid by the Mayor's law
17 firm was fair market value?

18 A I was aware of what rental was being
19 charged, which at that time was approximately one to
20 two dollars in excess of market and which, as a
21 matter of fact, was one of the reasons why it was
22 taking some additional while to fully lease the
23 property. I must admit it was only subsequent to all
24 of this that I did check that out. But I did

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1 determine subsequently that they did, in fact, pay
2 the then going price for what was being asked by the
3 developer.

4 Q The same as paid by others tenants?

5 A To the best of my knowledge, that was
6 reported to me.

7 Q Can you tell me what the selection process
8 was for members of the LDC?

9 A For members, originally, we had a
10 contingent of some forty members. And I remember
11 that they were achieved by sitting down in Mayor
12 Corning's office and reviewing the universe of the
13 citizens of Albany at large, keeping in mind that
14 this, the LDC was originally created by way of
15 putting into place a 501(c)(3) corporation which was
16 necessary in order to interface with the then SBA 502
17 program. And that SBA program provided for certain
18 participation in the membership by various sectors of
19 society; educators, lawyers, bankers, labor people, a
20 cross-section, if you will, of the population at
21 large. And, so, we sat down with Mayor Corning and
22 went through Albany at large and came up with forty
23 names that provided for that representations.

24 Q Were those people named in the bylaws?

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1 A Originally, yes. I believe so. Well, I am
2 not sure. I don't believe they are named in the
3 bylaws.

4 Q Who has the power to appoint new members?

5 A Well, subsequent to that, if you will,
6 after the initial chartering, we had attrition in the
7 membership, obviously. And at that time and before
8 each meeting, we presented to the then Board of
9 Directors how many additional new members we should
10 have in order to maintain the minimum levels. And
11 names are suggested at that time.

12 Q And the board then selects members; is that
13 correct?

14 A The board nominates them anyway.

15 Q Who makes the final appointment?

16 A Well, the board does.

17 Q Okay. Now, who appoints the directors?

18 A That is done by election. It is done at --
19 we have an annual meeting once a year, and the
20 directors are elected by the membership.

21 Q Is there a nominating committee?

22 A No. Nominations are accepted from the
23 floor.

24 Q Who, in practice, has been making

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1 nominations for directors?

2 A To the best of my knowledge, a different
3 person has made the nominations during my tenure,
4 which was since the beginning of 1979.

5 Q Has the practice been that one person
6 nominates the whole slate?

7 A It has been to just nominate the slate for
8 reelection.

9 Q Pardon me?

10 A The practice has been or experience has
11 been to nominate the slate for reelection.

12 Q There are changes in the slate from year to
13 year?

14 A No.

15 Q It is the same board?

16 A The same board, except that in recent
17 years, we have been adding to that board. And one
18 member has deceased.

19 Q How do you add members to the board; does
20 the board make the decision?

21 A The board makes a -- pencils a resolution
22 to increase the membership.

23 Q Does the board have an executive committee?

24 A No. There were originally five members,

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1 and so it was not necessary to have an executive
2 committee.

3 Q In actual practice how does the board go
4 about identifying people to fill vacancies, staff
5 vacancies or membership for board members?

6 A For membership, we sit down at a board
7 meeting just prior to the next annual meeting, and we
8 brainstorm as to who might be appropriate to replace
9 those people who may have left.

10 Q Does the Mayor sit in on those meetings?

11 A No.

12 Q Does anyone consult with him about
13 prospective new members and directors?

14 A I am sure we do.

15 Q Who does the consulting?

16 A We probably run them by him when we come up
17 with the names, to be sure that he has no objection.

18 Q Is that process of running it by the Mayor
19 written in the bylaws?

20 A No. If I might, though, I think it is
21 important to point out that while this is, in fact, a
22 501(c)(3) and is, as such, a private entity, the fact
23 remains that the effectiveness of the Albany LDC is
24 directly related to the fact that since 1979 the City

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1 of Albany has been providing the necessary capital,
2 at least in the beginning years, the necessary
3 capital to enable it to function as originally, as a
4 502, interfacing with the SBA programs which required
5 a certain amount of capital participation as the
6 local insertion. It also has been helpful in putting
7 together JDA loans. And the LDC has been necessary
8 to interface with state funding under that program
9 and operation. So, the city has been a major player
10 in the success of LDC and, hopefully, the success of
11 the redevelopment of downtown and economic
12 development thrust. And so, if for no other reason,
13 out of respect for the fact that they gave us the
14 financial power to do what we did, I think it is only
15 appropriate that we should run this sort of
16 information by the chief executive officer.

17 Q How much of the capital of the LDC did
18 originate with the city in one way or another?

19 A We were originally capitalized at three
20 hundred thousand a year.

21 Q Is that from the Community Development
22 funds?

23 A Yes. I am not attempting to quantify the
24 fact of all of the staff costs necessary to run it

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1 and to operate it and make it effective were covered
2 by the city's Community Development Agency.

3 Q Do you also receive UDAG funds by virtue of
4 applications to which the city is a signatory?

5 A Yes. They are processed through the
6 Community Development Agency, but are but packaged
7 through the Albany LDC.

8 Q Is it fair to say, then, that the LDC
9 functions essentially as an arm of city government?

10 A Yes.

11 Q Does the LDC have any formal ethical
12 standards or conflict of interest standards?

13 A They were never, at the time I left, never
14 formalized, although we would have utilized, I am
15 sure, the existing city code.

16 Q Did you consider the existing city code
17 applicable to the LDC?

18 A Well, to the extent that we are, in fact,
19 an instrumentality of the city, I dare say.

20 Q How about the General Municipal Law and
21 state statutes governing the city government? Do you
22 consider them applicable also to the LDC?

23 A At the time I left, Commissioner, we were
24 in the process, and our attorney is now, looking into

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1 the development of our own set of ethical standards.
2 And I am not sure whether they are not -- one, in
3 fact, may have been adopted. I am not sure.

4 Q Let me pose to you what may be a dilemma,
5 and see if you have had experience with it. The
6 dilemma would be that you might want serving on a
7 corporation like the LDC people who are very active
8 in economic development because of their expertise
9 and also to help encourage this participation in
10 economic development. At the same time, if you bring
11 them on the board, you may encounter conflict of
12 interest problems. In fact, the present Article 18
13 of the General Municipal Law provides that if you
14 have a conflict of interest, the contract is
15 absolutely prohibited, cannot be cured by a simple
16 disclosure and recusal. I wonder if you have
17 encountered that problem in your efforts to structure
18 this board and, at the same time, comply with the
19 ethical standards applicable to the City of Albany.

20 A I am very aware of what you are saying.
21 Fortunately, the LDC board, with the exception of the
22 most recent appointment, did not seem to run -- when
23 I say the "board," I mean board of directors, which
24 is the element within the corporation that makes and

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1 executes decisions, policy decisions, primarily.
2 Fortunately, we have had very little problem with
3 respect to conflicts of interest. I would suggest
4 that one needs to distinguish between membership,
5 general membership at large which oftentimes is
6 required, such as the SBA 502 program. As I
7 mentioned earlier, they wanted a segment of society
8 to fully represent a cross-section of society. But,
9 in fact, they officially have very little, if
10 anything, to do with the day by day policy decisions
11 which are made, other than the fact that they do, in
12 fact, wind up electing a slate of board of directors
13 each year. My concern in this process is that the
14 statute providing for the creation of Local
15 Development Corporations in the State of New York
16 provides certain abilities to facilitate the process.
17 And I dare say the statute was developed to enable a
18 city to extricate itself from blight and from
19 economic problems of various dimensions. And to the
20 extent that the laws on the books which were
21 developed and evolved to enable cities to do things
22 which the existing municipal law prevented them from
23 doing in a businesslike fashion, to the extent that
24 new legislation evaporates the ability of existing

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1 legislation for things to get done and for things to
2 happen, it has to be looked at very closely because
3 while it is important -- and I understand what it is
4 that you are trying to do -- it is important not to
5 negate the capacity of strong government to get
6 things done that need to be done. And, as I say, we
7 have utilized the laws that are on the books as well
8 as possible to overcome extraordinary hurdles. And
9 to the extent that these instruments are made invalid
10 or become ineffective to solve problems, to that
11 extent you you need to look very carefully at what it
12 is you are doing.

13 Q Did you have any responsibility for the IDA
14 as well as the LDC?

15 A Yes.

16 Q I won't ask you for all the -- but let me
17 go onto another question.

18 A The federal government had a 108 program
19 which, in order for it to be operative, had to be
20 handled through the IDA. And to the extent that I
21 oversaw the administration of the 108 program through
22 the IDA, to that extent I participated in it.

23 Q Did you become aware that members of the
24 Mayor's law firm were representing either bond

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1 purchasers before the IDA or borrowers in
2 transactions with the IDA?

3 A Probably.

4 Q Did you recognize that to be a problem
5 under existing municipal law?

6 A I didn't, although -- and I will explain
7 why. The IDA does not lend money. It authorizes the
8 issuance of tax exempt bonds --

9 Q I think I understand that.

10 A -- to my knowledge.

11 Q The IDA makes tax exemptions available
12 though to a borrower; does it not?

13 A That's right.

14 Q Federal income tax collection, the local
15 property tax, and state sales tax exemption; right?

16 A Right. There are many incentives involved,
17 to my knowledge, through the years for any
18 appropriate project. I have never known the board of
19 the IDA to turn down any project.

20 Q Well, you are aware of the limitation in
21 the tax reform Act of 1986; you are aware of the
22 volume cap?

23 A Yes.

24 Q Is it your testimony that the IDA has never

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1 oame up against the volume cap?

2 A That's right. During the previous cap --

3 Q You have answered the question, Mr.

4 Newland. Thank you.

5 BY MR. SCHWARZ:

6 Q I have just two questions. Do you recall,
7 sir, testifying before this Commission, at page 93 of
8 your transcript and being asked, in substance --

9 MR. MUMFORD: May we have a moment,
10 please? (Pause) May I have the question please?

11 Q On page 93 of your transcript, you were
12 asked the following: "I will direct your attention to
13 the fourth paragraph from the bottom of page two.
14 It states: "Major business being over, the meeting
15 was adjourned. And Vice-Chairman Tanksley welcomed
16 the board and new ALDC Board of Directors member Mr.
17 James M. DiNapoli." Who nominated Mr. DiNapoli to be
18 a member of the board?" Answer: "Mayor Whalen." Do
19 you recall that?

20 A Yes.

21 Q Page 94, you were asked, and I will direct
22 your attention to the fourth paragraph from the
23 bottom of page two. The paragraph states: "Judge
24 Herzog informed the board and staff that the Mayor

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1 has requested that the an LDC increase their board
2 membership to seven persons; one possibly being Mr.
3 Raymond J. Kinley, Jr." Do you recall that, sir?

4 A Yes.

5 Q Later in the paragraph it indicates,
6 question: "Mr. Newland, did Mayor Whalen give any
7 reasons for wanting to increase the membership of the
8 board?" Answer: "Not to me." Do you recall that
9 answer, sir?

10 A Yes.

11 Q Also, with respect to the Neenan Garage
12 that you testified before you waived the appraisal
13 on, do you recall that, sir?

14 A Yes.

15 Q Who would have paid the two thousand dollar
16 fee?

17 A I would assume Neenan's.

18 Q Mayor Whalen's client?

19 A Yes.

20 MR. SCHWARZ: Nothing further. Thank
21 you.

22 (The witness was excused.)

23 CHAIRMAN FEERICK: Thank you. We will
24 take a short recess and resume at about three
o'clock.

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(A brief recess)

CHAIRMAN FEERICK: Mayor Whalen, may I swear you in?

THOMAS M. WHALEN, III,
called herein as a witness before the Commission, and being duly sworn by the Chairman, testified as follows:

CHAIRMAN FEERICK: Please be seated, Mayor. I understand that you would like to make a brief preliminary statement. I am certainly going to grant that request. I would note for the record that the Commission's normal policy is to request of witnesses that they provide in advance of the hearing that written statement at least a day in advance of the hearing. And we are happy to provide witnesses the opportunity to do so, to make a brief opening statement. The Commission did receive a copy of your written statement within the hour. So we, speaking for myself, have not had an opportunity to examine it, which I certainly will after the hearing is concluded today.

As I mentioned at the outset, I would be happy to provide you with an opportunity to

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1 make a brief summary of your written statement.

2 MAYOR WHALEN: Thank you, Mr.
3 Chairman. Members of the Commission and members
4 of the Commission staff: thank you for this
5 opportunity to address those issues you have
6 expressed concerns about, and to share with you
7 the experiences and the observations I have had
8 during my tenure as Mayor of Albany these past
9 six years.

10 I hope to be able to provide the
11 Commission with insight not only into the
12 specific circumstances of Albany, but the
13 decision making process of all of us in local
14 government who continually face perceived
15 conflicts of interest and real prohibited
16 conflicts of interest.

17 You have a formidable challenge, for
18 all of us in government from high elected state
19 officials to village employees face potential
20 conflicts. Mayors and municipal officials, on
21 the front line of day-to-day city operations
22 have great exposure on a continual basis. We
23 try to focus on keeping our municipalities
24 running smoothly and efficiently while, at the

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1 same time, laying a strong foundation for the
2 future. Our stewardship is based on the desire
3 of those we are elected to represent.
4 Prohibited conflicts of interest are detrimental
5 to good, efficient government and an anathema to
6 our constituencies. Nevertheless, we are
7 routinely confronted with situations with the
8 prospect of conflict. Some are real, others are
9 perceived by those unaware of the environment in
10 which we work.

11 A Mayor must constantly balance what
12 is best for his city and what one might perceive
13 to be a conflict. In my case, this has been
14 even a stronger challenge because I was a
15 partner with one of Albany's largest and most
16 active law firms when I took office as President
17 of the Common Council in January 1982.
18 Thereafter, and during my predecessor's illness
19 I increasingly assumed city responsibilities
20 until Mayor Corning passed away on May 29, 1983.

21 As Government officials, we all face
22 potential conflicts of interest. The fact is
23 that we are all exposed to different levels of
24 perceived conflict. Elected municipal officials

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1 and municipal employees have a far greater
2 exposure because of the myriad activities and
3 the services we provide and the countless
4 transactions our administrations perform on a
5 day-in day-out basis.

6 Let me offer as an example a situation
7 you have investigated and which I am sure you
8 will want to explore further. First Realty of
9 Albany is a development firm owned by the Swyer
10 family. James J. Drislane, now deceased, became
11 associated with our firm in 1981. He had
12 previously represented the Swyers for twenty or
13 twenty-five years. In 1980, before Mr. Drislane
14 came with our firm, the Swyers received an IDA
15 inducement to rehabilitate an old, dilapidated
16 warehouse building. Two years later in January
17 '82 I was appointed to the three-member IDA.
18 After that inducement vote of 1980, the next
19 action was the bond resolution on December 14,
20 1982. One week before the project's closing --
21 Mayor Corning was hospitalized in Boston from
22 the preceding August of that year and wasn't
23 available to vote. I had two choices. One,
24 absent myself from the IDA vote and thus avoid

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1 the appearance of conflict. This would have
2 meant no quorum, no decision and no
3 rehabilitation of a building important as part
4 of the economic development initiatives of the
5 city, not to mention a breach of the inducement
6 agreement with the developer, which again, that
7 inducement resolution had been entered into
8 before Mr. Drislane came with our firm and
9 before I became President of the Common Council.
10 Or, I could have cast my vote, acknowledged the
11 conflict, and made proper public disclosure. I
12 concluded that to absent myself from the vote
13 would have constituted an abdication of my
14 duties and responsibilities to serve both the
15 IDA and the City of Albany. Arrangement were
16 therefore made for a full written disclosure,
17 and I cast my vote. That disclosure is
18 displayed at Tab 9 of the IDA closing documents.

19 As you know, in another matter, the
20 Crisafulli Food Warehouse IDA loan, I went even
21 further to indicate disclosure. In that case
22 the law firm did not represent the borrower but
23 the lender, which is even more remote. And
24 there was full written disclosure to all parties

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1 to the transaction and within the closing
2 documents. Have I encountered conflicts as a
3 city official? Of course, I have. And in the
4 case of the Swyers, I saw the conflict coming,
5 identified it, and responded by offering proper
6 disclosure.

7 On another matter which you have
8 investigated, my law partners and I purchased
9 shares in a limited partnership, a new office
10 building that we were to occupy as part of our
11 law firm at 39 North Pearl Street. It had
12 received UDAG funds. I did not identify the
13 conflict, but fortunately, within three weeks a
14 member of my staff did. And soon as that
15 conflict was brought to my attention, I
16 immediately and in writing withdrew, and I
17 terminated the conflict.

18 As for the case of Gordon Bell's
19 purchase of city property for an agreed upon
20 price of fourteen thousand dollars, when a
21 purchaser for the same price had backed out of
22 the transaction which had been approved by the
23 Common Council, there was no identification of a
24 conflict by me or my staff, no assessment of the

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1 level of conflict and, therefore, no reponse.
2 It got by me. I can only now in retrospect say
3 that it was so inconsequential in substance and
4 in amount that I did not at that time give it
5 the attention it deserved.

6 We all live in anxiety of conflicts
7 getting by us. Sometimes they do. Most times
8 they do not. The V. F. Conner case is the only
9 one over that extended period of time, to my
10 knowledge, that wasn't recognized and dealt
11 with.

12 I am proud of the ethical standards
13 and the achievements of the City of Albany in
14 this administration. Please consider before I
15 took office in 1983 that the State Comptroller
16 recommended a financial control board to handle
17 Albany's fiscal affairs. This past January, I
18 received the Mayor's Financial Leadership Award
19 from the United States Conference of Mayors, a
20 reflection on all of us that work for this city.
21 When I took office, Albany's bond rating was at
22 its lowest level. Today, Standard and Poor, and
23 just a week ago Moody's now gives us an "A"
24 rating with further increase being considered.

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1 We have developed a purchasing manual
2 for the first time in the city's history. It is
3 now strictly in force. The State Comptroller
4 who had consistently over the years found fault
5 with the city's purchasing practice, was unable
6 to find a single example of improper practices
7 in his most recent audit covering a two-year
8 period. We have revamped the assessment
9 process, we have created a new review process
10 for leases and contracts. We have worked with
11 community and business groups to develop a stiff
12 master plan, and brought in a highly
13 professional, highly motivated and experienced
14 staff. I mention these examples that are not a
15 result of conflict of interest or of creating a
16 climate where using public office for private
17 gain is permissible, but rather results from the
18 creation of a positive community attitude,
19 spearheaded by a city government that is
20 efficient, open, and totally honest.

21 Last week I was proud to accept on
22 behalf of the city another award for our
23 affordable housing program at the U. S.
24 Conference of Mayors meeting in Charleston, the

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1 third national award we have received in the
2 past two years. I think this is another shining
3 example of the public/private partnership which
4 works so well in Albany. This relationship
5 would not exist if the private sector believed
6 preference was being given to a selected few.

7 I could go on with many more examples
8 of the improvements made during this
9 administration. But every change, every
10 improvement, every formal process initiated was
11 designed to assure honesty, efficiency and
12 integrity in the government of the City of
13 Albany. There is no room left for violating
14 purchasing practices, for favoritism or for
15 inefficiency. As you know, I was an attorney
16 for many years, sharing status in the community
17 and a fine income with one of Albany's oldest
18 and most prestigious law firms. Currently,
19 there is no law which prohibits a municipal
20 official from having a legal practice or having
21 any other means of income. Moreover, if such a
22 law were enacted, it would have an exceedingly
23 unfavorable result, since only the independently
24 wealthy could then afford to take public office.

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1 For my part, such legislation is no longer
2 needed.

3 When I found out that the duties of
4 being Mayor of this great city required all of
5 my time, I resigned as a member and partner of
6 that law firm. I did so at financial sacrifice.
7 But in retrospect, since well over a year as
8 elapsed since I withdrew from the law firm, I
9 have ambivalent feelings. On the one hand, all
10 of us can feel more comfortable in that not even
11 an intimation of conflict can be inferred. On
12 the other hand, while my income is reduced, this
13 is a sacrifice that many of us who are in the
14 public service must consider. In Albany, as in
15 many cities our size, community leaders wear
16 many hats. Business executives, community
17 volunteers, chamber of commerce activists,
18 institutional board members. In the morning I
19 may work with an individual on addressing a
20 problem like affordable housing or economic
21 development, and then find myself across the
22 business table with the same person that
23 afternoon on a totally unrelated matter, and
24 perhaps a matter in which we represent totally

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1 divergent positions.

2 I am sure you do not propose the
3 elimination of businessmen and women from
4 community service or the ending of
5 public/private partnerships to avoid the
6 appearance of conflict.

7 Thank you, Mr. Chairman, and members
8 of the Commission for allowing me these
9 comments. I will try my best to answer your
10 questions and, hopefully, provide you with
11 answers that will assist you.

12 CHAIRMAN FEERICK: I would like to now
13 recognize Commission Deputy Counsel Kim Greene.

14 MS. GREENE: Thank you, Mr. Chairman.
15 Good afternoon, Mayor Whalen.

16 THE WITNESS: Good afternoon.

17 EXAMINATION BY MS. GREENE:

18 Q Mayor Whalen, between 1982 and March of
19 1988 were you engaged in the private practice of law?

20 A I was.

21 Q And in what capacity did you do that?

22 A I was a partner in the firm of Cooper,
23 Erving & Savage. Subsequent to that, until I left
24 the active practice of law in January of 1988,

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1 effective March 1988, I was a partner in the merged
2 law firm of Cooper, Erving & Savage, Whalen, Nolan &
3 Heller.

4 Q When you became Mayor, approximately how
5 much of your time did you devote to your law
6 practice?

7 A Well, it varied in degree. When I became
8 Mayor initially, I would say probably it was not as
9 much as it was in succeeding years. I would say
10 probably I spent twenty-five percent of my time
11 practicing law, seventy-five percent of my time as
12 Mayor. Obviously, as my tenure increased and a
13 myriad of activities went on in the City of Albany
14 many of which we initiated, I found that I was
15 spending sixty, seventy, eighty hours a week of being
16 Mayor, and it consumed all of my time.

17 Q Were you a senior partner in the law firm
18 of Cooper, Erving & Savage both before and after you
19 became Mayor?

20 A I was, along with other senior partners.

21 Q Did you play a management role in the firm
22 before you became Mayor?

23 A I did. And I played a management role
24 afterwards as well.

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1 Q What sorts of matters did you continue to
2 handle personally after you became Mayor?

3 A I did bankruptcy work, I was a trustee in
4 the United States District Court for the Northern
5 District of New York for Judge Mahoney as an official
6 trustee. I did a limited amount of bank work and
7 some trial work. My practice was a rather general
8 practice. I don't think I tried to disassociate
9 myself from any particular aspect of it, but my time
10 became greatly diminished.

11 Q After you became Mayor, did you or your law
12 firm take any steps or set up any system to wall
13 yourself off from any matters which might present
14 conflicts of interest with your official duties?

15 A Yes, we did. We had regular meetings of
16 the law firm, usually once or twice a month. At
17 those meetings we discussed the potential conflicts
18 that might exist. There was also a card system
19 relating to new files that were initiated by each
20 attorney. And those would identify, although not in
21 the first instance, they could identify potential
22 conflicts of interest.

23 Q Around the time you became Mayor, did you
24 participate in any discussion with other members of

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1 the firm regarding the impact your public role would
2 have on the firm's practice?

3 A Yes. As I stated in my private testimony,
4 there had been a history of public service in our law
5 firm. A prior county treasurer, a prior judge, prior
6 county legislator. A variety of former partners in
7 the law firm had held public office. And it was
8 always felt that in return for that sharing by
9 partners in the law firm, the reputation of the law
10 firm would be enhanced.

11 Q Prior to 1982, Mayor Whalen, did the firm
12 represent clients before city agencies and related
13 entities such as authorities?

14 A Yes, it did. Excuse me. There was a
15 period of time prior to that that we did not. I was
16 on the bench for six years here in the city. And
17 during that period we did not represent clients
18 before the city or agencies. And also, one of the
19 prior partners was also on the bench in city court,
20 and we gave effect to the same prohibition. That
21 would have been in the 1950s '60s and early '70s.

22 Q Did the firm change its practice after you
23 became Common Council President with respect to the
24 entities that it would appear before?

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1 A Yes. We tried to set up general principles
2 which were understood by the lawyers, both the
3 partners and the associates, as to what and what
4 would not be proper for the law firm to engage in.

5 Q And could you articulate for me what those
6 principles were?

7 A Yes. In essence, that there was a general
8 prohibition against appearing in any matter involving
9 the city and any of its agencies, commissions, or
10 authorities, but that those matters should be brought
11 up at partner meetings as often as they could be
12 brought up. And discussion would be had relative to
13 any potential conflict.

14 Q Did you include the IDA within your
15 definition of an agency before which you could not
16 appear?

17 A Yes.

18 Q And how about with respect to the Parking
19 Authority; is that also true?

20 A I don't think we segregated out any of the
21 allied agencies or authorities of the city. But
22 again, I think that if a case arose, it would have
23 been considered on a case by case basis. And we
24 would try to have a full and open discussion at one

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1 of the partners meetings to see if an actual conflict
2 would occur if the law firm decided to represent a
3 client.

4 Q Mayor Whalen, could you explain what the
5 need was to have discussion about individual cases if
6 there was a blanket prohibition against appearances
7 before certain agencies?

8 A I think that was consistent with our goal
9 to make sure that there was a complete awareness on
10 the part of all attorneys in the office.

11 Q Prior to 1982 were all the legal fees paid
12 to members of the law firm pooled and shared by
13 members of the firm?

14 A As far as I know, they were. And the same
15 thing occurred after 1/83 when I became Mayor.
16 However, I took a voluntary deduction from my share
17 of the net income. It was consistent in varying
18 degrees. As the Mayor's salary increased from 1983
19 to 1988 when I resigned from the active practice of
20 law, which was the salary offset against what would
21 have been my normal participation of the net income
22 in the law firm.

23 Q And is it correct that you resigned from
24 your law firm?

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1 A That's right. I resigned from the law firm
2 in January of 1988 effective March 1, 1988.

3 Q Thank you. I would like to turn now to the
4 matter of V. V. Conner, if I may. Mayor Whalen after
5 you became Mayor, did you ever perform legal services
6 for clients who wanted to buy city property?

7 A Yes, with reference to the Gordon Bell
8 matter, I understand that Mr. Bell testified this
9 morning. I tried to say in my opening statement that
10 I should not have been involved in that transaction.
11 I was.

12 Let me give you a little bit of the
13 background. There had been a prior purchaser for
14 fourteen thousand dollars. When that prior purchaser
15 found out that there were in-ground oil tanks, he
16 backed out. There was at that time that Gordon Bell
17 -- oh, incidentally, the independent appraisal of
18 that piece of property was nine thousand five hundred
19 dollars. So the fourteen thousand dollars was
20 considered a good purchase price. That prior
21 purchaser backed out after the matter had been
22 approved by the Common Council of the City of Albany
23 and I executed the transfer of deed. Mr. Bell
24 indicated an interest in it. I don't remember the

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1 phone conversation that he and I had. I would
2 imagine that he called me at the law firm. I did
3 represent him and I shouldn't have. And as I said
4 before, obviously, your schedule here shows a fee of
5 four hundred ten dollars. My net share of that fee
6 would have been under fifty dollars. I am sure I
7 wasn't motivated by the dollar considerations. I
8 think all I can say is that I didn't think of it.
9 Things were moving quite rapidly at the time. I am
10 sure it was for Gordon Bell's convenience and no
11 other.

12 Q Mayor Whalen, forgive me if I am causing
13 you to repeat yourself, but do you have any
14 recollection concerning how you first learned that
15 Mr. Bell was interested in purchasing this property?

16 A Well, I don't remember a telephone call. I
17 would imagine that Gordon Bell would have been
18 initiated it and called me at the law firm.

19 Q May I draw your attention to exhibit 48 in
20 the book that is on the table in front of you.

21 A Yes.

22 Q And I would like to ask you if you have
23 ever seen this letter before.

24 A Yes, just recently when it became an

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1 exhibit of the Commission.

2 Q And prior to that, you hadn't seen this
3 letter before?

4 A I don't remember ever seeing this. It is
5 not to say I couldn't have. It is a letter addressed
6 to Paul Collins who at that time was the Executive
7 Deputy Corporation Counsel in which Gordon Bell on
8 behalf of his corporation V. F. Conner Company, Inc.
9 indicates an interest in the piece of property which
10 he ultimately purchased for \$14,000.

11 Q Mayor Whalen, do you recall whether your
12 representation of Mr. Bell with respect to this
13 property was entered into the laugh firms card system
14 that you previously described that was used in part
15 to identify conflicts of interest?

16 A No. I have no recollection as to whether
17 or not it was. If it had, it obviously got by me.

18 Q I would like to move, now --

19 A And got by other partners as well.

20 Q I would like to turn now, if we could, to
21 the APA. Did you serve as the chairman of this
22 Authority at any time?

23 A Yes, I did.

24 Q And do you recall the date of your service

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1 in that position?

2 A Yes. If you will give me a chance here, I
3 am sure that I can -- I was chairman of the Parking
4 Authority as of August 15, 1983. I was a member of
5 the Authority from January 3, 1983 until October 5,
6 1987. We had reactivated the APA because of a
7 strategy that we considered would be beneficial to
8 the economic development of downtown. Parking in the
9 city has always been a dilemma, as we all know. And
10 we felt that it was time for the city to show its
11 initiative in economic development by providing new
12 parking structures for the public. That is the
13 reason why we activated the Parking Authority.

14 Q Did there come a time in 1986 when you
15 voted in favor of awarding a contract to manage the
16 facilities of the Parking Authority to the Maiden
17 Lane Auto Park?

18 A Yes, there did. And at that time, James
19 Drislane of the law firm represented Maiden Lane
20 parking. Immediately after that vote, I walked out
21 of my office with Mr. McArdle, the Corporation
22 Counsel, and I said, "Vince, I shouldn't have voted
23 on that selection. You have to go back and void that
24 vote." Mr. McArdle did just that. And it was based

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1 on that action that I took that there was the
2 resubmission to the Parking Authority by vendors of
3 an entirely new RFP. And Maiden Lane Auto Park on
4 the second time around was represented by another
5 attorney. And by that time I had withdrawn as
6 Chairman of the Parking Authority.

7 Q And, Mayor Whalen, what was the reason for
8 you determining that you should not have voted in
9 favor of this matter?

10 A Because this was a conflict. I immediately
11 recognized it, that I should not have been involved
12 in it. And as soon as I did recognize it -- It would
13 have been much preferable had I sat there and excused
14 myself from voting. It didn't dawn on me that
15 morning at 7:30. It dawned on me immediately
16 subsequent to the meeting being adjourned when Mr.
17 McArdle and I walked into my office.

18 Q I don't mean to belabor this, but what was
19 the conflict that this vote presented to you?

20 A That Jim Drislane was the attorney for
21 Maiden Lane Parking.

22 Q Did you inform anyone else other than
23 Vincent McArdle of your decision to rescind your vote
24 in favor of this contract?

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1 A Mr. McArdle went ahead and informed the
2 other members of the Authority and all those that
3 that had submitted the original RFP that there would
4 be a second RFP that would come out from the city.

5 Q How do you know that Mr. McArdle informed
6 the members of the Parking Authority regarding your
7 decision?

8 A He told me.

9 Q Prior to your having cast this vote in
10 favor of Maiden Lane, did you disclose at any time to
11 the Parking Authority that Maiden Lane was a client
12 of your law firm?

13 A No. And I saw no reason to, because at
14 that point there was no engagement on the part of the
15 city with Maiden Lane Auto Park with the Parking
16 Authority.

17 Q I would like to ask you to look at Exhibit
18 53 in the book in front of you.

19 A Yes.

20 Q And I would like to ask you if you can
21 identify what this document is.

22 A Well, it is a letter from Louis Gottlieb to
23 Mr. McArdle dated November 17, 1986 relative to open
24 surface parking facilities, park and lock facilities

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1 in which he makes a proposal.

2 Q And if we could turn to the second to last
3 page of this document which is denominated page 13, I
4 would like to direct your attention to the second
5 small indented paragraph from the bottom. And I
6 would like to draw your attention to the name listed
7 there as stated, Mr. James J. Drislane, Cooper,
8 Erving & Savage, State Street and Broadway, Albany,
9 New York 12207.

10 A Yes. That is put there by Mr. Gottlieb.
11 It says: "Listed below are some of our lessors and
12 banking facilities for references as to our financial
13 stability and technical ability to operate parking
14 facilities." He also gives Lew Swyer and a number of
15 other people as references.

16 Q Mayor Whalen, do you recall if you reviewed
17 this proposal prior to casting a vote on it at the
18 Parking Authority?

19 A No. I have no recollection of ever seeing
20 that document. That is not to say that I couldn't
21 have. But you are asking me now did I see something
22 that is three years old. No, I have no current
23 recollection.

24 Q And if we could go back to the first page

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1 of the document, can you tell me what the date is of
2 this proposal?

3 A November 17, 1986.

4 Q Thank you, Mayor Whalen. Now, with respect
5 to your resignation from the Parking Authority in
6 1987, could you tell me the reason why you resigned
7 from the Authority when you did?

8 A Yes. I think that I resigned for three
9 reasons. Again, my time was being completely
10 consumed as being Mayor of the city. We also had
11 started very early on in the city to try to bring in
12 private sector people into the city's agencies,
13 authorities and commissions. I am proud of the fact
14 that we have brought in so many people as part of
15 that operation now. It is a continuation of what I
16 tried to say in my opening statement; that there is a
17 good mix of public/private initiatives now in this
18 city. That was consistent with that strategy and
19 that goal. The third reason was that I wanted to
20 avoid the appearance of conflict.

21 Q And before you resigned from the Parking
22 Authority in October '87, do you recall if you
23 approved the second RFP for the management contract
24 for the parking facilities of the Authority?

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1 A No, I don't. I had resigned from the
2 parking authority on October 5, 1987. That second
3 RFP went out on November 4, 1987.

4 Q Mayor Whalen, I would like to turn now to
5 the Tricentennial Commission. Did you establish this
6 Commission?

7 A Well, no. I didn't establish the
8 Commission. The city did under my leadership. And
9 we knew that the celebration of a Tricentennial was a
10 unique event, and not only from the standpoint of
11 instilling pride in the city, but also to give
12 visibility to the City of Albany. I was fortunate
13 enough again to bring on board some highly motivated
14 energetic citizens of the city of Albany. The
15 chairman of that Commission was Lewis A. Swyer.
16 There were a number of vice-chairmen. We met on a
17 regular basis. I would say we probably started two
18 years prior to 1986 because we knew a great deal of
19 planning would be entailed in developing a successful
20 tricentennial year. Our law firm did the work for
21 the Tricentennial. I initially asked Mr. Devine who
22 was then with the law firm if he wanted to handle the
23 incorporation of the Tricentennial. I told him it
24 would be good exposure. He said, yes, that he did.

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1 He went ahead and he represented the Tricentennial
2 Commission in the very early stages. When he left
3 the law firm, representation of the Tricentennial
4 Commission was then done by another partner, Terrance
5 Christenson. I understand that Terry Christenson
6 stated publicly that he did a substantial amount of
7 work which was pro bono and that the fees that he
8 received for the work he did were substantially under
9 the value. We set up an -- and I understand from
10 chairman Feerick's opening statement that there is a
11 concern on the part of the Commission about the
12 closeness between the City of Albany and not-for-
13 profit corporations. What we did was pattern our
14 Tricentennial Commission after that which was
15 established in the city of Rochester. I called Mayor
16 Tom Ryan of Rochester because they had just
17 celebrated their 150th anniversary, and I asked him
18 now he did his event. And he said, "We formed a
19 not-for-profit corporation, we got private sector
20 people on board to raise money, and it was very
21 successful. I will send you the information on it,"
22 which he did. And we patterned ourselves after this.

23 Q If I could direct your attention to Exhibit
24 47 in the book in front of you; I would like to, if I

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1 may, direct your attention to the second paragraph of
2 the text of the letter which reads: "In support of
3 Albany's Tricentennial activities, we --" referring
4 to the law firm which has sent this letter -- "we
5 would be pleased to provide our professional services
6 gratis to help secure a New York State and/or federal
7 trademark registration for the Tricentennial logo. I
8 would like to ask this question. Before you chose
9 Cooper, Erving & Savage to represent the
10 Tricentennial Commission, did you take any steps to
11 determine whether other law firms would provide those
12 services on a completely pro bono basis?

13 A No. I have never seen this letter before.
14 I imagine the solicitation of business by this law
15 firm was ethically proper. But I don't see why the
16 Tricentennial Commission would want to switch from
17 one law firm providing pro bono work to another law
18 firm providing pro bono work.

19 Q Mayor Whalen, is it correct that Cooper,
20 Erving & Savage was paid a fee for its representation
21 of the Tricentennial?

22 A Yes, they did, that's correct. And, as I
23 tried to say, the majority of the work was pro bono.
24 And that was stated publicly by attorney Terrance

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1 Christenson.

2 Q Was the decision to select Cooper, Erving &
3 Savage ever voted upon by the members of the
4 Tricentennial Commission?

5 A No, it was not. There were seven or eight
6 people on the Executive Committee of the
7 Tricentennial Commission headed up by Mr. Swyer. I
8 don't ever recall having a formal vote on any
9 initiative of the Tricentennial Commission that I was
10 present at, and I wasn't present at all of them.

11 Most of the time it was a consensus after a
12 discussion led by Mr. Swyer.

13 Q Do you know what the amount of the fees
14 paid by the Tricentennial Commission to your law firm
15 is?

16 A I recall somebody saying that -- let's see
17 here. It says \$1,593.08. If that is a figure that
18 you documented, I can't argue with it.

19 Q Did you receive a share of these fees?

20 A I did, reduced by a proportionate amount
21 for the Mayor's salary. I received a portion of the
22 income of every fee that the law firm received until
23 such time as I disengaged myself from the active
24 practice of law.

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1 Q Thank you, Mayor. I would like to turn now
2 to the matter of 39 North Pearl Street. Did there
3 come a time when your law firm Cooper, Erving &
4 Savage decided to merge with the law firm of Nolan
5 and Heller?

6 A Yes, there did.

7 Q And were you a member of the executive
8 committee which was comprised of members of both law
9 firms?

10 A Yes, I was a member of the executive
11 committee. And the matter was being handled at that
12 time by Michael Kornstein and Senator Howard Nolan
13 who had gone out -- Once we came to an agreement that
14 the law firms would merge, there were details.

15 MR. SCHWARZ: May I have the question
16 back, please.

17 (The question was read by the
18 reporter.)

19 MR. SCHWARZ: That question was --

20 THE WITNESS: Excuse me, Mr. Schwarz.
21 I would like the opportunity to explain when I
22 do answer, if that is permissible. I would hope
23 that I would be given that opportunity.

24 MR. SCHWARZ: I would like to ask the

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1 Chair if he would go along.

2 CHAIRMAN FEERICK: The Chair will
3 certainly accept some latitude in responding to
4 a question. On the other hand, I think it would
5 be helpful in terms of the orderly progress of
6 this hearing today if when questions are asked,
7 try to focus your answers on the questions
8 asked. And if at the end of your testimony you
9 feel there is some additional comment that you
10 want to make on any subject of your testimony, I
11 will accept that. But I think it would be
12 helpful to the commissioners if, as the
13 questions are asked by staff counsel, if you can
14 do the best you can in responding to those
15 questions. And we will certainly give you every
16 opportunity to provide any additional statement
17 you want to make on the subject.

18 THE WITNESS: Could I respond to that,
19 please? As you know, I have no right to present
20 witnesses of my own. I have no right to present
21 rebuttal testimony. I don't even have the right
22 to question other people that have given
23 depositions or sworn testimony here today. I
24 think it would be awfully difficult for me at

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1 the very end of this to try to resurrect those
2 instances where I felt comment was necessary.
3 If we are here to get the entire story, then it
4 seems to me that my explanations are important
5 to the deliberations of this Commission.

6 CHAIRMAN FEERICK: Let me restate what
7 has been our rule, which I am going to have to
8 insist on today as well. We have had many
9 public hearings and we have had officials from
10 all over the state address our Commission. And
11 we have pretty much tried to stay with the basic
12 operating rules. I mentioned at the outset we
13 generally request that a written statement be
14 provided at least a day in advance so that we
15 might have the benefit in our questioning of a
16 witness who does present a written statement to
17 ask questions that might be suggested to us as a
18 result of our reading of the written statement.
19 Now, we were denied that opportunity by virtue
20 of the fact that we only received your statement
21 less than an hour before your testimony today,
22 although we did receive an outline of the seven
23 points that I think you indicated that you would
24 present in your written statement. I don't know

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1 if we have to sort of deal with that subject at
2 this point. And your attorneys have the right,
3 certainly, to propose questions to the
4 Commissioners to ask of you. And I would be
5 happy to receive any questions that they have
6 that we should consider putting to you in the
7 interest of completeness and fairness. But it
8 is not going to be helpful to us if our
9 questions, as put by the staff, are not
10 responded to. On the other hand, I think you
11 can appreciate as a member of the bar that we
12 are entitled to our response to the questions
13 that are put. I recognize that you don't have a
14 right to cross-examine, but we are doing the
15 best that we can in giving you fairness and
16 giving our witnesses fairness. And, at the end
17 of the hearing, if there is anything additional
18 that you want to present to us, we would be more
19 than happy to receive it. If you have any
20 suggestions of additional witnesses we should
21 examine, we would be happy to receive your
22 suggestions. If you have any suggestions of
23 additional documents that we should examine to
24 ensure fairness, we would be happy to examine

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1 those documents. We have every interest in
2 according you every protection to ensure
3 fairness. At the same time, we have an
4 obligation to conduct this hearing in a way that
5 is orderly and there is the framework of
6 questions, the witnesses responding to
7 questions. And if you had the ability, or any
8 witness had the ability to go beyond the
9 question in a rather lengthy sort of way, I
10 think it would be inconsistent with what we are
11 hoping to accomplish today.

12 THE WITNESS: Mr. Chairman, just by
13 way of explanation, I came back from Charleston
14 last Wednesday. That was the first instance
15 that I knew you wanted in advance a written
16 statement. I provided the Commission staff with
17 an outline of that on Friday. Obviously, I
18 didn't have the time. The sheer magnitude of
19 what has transpired over the eighteen-month
20 period that you have been investigating the City
21 of Albany meant that I wanted to be extremely
22 deliberate in my opening statement. I have no
23 intention of trying to obfuscate the issues. I
24 have answered, and I intend to answer as fully

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1 as I can. Again, I think that I am entitled to
2 give an explanation, and I would ask you to
3 provide me and accord me that right.

4 CHAIRMAN FEERICK: If, as we go, you
5 feel there is something more that you want to
6 add to the question, for example the last
7 question that Mr. Schwarz asked the reporter to
8 read was a very simple question, simply whether
9 you are a member of the executive committee of
10 the firm, as I understood the question. I am
11 not sure that a yes or no answer is not complete
12 under those circumstances. There may be some
13 follow-up questions that on your part require
14 some additional elaboration. And if you
15 indicate that to me, because it is not confined
16 simply to the question, I can assure you that
17 the Chair will provide you latitude in
18 responding.

19 THE WITNESS: Thank you.

20 Q Mayor Whalen, I believe that you had stated
21 that there was a real estate committee formed to
22 locate new office space for the merged law firms; is
23 that correct?

24 A That's correct.

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1 Q And when did this committee commence its
2 activities?

3 A In April of 1986.

4 Q And were you regularly informed of the
5 activities of this committee?

6 A I was informed of the activities on a
7 regular basis. I would say that Senator Nolan and
8 Mr. Kornstein reported whenever we had meetings.

9 Q Can you tell me when you first knew that
10 your law firm was considering leasing office space at
11 39 North Pearl Street?

12 A Yes. On July 28, 1986 in Executive
13 Committee meeting at which Senator Nolan gave a
14 report.

15 Q I would like to refer you to Exhibit 26 in
16 the exhibit book. Can you identify this document,
17 Mayor Whalen?

18 A It is a memorandum to partners of the law
19 firm from Mark Heller re Executive Committee meetings
20 on July 28, 1986, dated July 29, 1986.

21 Q Mayor Whalen, were you present for the
22 meeting that is reflected in this memorandum?

23 A The memorandum indicates that I was
24 present.

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1 Q And is it your testimony that at this
2 meeting on July 28th was the first time that you knew
3 that the law firms were engaged in discussions with
4 the developers of the 39 North Pearl Street project
5 regarding leasing office space in that building?

6 A Yes. I believe that there was a general
7 discussion of space in downtown Albany, and this was
8 one of the locations.

9 Q Had you heard any previous discussion of
10 this space?

11 A Not to my knowledge.

12 Q I would like to ask you to turn to Exhibit
13 46 in the book, please. I would like to direct your
14 attention to the third paragraph of the first page
15 that begins, "Whereas --" to the middle of that
16 paragraph, and ask you if you see where it describes
17 that this document relates to the acquisition of one
18 half acre parcel of land located at 37-41 North Pearl
19 Street in the City of Albany, New York; do you see
20 that?

21 A Excuse me; what page?

22 Q The first page of the document, third
23 paragraph starting with, "Whereas --" in the middle
24 of that paragraph.

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1 A Yes.

2 Q Is that land identified there; is that the
3 land that became known subsequently as 39 North Pearl
4 Street?

5 A Yes. It is identified here as 37-41. And
6 I believe that is the property upon which 39 North
7 Pearl Street was purchased.

8 Q If you could turn to the last page of the
9 document, please, denominated page 3. Is that your
10 signature that appears at the bottom of the page?

11 A It is.

12 Q And could you tell me the date on which you
13 executed this document?

14 A It says June 26, 1983.

15 Q And can you tell me what this document is?

16 A Approving the issuance by the City of
17 Albany IDA of four million dollars aggregate
18 principal amount industrial development revenue bond
19 to acquire and construct and install an industrial
20 development facility in the City of Albany.

21 Q On the date that you executed this Mayoral
22 approval, that being June 26, 1986 did you know that
23 your law firm was considering leasing space and
24 investing in this project?

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1 A No. The first indication that we had, as I
2 had previously testified, was on July 28, 1986 which
3 is the date of that executive committee meeting of
4 the law firm at which Howard Nolan reported.

5 Q If I may direct your attention to Exhibit
6 27, Mayor Whalen, do you see -- do you recognize this
7 document?

8 A I can tell you what it is. I don't know
9 that I have ever seen it before.

10 Q Please tell me.

11 A Well, it purports to be a letter from Mark
12 J. Simmons, the President of Vulcan Development and
13 Management Corporation to Senator Howard C. Nolan
14 Jr., who at that time was a partner in the law firm
15 of Nolan & Heller. And it is addressed to him at
16 Fifty Chapel Street, Albany, New York.

17 Q Is it correct that at this time Senator
18 Nolan was a member of the executive committee of
19 which you were also a member comprised of the
20 partners in both law firms?

21 A In April of 1986 -- I don't even know that
22 we had had an executive committee formed at that
23 time.

24 Q Is it your testimony that there was a real

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1 estate committee formed at that time?

2 A Yes. I would say in answer to the question
3 that Howard Nolan was off checking a number of
4 locations in downtown Albany for the location of the
5 law firm which would merge in January of 1987.

6 Q And did Senator Nolan share with you at any
7 time the information contained in this letter?

8 A I have no recollection of him discussing
9 that with me, no.

10 Q If I could direct your attention to the
11 first sentence of the third paragraph which reads,
12 "Besides office leases, we offer the unique option of
13 limited party equity ownership to tenants. This will
14 entitle you to below market rental sites and capital
15 appreciation." Do you see that statement, Mayor
16 Whalen?

17 A I do see that statement.

18 Q Can you tell me when you were first
19 provided with the opportunity to invest in this
20 project?

21 A Again, my recollection is at that executive
22 committee meeting on July 29, 1986 was the first time
23 that was brought to my attention.

24 THE WITNESS: Mr. Chairman, may I?

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1 CHAIRMAN FEERICK: Yes.

2 A And again, I tried to allude to this in my
3 opening statement. When I found out from Charles
4 Newland at a meeting of the Local Development
5 Corporation at a breakfast meeting of the membership,
6 he turned to me and he said that there is a federal
7 regulation that prohibits any indicia of ownership
8 when any municipal UDAG grant is set forth. And that
9 UDAG covered the entire Maiden Lane Triangle. He
10 told me that, and I obviously took it very seriously
11 because I went right back up to my office and wrote a
12 letter and withdrew any interest in that limited
13 partnership. And I brought it right down to 39 North
14 Pearl Street to Mark Heller who, at that time, was
15 the managing partner. By way of explanation, I am
16 trying to say that I saw that as a prohibition, and
17 immediately dealt with it when it was brought to my
18 attention.

19 Q Mayor Whalen, if I might direct your
20 attention to Exhibit 44 in the exhibit book. I would
21 like to ask if you can identify this document for me.

22 A It says -- I am trying to -- "Part IV" at
23 the top, "Assurances." Underneath that it is a
24 four-page single spaced document with fifteen

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1 paragraphs which I signed on November 28, 1984 as
2 Mayor of Albany.

3 Q Mayor Whalen, this document, for the
4 record, was provided to us by the City of Albany
5 appended to the Maiden Lane Triangle UDAG
6 application. And the assurances are assurances that
7 are carried with that UDAG application. If I may
8 direct your attention to paragraph ten, which appears
9 on the last page of this document. And I would like
10 to read it for the record. Paragraph ten states: "It
11 will establish safeguards to prohibit employees from
12 using positions for a purpose that is or gives the
13 appearance of being motivated by a desire for private
14 gain for themselves or others, particularly those
15 with whom they have family, business, or other ties."
16 And I would like to ask you what safeguards did you
17 establish as the Mayor of Albany to carry out the
18 purpose of this paragraph?

19 A Well, I think that probably the city code
20 of ethics would have been distributed which was
21 consistent with paragraph ten. I don't recall any
22 other specific directions that were taken by the city
23 in that regard. But I think it was generally
24 understood that all of us would make every effort, a

1 complete effort to avoid any such instances where it
2 appeared that there might be favoritism to family,
3 business, or other ties as is set forth in paragraph
4 ten.

5 Q If I may direct your attention to Exhibit
6 43, can you identify this document for me, Mayor
7 Whalen?

8 A Yes. This is a document dated June 6, 1986
9 directed to a Mr. Donald Dodge, Deputy Assistant
10 Secretary for Program Management. It says it is the
11 certification by chief officer of the City of Albany,
12 and would have been prepared for my signature by
13 David Riker, who was then the Director of the Urban
14 Renewal Agency.

15 Q Does this certification provide that the
16 city has complied with all of the requirement of the
17 UDAG application and all of the provisions contained
18 in the agreement?

19 A Yes, it does. Mr. Chairman?

20 CHAIRMAN FEERICK: Yes.

21 A That document doesn't register with me,
22 Counsellor. And I would say that it probably is a
23 document that is included in dozens of submissions
24 that are made to the federal government. And I would

1 -- having said that, I would think that the person
2 that prepared it for my signature, David Riker, could
3 be able to expound much better than I as to what
4 requirements and what steps the city had taken to be
5 in full compliance.

6 Q Is it fair to say that without your
7 certification here, that the UDAG funds for the 39
8 North Pearl Street project would not have been given
9 to the city?

10 A I don't think I could answer that question.

11 Q At the time you executed the certificate on
12 June 6, 1986 did you know that your law firm was
13 considering leasing space and investing in this
14 project?

15 A No. I think I testified previously that it
16 was on July 28, 1986. Mr. Chairman?

17 CHAIRMAN FEERICK: Yes.

18 A There was no grand design on my part or on
19 the part of any of my partners to create any type of
20 secret interest in a building in downtown.

21 Q Did you subsequently join in an investment
22 partnership and personally invest in this project?

23 A I did not -- yes. I did not invest any
24 personal funds. The funds that were used to purchase

1 the equity interest in 39 North Pearl Street were all
2 funds that were borrowed.

3 Q When did you decide to make this
4 investment?

5 A In October of 1986.

6 Q How much did you invest in this project?

7 A There were eight shares at fifty thousand
8 dollars a share for a total of four hundred thousand
9 dollars. My share would have been a proportion which
10 was directly related to my percentage of
11 participation in the net income of the law firm. I
12 have since been told by Mr. Heller that the actual
13 interest would have been less than one percent.

14 Q And what was your percentage participation
15 in the law firm at that time?

16 A I don't remember.

17 Q Did you at any time disclose to any city
18 agency or other entity that provided funds for this
19 project that you had made this investment?

20 A Did I disclose to any agency of the city?

21 Q Yes.

22 A (Pause) Mr. Mumford has asked me to back up
23 for a minute.

24 CHAIRMAN FEERICK: We will let you

1 back up.

2 THE WITNESS: Thank you, Mr. Chairman.

3 A And Mr. Mumford informs me that my
4 percentage of participation in the law firm wasn't
5 the same as my percentage of participation in the
6 limited partnership. That may be indicative of how
7 much attention I was paying to the law firm and to
8 the limited partnership.

9 BY MR. SCHWARZ:

10 Q Just to clarify something, you said one
11 percent. Did you mean one percent of the overall
12 equity?

13 A In the building, yes. Excuse me; did I
14 disclose to any agency -- The purchase of the
15 interest in Vulcan took place on December 26, 1986, I
16 withdrew my interest, as I stated previously, at the
17 LDC breakfast on January 13, 1987, which would have
18 been within three weeks. During that period of time
19 I don't remember making any disclosure to any city
20 official or member of any agency.

21 Q Thank you, Mayor Whalen. I would like to
22 turn now to the question of the tax assessment of
23 certain properties that were purchased by First
24 American Bank in the City of Albany. As Mayor, do

1 you appoint the city tax assessor?

2 A I do.

3 Q And did there come a time in 1985 when you
4 approached the city assessor regarding a number of
5 commercial properties that First American Bank had
6 purchased in the City of Albany?

7 A Yes. I wrote a a memo to the then city
8 assessor Bruce McDonald.

9 Q What prompted this approach?

10 A I had been made aware by someone in the
11 bank or by a member of the firm that Banker's Trust
12 company was about to be acquired by First American
13 Bank. And my recollection is that there was a
14 purchase of assets of one institution by the other.
15 This came up at a partner's meeting in Cooper, Erving
16 & Savage. There was a discussion on this, and I
17 said, "Let me look into it." I went up to my office
18 in City Hall. I wrote a memo to the then city
19 assessor, Bruce McDonald, and asked him to please let
20 me have his advice with respect to this inquiry which
21 was similar to inquiries that I still receive on a
22 regular basis from property owners in the city, and I
23 give them the same response. And Mr. McDonald wrote
24 back to me, and he used the phrase, "The assessments

1 are in the ball park." And my response to him was,
2 "Let the assessments stay where they are until such
3 time as we have a general review of banking
4 assessment in downtown, which was part of an overall
5 process that we had undertaken when I became Mayor
6 which still exists today.

7 Q Mayor Whalen, was First American Bank a
8 client of your law firm at the time this matter
9 arose?

10 A Yes, it was.

11 Q And at this time, was your lawyer firm a
12 tenant in one of the properties that was listed in
13 the memo concerning the reassessment?

14 A We occupied space at 35 State Street in the
15 city. I hesitate to agree with your categorization
16 that we were a tenant, although in a loose sense we
17 probably were. I am not aware that we ever had a
18 written lease, and that goes back many, many years to
19 the point when the senior partner in the law firm was
20 also President of the bank.

21 Q Mayor Whalen, during the period of the
22 memos that you just described that went between
23 yourself and the assessor Bruce McDonald, did you at
24 any time disclose to the assessor that First American

1 Bank was a client of your law firm?

2 A No. I did not, Mr. Chairman, because I
3 think this shows a dilemma that many of us have. And
4 I mentioned this in my private sworn testimony. I
5 would be a little fearful of getting into an area
6 where I walked into a room and announced to people
7 that so-and-so is a client of our firm, period. I
8 think it could send out the entirely wrong message to
9 another official that somehow or other I was letting
10 them quietly know who the law firm's clients were.
11 And I quite frankly don't know the right way that
12 that that should be handled. But I think it shows a
13 dilemma. At that time, I said nothing to Mr.
14 McDonald. I considered it to be another function
15 that I had as Mayor. I am still stopped on the
16 street by people that talk about their assessment.
17 And my answer to them is the same as it was when this
18 one was asked. "Let me look into it, and I will get
19 back to you."

20 Q I would like to turn now to the matter of
21 the concession at the Tap Room restaurant located on
22 the Albany Municipal Golf Course. In 1983 did you
23 meet with Phillip Curley to discuss this concession?

24 A Yes, I did.

1 Q And where did this meeting occur?

2 A The meeting occurred in my office in City
3 Hall.

4 Q At this meeting did you discuss the amount
5 of rent that Mr. Curley would pay for this
6 concession?

7 A There may have been reference made to what
8 the rent would be. My recollection is that the terms
9 of the occupancy by Mr. Curley had already been
10 established between Mr. Curley and the then
11 Commissioner of Public Works, Mr. Maikels under whose
12 supervision the restaurant at the golf course was.

13 Q Mayor Whalen, during that meeting did you
14 decide the amount of rent to be five hundred dollars
15 a month?

16 A No. It had been previously decided.

17 Q By whom had it previously been decided?

18 A Between Commissioner Maikels and Phillip
19 Curley.

20 Q At the conclusion of your meeting with Mr.
21 Curley did you direct him to go to corporation
22 counsel's office so that the necessary legal
23 documents could be prepared?

24 A I did.

1 Q Did you also refer Mr. Curley to your law
2 partner Michael Kornstein for purposes of providing
3 legal representation to him?

4 A Yes. Might I, Mr. Chairman?

5 CHAIRMAN FEERICK: Yes.

6 A Mr. Curley in the course of the
7 conversation indicated that he was not from Albany.
8 He also indicated that he needed to obtain a liquor
9 license and did I know of a lawyer. I gave him my
10 law firm card, I wrote Mr. Kornstein's name on the
11 back of it, I believe, and I gave it to Mr. Curley.
12 And I said, "Mike Kornstein of our law firm does SLA
13 work. If you want to see him, you can." To the best
14 of my knowledge he went and saw Mike Kornstein who
15 did the lawyer work for him with respect to the SLA
16 application. Incidental to that work and ancillary
17 to it was some contact that Mr. Kornstein had to have
18 with Paul Collins who was then Executive Deputy
19 Corporation Counsel of the city. In order for the
20 license agreement to be in proper form for the SLA,
21 there was never any indicia of -- indication that we
22 were to represent -- by "we," I mean the law firm of
23 of Cooper, Erving & Savage -- represent Mr. Curley in
24 any of his negotiations with the city. Obviously,

1 given the notoriety that this particular transaction
2 has received, I would never do that again.

3 Q Mayor Whalen, if I may ask you a final
4 question with respect to this matter, that being
5 while the matter was pending in the corporation
6 counsel's office, did you at any time disclose to
7 that office that a member of your law firm was
8 representing Mr. Curley?

9 A Did I disclose to the Corporation Counsel's
10 office?

11 Q Yes.

12 A No. I think Mr. Kornstein indicated to Mr.
13 Collins that my name is on the letterhead of the law
14 firm.

15 Q Mayor Whalen, I would like to turn now to
16 something you addressed in your opening statement;
17 that being the First Realty of Albany project. Did
18 your law firm serve as counsel to the company, First
19 Realty of Albany for purposes of obtaining a bond
20 issue from the Albany industrial development agency?

21 A No. Our firm did not. My recollection is
22 that the firm of Krolick and DeGraff represented
23 First Realty with respect to the bond issue.

24 Q Isn't it correct that Krolick & DeGraff

1 served as the counsel for the bond issue?

2 A But Mr. Drislane served as counsel to the
3 company in connection with this bond issue. Krolick
4 and DeGraff represented the Swyer interests, I
5 believe, in every single IDA transaction as bond
6 counsel. If I might, Mr. Chairman -- and I am not
7 trying to cloud the issue here. But in IDA
8 transactions, the fact that somebody is listed as
9 counsel, I don't think is of any import. The work,
10 all of the work is done by bond counsel. There may
11 be an opinion letter that is put in those documents
12 by the general counsel to the firm. And in my
13 experience, even that letter, although signed by
14 counsel to the firm, is prepared by bond counsel.
15 And the fact that Mr. Drislane might have been
16 identified at some point as being the attorney for
17 the Swyers doesn't mean that he played some role in
18 the transaction. In addition to that, and in
19 particular in this case which is a piece of property
20 up on Central Avenue, Mr. Drislane represented the
21 Swyers with respect to the acquisition of the
22 property and other indicia of representation that
23 related to the real property, not necessarily to the
24 industrial revenue bond financing.

1 Q Mayor Whalen, if Mr. Drislane had not acted
2 as counsel in this matter, then what was the
3 necessity for disclosure that you made in the bond
4 closing documents concerning your relationship to
5 both the law firm and the IDA?

6 A So that there would be no question but that
7 his representation and my position was noted for the
8 record.

9 Q Did your law firm receive a fee in
10 connection with Mr. Drislane's actions on this
11 matter?

12 A Well on this matter, I really don't have
13 information within which to give you an accurate
14 answer. I am sure he received a fee probably for the
15 real property transaction that was related to the
16 transaction involving that Central Avenue property
17 and its rehabilitation.

18 Q Mayor Whalen, did you disclose the
19 relationship between your law firm and First Realty
20 of Albany Company to anyone else, other than the
21 disclosure that was made in the bond closing
22 documents?

23 A Yes, I did.

24 Q And to whom did you make that disclosure?

1 A I disclosed it to Mr. McArdle, the
2 Corporation Counsel of the city. At that time, Mayor
3 Corning was ill in the hospital in Boston. And Mr.
4 McArdle in a letter to Mayor Corning indicated that
5 we had to expand the number of people on the IDA.
6 And he specifically alluded to the fact that there
7 may be instances where some of Tom's clients are
8 involved in IDA closings and he may have to absent
9 himself. It was based on that letter from Vincent
10 McArdle that went to the Mayor who at that time was a
11 member of the IDA, that the membership was expanded
12 from three to five. So, yes, there was a disclosure.

13 Q I would like to direct your attention to
14 Exhibit 39, and further direct your attention to the
15 second page, second full paragraph on the page headed
16 IDA members. The question is: is this the letter
17 that Mr. McArdle sent to Mayor Corning after you made
18 this disclosure to him?

19 A Yes, it is.

20 Q Is this letter a matter of public record,
21 Mr. Whalen?

22 A Excuse me, public record? It is part -- it
23 is a letter that is subject to the Freedom of
24 Information disclosure, which I would assume makes it

1 a public document.

2 Q And is it correct that you just testified
3 that after this letter was written to Mayor Corning
4 that the membership of the IDA was increased from
5 three members to five members?

6 A That's correct.

7 Q And could you explain to me why you cast a
8 vote in favor of this bond issue the week before
9 rather than waiting for another week until the
10 membership was expanded and thereby excluding the
11 necessity of your voting on this matter?

12 A Well, we are into the fall of 1982 when I
13 was President of the Common Council. At that
14 particular time, I am going to say there were seven
15 or eight different IDA closings pending. And this is
16 a very hectic period of time where everybody wants to
17 close before the end of the year for tax purposes.
18 We wanted to get through these as fast as we could as
19 an accommodation to the people that were involved in
20 rebuilding Albany. And I am sure that is the reason
21 I went ahead without waiting until Christmas week for
22 other members to come on board.

23 Q I would like to direct your attention now
24 to the project known at 80 State Street Partners.

1 Are you familiar with this project?

2 A Well, am I familiar with it. It is a new
3 office building in downtown Albany constructed in
4 1984.

5 Q Did this project receive -- was it the
6 recipient of an Albany IDA bond issue while you were
7 chairman of the agency?

8 A Yes, it was.

9 Q And did a member of your law firm represent
10 the company in connection with the bond issue?

11 A No. It was represented by Krolick and
12 DeGraff who were bond counsel to the IDA and to the
13 Swyers. The Swyers are the same Swyers that were
14 involved in First Realty which we just discussed, 80
15 State Street and the 80 State Street Garage.

16 Q Mayor Whalen, I would like to ask you if
17 you recall your private testimony to the Commission
18 given on May 23, 1989.

19 CHAIRMAN FEERICK: Can you refer to a
20 page?

21 MS. GREENE: I intend to.

22 Q Do you have a copy of your transcript? I
23 would like to direct your attention to page 83 of the
24 transcript and ask you if you recall being asked the

1 following question and giving the following answer.
2 Question: "At the time that you did that --" which
3 refers to the closing -- "execute the closing
4 memorandum of the bond issue, did you know that James
5 Drislane represented the company was serving as
6 counsel to the company for purposes of this bond
7 issue?" Answer: "I did. And I also knew that by
8 executing that document was a ministerial act, and I
9 was mandated to do so. And had I not signed those
10 documents, a new twenty million dollar -- twenty-two
11 million dollar building in downtown Albany would not
12 have been built." Do you recall giving that
13 testimony?

14 A Yes.

15 THE WITNESS: May I. Mr. Chairman?

16 CHAIRMAN FEERICK: Yes.

17 A I am not so sure that I am not saying the
18 same thing now, that Mr. Drislane was the counsel to
19 the company, but bond counsel was Krolick and
20 DeGraff. And again, they are the ones to play the
21 role in the issuance of a bond for an IDA closing.

22 Q Did your firm receive a fee for Mr.
23 Drislane's role in connection with this bond issue?

24 A Did the firm receive a fee?

1 Q Yes.

2 THE WITNESS: Mr. Chairman?

3 CHAIRMAN FEERICK: If you don't know,
4 that is certainly perfectly acceptable.

5 A I don't. I am assuming Mr. Drislane
6 received a fee, but the fee with respect to the
7 acquisition of the real property, not with respect to
8 the IDA loan. And I might also say that, again, the
9 record shows full disclosure in Tab 9 of the closing
10 documents of Mr. Drislane being counsel to the
11 company and my position as President of the Common
12 Council and as a member of the IDA.

13 CHAIRMAN FEERICK: Next question.

14 Q Mayor Whalen, I would like to move now to
15 the question of the Crisafulli Brothers Warehouse
16 project. Do you recall whether this project received
17 a bond issue from the Albany Industrial Development
18 Agency?

19 A I have been told that it did, yes.

20 Q I would like to direct your attention to
21 exhibit 38. Exhibit 38 is a copy of the inducement
22 resolution for a bond issue on behalf of Crisafulli
23 Brothers Warehouse project --

24 A Yes.

1 Q -- dated September 10, 1982. Mayor Whalen
2 did you cast a vote in favor of the inducement
3 resolution for this project?

4 A Exhibit 38 indicates on the last page that
5 Mayor Corning was absent, and that both myself and
6 David Riker voted in the affirmative.

7 Q Did your law firm represent Bankers Trust,
8 the purchaser of this bond issue from the IDA?

9 A The law firm represented the lender which I
10 tried to say in my opening statement, it did, who had
11 been the bank for the Crisafulli Brothers for the
12 past forty to fifty years.

13 MS. GREENE: Thank you, Mayor Whalen.

14 I have no further questions, Mr. Chairman

15 MR. MUMFORD: You had suggested at
16 some time if we had some exhibits, you wanted us
17 to make an offer. I have two in particular now.
18 I just didn't know when you wanted me to offer
19 them. I think it might be helpful during the
20 Commission's questioning.

21 CHAIRMAN FEERICK: In other words, you
22 have two additional documents you would like us
23 to examine?

24 MR. MUMFORD: I do. I think they are

1 extremely pertinent to this matter, and for some
2 reason they have not been.

3 CHAIRMAN FEERICK: I would ask that
4 they be marked, and we will receive them. Just
5 identify each one that is presented to us.

6 MR. MUMFORD: If I may, yes. The
7 first is what Mayor Whalen has referred to as
8 Tab 9. It is one of the closing documents in
9 the closing of the First Realty project. And at
10 page 48 of Tab 9 under the caption of "related
11 parties and transactions," I quote: "Thomas M.
12 Whalen, III, Vice-Chairman of the issuer is a
13 senior member of the law firm of Cooper, Erving
14 & Savage, counsel to the company."

15 The next is a document with respect
16 to --

17 CHAIRMAN FEERICK: I take it that the
18 first document was sought by Commission subpoena
19 which is part of the litigation; is that
20 correct, that document that you just made
21 reference to?

22 MR. MUMFORD: This is a photocopy of a
23 document that was turned over to this Commission
24 approximately sixteen months ago."

1 CHAIRMAN FEERICK: Okay, thank you.

2 MR. MUMFORD: It is Tab 9. At Mayor
3 Whalen's private deposition, Tab 8 was shown to
4 him as an exhibit, but Tab 9 wasn't presented to
5 him. And today, Tab 9 has not been presented
6 here. And I am just offering it up.

7 CHAIRMAN FEERICK: I am going to ask
8 our special counsel to put a question to you.

9 MR. SCHWARZ: Is that one of the
10 documents that was then returned to the city

11 and when documents were returned and then was
12 resought as part of the recent subpoena?

13 MR. MUMFORD: I don't have those
14 papers here. I wouldn't be surprised.

15 MR. SCHWARZ: In other words, you gave
16 it to us and we gave it back to you and we had
17 to go to court to get it back?

18 MR. McARDLE: You didn't think it was
19 important.

20 MR. SCHWARZ: We asked you for it
21 recently; did we?

22 MR. MUMFORD: We received information
23 that you obtained it somewhere else. You
24 withdrew the application because you said you

1 found it somewhere else.

2 MR. SCHWARZ: Isn't that one of the
3 documents that is part of the subpoena?

4 MR. McARDLE: It possibly is. But you
5 also indicated that you didn't need it for this
6 proceeding. We need it.

7 CHAIRMAN FEERICK: In any event, we
8 will accept that document for whatever it shows
9 and whatever relevance it might have to this
10 hearing. What is the next item?

11 MR. MUMFORD: The next item is one
12 that you clearly do have because it was before
13 the Commission just on Friday at a deposition
14 which is the Crisafulli closing matter. And at
15 page 38 of that at Section 7.14 under the
16 caption "Interrelationship of certain persons,"
17 the parties to this bond purchase agreement have
18 all been advised and are aware that Thomas M.
19 Whalen, III is vice-chairman of the issuer and a
20 partner in the law firm of Cooper, Erving &
21 Savage, counsel to the holder."

22 CHAIRMAN FEERICK: Let's see the
23 document.

24 MR. MUMFORD: (offering)

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 CHAIRMAN FEERICK: Thank you very
2 much. We are at the point where the
3 Commissioners would put questions to Mayor
4 Whalen. We have been going for about an hour
5 and a half. If you would wish a short recess, I
6 would grant it. If not, we will just go on with
7 the questions.

8 THE WITNESS: Let's continue, yes.

9 COMMISSIONER MAGAVERN: Mayor Whalen,
10 I want to preface my questions by indicating to
11 you the spirit of them and the task that we are
12 facing. Our problem is to determine whether the
13 existing laws dealing with conflicts of interest
14 and ethical standards for public officials are
15 sufficient to avoid pressure on private parties
16 by public officials, to avoid private influence
17 on government of an ulterior kind, to protect
18 public confidence in government. And it is a
19 point you recognize, to encourage good people to
20 serve in government, not putting unnecessary
21 barriers in their way, and providing them with
22 clear guidance. And one of my particular
23 concerns is the last point, whether clear
24 guidance is, in fact, provided by existing law.

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 You have lived through a series of problems.
2 You pointed out in your opening statement that
3 there can be difficult problems. You have found
4 yourself in dilemmas at various times. And, so,
5 although it is not a role necessarily to be
6 relished, you are an ideal person to testify as
7 to the reality of trying to serve as a public
8 official, also maintaining a base in the private
9 sector under present law. And therefore, I am
10 going to have to ask you at times to look to the
11 law, to give me your reaction to it. It is not
12 in the spirit of trying to be argumentative with
13 you or be personally critical of you, but rather
14 draw out the problems we have under existing
15 law.

16 EXAMINATION BY COMMISSIONER MAGAVERN:

17 Q Let me turn just first to a couple of minor
18 housekeeping points. You testified, I think, that
19 the land value in the Conner transaction was valued
20 by the city at \$9,000. I wonder if you would look at
21 Exhibit 20 and see if that doesn't indicate a
22 different value. And perhaps you can explain what
23 the difference is.

24 A I think I testified, Mr. Magavern, that the

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 appraised value as given by an independent appraiser
2 was nine thousand five hundred dollars. .

3 Q Can you look at Exhibit 20, Mayor Whalen.

4 A Those are assessment figures; they are not
5 actual market value figures. Those are assessment
6 figures.

7 Q Okay. What is your equalization rate?

8 A Oh, boy. The difference between commercial
9 and residential --

10 MR. McARDLE: Can I clarify this, jsut
11 as a point of clarification?

12 MR. MAGAVERN: Yes.

13 (Attorney/client conference)

14 THE WITNESS: These figures relate to
15 a property which is tax exempt, and they go back
16 to the time when it was taxable when Mobil Oil
17 owned the property and it was a going gas
18 station. And the figures when Mobil transferred
19 it to the city would have never changed, and
20 this was back in the '70s. And they don't
21 reflect anything to do with the real value of
22 the property once it becomes tax exempt.

23 Q This was taken from the tax bill?

24 A It was a calculation based on the

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 equalization rate. It was exempt.

2 Q And the equalization rate would have been a
3 fraction of market value?

4 A That is one of the problems. We had had
5 many properties downtown. It would have been no
6 relation to its real value. That, we corrected
7 within the last seven or eight years.

8 Q I must question -- it is confusing to me.
9 Mayor Whalen, when you became Mayor, I think you said
10 you started devoting about seventy-five percent of
11 your time to city business and only twenty-five
12 percent to the law firm.

13 A Yes.

14 Q And at that time how much did you cut back
15 your income from the law firm?

16 A It varied.

17 Q There has been testimony -- it might have
18 been by Mr. Kornstein or Mr. Devine, I am not sure --
19 that it was two thousand dollars a month. Does that
20 sound right?

21 A The Mayor's salary since 1983 obviously
22 went up through 1988. I am going to say that it
23 varied anywhere from twenty thousand dollars to forty
24 thousand dollars. As the salary of Mayor increased,

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 I proportionately reduced my percentage -- The
2 percentage stayed the same, but there was an offset
3 from my actual draw.

4 Q Your contributions to the law firm were
5 reduced by far more than your salary reduction or
6 your income reduction to the firm?

7 A Well, I don't know that that would actually
8 be the case, because I am sure that there were
9 matters that I had worked on that for the next few
10 years still generated substantial income for the
11 firm.

12 Q When you joined the firm -- I'm sorry when
13 you first became Council President, did you then at
14 that time review the problem of conflicts of interest
15 that might occur in representation of clients by your
16 firm before or in respect to any city agency?

17 A Yes.

18 Q Did you come -- let me refer to page
19 twenty-five of your deposition, if you will, in your
20 private testimony, line 13. Now your testimony there
21 is, "When I became president of the Common Council,
22 we automatically disassociated ourselves from
23 representing any individuals before city government
24 "or city agencies." Before you disassociated

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 yourself, can you explain a bit what that policy was
2 beyond the deposition?

3 A We used to have partners meetings once or
4 twice a month. And although housekeeping matters
5 were generally on the agenda, there would also be
6 discussions to the effect that if I represent John
7 Jones generally, do I have to get another lawyer to
8 represent him before the board of Zoning Appeals, or
9 if this is part of a transaction, do I have to go out
10 and get special counsel insofar as the city is
11 concerned. You are asking me to go back seven years,
12 and I can only try to recollect what would be the
13 general parameters.

14 Q Was this document adopted as a general
15 principle by your firm that you say you disassociated
16 yourself at that time from representing yourself
17 before any city government or agency?

18 A Yes.

19 Q Did that mean representing private clients
20 before city government or agencies in respect to
21 litigation?

22 A Yes, it would.

23 Q Did it also include, in addition to
24 litigation, did it include negotiated transactions,

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 business transactions, and the like?

2 A I don't think we got that definitive.

3 Q You left that hanging?

4 A Well, I don't know whether it is fair to
5 say we left it hanging. I am not so sure that we sat
6 there and really brainstormed, perhaps not as
7 thoroughly as we should have about what is and what
8 is not legal representation. But if it was a general
9 business transaction, it may very well have fallen
10 outside the parameters of legal representation.

11 Q Do you believe that the same policy should
12 apply to representation of a client in, say, a
13 development project before some city agency?

14 A I would be very wary of setting that forth
15 with a broad brush. I think that would be awfully
16 difficult. I think that type of an instance has to
17 be taken on a case by case basis.

18 Q Let's take 80 State Street as a case, then.
19 That was a transaction in which a developer borrowed
20 money through a bond issue by the Albany IDA in 1983;
21 correct?

22 A Yes.

23 Q And your firm represented the borrower, you
24 said, at least in respect to the real property aspect

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 of that transaction?

2 A The developer, the borrower of the bond.

3 Q The borrower is -- let me see if we can get
4 this straight. The form of the loan is strictly a
5 financing loan; is that right?

6 A Say that again.

7 Q The developer is ultimately borrowing money
8 from a bank through the IDA -- from a bank through
9 the IDA; correct?

10 A Yes. Did I just -- I am probably going to
11 say something that you already know. Industrial
12 revenue bonds are not obligations of the city.

13 Q I quite understand that. And the only
14 involvement of the city or the Industrial Development
15 Agency in these obligations is to be a vehicle for
16 economic development, and so that they take on the
17 aegis of being tax exempt for state and federal
18 income tax purposes. They also have discretion
19 whether or not to issue a bond for a particular
20 project; correct?

21 A No one can mandamus them to issue a bond.
22 That's correct. But by the same token, in the six
23 years I have been Mayor and since I have been
24 president of the Common Council, we have never turned

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 down any developer that has received an inducement
2 resolution, which means they found a bank to buy
3 their bond.

4 Q The inducement resolution is a resolution
5 of the agency?

6 A Correct.

7 Q And when the agency does determine to
8 finance a project through issuance of a bond, that
9 carries with it local property tax exemptions, too;
10 does it not?

11 A But there is a pilot agreement attached to
12 it.

13 Q And?

14 A So there are taxes.

15 Q Okay. Let's find out what are the terms of
16 the pilot agreement. Are they to pay taxes on the
17 full value of the development project or just on the
18 value prior to development?

19 A No. It ultimately goes to the full value.

20 Q Over how much time?

21 A Well, in the City of Albany over a period
22 of five years. But that is not through the IDA bond.
23 That is through the incentive board under, again, a
24 program that we have set up to initiate the

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 development opportunities in the city where we
2 provide developers of commercial properties with an
3 incentive. And again, anybody that qualifies for it
4 gets it.

5 Q Your testimony, as I understand it, is that
6 IDA financing does not bring with it a tax exemption
7 other than what the developer would get without --
8 and I am talking about property tax exemption --
9 other than what the developer would get with a
10 conventional loan. There is an agreed upon payment
11 in lieu of taxes by the developer to the city for
12 such period of time that the property remains tax
13 exempt to pay at the full value of the property as
14 improved; is that your testimony?

15 A That's correct.

16 Q Okay. Now, in the case of 80 State Street,
17 Inc., did you absent yourself from the vote in that
18 case?

19 A Yes. Can I give you the chronology that
20 relates to 80 State Street? Obviously, in September
21 of 1980 at the time of the inducement resolution, I
22 had no official office so I did not participate. Mr.
23 Drislane joined the law firm in September 1981. On
24 September 21, 1983, I was absent at the time of the

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1 modified inducement resolution, and there was no
2 participation on my part. In December, three years
3 later, December 14th, I was absent at the public
4 hearing and there was no participation. On December
5 20, 1983, as Chairman, I was absent for the bond
6 resolution. There was no participation. On December
7 23, 1983, I signed the documents at the closing.
8 There was full disclosure at that particular time.
9 It was a ministerial act mandated by the IDA.

10 Q There is a point that we take a look at the
11 laws, Section 803 of the General Municipal Law. If
12 you don't have it, I will ask someone to provide it
13 to you.

14 A (Pause) Yes.

15 Q Okay. Can you tell me to whom disclosure
16 is to be made under that section?

17 A In the second paragraph it says, "Such
18 written disclosure shall be made part of and set
19 forth in the official record of the proceeding of
20 such body."

21 Q Paragraph one, who is the disclosure to be
22 made to?

23 A The governing body -- "The agency shall
24 publicly disclose the nature and extent of such

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1 interest in writing to the governing body thereof."

2 Q Who is that? The governing body of the
3 agency, I take it, is the members of the agency; is
4 it not?

5 A I would think so.

6 Q Did you make disclosure to the members of
7 the agency?

8 A Yes. I believe that this is the one where
9 I informed Mr. McArdle, and he informed Mayor
10 Corning.

11 Q At 80 State Street?

12 A Mr. McArdle, that was First Realty. Okay,
13 that was another closing which was First Realty,
14 which -- and the General Municipal Law also says that
15 if there is disclosure in one transaction involving
16 the same parties, there is disclosure to all within a
17 one-year period.

18 Q In the case of 80 State Street who was the
19 party?

20 A It was the Swyers.

21 Q In reality, who was the legal entity? It
22 wasn't just the Swyers; there was a legal entity,
23 right, that was the borrower?

24 A No. I think all of us looked at the

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1 development of 80 State Street and First Realty as
2 being developments of Lewis Swyer, number one, and
3 his son Edward Swyer, number two.

4 Q Was there an entity in the 80 State Street
5 project known as a partnership, 80 State Street
6 Partnership, something like that?

7 A I think it goes also to partners one, two,
8 three and four in the course of these transactions.
9 And I think you will always see that in 80 State
10 Street, the inducement resolution was to First
11 Realty, which shows the interconnection of the Swyers
12 with respect to all of their developments.

13 Q Let me see if I can get briefly to the
14 point. Reflecting on it now, do you think that the
15 disclosure in -- what document is that, Tab 9?

16 A Tab 9, that is First Realty.

17 Q Would you call it a --

18 A The issuing statement, I believe.

19 Q The issuing statement, okay. Do you think
20 that that disclosure which was effected by your
21 talking to Mr. McArdle, was compliance with Section
22 803 which requires disclosure of the nature and
23 extent of your interest in writing to the governing
24 body of the agency?

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1 A Yes, I would think.

2 Q You are satisfied with that disclosure?

3 A Well, what is the purpose of disclosure?

4 The purpose of the disclosure, as I understand it, is
5 to make sure that everybody is aware of all the
6 relationships between the respective parties to that
7 particular transaction.

8 Q I will submit that there is another thing,
9 Mayor. One of the purposes of Section 803 is to send
10 out a letter to every decision maker and to make it a
11 part of the public record so that the public and its
12 decision makers are alerted that there may be a
13 problem here and we ought to look at it closely.
14 Would you agree with that?

15 A That there is a problem?

16 Q There may be a problem.

17 A (No response)

18 Q I won't press it.

19 A Again, I have difficulty with that.

20 Q Let me turn, if I may -- and this is not to
21 be critical of Mr. McArdle nor of you, really. Let's
22 turn to Exhibit 39, page two, the paragraph under IDA
23 members that was rendered, I believe, in your direct
24 testimony.

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1 A Yes.

2 Q That indicates, I think -- and correct me
3 if I am wrong -- that you understood at that time
4 that you could handle a conflict of interest on the
5 agency by abstaining from participation in the agency
6 procedures; correct?

7 A Yes.

8 Q Now, I submit to you that under Section 801
9 of the General Municipal Law that it is not a
10 sufficient remedy for prohibiting conflict of
11 interest, that Section 801 prohibits conflicts. If
12 you fall within the terms of the conflict, it is
13 absolutely and it is not remedied by disclosure and
14 abstention. And if you don't mind a short commercial
15 message on my part, one of the problems we see in the
16 law is precisely that, that the conflicts are dealt
17 with -- They don't deal with the kind of indirect
18 relationships that are kept with in the public arena
19 by disclosure and abstention.

20 Second, in the narrow confines too rigidly,
21 so that a firm who is perfectly innocent in intention
22 and who is willing to disclose his interest or her
23 interest and abstain and not have anything to do with
24 the matter can stand up in public and say, "There is"

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1 nothing to hide here, it's okay, everybody can look
2 at it. And if you disagree, vote me out of office,"
3 that person handles then the conflict by disclosure
4 and abstention. That seems to be the conclusion you
5 have reached. And I submit to you, it is at odds
6 with present law, and it is something we would like
7 to change. That may be a bit self-serving for me to
8 tag on and say, "Do you think that is a great idea?"
9 But let me ask you anyway.

10 A Any modifications to existing laws that you
11 can recommend to the Governor that are consistent
12 with trying to foster the integrity of the public
13 officials, I support. Now, that is as broad as the
14 question you asked.

15 Q Who selects bond counsel for an IDA
16 transaction?

17 A Usually the developer.

18 Q Not the agency?

19 A No. We never get involved in that. I
20 can't think of -- in all of the IDAs we have had I
21 have never been approached, ever, to suggest bond
22 counsel to a developer. As you know, it is a very
23 specialized area of law. There are only a few law
24 firms in Albany; two, maybe three, that represent

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1 themselves as bond counsel.

2 Q One of the critical documents in the
3 documentation of a bond project is the lease which
4 states the terms, basically, the payment terms for
5 the ultimate borrower.

6 A For the developer, right.

7 Q And the borrower and developer is a party
8 to that lease, right, and has a vital interest in the
9 terms of that lease; correct --

10 A Yes.

11 Q -- and must be represented by counsel in
12 working out the terms of that lease, even if the
13 lease is drafted by that bond counsel; isn't that
14 right, too?

15 A No. I would say that again, the attorney
16 for the developer/borrower has little, if anything,
17 to say about the terms of that instrument; that the
18 developer will be guided almost exclusively by the
19 advice he receives from bond counsel because he knows
20 that he cannot borrow that money without the opinion
21 of bond counsel. And, therefore, bond counsel will
22 dictate to him exactly what he needs in order to
23 borrow the money.

24 Q Bond counsel will not determine the payment

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1 provisions, do they; their concern is to see a valid
2 bond issue?

3 A They will be decided exclusively by whoever
4 buys the bond, the bank.

5 Q And when people deal with banks, don't you
6 advise your clients that they ought to be represented
7 by counsel when they deal with banks on important
8 things like that?

9 A I think at that particular stage, bond
10 counsel is in it.

11 Q And in your experience, don't bond counsel
12 and counsel to the developer meet to discuss the
13 terms, to get the papers in order, to arrange the
14 closing?

15 A Well, if it is insofar as the technical
16 representation of the borrower/developer, yes. But
17 again, if we had to give a ratio, it's 99:1 in favor
18 of bond counsel.

19 Q In the Crisafulli case, in that case your
20 firm represented Bankers Trust Company at that time?

21 A They were the borrower.

22 Q In that case your firm got a fee of, I
23 think five thousand dollars, or something of that
24 sort, for reviewing bond documents; isn't that right?

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1 A I don't know whether that is right or not.
2 I know that --

3 Q If the evidence indicates it, you wouldn't
4 disagree; if there is an invoice that says five
5 thousand dollars for reviewing the bond documents,
6 you are not going to disagree?

7 A As far as their legality is concerned, as
8 far as Bankers Trust Company was concerned, I would
9 not dispute it, nor would I dispute the fact that as
10 happens in all of the cases, at least locally, the
11 bank gets the borrower to pay the legal fee to the
12 bank.

13 Q I want to correct the record, because I may
14 have confused myself. It is three thousand seven
15 hundred fifty dollars. And that was for review for
16 Banker's Trust of the bond document. And that was a
17 fee earned by your firm for direct services on the
18 bond documents on a bond issued by the IDA; is that
19 correct?

20 A Yes, and there was disclosure.

21 Q But the fact is, your firm had an interest
22 in that bond issue; did it not, and it was going to
23 earn a fee?

24 A I think that is stretching it to say that

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1 somehow or other there was an interest of the firm
2 because it received a fee for representing the bank
3 which was payable by the borrower.

4 Q Let me go to another subject, if I may.
5 Let me take the Local Development Corporation. Do
6 you view the LDC essentially as an arm of city
7 government?

8 A No, not essentially as an arm of city
9 government. I don't think that is a proper
10 categorization, and I will tell you why.

11 Q I will accept your answer, Mayor.

12 Q You believe it should be governed by the
13 same?

14 A Could I explain?

15 Q Well, I think you have answered it, and I
16 would hate to cut you off if you think it is
17 essential, but --

18 A No. There have been some innuendos that
19 somehow or other there are these great connections
20 between the LDC and the city. To some degree, that
21 is true. But the membership on the Local Development
22 Corporation is entirely from the private sector,
23 appointed by the board of directors upon
24 recommendation of the Mayor. But in the City of

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1 Albany the LDC has been a magnificent vehicle for us
2 to use for further economic development and also a
3 magnificent vehicle to bring in private sector
4 people.

5 Q Having delivered a commercial message a
6 short time ago, maybe you are on this one.

7 A Sure.

8 Q I want to ask your opinion as to whether
9 the city code of ethics and the state laws regarding
10 conflicts of interest that apply to the city should
11 also apply to the LDC?

12 A Yes.

13 Q Okay. Now, going back to -- I think it is
14 the First American Bank appraisal problem, as I
15 understand it from prior testimony, the question was
16 raised in your firm as a discussion in which you were
17 present as to whether the firm could represent the
18 bank in seeking a favorable assessment or avoiding an
19 increase in the assessment based on what was the
20 punitive price for the property between Bankers Trust
21 and First American; right?

22 A No. There was never any discussion about
23 our representing the bank with respect to the first
24 American assessment.

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1 Q Was there any discussion?

2 A The question, as I understand it, that was
3 raised was the propriety of my taking the memo and
4 saying, "Let me look into it."

5 Q Was that in the context of a discussion
6 within your firm about conflict of interest?

7 A On that?

8 Q Yes.

9 A No. I don't think we had any discussion.
10 It was at a round table meeting where the question of
11 the First American assessment came up. I said, "Let
12 me look into it." I am trying to -- I did that as
13 Mayor. And I tried to indicate that that is the same
14 thing I have done, and it is documented.

15 Q Was it indicated to you that if you raise
16 the assessment -- if the city raised the assessment
17 based on the punitive purchase price, that the bank
18 might want to litigate it in a tax certiorari
19 proceeding?

20 A No.

21 Q No discussion of that point?

22 A No.

23 Q No discussion of the probability that the
24 firm would have a conflict of interest in that case?

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1 A No. We didn't discuss it. I think the
2 reason we didn't discuss it, because I was Johnny-on-
3 the-spot as Mayor. And although it was given to me
4 in a partner's meeting, it was given to me as Mayor.
5 And I made that statement, "Let me look into it."

6 Q Basically, you averted a conflict of
7 interest by avoiding litigation; didn't you? If the
8 bank had wanted to litigate the increase in
9 assessment, your firm would have had a conflict of
10 interest problem that it would have had to deal with;
11 is that right?

12 A I think we can stretch this out to what
13 it might have been.

14 Q I am basing this on testimony by Mr.
15 Devine, I am not making it up out of whole cloth.

16 A There was never any consideration or
17 thought given to future litigation, at least not by
18 me.

19 Q It never occurred to you that that might be
20 a problem?

21 A No, it didn't. It didn't cross my mind.

22 Q You indicated that as a basis for keeping
23 assessment at its current level, that the prices were
24 part of a merger agreement; right?

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1 A Correct.

2 Q Did you inquire into what function those
3 prices played in the merger agreement, and
4 specifically whether they didn't establish a fair
5 market value attributed to the property by the
6 parties that would be used for depreciation purposes,
7 for federal tax purposes?

8 A No. I passed on the information to the
9 city assessor Bruce McDonald at that point. And I
10 don't think we got into any of the details relating
11 to that.

12 Q Prior to that time had it been the practice
13 of the assessor to raise assessments based on new
14 sales prices?

15 A Not generally, no. There was a "welcome
16 stranger" procedure that had been involved here in
17 the city before I became Mayor. And that system was
18 the famous rollercoaster yo-yo that I testified to in
19 my private testimony. And one of the first things we
20 did in 1983 was to tell people in the private sector,
21 particularly those involved in downtown, that that
22 would no longer happen.

23 Q Have you completed that comprehensive
24 review of bank properties yet?

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1 A I would say yes, we have. But the
2 reassessment of properties in Albany -- we found out
3 that most of the bank properties were overassessed.
4 That is what happened.

5 Q Has the First American Bank property been
6 reduced since then?

7 A I would have to check my records, or the
8 records in the city assessor's office would show what
9 has happened. I know before I took over, the books
10 were riddled with red ink which showed the
11 rollercoaster, and they no longer are. That record,
12 I wish you would look at it.

13 Q I would be glad do look at it sometime.
14 Could you look at Section 805-a of the General
15 Municipal Law?

16 A Yes.

17 Q Now, do you think that section which
18 generally prohibits -- the particular subdivision
19 l-c, I draw your attention to that one. I will just
20 read for the record the essence of that section: "No
21 municipal officer or employee shall --" skipping
22 down, "receive or enter into any agreement, express
23 or implied, for compensation for services to be
24 rendered in relation to any matter before any

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1 municipal agency in which he is an officer, member,
2 or employee of any municipal agency over which he has
3 jurisdiction or to which he has the power to appoint
4 a member, officer or employee." Without going to the
5 question of acknowledged intent or anything of that
6 sort, in reflection -- let me ask you this. Did you
7 ever look at that section?

8 A I am sure I have. And I can't tell you
9 exactly when.

10 Q Did you determine whether such transactions
11 as the First Realty transaction and 80 State Street
12 Center, and Crisafulli, the Tap Room, V. F. Conner,
13 whether those transactions might be covered by that
14 prohibition?

15 A If you are asking me did I pull out this
16 section and review the facts of those particular
17 instances in the context of the prohibition contained
18 in 805-a, I did not.

19 Q Looking at it now, do you see a problem?

20 A I would rather not answer that with a yes
21 or no. I think that I have tried to give you as best
22 as I could the reasons for my actions when those
23 actions were undertaken.

24 Q Okay. Do we agree, then, Mayor Whalen,

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1 that these cases at least demonstrate the kinds of
2 dilemmas and difficulties that a public official can
3 be placed in trying to maintain some of the private
4 sector base and, at the same time, acting as a public
5 official?

6 A I would agree with you absolutely and
7 wholeheartedly.

8 Q What role has your board of ethics -- Does
9 the city have a board of ethics?

10 A Yes. Judge Bergen, Holt-Harris and Bishop

11 Ball.

12 Q What role has that played in your efforts
13 to deal with the problems described today?

14 A They have not played an active role lately.
15 They did in 1986 and 1987 when they received a
16 request from myself that related to 39 North Pearl
17 Street, even though it was after the fact. And I
18 believe they also received requests from newspaper
19 reporters.

20 Q Did they give you an opinion?

21 A They did. They told me that it had the
22 potential of a conflict of interest. But since I
23 immediately withdrew, the question was moot.

24 Q Have you submitted any other problems to

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 them?

2 A No. That is the only one.

3 Q Have you any ideas as to whether -- let me
4 ask you this. Do you believe it might be a good idea
5 to strengthen the board of ethics by giving it power
6 to initiate its investigations or to review
7 complaints?

8 A Whether or not they would be the proper
9 vehicle, I don't know. But I do believe that there
10 should be some -- there should be something set up
11 that would have that function to decide it upon
12 inquiry from the general public, or on their own, or
13 from the municipal official himself.

14 Q Reflecting on all of these transactions
15 that have been brought to your attention in recent
16 days, do you see that some of the practices that have
17 existed -- not isolating you, but that have existed
18 in the city and some of the interrelationships that
19 exist -- and you use the term "potential conflict of
20 interest," could be a matter of concern to other
21 folks, to business people who might want to deal with
22 the city or its agencies who are affected by its
23 decisions, and to the general public, and that that
24 experience demonstrates a need to adopt more clear

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1 and more general and engender more rigorous rules?

2 A It hasn't just been recent days, Mr.
3 Magavern. It has been eighteen months that we have
4 been at this. And yes, I am very sensitive to that.
5 However, in a city the size of Albany -- and I tried
6 to allude to this in my opening comments -- I think
7 it is very, very difficult to factor out and all of a
8 sudden to make prohibition with a broad brush. This
9 it's not midtown Manhattan. You have got a very
10 sophisticated business community that interacts with
11 government all the time.

12 Q Would you agree that at least there ought
13 to be a process to get the issues out on the table at
14 the early -- before the transactions occur, make a
15 better public record to expose to scrutiny and deal
16 with it in an explicit way?

17 A I do. But I also think that if there were
18 the appearance, a general appearance that there was
19 some undercurrent in the city that showed favoritism,
20 that would be exposed so fast given the smallness of
21 the Albany community, that we would all be aware of
22 it at once. And I think that the proof that that
23 isn't there is the relationship that city government
24 does have with the private sector.

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1 Q Finally, do you have any specific
2 recommendations as a result of your experience that
3 you think we ought to be looking at?

4 A Public service and private sector
5 involvement is a dilemma that faces all of us now.
6 We see it being -- we see it being faced now in
7 Washington, and certainly I faced it here up until
8 the time I resigned from the practice of law. And
9 this is a very difficult subject. Is public service
10 to be only for the wealthy? Is service on the
11 federal bench to be only for the wealthy, or in
12 congress, or in municipal government? I think that
13 ethics problems are all a part of that -- all of a
14 part of that all-encompassing subject of people being
15 in public service. And the parameters here are
16 difficult to handle.

17 COMMISSIONER MAGAVERN: Thank you, Mr.

18 Mayor.

19 BY MR. EMERY:

20 Q Mr. Mayor, do you know John Curley?

21 A I do. He is a Superintendent in the
22 Department of Public Works.

23 Q Did you know him prior to the time that his
24 brother came to you and confirmed a license agreement

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1 that he had worked out, apparently, with Commissioner
2 Maikels?

3 A Yes. That would be in '83; in the fall, we
4 are talking about, shortly after I became Mayor. I
5 would say I probably knew John Curley was an
6 employee. Did I know him, no.

7 Q Do you know why, if there is a reason --
8 and maybe this displays my lack of knowledge -- but
9 why there was no RFP on the Tap Room license
10 agreement, why there weren't competing bids or why
11 there wasn't an open process? Why is it that Mr.
12 Curley got that restaurant license from the city as
13 opposed to any one of a number of other people who
14 may have wanted it?

15 A No. I relied on Commissioner Maikels who
16 made the affirmative -- he was the Commissioner of
17 the Department of Public Works who told me that Phil
18 Curley's proposal was the best one. At that time, I
19 was a brand new Mayor. I was the new boy on the
20 block, and these were people that worked for the city
21 for a long time. In those early months, I was
22 inclined to take their word as being rather
23 substantial.

24 Q If you were to do that now, you would make

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1 sure that there were other people included in the
2 process?

3 A Yes. I think that as we operate now, we
4 send out RFPs with respect to most city licenses and
5 contracts.

6 Q Now, turning to a different matter; when
7 you were meeting with the partners in your firm --
8 when you first became Mayor and you were discussing,
9 according to Mr. Kornstein and Mr. Devine's testimony
10 this morning, when you were discussing the issue of
11 your role as Mayor while you would remain a partner
12 of the firm, they reported to us that you said words
13 to the effect that your presence as Mayor as a
14 partner of the law firm would be helpful for the
15 firm, as the exposure would be helpful. Did you say
16 that at the partners' meetings?

17 A I would say that someone is alleged to say,
18 "Look what Corning did for Doug Rutnik and Richie
19 Meyers." I don't know who alluded to that; I don't
20 have a recollection of that. But I, or I would think
21 Mr. Brennan who at that time was a senior partner,
22 and Mr. Drislane who was also a senior partner, more
23 than the young partners would have said that the
24 visibility would have enhanced the image of the law

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1 firm.

2 Q What you meant by that was that there would
3 be more business coming to the law firm as a result
4 of your role as Mayor?

5 A Yes. I think that that is probably
6 accurate; that there is that possibility, like the
7 possibility exists for somebody in the state senate.

8 Q And that, in fact, awareness on the part of
9 the people to express that, to your recollection,
10 including yourself, that being a public official may
11 draw people to the firm as clients who are interested
12 in the influence that those public officials can

13 wield?

14 A May I draw -- I don't say that your entire
15 sentence is accurate. I don't know that anybody said
16 anything about using influence as much as there had
17 been a history of public service in the law firm;
18 that it had proved to be beneficial for the law firm
19 in the past, and this would be a continuum of that.
20 Just picking up for one moment on some of the
21 questions Mr. Magavern asked you about the First
22 American Bank --

23 A Reassessment?

24 Q I take it from the testimony that when that

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1 occurred -- when that whole series of events
2 occurred, you were proposed as Mayor by your law firm
3 to see what could be done about the reassessment
4 problem and, at some point later on at a partnership
5 meeting you reported back -- the testimony was by Mr.
6 Devine -- that, "It is taken care of and there is no
7 problem?" That's correct; isn't it?

8 A No. I have no recollection of saying that
9 "it is taken care of."

10 Q That it was not going to be a problem
11 because there weren't going to be any reassessment;
12 you reported that to the law firm?

13 A I don't know how it got back to the law
14 firm. I am not so sure I did report back. It might
15 have been someone from the bank contacted Bruce
16 McDonald.

17 Q If Mr. Devine testified here today that you
18 reported that back, you wouldn't necessarily dispute
19 it; would you?

20 A I have no recollection that what he
21 testified to is accurate, no.

22 Q Despite the fact that there was that
23 decision as reflected in your memorandum that is an
24 exhibit here that there would be no reassessment at

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1 this time; that was your memorandum to Mr. McDonald,
2 is that correct?

3 A Yes.

4 Q That was at the very same time that there
5 was this bank merger between First American Bank and
6 Bankers Trust. That was shortly after that merger?

7 A Yes, that I wrote him the memo based on his
8 memo to me that it was in the ball park.

9 Q And Bankers Trust had been your firm's long
10 term client; had it not?

11 A Yes.

12 Q And First American Bank was a new bank, as
13 far as your client was concerned, that merged with
14 Banker's Trust?

15 A That's correct. They were coming up from
16 Washington.

17 Q It was not at all clear, was it, that they
18 were going to retain or keep your law firm's services
19 at that time?

20 A I don't remember that being a
21 consideration.

22 Q But it could very well have been a
23 consideration; could it not?

24 A I think there could have been a lot of

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1 things that entered into who represented First
2 American and Banker's Trust. But if you are asking
3 me was that a consideration of mine at the time, I
4 don't recall giving that any consideration.

5 Q The representation of First American Bank
6 was a whole new ball game, was it not, in terms of
7 coming up here and finding a law firm to represent
8 them in the multiplicity of matters that they came to
9 have over the years?

10 A I don't know. This was Clark Clifford's
11 law firm that represented First American. And I am
12 sure Clark Clifford would have picked whatever lawyer
13 he wanted in Albany, New York.

14 Q Now, the fact is that that client
15 represented about twenty-five percent of the law
16 firm's billings; is that correct?

17 A If you have testimony to that effect, I am
18 not aware of it. And I am not about to say right now
19 what percentage income the law firm had from first
20 American.

21 Q The final point, with respect to the 39
22 North Pearl Street project, I believe you testified
23 as to a sequence of events that went from somewhere
24 in April '86 through January '87 when you finally

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1 withdrew from your investment partnership; is that
2 correct? Am I mistaken?

3 MR. MUMFORD: October.

4 Q The final withdrawal was January '87; was
5 it not?

6 A Yes.

7 Q And at that time your partners had invested
8 and you withdrew from that investment?

9 A That's correct.

10 Q And prior to that, you had executed in your
11 discretionary capacity as Mayor a number of actions,
12 three or four actions, at least, which had permitted
13 the development or authorized the development of
14 North Federal Street including an IDA loan and other
15 matters, an easement and other matters; is that
16 correct?

17 A It is, but --

18 Q Prior to the time you withdrew?

19 A Yes. And at that time, there was no
20 definitive indication that the law firm was going to
21 be a tenant or that we would have an equity
22 participation.

23 Q I am saying as of January when the
24 investment was made, there was such knowledge on your

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1 part?

2 A Yes. As I tried to say, as soon as the
3 UDAG prohibition was brought to my attention, I
4 immediately withdrew.

5 Q And the result of all of your actions, even
6 though it was not to benefit yourself directly, was
7 to benefit your partners substantially; was it not?

8 A As I understand Mr. Newland's testimony
9 here, the per square foot rental of the space at 39
10 North Pearl Street was two dollars above market.

11 Q I am talking about the investment
12 opportunity and the matter of participating in an
13 equity investment on the redevelopment project at 39
14 North Pearl. This was a substantial boon to your
15 partners?

16 A I would say right now that those gentlemen
17 are on a four hundred thousand dollar note. And if
18 you characterize that as a boon to them, it is a boon
19 that they have not realized yet or may never.

20 COMMISSIONER EMERY: Thank you.

21 MR. SCHWARZ: I will try to be brief.

22 Mr. Mayor, you have used the words with respect
23 to Mr. Curley, you said you would never do it
24 again, and with respect to somebody else you

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 said you didn't look at something as thoroughly
2 as you should have. I guess the question I have
3 when I come away from that is the eighteen
4 months experience that you have had with
5 investigations and this Commission, and
6 everything else, it has no doubt sensitized you
7 to these issues. And that is all to the good of
8 the next Mayor who comes in and is going to
9 start all over.

10 Q So, my question is: what do we do here? I
11 was interested in noting from the deposition that you
12 hadn't looked at the model code that this Commission
13 proposed. In answer to the Chair's question before,
14 I believe you said to Mr. Magavern's question, I
15 believe you said that the board of ethics hadn't been
16 asked to do anything more since submitting questions.
17 What steps have you taken since all of this to make
18 these rules clearer in your city for other officials
19 in your city, and perhaps for your successor?

20 A Well, I am not so sure that you are
21 paraphrasing my comments with respect to Mr. Curley
22 and my other testimony.

23 Q Remove that preface.

24 A You say why haven't I done something --

(WHALEN, T. - EXAM. BY COMMISSIONERS)

1 Q I didn't ask you in connection with --

2 A -- that you feel should have been done. I
3 would say I am so consumed with running the city and
4 trying to prepare for the eventual hearing that I
5 have had little time to do anything else. Now,
6 hopefully, I will have time to look into some of
7 these items.

8 MR. SCHWARZ: I have no further
9 questions.

10 CHAIRMAN FEERICK: I have no questions
11 to put to you, Mayor. I would just like to make
12 a short statement as to what our mutual
13 procedure is after a hearing is complete.
14 If there is any additional work we
15 need to do of a factual nature and discuss the
16 subject at a Commission hearing -- or at a
17 Commission meeting and, depending on the
18 discussion, to crystalize our views on the
19 subject of the hearing and whatever
20 recommendations seem to be merited as a result
21 of that discussion. And we usually submit a
22 report to the Governor as the appointing
23 authority for our Commission.

24 That being the case, I certainly know

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1 that the Commissioners would welcome any
2 additional information that you would want to
3 review after you have had a chance to review the
4 statements made today and examine the testimony
5 of the witnesses that you didn't hear
6 personally. And we would be happy to consider
7 that additional statement along with other
8 information we have compiled in terms of
9 formulating our final report.

10 THE WITNESS: Thank you. We welcome
11 the opportunity.

12 CHAIRMAN FEERICK: Thank you. This
13 hearing is ended.

14 (The proceedings before the Commission
15 were concluded at approximately 5:35
16 p.m.)

(WHALEN, T. - EXAM. BY COMMISSIONERS)

C E R T I F I C A T I O N

IN THE MATTER OF: State of New York
Commission on Government Integrity

RE: PUBLIC HEARING

Witnesses presented:

John Fox

Phillip C. Curley

Terrence P. Devine

Gordon C. Bell

Michael Kornstein

Charles E. Newland

Hon. Thomas M. Whalen, III

AT: Justice Building, Courtroom #1
Empire State Plaza
Albany, New York

ON: June 26, 1989

9:00 a.m. - 5:35 p.m.

I, Beth S. Goldman, Certified

Shorthand Reporter, Registered Professional

Reporter and Notary Public do hereby certify

that the foregoing is a true and accurate

transcription of the proceedings conducted in

the above-entitled matter, as reported by me,

to the best of my knowledge and belief.

DATE: June 28, 1989

Beth S. Goldman
BETH S. GOLDMAN, CSR, RPR